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RUDY, COY AND WIGGINS, JUNE 30, 1987

REFERRED TO COMMITTEE ON INSURANCE, JUNE 30, 1987

AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated
2 Statutes, adding provisions relating to insurance; and making
3 repeals.

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26 § 7726. Authorized contract provisions.

27 § 7727. Subscriptions provided by government agencies.

28 § 7728. Board of directors.

29 § 7729. Rates and contracts.

30 § 7730. Investment of funds.

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2 § 7732. Regulation by Department of Health.
3 § 7733. Dental service agents.
4 § 7734. Dissolution or liquidation.
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26 § 8113. Examination of association.
27 § 8114. Annual and other statements.
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5 § 8131. Powers and duties of department.

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21 Association.

22 § 8312. Board of directors.

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4 Subchapter E. Impaired and Insolvent Insurers

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6 § 8342. Affairs of impaired and insolvent insurers.

7 § 8343. Proceedings involving insolvent insurers.

8 § 8344. Timely filing of claims.

9 § 8345. Duplication of recovery.

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18 Subchapter C. Regulation

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21 § 8523. Limitations on interest and other charges.

22 § 8524. Delinquency and cancellation charges.

23 § 8525. Cancellation of insurance contract upon default.

24 § 8526. Return of premiums.

25 § 8527. Secured transactions.

26 § 8528. Penalties for violation.

27 The General Assembly of the Commonwealth of Pennsylvania

28 hereby enacts as follows:

29 Section 1. Title 40 and Chapter 17 of Title 75 of the

30 Pennsylvania Consolidated Statutes are repealed.

1 Section 2. Title 40 is amended by adding parts to read:

2 TITLE 40

3 INSURANCE

4 Part

5 I. Preliminary Provisions

6 II. Regulation of Insurers and Related Persons Generally

7 III. Organization of Insurance Entities

8 IV. Special Provisions Relating to Particular Classes of Risk

9 PART I

10 PRELIMINARY PROVISIONS

11 Chapter

12 1. General Provisions

13 CHAPTER 1

14 GENERAL PROVISIONS

15 Sec.

16 101. Short title of title.

17 102. Definitions.

18 § 101. Short title of title.

19 This title shall be known and may be cited as the Insurance
20 Code.

21 § 102. Definitions.

22 Subject to additional definitions contained in subsequent
23 provisions of this title which are applicable to specific
24 provisions of this title, the following words and phrases when
25 used in this title shall have the meanings given to them in this
26 section unless the context clearly indicates otherwise:

27 "Alien." Incorporated or organized under the law of another
28 country.

29 "Association." An individual, partnership or association of
30 individuals authorized to engage in the business of insurance in

1 this Commonwealth as insurers on the Lloyds plan.

2 "Authorized." Having authority under this title to engage in
3 this Commonwealth in the class or classes of insurance specified
4 in the authorization.

5 "Certificate of authority." An instrument in writing issued
6 by the department authorizing an insurer or proposed insurer to
7 engage in the business of insurance, or some specified class or
8 classes thereof, in this Commonwealth.

9 "Commissioner." The Insurance Commissioner of the
10 Commonwealth.

11 "Company." An insurance corporation or title insurance
12 corporation whether incorporated under the law of this
13 Commonwealth, or of any other state, or under the law of any
14 foreign country.

15 "Corporation not-for-profit." A corporation not-for-profit
16 as defined in Title 15 (relating to corporations and
17 unincorporated associations).

18 "Department." The Insurance Department of the Commonwealth.

19 "Domestic." Incorporated or organized under the law of this
20 Commonwealth.

21 "Entity." A company, association or exchange.

22 "Exchange." An individual, partnership or corporation
23 authorized by the law of this Commonwealth to exchange inter-
24 insurance or reciprocal insurance contracts with other similarly
25 authorized individuals, partnerships or corporations.

26 "Foreign." Incorporated or organized under the law of
27 another state.

28 "Regulation." A regulation as defined in 45 Pa.C.S. § 501
29 (relating to definitions).

30

PART II

1 REGULATION OF INSURERS AND RELATED

2 PERSONS GENERALLY

3 Chapter

4 3. General Provisions

5 5. Insurance Department

6 7. Reserve Liability

7 9. Deposits of Securities to do Interstate Business

8 11. Agents and Brokers

9 13. Unlicensed Insurers

10 15. Unfair Insurance Practices

11 17. Reporting Requirements

12 19. Insurance Rates

13 21. Reciprocal and Inter-Insurance Exchanges

14 23. Lloyds Associations

15 CHAPTER 3

16 GENERAL PROVISIONS

17 Sec.

18 301. Definitions (Reserved).

19 302. Applicability of part.

20 303. Compliance with part.

21 304. Regulations.

22 § 301. Definitions (Reserved).

23 § 302. Applicability of part.

24 (a) General rule.--The provisions of this part shall apply
25 to all entities transacting any class of insurance business, to
26 rating organizations and to all insurance agents and insurance
27 brokers.

28 (b) Fraternal benefit societies.--Except for sections 514
29 (relating to records and report of department), 709 (relating to
30 valuation of securities) and 1107 (relating to penalty for

1 soliciting for nonexistent company) and Chapter 39 (relating to
2 suspension of business and dissolution), this part does not
3 apply to fraternal benefit societies, orders or associations
4 conducted not for profit, and having a lodge system with
5 ritualistic form of work and representative form of government,
6 or to beneficial or relief associations conducted not for profit
7 formed by churches, societies, classes, firms or corporations,
8 with or without ritualistic form of work, the privilege of
9 membership in which is confined to the members of such churches,
10 societies or classes, and to members and employees of such firms
11 or corporations.

12 (c) Mutual fire insurance companies.--Except for sections
13 511 (relating to examination of companies), 512 (relating to
14 powers with regard to examinations) and 514 and Chapter 39, this
15 part does not apply to incorporated domestic mutual fire
16 insurance companies with unlimited or limited liability to
17 assessment for payment of expenses and of losses and loss
18 adjustments, set forth in the policy contract or in the
19 promissory notes attached thereto.

20 § 303. Compliance with part.

21 (a) General rule.--Except as otherwise expressly provided in
22 this title, a person shall not negotiate, solicit or execute any
23 contract of insurance in this Commonwealth, receive and transmit
24 any offer of insurance, receive or deliver a policy of insurance
25 or aid in the transaction of the business of insurance without
26 fully complying with this part.

27 (b) Cross references.--See sections 7305 (relating to
28 applicability of other law), 7512 (relating to exemptions for
29 hospital plan corporations) and 7714 (relating to exemptions for
30 professional health service corporations).

1 § 304. Regulations.

2 The department shall prescribe those regulations that may be
3 reasonably necessary for the exercise of its powers and
4 performance of its duties under this title and for the
5 administration of the department.

6 CHAPTER 5
7 INSURANCE DEPARTMENT

8 Sec.

9 501. Establishment of department.

10 502. Appointment of commissioner.

11 503. Restrictions on officers and employees.

12 504. Seal.

13 505. Certified documents and copies.

14 506. Certificates of authority to do business.

15 507. Penalty for acting without authority.

16 508. Fees.

17 509. Assessments for expenses of Committee on Valuation of
18 Securities.

19 510. Additional restrictions of other states.

20 511. Examination of companies.

21 512. Powers with regard to examinations.

22 513. Collection of taxes, fines and penalties.

23 514. Records and report of department.

24 515. Administrative procedure and judicial review.

25 § 501. Establishment of department.

26 The Insurance Department shall be the executive agency
27 charged with the execution of the laws relating to insurance.

28 § 502. Appointment of commissioner.

29 The Governor, with the advice and consent of the Senate,
30 shall appoint an Insurance Commissioner, who shall hold office

1 for the term of four years and until his successor is appointed
2 and qualified.

3 § 503. Restrictions on officers and employees.

4 An officer or employee of the department shall not be
5 employed by or be pecuniarily interested in any insurance entity
6 or in any insurance business, other than as a policyholder.

7 § 504. Seal.

8 The department shall adopt and renew, from time to time, a
9 seal of office, an impression of which shall be filed in the
10 office of the Secretary of the Commonwealth.

11 § 505. Certified documents and copies.

12 (a) Certificates of authority.--The department shall
13 furnish, under seal of the department, when required for
14 evidence in court, certificates relative to the authority of an
15 entity, agent or broker to transact business in this
16 Commonwealth upon any particular date, and the certificate shall
17 be competent evidence thereof.

18 (b) Certified copies of documents.--The department shall, at
19 the request of any person and on payment of the fee, give
20 certified copies of any charter, statement or record filed in
21 its office, whenever it is deemed by the department not
22 prejudicial to the public interest. These certified copies shall
23 be admissible in evidence in judicial and administrative
24 proceedings.

25 § 506. Certificates of authority to do business.

26 (a) General rule.--A foreign or alien insurance entity shall
27 not do an insurance business in this Commonwealth without first
28 having obtained a certificate of authority from the department
29 authorizing it to do such business. Before granting the
30 certificate of authority to an insurance entity, the department

1 shall be satisfied, by such examination as it may make or by
2 such evidence as it may require, that the entity conforms to the
3 requirements of this title. After such issue, the holder shall
4 continue to comply with the requirements of this title.

5 (b) Renewal.--The department may renew the certificate of
6 authority of any mutual assessment life or accident association,
7 which is now lawfully doing business in this Commonwealth,
8 beginning on April 1 of each year, and continuing in force for
9 one year unless sooner revoked by the department or surrendered
10 by the licensee. Any certificates issued after April 1 shall
11 expire on March 31 succeeding.

12 (c) Doing insurance business.--Any of the following acts
13 constitute the doing of an insurance business in this
14 Commonwealth, whether effected by mail or otherwise:

15 (1) The issuance or delivery of contracts of insurance
16 to persons resident in this Commonwealth.

17 (2) The solicitation of applications for such contracts
18 or other negotiations preliminary to execution of such
19 contracts.

20 (3) The collection of premiums, membership fees,
21 assessments or other consideration for such contracts.

22 (4) The transaction of matters subsequent to execution
23 of such contracts and arising out of them.

24 (d) Action for injunction.--Whenever the department
25 believes, from evidence satisfactory to it, that any insurance
26 entity is doing an insurance business in this Commonwealth in
27 violation of any provision of this title or any order or
28 requirement of the department issued or promulgated pursuant to
29 authority expressly granted the department by law, or is about
30 to violate any such provision, order or requirement, the

1 department may, after approval by the Attorney General, bring an
2 action for an injunction. This remedy is in addition to any
3 other remedy provided by law.

4 (e) Appointment of agent for receiving service.--The
5 performance by a foreign or alien insurance entity of any act
6 which constitutes the doing of an insurance business in this
7 Commonwealth shall be deemed an appointment by the entity of the
8 Secretary of the Commonwealth as its true and lawful attorney
9 upon whom may be served all lawful process in any action, suit
10 or proceeding instituted by or on behalf of the department
11 against it arising out of a violation of this section and shall
12 signify its consent that such service of process shall have the
13 same legal force and validity as personal service of process in
14 this Commonwealth upon it.

15 (f) Service of process on Secretary of the Commonwealth.--
16 Service of process shall be made by delivering to and leaving
17 with the Secretary of the Commonwealth two copies thereof. The
18 Secretary shall immediately send, by registered mail, one of the
19 copies of such process to the entity at its last known principal
20 place of business and shall keep a record of all process so
21 served upon him. Notice of service upon the Secretary and a copy
22 of the process shall be sent within ten days thereafter, by
23 registered mail, by or on behalf of the department to the entity
24 at its last known principal place of business. The receipt of
25 the entity or the receipt issued by the post office with which
26 the notice is registered showing the name of the sender of the
27 notice and the name and address of the entity to whom the notice
28 is addressed, and the affidavit of or on behalf of the
29 department showing a compliance herewith, shall be filed with
30 the prothonotary or clerk of the court on or before the date the

1 entity is required to answer or within such further time as the
2 court may allow.

3 (g) Personal service.--Service of process in any action or
4 proceeding under this section shall, in addition to the manner
5 provided in subsection (f), be valid if served upon any person
6 in this Commonwealth who on behalf of the entity is soliciting
7 insurance; making, issuing or delivering any contract of
8 insurance; or collecting or receiving any premium, membership
9 fee, assessment or other consideration for insurance. Notice of
10 the service and a copy of the process shall be sent within ten
11 days after such service by registered mail by the department to
12 the entity at its last known principal place of business. The
13 return receipt from the entity or the receipt issued by the post
14 office with which the notice is registered, showing the name of
15 the sender of the notice and the name and address of the entity
16 to whom the notice is addressed, and the affidavit of the
17 department showing a compliance with this subsection shall be
18 filed with the prothonotary or clerk of the court on or before
19 the date the entity is required to answer or within such further
20 time as the court may allow.

21 (h) Bond.--Before any foreign or alien entity files any
22 pleading in any action or proceeding instituted against it under
23 this section, the entity shall, if the court requires, deposit
24 with the prothonotary of the court cash or securities or file
25 with the prothonotary a bond with good and sufficient sureties
26 approved by the court. The deposit or bond shall be in the
27 amount approved by the court, taking into account all relevant
28 circumstances, including the financial condition of the entity,
29 as sufficient to secure the payment of any final judgment which
30 may be rendered in such action or proceeding.

1 (i) Time to respond.--A judgment by default or otherwise
2 shall not be entered in any action or proceeding under this
3 section until the expiration of 30 days from the date of the
4 filing of the affidavit of compliance as set forth in subsection
5 (f) or (g).

6 (j) Other procedures for service.--This section does not
7 limit or abridge the right to serve any process, notice or
8 demand upon any foreign or alien entity in any manner permitted
9 by law.

10 (k) Exclusions.--This section does not apply to the
11 following:

12 (1) Transactions regulated by Chapter 13 (relating to
13 unlicensed insurers).

14 (2) Life insurance or annuities provided to educational
15 or scientific institutions organized and operated without
16 profit to any private shareholder or individual for the
17 benefit of the institutions and individuals engaged in the
18 service of the institutions.

19 (3) Contracts of reinsurance.

20 (4) Transactions in this Commonwealth which involve a
21 policy lawfully solicited, written and delivered outside this
22 Commonwealth covering only subjects of insurance not
23 resident, located or expressly to be performed in this
24 Commonwealth at the time of issuance of the policy and which
25 are subsequent to the issuance of the policy.

26 (5) Transactions in this Commonwealth, except group
27 credit life or group credit accident and health insurance
28 transactions, involving group or blanket insurance policies
29 or group annuity contracts, where the group policy or
30 contract is issued and delivered pursuant to the group or

1 blanket insurance or group annuity laws of a jurisdiction in
2 which the insurer is authorized to do an insurance business
3 and in which the policyholder is domiciled or has its
4 principal place of business or otherwise has a situs.

5 (6) Transactions in this Commonwealth, except group
6 credit life or group credit accident and health insurance
7 transactions, involving a group or blanket insurance policy
8 or group annuity contract not exempt under paragraph (5), if:

9 (i) they involve a group which conforms to one of
10 the definitions of eligibility for group coverage
11 contained in this title; and

12 (ii) the group policy or contract is lawfully issued
13 outside this Commonwealth in a jurisdiction in which the
14 insurer is authorized to do insurance business.

15 The insurer claiming exemption under this paragraph has the
16 burden of demonstrating compliance with the conditions of
17 this paragraph.

18 (7) Any industrial insured, insurance company or
19 underwriter issuing contracts of insurance to industrial
20 insureds or any contract of insurance issued to an industrial
21 insured. This paragraph does not exempt any industrial
22 insured from Chapter 13. As used in this paragraph the term
23 "industrial insured" means an insured who procures the
24 insurance of any risk by use of the services of a full-time
25 employee acting as an insurance manager or buyer or the
26 services of a regularly and continuously retained qualified
27 insurance consultant, whose aggregate annual premiums for
28 insurance on all risks total at least \$25,000 and who has at
29 least 25 full-time employees.

30 (8) Transactions in this Commonwealth involving a policy

1 of insurance issued prior to July 31, 1968.

2 (9) Insurance on the property and operation of railroads
3 or aircraft engaged in interstate or foreign commerce.

4 (10) Insurance on vessels, crafts or hulls, cargoes,
5 marine builder's risks, marine protection and indemnity,
6 lessees' and charterers' liability, or other risks, including
7 strikes and war risks commonly insured under ocean or wet
8 marine forms of policies.

9 § 507. Penalty for acting without authority.

10 (a) Entities.--Any insurance entity doing an insurance
11 business in this Commonwealth without a certificate of authority
12 as required by this chapter shall pay a civil penalty of not
13 less than \$1,000 nor more than \$10,000 for each offense, to be
14 recovered on behalf of the Commonwealth.

15 (b) Persons.--Any person negotiating or soliciting any
16 policy of insurance or suretyship in this Commonwealth,
17 collecting or forwarding premiums or delivering policies for any
18 entity to which a certificate of authority has not been granted
19 shall be deemed to be the agent of the entity in any legal
20 proceedings brought against it. The person shall pay a civil
21 penalty of not less than \$1,000 nor more than \$10,000 for each
22 offense, to be recovered on behalf of the Commonwealth.

23 (c) Exceeding authority.--Any insurance entity doing an
24 insurance business in this Commonwealth, which exceeds the
25 powers granted under a certificate of authority, shall pay to
26 the Commonwealth a sum of not more than \$500 for each policy
27 issued in violation of this chapter.

28 (d) Hearing and notice.--Before the department takes any
29 action under this section, it shall give written notice to the
30 entity or person accused of violating the law, stating the

1 nature of the alleged violation and fixing a time and place, at
2 least ten days thereafter, when a hearing of the matter shall be
3 held. After the hearing or the failure of the respondent to
4 appear at the hearing, the department shall impose such penalty
5 as it deems advisable.

6 § 508. Fees.

7 (a) General rule.--The department shall charge and collect
8 fees as provided under this title or under section 612-A of the
9 act of April 9, 1929 (P.L.177, No.175), known as The
10 Administrative Code of 1929. All fees collected shall be paid
11 daily into the State Treasury.

12 (b) Biennial licenses.--The department may issue licenses
13 for a period of two years at two times the annual fees
14 established by law. One-half of any fee collected shall be
15 refunded or be credited to the account of the payor entitled to
16 the refund if the license is canceled within 12 months of its
17 inception date or within 12 months of its effective date as
18 certified to the department by insurance entities authorized by
19 law to transact business in this Commonwealth.

20 § 509. Assessments for expenses of Committee on Valuation of
21 Securities.

22 (a) Authority of department.--The department may contract
23 with the Committee on Valuation of Securities of the National
24 Association of Insurance Commissioners to make available to the
25 department the analyses, reports and information developed by
26 the committee with respect to the investigation, analyses and
27 valuation of securities and the determination of the
28 amortizability of bonds owned by insurance companies. After
29 taking into consideration similar payments which may be made by
30 other states, the department may make payment therefor to the

1 committee to the extent authorized in this section, on account
2 of the expenses of the committee, from funds obtained through
3 assessments under this section.

4 (b) Information from committee.--The department shall
5 periodically obtain from the committee a verified budget
6 estimate of the receipts and of the expenses to be incurred by
7 the committee for a stated period not exceeding one year with
8 appropriate explanations of the estimates. The department shall
9 require annually, and at such other times as it may deem it
10 necessary or advisable, a duly certified audit of receipts and
11 disbursements and statement of assets and liabilities showing
12 the details of the financial operations of the committee.

13 (c) Method of assessment.--If the department is satisfied as
14 to the reasonableness of the committee's budget estimate, it
15 shall determine the portion of the funds required by the budget
16 estimate, to be assessed as provided in this section, by
17 deducting from the budget estimate or from the sum of \$250,000,
18 whichever is less, any amounts received or receivable by the
19 committee from other states whose laws do not substantially
20 conform to the method of assessment provided in this section,
21 and applying to the remainder the proportion which the total
22 investments in securities of domestic life insurers bear to the
23 total investments in securities of life insurers domiciled in
24 this and other states whose laws authorize and require
25 assessments on substantially the same base as provided in this
26 section. The department shall thereafter, as soon as convenient,
27 by notice stating the method of computation thereof, assess the
28 amount to be paid on account of such expense pro rata upon all
29 domestic life insurers in the proportion which the total
30 investments in securities of each domestic life insurer bears to

1 the total investments in securities of all such insurers. The
2 aggregate amount assessed upon all domestic life insurers
3 pursuant to this section in any one year shall not exceed an
4 amount determined by applying to the "remainder," referred to in
5 the first sentence of this subsection, the proportion which the
6 total investments in securities of domestic life insurers bear
7 to 75% of the total investments in securities of all life
8 insurers domiciled in all the states of the United States and
9 the District of Columbia. For purposes of this section, the
10 total investments in securities of any life insurer, shall be
11 the total admitted value of stock and bonds reported as such in
12 its annual statement last filed prior to the assessment with the
13 department or with the supervisory official of its state of
14 domicile. Upon receipt of the notice, each insurer shall, within
15 30 days, pay the assessment to the department. The department
16 shall deposit all moneys collected by it pursuant to this
17 section in an account entitled "Insurance Commissioner Security
18 Valuation Expense Account" in a bank or trust company in this
19 Commonwealth. The moneys shall be paid by the department to the
20 Committee on Valuation of Securities after audit by the Auditor
21 General.

22 § 510. Additional restrictions of other states.

23 (a) General rule.--If any other state or a foreign
24 government imposes any burdens or prohibitions on insurance
25 companies, or agents of this Commonwealth doing business
26 therein, which are in addition to or in excess of the burdens or
27 prohibitions imposed by the Commonwealth on insurance companies
28 and agents, similar burdens and prohibitions shall be imposed on
29 all insurance companies and agents of the other state or foreign
30 government doing business in this Commonwealth so long as these

1 burdens and prohibitions remain in force. Foreign or alien
2 insurance companies shall not be required to pay any taxes and
3 fees which are greater in aggregate amount than those which
4 would be imposed by the law of the other state or foreign
5 country or any political subdivision thereof upon an insurance
6 company of this Commonwealth transacting the same volume and
7 kind of business in the foreign state or country.

8 (b) Motor vehicle insurance.--If any other state or foreign
9 country requires additional or other insurance covering
10 motorists, or motor vehicles that are insured by domestic
11 insurance companies, or in authorized insurance companies of
12 other states in order to use the highways of the other state or
13 foreign country, similar insurance shall be required to cover
14 all motorists and motor vehicles of the other state or foreign
15 country using the highways of this Commonwealth so long as the
16 requirements of the other state or foreign country remain in
17 force.

18 (c) Monopolistic funds.--The existence of a monopolistic
19 state fund for the writing of any class of insurance in any
20 state or foreign country shall not be deemed a reason to deny to
21 an entity of that state or foreign country a license to transact
22 such classes of insurance in this Commonwealth.

23 (d) Definitions.--As used in this section the following
24 words and phrases shall have the meanings given to them in this
25 subsection:

26 "Agent." An insurance agent, insurance broker, public
27 adjuster or public adjusters' solicitor.

28 "Burdens or prohibitions." Taxes, fines, penalties,
29 licenses, fees, rules, regulations, obligations and
30 prohibitions, including prohibitions against writing particular

1 kinds of insurance by insurance companies, and restrictions on
2 the payment or division of commissions to or with insurance
3 agents or brokers licensed under the law of this Commonwealth.

4 § 511. Examination of companies.

5 (a) Power of department.--The department shall require every
6 domestic insurance entity to keep its books, records, accounts,
7 vouchers, portfolios and transactions in such manner that it may
8 readily verify its annual quarterly and monthly statements and
9 ascertain whether the entity has complied with the provisions of
10 law. The department shall, without notice, at least once every
11 year during the first five years of existence of every domestic
12 insurance entity, and thereafter every four years or more often
13 thoroughly examine the affairs of each domestic insurance entity
14 to ascertain its financial condition, its ability to fulfill its
15 obligations, its compliance with law, the equity of its plans,
16 its dealings with its policyholders and claimants and any other
17 facts relating to its business methods and management. In the
18 course of conducting this examination, it may compel the
19 attendance of officers, directors, trustees or members of any
20 domestic insurance entity or examine any foreign or alien
21 insurance entity applying for admission or already admitted to
22 do business in this Commonwealth. In lieu of this examination,
23 the department may accept the report of examination made by or
24 upon the authority of the supervising official of any other
25 state.

26 (b) Report.--The department shall prepare a report of the
27 examination of any domestic insurance entity immediately upon
28 completion of its examination. It shall submit the report to the
29 domestic insurance entity examined, which may object to any part
30 of the report within 30 days from the receipt thereof. If any

1 objection is made, the department shall grant a hearing to the
2 organization examined before making the report available for
3 public inspection. Thereafter, it may publish the report or the
4 results of the examination as contained therein in one or more
5 newspapers in this Commonwealth.

6 (c) Corporations.--The department may examine into the
7 affairs of any domestic or foreign corporation doing business in
8 this Commonwealth which is engaged in, or is claiming or
9 advertising that it is engaged in, organizing or receiving
10 subscriptions for or disposing of stocks of, or in any manner
11 taking part in the formation or in the business of, an insurance
12 entity, either as agent or otherwise, or which is holding the
13 capital stock of one or more insurance companies for the purpose
14 of controlling the management thereof as voting trustees or
15 otherwise.

16 § 512. Powers with regard to examinations.

17 For the purpose of the examination under section 511
18 (relating to examination of companies), the department shall
19 have free access to all the books and papers of any entity which
20 relate to its business, and to the books and papers kept by any
21 of its agents, and may summon, and administer the oath to, and
22 examine as witnesses, the directors, officers, agents and
23 trustees of the entity and any other person. The department
24 shall publish the result of its examination of the affairs of
25 any entity if it is deemed by the department in the interest of
26 the policyholders to do so. All expenses incurred in the course
27 of the examination, including compensation of the deputies,
28 examiners and other employees of the department assisting in the
29 examination, shall be charged to the entity examined in
30 equitable proportions at such times and in such manner as the

1 department shall by rule or regulation prescribe.

2 § 513. Collection of taxes, fines and penalties.

3 The taxes imposed under this title shall be collected by the
4 Department of Revenue. The fines and penalties imposed by the
5 department shall, in case of failure to pay after notice from
6 the department, be collected as taxes upon corporations or
7 individuals are now collected by law. The department shall have
8 the powers conferred by law upon the Department of Revenue in
9 the settlement of accounts, for purposes of collecting these
10 fines and penalties, subject to the approval of the Auditor
11 General and to the right of any party aggrieved to file a
12 petition for resettlement or for review and appeal.

13 § 514. Records and report of department.

14 The department shall preserve, in a permanent form, a full
15 record of its proceedings and a concise statement of the
16 condition of each entity, society or agency examined. It shall
17 make an annual report, to be submitted to the General Assembly,
18 showing the receipts and expenses of the department, the
19 condition of the entities or societies doing business in this
20 Commonwealth, and such other information as will inform the
21 public of the affairs or activities of the department.

22 § 515. Administrative procedure and judicial review.

23 (a) Administrative procedure.--Except as otherwise
24 specifically provided, no provision of this title abridges the
25 availability of an administrative hearing under 2 Pa.C.S. Ch. 5
26 Subch. A (relating to practice and procedure of Commonwealth
27 agencies). The department shall conduct all administrative
28 hearings in such a manner as to maintain the separation of
29 prosecutorial and adjudicatory functions required by law.

30 (b) Judicial review.--Any adjudication rendered pursuant to

1 this title may be appealed under 2 Pa.C.S. Ch. 7 Subch. A
2 (relating to judicial review of Commonwealth agency action).

3 CHAPTER 7

4 RESERVE LIABILITY

5 Subchapter

6 A. Life Insurance and Annuities

7 B. Insurance Other than Life Insurance

8 C. Workmen's Compensation and Liability Insurance

9 D. Casualty Insurance

10 E. Title Insurance

11 SUBCHAPTER A

12 LIFE INSURANCE AND ANNUITIES

13 Sec.

14 701. Valuation by department.

15 702. Computation of reserves on prior policies.

16 703. Computation of reserves on recent policies.

17 704. Reserves for special plans.

18 705. Minimum reserve requirements of certain companies.

19 706. Computation of reserves for health and accident insurance.

20 707. Valuations by other states.

21 708. Reserve fund.

22 709. Valuation of securities.

23 § 701. Valuation by department.

24 The department shall each year value, or cause to be valued,
25 the reserve liabilities referred to in this section as reserves
26 or net value, as of December 31 of the preceding year, for all
27 outstanding life insurance policies and annuity and pure
28 endowment contracts of every life insurance company doing
29 business in this Commonwealth, except that, in the case of any
30 alien company, the valuation shall be limited to its United

1 States business in accordance with the terms of the policy or
2 contract and with this chapter, and may certify the amount of
3 these reserves, specifying the mortality tables, rates of
4 interest and methods (net level premium method or other) used in
5 the calculation of the reserves. In calculating these reserve
6 liabilities, the department may use group methods and
7 approximate averages for fractions of a year or otherwise. The
8 provisions of this section and sections 702 (relating to
9 computation of reserves on prior policies) through 705 (relating
10 to minimum reserve requirements of certain companies) for the
11 valuation of policies and for premium rates do not apply to
12 companies or associations transacting business on the mutual
13 assessment plan.

14 § 702. Computation of reserves on prior policies.

15 In the case of policies issued prior to the operative date of
16 section 5322 (relating to standard nonforfeiture law for life
17 insurance):

18 (1) The net value of all outstanding policies of life
19 insurance issued by the company prior to January 1, 1890,
20 shall be computed on the basis of the American experience
21 table of mortality, with interest at not less than 4.5% and
22 not more than 6% a year.

23 (2) The net value of all outstanding policies of life
24 insurance issued between January 1, 1890, and December 31,
25 1902, shall be computed on the basis of the combined
26 experience or actuaries' table of mortality, with interest at
27 4% a year.

28 (3) The net value of all outstanding policies of life
29 insurance issued on and after January 1, 1903, shall be
30 computed on the basis of the American experience table of

1 mortality, with interest at 3.5% a year, except that any
2 company may value its group term insurance policies under
3 which premium rates are not guaranteed for a period in excess
4 of five years on the basis of the American men ultimate table
5 of mortality, with interest at 3.5% a year.

6 (4) The net value of all policies of life insurance
7 issued on and after January 1, 1921, where the premiums are
8 payable monthly or more often, shall be computed on the basis
9 of the American experience table of mortality, with interest
10 at 3.5% a year, except that any company may value its
11 industrial policies on the basis of the standard industrial
12 mortality table, with interest at 3.5% a year.

13 (5) The net value of a policy at any time shall be taken
14 to be the single net premium which will at that time effect
15 the insurance, less the value at that time of the future net
16 premiums called for by the table of mortality and rate of
17 interest designated.

18 (6) Except as otherwise provided in section 703(b)(2)
19 and (c) (relating to computation of reserves on recent
20 policies) for group annuity and pure endowment contracts, the
21 legal minimum standard for valuation of annuities issued
22 after January 1, 1912, shall be McClintock's table of
23 mortality among annuitants, with interest at 3.5% a year. For
24 annuities and pure endowments purchased under group annuity
25 and pure endowment contracts, the legal minimum standard may,
26 at the option of the company, be the 1971 Group Annuity
27 Mortality Table or any modification of this table approved by
28 the department, with interest at 5% a year. Annuities
29 deferred ten or more years and written in connection with
30 life or term insurance shall be valued upon the same

1 mortality table from which the consideration or premiums were
2 computed, with interest not higher than 3.5% a year.

3 (7) A company may at any time elect under any of its
4 policies of life insurance to reserve on the American
5 experience table of mortality, with a lower rate of interest
6 but at a rate not less than 2%, or on the American men
7 ultimate table of mortality with such modification and
8 extension below age 20 as may be approved by the department,
9 with interest at a rate not more than 3.5% and not less than
10 2%, and its obligations under such policies shall be valued
11 accordingly.

12 (8) On or after the operative date of section 5322,
13 reserves for any policies or contracts may be calculated, at
14 the option of the company, according to any standard which
15 produces greater aggregate reserves for all such policies or
16 contracts than the standard in use by such company
17 immediately prior to the exercise of the option. With the
18 approval of the department, any company which has adopted any
19 standard of valuation producing greater aggregate reserves
20 than the minimum reserves under paragraphs (1) through (7)
21 may adopt any lower standard of valuation for any policies or
22 contracts but not lower than the minimum reserves under
23 paragraphs (1) through (7) nor lower than the standard
24 specified in the policies or contracts or the standard used
25 by the company for the determination of the nonforfeiture
26 values thereof.

27 § 703. Computation of reserves on recent policies.

28 (a) Applicability.--This section applies only to policies
29 and contracts issued on or after the operative date of section
30 5322 (relating to standard nonforfeiture law for life

1 insurance), except as otherwise provided in subsections (b)(2)
2 and (c) for group annuity and pure endowment contracts issued
3 prior thereto.

4 (b) General rule for minimum standard.--

5 (1) Except as otherwise provided in paragraph (2) and in
6 subsection (c), the minimum standard for the valuation of all
7 such policies and contracts shall be the commissioners
8 reserve valuation methods defined in subsections (d) and (e),
9 and in section 705 (relating to minimum reserve requirements
10 of certain companies), 3.5% interest for policies and
11 contracts other than group annuity and pure endowment
12 contracts and as provided in paragraph (1)(iv) for group
13 annuity and pure endowment contracts, or in the case of
14 policies and contracts, other than annuity and pure endowment
15 contracts, issued on or after June 23, 1976, 4% interest for
16 such policies issued prior to January 1, 1979, and 4.5%
17 interest or such higher rate of interest as may be approved
18 from time to time by the department for such policies issued
19 on or after January 1, 1979, and the following tables:

20 (i) For all ordinary policies of life insurance
21 issued on the standard basis, excluding any disability
22 and accidental death benefits in such policies, the
23 Commissioners 1941 Standard Ordinary Mortality Table for
24 such policies issued prior to the operative date of
25 section 5322(e)(2) and the Commissioners 1958 Standard
26 Ordinary Mortality Table for such policies issued on or
27 after that operative date and prior to the operative date
28 of section 5322(f). However, for any category of such
29 policies issued on female risks, all modified net
30 premiums and present values referred to in this section

1 may be calculated according to any age not more than six
2 years younger than the actual age of the insured; and for
3 such policies issued on or after the operative date of
4 section 5322(f), the modified net premiums and present
5 values may be calculated on the basis of the
6 Commissioners 1980 Standard Ordinary Mortality Table or,
7 at the election of the company for any one or more
8 specified plans of life insurance, the Commissioners 1980
9 Standard Ordinary Mortality Table with Ten-Year Select
10 Mortality Factors or any ordinary mortality table adopted
11 after 1980 by the National Association of Insurance
12 Commissioners and approved by regulation of the
13 department for use in determining the minimum standard of
14 valuation for such policies.

15 (ii) For all industrial life insurance policies
16 issued on the standard basis, excluding any disability
17 and accidental death benefits in those policies, the 1941
18 Standard Industrial Mortality Table for those policies
19 issued prior to the operative date of section 5322(e)(3),
20 and, for those policies issued on or after that operative
21 date, the Commissioners 1961 Standard Industrial
22 Mortality Table or any industrial mortality table adopted
23 after 1980 by the National Association of Insurance
24 Commissioners and approved by regulation of the
25 department for use in determining the minimum standard of
26 valuation for such policies.

27 (iii) For individual annuity and pure endowment
28 contracts, excluding any disability and accidental death
29 benefits in such contracts, the 1937 Standard Annuity
30 Mortality Table, or, at the option of the company, the

1 Annuity Mortality Table for 1949 Ultimate or any
2 modification of either of these tables approved by the
3 department.

4 (iv) For all annuities and pure endowments purchased
5 under group annuity and pure endowment contracts,
6 excluding any disability and accidental death benefits in
7 such contracts, either the Group Annuity Mortality Table
8 for 1951 or any modification of such table approved by
9 the department, with interest at 3.5% or, at the option
10 of the company, the 1971 Group Annuity Mortality Table or
11 any modification of this table approved by the
12 department, with interest at 5%; or, at the option of the
13 company, any of the tables or modifications of tables
14 specified for individual annuity and pure endowment
15 contracts.

16 (v) For total and permanent disability benefits in
17 or supplementary to ordinary policies or contracts, for
18 policies or contracts issued on or after January 1, 1966,
19 the tables of Period 2 disablement rates and the 1930 to
20 1950 termination rates of the 1952 Disability Study of
21 the Society of Actuaries, with due regard to the type of
22 benefit, or any tables of disablement rates and
23 termination rates adopted after 1980 by the National
24 Association of Insurance Commissioners and approved by
25 regulation of the department for use in determining the
26 minimum standard of valuation for such policies; for
27 policies or contracts issued on or after January 1, 1961,
28 and prior to January 1, 1966, either such tables or, at
29 the option of the company, the Class (3) Disability Table
30 (1926); and for policies issued prior to January 1, 1961,

1 the Class (3) Disability Table (1926). Any such table
2 shall, for active lives, be combined with a mortality
3 table permitted for calculating the reserves for life
4 insurance policies.

5 (vi) For accidental death benefits in or
6 supplementary to policies, for policies issued on or
7 after January 1, 1966, the 1959 Accidental Death Benefits
8 Table or any accidental death benefits table adopted
9 after 1980 by the National Association of Insurance
10 Commissioners and approved by regulation of the
11 department for use in determining the minimum standard of
12 valuation for such policies; for policies issued on or
13 after January 1, 1961, and prior to January 1, 1966,
14 either such table or, at the option of the company, the
15 Inter-Company Double Indemnity Mortality Table; and for
16 policies issued prior to January 1, 1961, the Inter-
17 Company Double Indemnity Mortality Table. Either table
18 shall be combined with a mortality table permitted for
19 calculating the reserves for life insurance policies.

20 (vii) For group life insurance, life insurance
21 issued on the substandard basis and other special
22 benefits, such tables as may be approved by the
23 department.

24 (2) Except as provided in subsection (c), the minimum
25 standard for valuation of all individual annuity and pure
26 endowment contracts issued on or after the operative date of
27 this subparagraph, as defined in subparagraph (vi), and for
28 all annuities and pure endowments purchased on or after the
29 operative date under group annuity and pure endowment
30 contracts, shall be the commissioners reserve valuation

1 methods defined in subsections (d) and (e) and the following
2 tables and interest rates:

3 (i) For individual annuity and pure endowment
4 contracts issued prior to January 1, 1979, excluding any
5 disability and accidental death benefits in such
6 contracts, the 1971 Individual Annuity Mortality Table or
7 any modification of this table approved by the
8 department; and 6% interest for single premium immediate
9 annuity contracts, and 4% interest for all other
10 individual annuity and pure endowment contracts.

11 (ii) For individual single premium immediate annuity
12 contracts issued on or after January 1, 1979, excluding
13 any disability and accidental death benefits in such
14 contracts, the 1971 Individual Annuity Mortality Table or
15 any individual annuity mortality table, adopted after
16 1980 by the National Association of Insurance
17 Commissioners and approved by regulation of the
18 department for use in determining the minimum standard of
19 valuation for such contracts, or any modification of
20 these tables approved by the department, and 7.5%
21 interest or such higher rate of interest as may be
22 approved from time to time by the department.

23 (iii) For individual annuity and pure endowment
24 contracts issued on or after January 1, 1979, other than
25 single premium immediate annuity contracts, excluding any
26 disability and accidental death benefits in such
27 contracts, the 1971 Individual Annuity Mortality Table or
28 any individual annuity mortality table adopted after 1980
29 by the National Association of Insurance Commissioners
30 and approved by regulation of the department for use in

1 determining the minimum standard of valuation for such
2 contracts, or any modification of these tables approved
3 by the department, and 5.5% interest for single premium
4 deferred annuity and pure endowment contracts and 4.5%
5 interest for all other such individual annuity and pure
6 endowment contracts or such higher rate of interest as
7 may be approved from time to time by the department.

8 (iv) For all annuities and pure endowments purchased
9 prior to January 1, 1979, under group annuity and pure
10 endowment contracts, excluding any disability and
11 accidental death benefits purchased under such contracts,
12 the 1971 Group Annuity Mortality Table or any
13 modification of this table approved by the department,
14 and 6% interest.

15 (v) For all annuities and pure endowments purchased
16 on or after January 1, 1979, under group annuity and pure
17 endowment contracts, excluding any disability and
18 accidental death benefits purchased under such contracts,
19 the 1971 Group Annuity Mortality Table or any group
20 annuity mortality table adopted after 1980 by the
21 National Association of Insurance Commissioners and
22 approved by regulation of the department for use in
23 determining the minimum standard of valuation for such
24 annuities and pure endowments or any modification of
25 these tables approved by the department, and 7.5%
26 interest or such higher rate of interest as may be
27 approved, from time to time, by the department.

28 (vi) After June 23, 1976, a company may file with
29 the department a written notice of its election to comply
30 with the provisions of this subparagraph (ii) after a

1 specified date before January 1, 1979, which shall be the
2 operative date of this subparagraph for the company.

3 However, a company may elect a different operative date
4 for individual annuity and pure endowment contracts from
5 that elected for group annuity and pure endowment
6 contracts. Whenever a company makes no such election, the
7 operative date of this subparagraph for the company shall
8 be January 1, 1979.

9 (c) Dynamic interest rates.--

10 (1) The interest rates used in determining the minimum
11 standard for the valuation of any of the following shall be
12 the calendar year statutory valuation interest rates as
13 defined in this subsection:

14 (i) All life insurance policies issued in a
15 particular calendar year, on or after the operative date
16 of section 5322(f).

17 (ii) All individual annuity and pure endowment
18 contracts issued in a particular calendar year on or
19 after January 1, 1981.

20 (iii) All annuities and pure endowments purchased in
21 a particular calendar year on or after January 1, 1981,
22 under group annuity and pure endowment contracts.

23 (iv) The net increase, if any, in a particular
24 calendar year after January 1, 1981, in amounts held
25 under guaranteed interest contracts.

26 (2) The calendar year statutory valuation interest
27 rates, referred to in this paragraph as I, shall be
28 determined as follows and the results rounded to the nearer
29 0.25%:

30 (i) For life insurance: $I = .03 + W(R1 - .03) +$

1 W/2(R2 - .09).

2 (ii) For single premium immediate annuities and for
3 annuity benefits involving life contingencies arising
4 from other annuities with cash settlement options and
5 from guaranteed interest contracts with cash settlement
6 options: $I = .03 + W(R - .03)$. For purposes of this
7 paragraph, R1 is the lesser of R and .09, R2 is the
8 greater of R and .09, R is the reference interest rate
9 defined in paragraph (4) and W is the weighting factor
10 defined in paragraph (3).

11 (iii) For other annuities with cash settlement
12 options and guaranteed interest contracts with cash
13 settlement options, valued on an issue year basis, except
14 as stated in subparagraph (ii), the formula for life
15 insurance stated in subparagraph (i) shall apply to
16 annuities and guaranteed interest contracts with
17 guarantee durations in excess of ten years, and the
18 formula for single premium immediate annuities stated in
19 subparagraph (ii) shall apply to annuities and guaranteed
20 interest contracts with guarantee duration of ten years
21 or less.

22 (iv) For other annuities with no cash settlement
23 options and for guaranteed interest contracts with no
24 cash settlement options, the formula for single premium
25 immediate annuities stated in subparagraph (ii) shall
26 apply.

27 (v) For other annuities with cash settlement options
28 and guaranteed interest contracts with cash settlement
29 options, valued on a change in fund basis, the formula
30 for single premium immediate annuities stated in

1 subparagraph (ii) shall apply.

2 (vi) However, if the calendar year statutory
3 valuation interest rate for any life insurance policies
4 issued in any calendar year determined without reference
5 to this subparagraph differs from the corresponding
6 actual rate for similar policies issued in the
7 immediately preceding calendar year by less than 0.5%,
8 the calendar year statutory valuation interest rate for
9 the life insurance policies shall be equal to the
10 corresponding actual rate for the immediately preceding
11 calendar year. For the purpose of applying the
12 immediately preceding sentence, the calendar year
13 statutory valuation interest rate for life insurance
14 policies issued in a calendar year shall be determined
15 for 1980 (using the reference interest rate defined for
16 1979) and shall be determined for each subsequent
17 calendar year.

18 (3) The weighting factors referred to in the formulas
19 stated above are given in the following tables:

20 (i) Weighting factors for life insurance:

21	Guarantee	Weighting
22	Duration	Factors
23	(Years)	
24	10 or less	.50
25	More than 10, but not more than 20	.45
26	More than 20	.35

27 For life insurance, the guarantee duration is the maximum
28 number of years the life insurance can remain in force on
29 a basis guaranteed in the policy or under options to
30 convert to plans of life insurance with premium rates or

1 nonforfeiture values or both which are guaranteed in the
2 original policy.

3 (ii) The weighting factor for single premium
4 immediate annuities and for annuity benefits involving
5 life contingencies arising from other annuities with cash
6 settlement options and guaranteed interest contracts with
7 cash settlement options shall be .80.

8 (iii) Weighting factors for other annuities and for
9 guaranteed interest contracts, except as stated in
10 subparagraph (ii), shall be as specified in clauses (A),
11 (B) and (C), subject to the rules and definitions in
12 clauses (D), (E) and (F):

13 (A) For annuities and guaranteed interest
14 contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
5 or less	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

24 (B) For annuities and guaranteed interest
25 contracts valued on a change in fund basis, the
26 factors stated in clause (A) shall be increased by:

Plan Type	Weighting Factor		
	A	B	C
	.15	.25	.05

30 (C) For annuities and guaranteed interest

1 contracts valued on an issue year basis (other than
2 those with no cash settlement options) which do not
3 guarantee interest on considerations received more
4 than one year after issue or purchase and for
5 annuities and guaranteed interest contracts valued on
6 a change in fund basis which do not guarantee
7 interest rates on considerations received more than
8 twelve months beyond the valuation date, the factors
9 as determined under clauses (A) and (B) shall be
10 increased by:

	Plan Type		
	A	B	C
	.05	.05	.05

14 (D) For other annuities with cash settlement
15 options and guaranteed interest contracts with cash
16 settlement options, the guarantee duration is the
17 number of years for which the contract guarantees
18 interest rates in excess of the calendar year
19 statutory valuation interest rate for life insurance
20 policies with guarantee duration in excess of twenty
21 years. For other annuities with no cash settlement
22 options and for guaranteed interest contracts with no
23 cash settlement options, the guarantee duration is
24 the number of years from the date of issue or date of
25 purchase to the date annuity benefits are scheduled
26 to commence.

27 (E) The plan types as used in clauses (A), (B)
28 and (C) are defined as follows:

29 Plan Type A: At any time the policyholder
30 may not withdraw funds or may withdraw funds

1 only on the following conditions: (1) with
2 an adjustment to reflect changes in interest
3 rates or asset values since receipt of the
4 funds by the insurance company; (2) without
5 such adjustment but in installments over five
6 years or more; or (3) as an immediate life
7 annuity.

8 Plan Type B: Before expiration of the
9 interest rate guarantee, the policyholder may
10 not withdraw funds or may withdraw funds only
11 on the following conditions: (1) with an
12 adjustment to reflect changes in interest
13 rates or asset values since receipt of the
14 funds by the insurance company; or (2)
15 without such adjustment but in installments
16 over five years or more. At the end of the
17 interest rate guarantee, funds may be
18 withdrawn without such adjustment in a single
19 sum or installments over less than five
20 years.

21 Plan Type C: The policyholder may
22 withdraw funds before expiration of the
23 interest rate guarantee in a single sum or
24 installments over less than five years
25 either: (1) without adjustment to reflect
26 changes in interest rates or asset values
27 since receipt of the funds by the insurance
28 company; or (2) subject only to a fixed
29 surrender charge stipulated in the contract
30 as a percentage of the fund.

1 (F) A company may elect to value guaranteed
2 interest contracts with cash settlement options and
3 annuities with cash settlement options on either an
4 issue year basis or on a change in fund basis.
5 Guaranteed interest contracts with no cash settlement
6 options and other annuities with no cash settlement
7 options shall be valued on an issue year basis. As
8 used in this subsection, an "issue year basis of
9 valuation" refers to a valuation basis under which
10 the interest rate used to determine the minimum
11 valuation standard for the entire duration of the
12 annuity or guaranteed interest contract is the
13 calendar year valuation interest rate for the year of
14 issue or year of purchase of the annuity or
15 guaranteed interest contract, and the "change in fund
16 basis of valuation" refers to a valuation basis under
17 which the interest rate used to determine the minimum
18 valuation standard applicable to each change in the
19 fund held under the annuity or guaranteed interest
20 contract is the calendar year valuation interest rate
21 for the year of the change in the fund.

22 (4) The reference interest rate referred to in paragraph
23 (2)(ii) shall be as follows:

24 (i) For all life insurance, the lesser of the
25 average over a period of 36 months and the average over a
26 period of 12 months, ending on June 30 of the calendar
27 year next preceding the year of issue, of Moody's
28 Corporate Bond Yield Average--Monthly Average Corporates
29 as published by Moody's Investors Service, Inc.

30 (ii) For single premium immediate annuities and for

1 annuity benefits involving life contingencies arising
2 from other annuities with cash settlement options and
3 guaranteed interest contracts with cash settlement
4 options, the average over a period of 12 months, ending
5 on June 30 of the calendar year of issue or year of
6 purchase, of Moody's Corporate Bond Yield Average--
7 Monthly Average Corporates as published by Moody's
8 Investors Service, Inc.

9 (iii) For other annuities with cash settlement
10 options and guaranteed interest contracts with cash
11 settlement options, valued on a year of issue basis,
12 except as stated in subparagraph (ii) with guarantee
13 duration in excess of ten years, the lesser of the
14 average over a period of 36 months and the average over a
15 period of 12 months, ending on June 30 of the calendar
16 year of issue or purchase, of Moody's Corporate Bond
17 Yield Average--Monthly Average Corporates as published by
18 Moody's Investors Service, Inc.

19 (iv) For other annuities with cash settlement
20 options and guaranteed interest contracts with cash
21 settlement options, valued on a year of issue basis,
22 except as stated in subparagraph (ii), with guarantee
23 duration of ten years or less, the average over a period
24 of 12 months, ending on June 30 of the calendar year of
25 issue or purchase, of Moody's Corporate Bond Yield
26 Average--Monthly Average Corporates as published by
27 Moody's Investors Service, Inc.

28 (v) For other annuities with no cash settlement
29 options and for guaranteed interest contracts with no
30 cash settlement options, the average over a period of 12

1 months, ending on June 30 of the calendar year of issue
2 or purchase, of Moody's Corporate Bond Yield Average--
3 Monthly Average Corporates as published by Moody's
4 Investors Service, Inc.

5 (vi) For other annuities with cash settlement
6 options and guaranteed interest contracts with cash
7 settlement options, valued on a change in fund basis,
8 except as stated in subparagraph (ii), the average over a
9 period of 12 months, ending on June 30 of the calendar
10 year of the change in the fund, of Moody's Corporate Bond
11 Yield Average--Monthly Average Corporates as published by
12 Moody's Investors Service, Inc.

13 (5) If Moody's Corporate Bond Yield Average--Monthly
14 Average Corporates is no longer published by Moody's
15 Investors Service, Inc., or if the National Association of
16 Insurance Commissioners determines that Moody's Corporate
17 Bond Yield Average--Monthly Average Corporates is no longer
18 appropriate for the determination of the reference interest
19 rate, then an alternative method for determination of the
20 reference interest rate adopted by the National Association
21 of Insurance Commissioners and approved by regulation of the
22 department may be substituted.

23 (d) Commissioners reserve valuation method.--

24 (1) Except as otherwise provided in paragraph (2), in
25 subsection (e) and in section 705 (relating to minimum
26 reserve requirements of certain companies), reserves
27 according to the commissioners reserve valuation method for
28 the life insurance and endowment benefits of policies
29 providing for a uniform amount of insurance and requiring the
30 payment of uniform premiums shall be the excess, if any, of

1 the present value at the date of valuation of such future
2 guaranteed benefits provided for by those policies, over the
3 then present value of any future modified net premiums
4 therefor. The modified net premiums for any such policy shall
5 be such uniform percentage of the respective contract
6 premiums for such benefits that the present value, at the
7 date of issue of the policy, of all such modified net
8 premiums shall be equal to the sum of the then present value
9 of such benefits provided for by the policy and the excess of
10 (i) over (ii), as follows:

11 (i) A net level annual premium equal to the present
12 value at the date of issue of such benefits provided for
13 after the first policy year, divided by the present value
14 at the date of issue of an annuity of one per annum
15 payable on the first and each subsequent anniversary of
16 such policy on which a premium falls due. However, such
17 net level annual premium shall not exceed the net level
18 annual premium on the 19 year premium whole life plan for
19 insurance of the same amount at an age one year higher
20 than the age at issue of such policy.

21 (ii) A net one year term premium for such benefits
22 provided for in the first policy year.

23 (2) For any life insurance policy issued on or after
24 January 1, 1985, for which the gross premium in the first
25 policy year exceeds that of the second year and for which no
26 comparable additional benefit is provided in the first year
27 for such excess and which provides an endowment benefit or a
28 cash surrender value or a combination thereof in an amount
29 greater than such excess premium, the reserve according to
30 the commissioners reserve valuation method as of any policy

1 anniversary occurring on or before the assumed ending date
2 shall, except as otherwise provided in section 705, be the
3 greater of the reserve as of such policy anniversary
4 calculated as described in paragraph (1) and the reserve as
5 of such policy anniversary calculated as described in
6 paragraph (1), but subject to the following:

7 (i) the value defined in paragraph (1)(i) shall be
8 reduced by 15% of the amount of such excess first year
9 premium;

10 (ii) all present values of benefits and premiums
11 shall be determined without reference to premiums or
12 benefits provided for by the policy after the assumed
13 ending date;

14 (iii) the policy shall be assumed to mature on the
15 assumed ending date as an endowment; and

16 (iv) the cash surrender value provided on the
17 assumed ending date shall be considered as an endowment
18 benefit.

19 In making this comparison the mortality and interest bases
20 stated in subsections (b)(1) and (c) shall be used. As used
21 in this paragraph, the term "assumed ending date" means the
22 first policy anniversary on which the sum of any endowment
23 benefit and any cash surrender value then available is
24 greater than the excess premium.

25 (3) Reserves according to the commissioners reserve
26 valuation method for:

27 (i) life insurance policies providing for a varying
28 amount of insurance or requiring the payment of varying
29 premiums;

30 (ii) group annuity and pure endowment contracts

1 purchased under a retirement plan or plan of deferred
2 compensation, established or maintained by an employer,
3 including a partnership or sole proprietorship, or by an
4 employee organization, or by both, other than a plan
5 providing individual retirement accounts or individual
6 retirement annuities under section 408 of the Internal
7 Revenue Code (68A Stat. 3, 26 U.S.C. § 408);

8 (iii) disability and accidental death benefits in
9 all policies and contracts; and

10 (iv) all other benefits, except life insurance and
11 endowment benefits in life insurance policies and
12 benefits provided by all other annuity and pure endowment
13 contracts;

14 shall be calculated by a method consistent with the
15 principles of this subsection except that any extra premiums
16 charged because of impairments or special hazards shall be
17 disregarded in the determination of modified net premiums.

18 (e) Department's annuity reserve method.--This subsection
19 applies to all annuity and pure endowment contracts other than
20 group annuity and pure endowment contracts purchased under a
21 retirement plan or plan of deferred compensation established or
22 maintained by an employer, including a partnership or sole
23 proprietorship, or by an employee organization, or by both,
24 other than a plan providing individual retirement accounts or
25 individual retirement annuities under section 408 of the
26 Internal Revenue Code. Reserves according to the commissioners
27 annuity reserve method for benefits under annuity or pure
28 endowment contracts, excluding any disability and accidental
29 death benefits in such contracts, shall be the greatest of the
30 respective excesses of the present values at the date of

1 valuation of the future guaranteed benefits, including
2 guaranteed nonforfeiture benefits, provided for by such
3 contracts at the end of each respective contract year, over the
4 present value, at the date of valuation, of any future valuation
5 considerations derived from future gross considerations required
6 by the terms of such contract, that become payable prior to the
7 end of such respective contract year. The future guaranteed
8 benefits shall be determined by using the mortality table, if
9 any, and the interest rate specified in such contracts for
10 determining guaranteed benefits. The valuation considerations
11 are the portions of the respective gross considerations applied
12 under the terms of such contracts to determine nonforfeiture
13 values.

14 (f) Test against nonforfeiture interest rate.--A company's
15 aggregate reserves for all life insurance policies, excluding
16 disability and accidental death benefits, shall not be less than
17 the aggregate reserves calculated in accordance with the methods
18 set forth in subsections (d) and (e) and in section 705, and the
19 mortality table or tables and rate or rates of interest used in
20 calculating nonforfeiture benefits for such policies.

21 (g) Standards producing greater reserves.--Reserves for any
22 category of policies, contracts or benefits as established by
23 the department may be calculated, at the option of the company,
24 according to any standards which produce greater aggregate
25 reserves for such category than those calculated according to
26 the minimum standard provided under this section, but the rate
27 of interest used for policies and contracts other than annuity
28 and pure endowment contracts shall not be higher than the
29 corresponding rate of interest used in calculating any
30 nonforfeiture benefits provided for therein.

1 (h) Destrengthening of reserves.--Any life insurance company
2 which adopts any standard of valuation producing greater
3 aggregate reserves than those calculated according to the
4 minimum standard provided under this section may, with the
5 approval of the department, adopt any lower standard of
6 valuation, but not lower than the minimum provided under this
7 section.

8 § 704. Reserves for special plans.

9 In the case of any plan of life insurance which provides for
10 future premium determination, the amounts of which are to be
11 determined by the insurance company based on then estimates of
12 future experience or, in the case of any plan of life insurance
13 or annuity which is of such a nature that the minimum reserves
14 cannot be determined by the methods described in sections 703(d)
15 and (e) (relating to computation of reserves on recent policies)
16 and 705 (relating to minimum reserve requirements of certain
17 companies), the reserves which are held under the plan shall:

18 (1) be appropriate in relation to the benefits and the
19 pattern of premiums for that plan; and

20 (2) be computed by a method which is consistent with the
21 principles of this section and section 705, as determined by
22 regulations of the department.

23 § 705. Minimum reserve requirements of certain companies.

24 (a) Reduced premiums.--If in any contract year the gross
25 premium charged by any life insurance company on any policy or
26 contract is less than the valuation net premium for the policy
27 or contract calculated by the method used in calculating the
28 reserve thereon but using the minimum valuation standards of
29 mortality and rate of interest, the minimum reserve required for
30 the policy or contract shall be the greater of either the

1 reserve calculated according to the mortality table, rate of
2 interest and method actually used for the policy or contract, or
3 the reserve calculated by the method actually used for the
4 policy or contract but using the minimum valuation standards of
5 mortality and rate of interest and replacing the valuation net
6 premium by the actual gross premium in each contract year for
7 which the valuation net premium exceeds the actual gross
8 premium. The minimum valuation standards of mortality and rate
9 of interest referred to in this section are those standards
10 stated in sections 702 (relating to computation of reserves on
11 prior policies) and 703 (b)(1) and (c) (relating to computation
12 of reserves on recent policies).

13 (b) Exception.--For any life insurance policy issued on or
14 after January 1, 1985, for which the gross premium in the first
15 policy year exceeds that of the second year and for which no
16 comparable additional benefit is provided in the first year for
17 the excess and which provides an endowment benefit or a cash
18 surrender value or a combination thereof in an amount greater
19 than the excess premium, the provisions of subsection (a) shall
20 be applied as if the method actually used in calculating the
21 reserve for the policy were the method described in section
22 703(d), ignoring section 703(d)(2). The minimum reserve at each
23 policy anniversary of such policy shall be the greater of the
24 minimum reserve calculated in accordance with section 703(d),
25 including section 703(d)(2), and the minimum reserve calculated
26 in accordance with this section.

27 § 706. Computation of reserves for health and accident
28 insurance.

29 (a) General rule.--The department shall annually value, or
30 shall annually require the insurer to value, the reserve

1 liabilities, as of December 31 of the preceding year, of every
2 life insurance company doing business in this Commonwealth, with
3 respect to its health and accident insurance policies. For all
4 such policies, the company shall maintain an active life reserve
5 which shall place a sound value on its liabilities under such
6 policies and shall be not less than the reserve according to
7 appropriate standards set forth in the regulations of the
8 department and not less in the aggregate than the pro rata gross
9 unearned premiums for the policies.

10 (b) Exception.--This section does not apply to total and
11 permanent disability benefits supplementary to life insurance or
12 annuity policies or contracts.

13 § 707. Valuations by other states.

14 In lieu of the valuation of the reserves required in sections
15 701 (relating to valuation by department) through 704 (relating
16 to reserves for special plans) and section 706 (relating to
17 computation of reserves for health and accident insurance) of
18 any foreign or alien company, the department may accept any
19 valuation made by the insurance supervisory official of any
20 state or other jurisdiction if this valuation complies with the
21 minimum standard provided in those sections and if the official
22 of that state or jurisdiction accepts as sufficient and valid
23 for all legal purposes the certificate of valuation of the
24 department when such certificate states the valuation to have
25 been made in a specified manner according to which the aggregate
26 reserves would be at least as large as if they had been computed
27 in the manner prescribed by the law of that state or
28 jurisdiction. Each company shall furnish to the department, on
29 or before March 1 in each year, a certificate from the proper
30 officer of that state or jurisdiction, setting forth the value

1 of all the policies and contracts of the company in force on the
2 previous December 31. Any company failing to furnish the
3 certificate shall make a complete detailed list of policies to
4 the department and shall be liable for all charges and expenses
5 resulting from the failure to furnish this certificate.

6 § 708. Reserve fund.

7 The aggregate reserves or net value of the policies and
8 contracts of any life insurance company ascertained under this
9 chapter shall be deemed its reserve liability. It shall hold
10 funds in secure investments of an amount equal to the net value
11 above all its other liabilities. The department shall, after
12 having determined the net value of all the policies and
13 contracts in force, confirm compliance with this section.
14 Whenever any life insurance company doing business in this
15 Commonwealth does not have on hand the net value of all policies
16 in force, after all other debts and claims against it, including
17 50% of capital, have been provided for, the department shall
18 notify the company and its agents to issue no new policies until
19 its funds become equal to its liabilities.

20 § 709. Valuation of securities.

21 (a) General rule.--Bonds or other evidences of debt held by
22 life insurance companies or fraternal benefit societies
23 authorized to do business in this Commonwealth may, if amply
24 secured and if not in default as to principal or interest, be
25 valued as follows:

26 (1) If purchased at par, at the par value.

27 (2) If purchased above or below par, on the basis of the
28 purchase price adjusted so as to bring the value at maturity
29 and so as to yield meantime the effective rate of interest at
30 which the purchase was made.

1 The purchase price shall not be taken at a higher figure than
2 the actual market value at the time of purchase. The department
3 shall have full discretion in determining the method of
4 calculating values under this section, and the values found by
5 it in accordance with that method shall be final and binding.
6 Any company or society may return the bonds or other evidences
7 of debt at their market value or their book value, but not at an
8 aggregate value exceeding the aggregate of the values calculated
9 under this section.

10 (b) Election.--This section does not require any life
11 insurance company or fraternal benefit society authorized to do
12 business in this Commonwealth to value its bonds and other
13 evidences of debt by amortization as provided in this section,
14 but any company or society electing to adopt the amortized basis
15 shall have its bonds valued upon that basis.

16 SUBCHAPTER B

17 INSURANCE OTHER THAN LIFE INSURANCE

18 Sec.

19 721. Computation of unearned premium liability.

20 § 721. Computation of unearned premium liability.

21 (a) General rule.--In determining the liabilities upon its
22 contracts of insurance of any insurance company, other than a
23 life insurance company, and the amount the company should hold
24 as an unearned premium liability, the department shall calculate
25 the amount on a monthly prorata basis or its equivalent on the
26 premiums in force at the end of any quarterly or annual period,
27 except in the case of noncancelable health and accident
28 insurance issued on and after January 1, 1950. The amount shall
29 be calculated according to the methods set out in subsection
30 (b). On perpetual insurance, the department shall charge the

1 cash deposit received, less a surrender charge not exceeding 10%
2 thereof. For marine and inland insurance, the department shall
3 charge 50% of the premium written in the policy upon risks
4 covering more than one passage not terminated, and the full
5 amount of the premium written in the policy upon all other
6 marine and inland risks not terminated; however, the department
7 may charge a premium reserve equal to the unearned portions of
8 the gross premiums charged, computed on each respective risk
9 from the date of the issuance of the policy.

10 (b) Casualty insurance other than noncancelable health and
11 accident insurance.--The department shall, in calculating the
12 reserve against unpaid losses of casualty insurance companies,
13 other than losses under noncancelable health and accident
14 insurance issued on and after January 1, 1950, liability and
15 workmen's compensation policies, set down by careful estimate in
16 each case the loss likely to be incurred against every claim
17 presented or that may be presented pursuant to notice from the
18 insured of the occurrence of an event that may result in a loss.
19 The sum of the items so estimated shall be the total amount of
20 the reserve, except that in credit insurance 50% of the premiums
21 on all credit policies expiring in the months of October,
22 November and December of the current year, less the amount of
23 losses paid on such policies, shall in addition thereto be
24 charged in the loss reserve.

25 (c) Health and accident insurance.--The department shall
26 annually value, or shall annually require the insurer to value,
27 the reserve liabilities, as of December 31 of the preceding
28 year, of every casualty insurance company doing business in this
29 Commonwealth, with respect to all of its health and accident
30 insurance policies. For all such policies the company shall

1 maintain an active life reserve which shall place a sound value
2 on its liabilities under the policies and be not less than the
3 reserve according to appropriate standards set forth in the
4 regulations of the department and not less in the aggregate than
5 the prorata gross unearned premiums for such policies. With
6 respect to any foreign or alien insurer, the department may
7 accept a like valuation of the insurance supervising official of
8 the state, province or foreign country in which the insurer is
9 domiciled if the valuation is made upon a basis and according to
10 standards producing an aggregate reserve not less than under
11 this section.

12 (d) Definition.--As used in this section, the term
13 "noncancelable health and accident insurance" means insurance
14 against disability resulting from sickness, ailment or bodily
15 injury under a policy or contract which the insurer does not
16 have the option to cancel or otherwise terminate the contract at
17 or after the expiration of one year from its effective date,
18 excluding policies or contracts insuring solely against
19 accidental injury, or total and permanent disability benefits,
20 supplementary to life insurance or annuity policies or
21 contracts.

22 SUBCHAPTER C

23 WORKMEN'S COMPENSATION AND LIABILITY INSURANCE

24 Sec.

25 731. Definitions.

26 732. Computation of reserves.

27 733. Distribution of unallocated loss expense payments.

28 734. Power of department to determine reserves.

29 § 731. Definitions.

30 The following words and phrases when used in this subchapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Compensation." All insurance effected by virtue of statutes
4 providing compensation to employees for personal injuries
5 irrespective of fault of the employer.

6 "Earned premiums." Gross premiums charged on all policies
7 written, including all excess and additional premiums and
8 reinsurance premiums accepted, less return premiums other than
9 premiums returned to policyholders as dividends, and less all
10 reinsurance premiums ceded and premiums on policies canceled.
11 Earned premiums attributable to any specific period shall be
12 calculated by adding to the liability for unearned premiums at
13 the beginning of the period, the premiums written during the
14 period and subtracting the liability for unearned premiums at
15 the end of the period.

16 "Even monthly amount." The written premium divided by the
17 number of months for which the premium is written.

18 "Liability." All insurance except compensation insurance
19 against loss or damage from accident to or injuries suffered by
20 an employee or other person and for which the insured is liable.

21 "Loss payments" or "loss expense payments." All payments to
22 claimants, including payments for medical and surgical services,
23 legal expenses, salaries and expenses of investigators,
24 adjusters and field men, rents, salaries and expenses of office
25 employees, home office expenses and all other payments made on
26 account of claims, whether the payments are allocated to
27 specific claims or unallocated.

28 "Monthly prorata basis." The calculation by which written
29 premium becomes earned in even monthly amounts for each entire
30 calendar month or part thereof during which a policy is in

1 force, except that for the calendar months in which a premium is
2 written or expires, one-half the even monthly amount is earned.

3 § 732. Computation of reserves.

4 The reserve required of stock and mutual insurance companies
5 and exchanges for outstanding losses under insurance against
6 loss or damage from accident to or injuries suffered by an
7 employee or other person, and for which the insured is liable,
8 shall be computed as follows:

9 (1) For all liability premiums earned during the three
10 years immediately preceding the date as of which the
11 statement is made, 60% of the earned liability premiums of
12 each of those three years, less all loss and loss expense
13 payments made under liability policies written in the
14 corresponding years.

15 (2) For all compensation claims under policies written
16 more than three years prior to the date as of which the
17 statement is made, the present value at 4% interest of the
18 determined and estimated future payments.

19 (3) For all compensation premiums earned in the three
20 years immediately preceding the date as of which the
21 statement is made, 65% of the earned compensation premiums of
22 each of those three years, less all loss and loss expense
23 payments made in connection with such claims under policies
24 written in the corresponding years, but not less than the
25 present value at 4% interest of the determined and the
26 estimated unpaid compensation claims under policies written
27 during each of those years.

28 § 733. Distribution of unallocated loss expense payments.

29 All unallocated liability loss expense payments and all
30 unallocated compensation loss expense payments made in a given

1 calendar year in which an insurer has been issuing liability or
2 compensation policies, as appropriate, shall be made in
3 accordance with instructions set forth in the notes pertaining
4 to Schedule P, at page 35 of the Fire and Casualty Companies
5 (Association Edition) Annual Statement Blank for the year ended
6 December 31, 1974, as adopted for use in this Commonwealth by
7 the department.

8 § 734. Power of department to determine reserves.

9 Whenever the department determines that the liability or
10 compensation loss reserves of any insurer calculated in
11 accordance with this subchapter are inadequate, it may require
12 the insurer to maintain additional reserves based upon estimated
13 individual claims or otherwise. Whenever a satisfactory
14 mathematical or actuarial table for valuing compensation loss
15 reserves is approved and promulgated by the department, it may
16 require any insurer under its supervision to maintain upon this
17 tabular basis greater or lesser reserves than those provided
18 under section 732 (relating to computation of reserves).

19 SUBCHAPTER D

20 CASUALTY INSURANCE

21 Sec.

22 741. Right of action.

23 742. Notice of impairment of funds.

24 § 741. Right of action.

25 A policy of accident insurance against loss or damage
26 resulting from accident to or injury suffered by an employee or
27 other person and for which the person insured is liable, or
28 against loss or damage to property caused by animals or by any
29 vehicle drawn, propelled or operated by any motive power and for
30 which loss or damage the person is liable, shall not be issued

1 or delivered in this Commonwealth by any corporation or other
2 insurer authorized to do business in this Commonwealth unless
3 the policy contains a provision that the insolvency or
4 bankruptcy of the person insured shall not release the insurance
5 carrier from the payment of damages for injury sustained or loss
6 occasioned during the life of the policy. The provision shall
7 also state that in case execution against the insured is
8 returned unsatisfied because of bankruptcy or insolvency in an
9 action brought by the injured person, or his personal
10 representative in case death results from the accident, then an
11 action may be maintained by the injured person or his personal
12 representative against the corporation under the terms of the
13 policy, for the amount of judgment in the action, not exceeding
14 the amount of the policy.

15 § 742. Notice of impairment of funds.

16 Having charged as a liability the reinsurance and loss
17 reserves for insurance companies and exchanges of this
18 Commonwealth other than life insurance companies and adding
19 thereto all other debts and claims against the company or
20 exchange, the department shall, in case it finds the capital or
21 reserve of the company or exchange impaired to any degree, give
22 notice to the company or exchange to make good the capital or
23 reserve within 30 days.

24 SUBCHAPTER E
25 TITLE INSURANCE

26 Sec.

27 751. Title insurance reserve.

28 752. Reinsurance on liquidation of company.

29 753. Recovery by policyholders.

30 § 751. Title insurance reserve.

1 (a) Reserve fund requirement.--All companies incorporated
2 for the insurance of owners of real estate, mortgages and others
3 interested in real estate, from loss by reason of defective
4 titles, liens and encumbrances, as well as all title insurance
5 and trust companies receiving deposits, heretofore incorporated
6 and authorized by charter or by law to carry on such business,
7 shall establish and maintain a reserve fund for the protection
8 of policyholders.

9 (b) Establishment and maintenance of fund.--The reserve fund
10 shall be established by setting aside a sum equal to 10% of the
11 premium paid on each policy of insurance which the company may
12 issue until the total amount set aside equals \$250,000. The
13 total reserve fund may, with the consent of the department, be
14 set aside at any one time or from time to time out of surplus
15 and undivided profits. The reserve fund shall be maintained as
16 long as liability on any policies is outstanding.

17 (c) Supervision by department.--The custody of the reserve
18 fund shall be retained by the company, and the fund shall be
19 kept separate from other assets of the company. The department
20 shall ascertain that a reserve fund equal to the amount required
21 by subsection (b) is maintained. If any company neglects or
22 refuses to establish or maintain the reserve fund, the
23 department shall direct the company either to comply with the
24 provisions of this section or to discontinue doing title
25 insurance business.

26 (d) Investment of reserve fund.--The company shall invest
27 the reserve fund in first mortgage or other securities
28 designated by law as legal investments for trust funds whenever
29 the accumulated fund amounts to \$1,000 or more. The mortgages or
30 other securities shall be carried at cost price, but not at more

1 than market price. If there is a depreciation in the market
2 price of any securities, the company shall make good the
3 depreciation by the addition of other legal investments so that
4 the fund shall always be maintained at the full amount required
5 by subsection (b). The companies may withdraw from the fund any
6 mortgages or other securities held therein by crediting the fund
7 the amount at which the mortgages or securities are valued if
8 there are immediately substituted therefor other first mortgages
9 or securities.

10 (e) Cancellation of policy.--Whenever any policy of title
11 insurance is surrendered by the holder, canceled or liability
12 thereon completely discharged, the reserve therefor may be
13 withdrawn or credited against reserves that may be due.

14 (f) Status of reserve fund to be a trust fund.--The reserve
15 fund shall be kept separate and apart from the other assets of
16 the company. The income of the reserve fund shall become part of
17 the general assets of the company. The reserve fund shall
18 constitute a separate and distinct trust fund for the protection
19 of policyholders and shall not be subject to distribution among
20 depositors or other creditors until all policyholders have been
21 paid in full or the liability on the policies contingent or
22 actual has been completely discharged.

23 (g) Reinsurance by department.--If the department takes
24 possession of and winds up any company, the department may use
25 the reserve fund to purchase reinsurance for the liabilities
26 represented by the policies outstanding against the fund.
27 Acceptance of the policy of the reinsuring company shall operate
28 as a complete discharge of liability under the policy of the
29 insolvent company. If any policyholder refuses to accept the
30 policy of the reinsuring company, he shall be entitled to

1 receive only the pro rata portion of his reserve that remains
2 upon distribution under subsection (h).

3 (h) Distribution of reserve fund.--The reserve fund in the
4 custody of the department shall be liable only to the following
5 claims:

6 (1) To pay all outstanding claims of indemnity that have
7 arisen by virtue of any policies of insurance.

8 (2) For the purchase of reinsurance to indemnify and
9 protect the remaining outstanding policies.

10 (3) To distribute among policyholders, upon cancellation
11 of their policies, the proportionate share of the reserve
12 fund to which they are entitled, which shall not exceed the
13 proportion which the premium paid for the policy bears to the
14 whole amount of title insurance then outstanding.

15 § 752. Reinsurance on liquidation of company.

16 Whenever the department purchases reinsurance under section
17 751 (relating to title insurance reserve), it may do so by
18 purchasing, from a company incorporated under the law of this
19 Commonwealth with the right to insure titles to real estate to
20 owners, mortgagees and others and having a title insurance
21 reserve of the maximum amount required by section 751, a blanket
22 policy in the name of the Commonwealth for the use of the
23 original policyholders. In this blanket policy, the title
24 insurance company shall agree that it will, on demand of anyone
25 holding an outstanding policy issued by the original company,
26 fulfill for the policyholder the same obligations as were due to
27 him under the original policy, but the amount of recoverable
28 damages shall be limited in accordance with section 753
29 (relating to recovery by policyholders).

30 § 753. Recovery by policyholders.

1 (a) Determinations of insurance and liability.--Prior to
2 purchasing reinsurance, the department shall determine the total
3 amount of insurance issued by the corporation of which it has
4 taken possession and the amount of this insurance upon which the
5 corporation had an outstanding liability on the day the
6 corporation came into its custody. The department shall file
7 written certificates of these determinations in its office and
8 in the records of the court under which its certificate of
9 possession is filed.

10 (b) Reinsurance policy.--The department shall then use the
11 reserve fund in its custody to pay the fee for examinations by
12 the reinsuring company and to purchase as large an amount of
13 insurance as can be acquired. The blanket policy for reinsurance
14 shall contain a clause that each policyholder of the company
15 which originally issued the insurance reinsured shall be
16 entitled to recover in his own name, not according to the amount
17 of the original policy, but in the proportion that the total
18 amount of the reinsurance purchased bears to the total amount of
19 outstanding insurance determined to be in existence by the
20 department and shown by the certificates executed under this
21 section.

22 (c) Limitations on reinsurance liability.--The total
23 liability of the reinsuring company shall not exceed the amount
24 of the blanket policy issued under section 752 (relating to
25 reinsurance on liquidation of company) and shall not be enlarged
26 beyond that of the original company. Claims by policyholders
27 against the reinsuring company shall be subject to all the
28 conditions and limitations of the original insurance as respects
29 the status of the claim and claimant.

30 (d) Rights of policyholders.--Each policyholder of the

1 company which originally issued the insurance reinsured may sue
2 the reinsurance carrier, using his own name as plaintiff,
3 notwithstanding the fact that the reinsurance policy is issued
4 in the name of the Commonwealth.

5 CHAPTER 9

6 DEPOSITS OF SECURITIES TO DO INTERSTATE BUSINESS

7 Sec.

8 901. Deposit of securities with department.

9 902. State Treasurer as custodian.

10 903. Return of securities.

11 904. Actions in equity regarding deposits.

12 § 901. Deposit of securities with department.

13 Any domestic insurance entity desiring to transact business
14 in other states, where the law requires that the entity first
15 deposit securities of a designated value with the department or
16 any proper officer of this Commonwealth in trust and for the
17 benefit of all its policyholders, or any foreign or alien
18 insurance company or association desiring to make the deposit
19 required of foreign companies or associations in order to
20 transact business in the United States, may deposit with the
21 department securities for such an amount as the law of the other
22 states designates, or as the law of this Commonwealth requires
23 for foreign companies or associations. If the department is
24 satisfied that the securities are worth the required amount, it
25 shall receive them or those given in exchange therefor for the
26 purpose of this section. Upon the written request of the
27 insurance entity, the department shall further certify, under
28 its official seal to the proper officer of the other state in
29 which the insurance entity desires to transact business or the
30 official of the Federal Government, that the entity has

1 deposited securities with it, list the securities and certify
2 that it is satisfied they are worth the sum designated by the
3 law of the other state or required by the Federal Government.
4 § 902. State Treasurer as custodian.

5 Upon receipt of any deposit made under section 901 (relating
6 to deposit of securities with department), the department shall
7 immediately place them with the State Treasurer, who shall
8 receive and hold them in the name of the Commonwealth in trust
9 for the purposes for which the deposit is made. The State
10 Treasurer shall be responsible for their custody and
11 safekeeping. The entity making the deposit may from time to time
12 demand and receive from the State Treasurer, on the written
13 order of the department, all or any portion of the securities so
14 deposited, upon depositing with him other securities of at least
15 equal value and may demand, receive, sue for and recover the
16 interest and income from the securities from the payee or
17 obligee thereof as these become due and payable.

18 § 903. Return of securities.

19 Upon request of any domestic entity which has made a deposit
20 under this chapter, the department may authorize the State
21 Treasurer to return to the entity the whole or any portion of
22 the securities held by him on deposit, if the department is
23 satisfied that the securities are subject to no liability and
24 are not required to be longer held under this title, or for the
25 purpose of the original deposit. The State Treasurer may in like
26 manner return to the trustees or other representatives of a
27 foreign or alien insurance company or association authorized for
28 that purpose any deposit made by the company, if the company or
29 association has ceased to do business in this Commonwealth and
30 is under no obligation to policyholders or other persons in this

1 Commonwealth or in the United States, for whose benefit the
2 deposit was made. A deposit shall not be wholly withdrawn or
3 diminished so long as any liability to policy holders remains
4 unsatisfied, except in case of dissolution by a court of any
5 entity making the deposit, in which case the State Treasurer
6 shall, upon the written order of the court, assign and transfer
7 to the receiver all securities or funds in his possession
8 belonging to the entity.

9 § 904. Actions in equity regarding deposits.

10 An insurance entity which has made a deposit under this
11 chapter, or its trustees or resident manager in the United
12 States, or the department, may bring an action in equity against
13 the Commonwealth and other parties properly joined therein, to
14 enforce, administer or terminate the trust created by the
15 deposit. The process in the action shall be served on the State
16 Treasurer, who shall appear and answer on behalf of the
17 Commonwealth and perform such orders and decrees as the court
18 may make.

19 CHAPTER 11

20 AGENTS AND BROKERS

21 Subchapter

- 22 A. Agents
- 23 B. Termination of Agency Contracts
- 24 C. Insurance Brokers
- 25 D. Prohibited Activities
- 26 E. Managers and Exclusive General Agents
- 27 F. Public Adjusters and Solicitors
- 28 G. Public Remedies for Unlicensed Activity

29 SUBCHAPTER A

30 AGENTS

- 1 Sec.
- 2 1101. Definition of agent.
- 3 1102. Certification of agents.
- 4 1103. Licenses of agents.
- 5 1104. Penalty for doing business as agent without license.
- 6 1105. Personal liability of agents for unauthorized entity.
- 7 1106. Penalty for advertising as agent of unauthorized entity.
- 8 1107. Penalty for soliciting for nonexistent company.
- 9 1108. Licensure of nonresident agents.

10 § 1101. Definition of agent.

11 (a) General rule.--As used in this chapter, the term "agent"
12 means any of the following:

13 (1) Any person authorized in writing by an entity:

14 (i) to solicit risks and collect premiums and to
15 issue or countersign policies in its behalf; or

16 (ii) to solicit risks and collect premiums in its
17 behalf.

18 (2) A person, not a licensed insurance broker, who,
19 whether or not for compensation:

20 (i) solicits insurance on behalf of any insurance
21 entity;

22 (ii) transmits for a person other than himself an
23 application for a policy of insurance to or from the
24 entity;

25 (iii) offers or assumes to act in the negotiation of
26 such insurance; or

27 (iv) in any manner aids in transacting the insurance
28 business of any entity by negotiating for or placing
29 risks or delivering policies or collecting premiums for
30 the entity.

1 (b) Exclusions.--The term "agent" does not include:

2 (1) Nonresident salaried employees of foreign exchanges
3 which maintain no offices in this Commonwealth and pay no
4 commissions to such employees.

5 (2) Officers or salaried employees of any insurance
6 entity authorized to transact business in this Commonwealth
7 who do not solicit, negotiate or place risks.

8 (3) Attorneys at law.

9 (4) Licensed real estate agents.

10 (5) Real estate brokers.

11 Except as provided in Chapter 67 (relating to title insurance),
12 this subchapter does not apply to title insurance agents.

13 § 1102. Certification of agents.

14 Insurance entities authorized by law to transact business in
15 this Commonwealth shall from time to time certify to the
16 department the names of all agents appointed by them to solicit
17 insurance in this Commonwealth.

18 § 1103. Licenses of agents.

19 (a) Power to issue license.--The department may issue, upon
20 certification under section 1102 (relating to certification of
21 agents), an agent's license to any person of at least 18 years
22 of age and to any partnership or corporation.

23 (b) Limitations.--A license as agent shall not be granted to
24 any corporation unless by provisions of its charter it is
25 authorized to engage in the business of insurance or real estate
26 and unless individual licenses are also secured for each active
27 officer of such corporation. A license shall not be granted to a
28 partnership or association unless individual licenses are also
29 secured for each active member of the partnership or
30 association.

1 (c) Requirements for licensure.--Before the license is
2 granted, the applicant shall first complete a verified
3 application in a form determined by the department. The answers
4 on the application shall be verified by the applicant and
5 vouched for by endorsement of the entity interested. The
6 application shall also be accompanied by a verified statement by
7 the entity that the applicant is of good business reputation,
8 has experience in underwriting, other than soliciting, and is
9 worthy of a license. Any applicant who has held, for any period
10 during the five years immediately preceding the application, a
11 license to transact as agent any class or kind of insurance
12 business for any entity authorized to transact business in this
13 Commonwealth may, upon proper application, receive a license to
14 transact as agent the same class or kind of insurance business
15 for any other entity which is so authorized, without submitting
16 to an examination. Agents' license fees shall be paid in full at
17 the time of issuance and shall not be apportioned pro rata over
18 the initial license period.

19 (d) License.--When the department is satisfied that the
20 applicant is worthy of license and that he is reasonably
21 familiar with provisions of the insurance law of this
22 Commonwealth, it shall issue a license. The license shall state
23 that the entity represented by the agent has complied with this
24 title and has been authorized by the department to transact
25 business in this Commonwealth and that the agent has been
26 appointed by that entity.

27 (e) Expiration.--The licenses of life insurance agents shall
28 expire annually on March 31, the licenses of fire insurance
29 agents shall expire annually on September 30, and the licenses
30 of casualty and health and accident insurance agents shall

1 expire annually on December 31. However, any such license may be
2 sooner terminated as the result of severance of business
3 relations between the entity and the agent or may be revoked by
4 the department for cause.

5 (f) Domestic mutual fire insurance companies.--This section
6 applies to domestic mutual fire insurance companies, but no
7 agent of such a company acting or authorized to act as such on
8 October 20, 1961, shall be required to take an examination for
9 licensure. This section does not require agents of domestic
10 mutual fire insurance companies, which agents write only
11 coverages other than insurance upon automobiles authorized by
12 section 3302(b)(1), (2) and (3) (relating to authorized classes
13 of insurance), to submit to the examination for licensure.

14 (g) Exemption from examination.--The examination for
15 licensure shall not be required of any person who has received
16 the designation of Chartered Life Underwriter (C.L.U.) from the
17 American College of Life Underwriters, except that the person
18 may be examined on pertinent provisions of the insurance law as
19 determined by the department.

20 § 1104. Penalty for doing business as agent without license.

21 A person commits a misdemeanor of the third degree if he
22 transacts business in this Commonwealth as the agent of an
23 insurance entity without a license as required by this chapter.
24 Prosecutions for violations under this section may be instituted
25 by the department.

26 § 1105. Personal liability of agents for unauthorized entity.

27 An insurance agent shall be personally liable on all
28 contracts of insurance or suretyship unlawfully made by or
29 through him, directly or indirectly, for or in behalf of any
30 entity not authorized to do business in this Commonwealth. This

1 section applies to any person who transacts business in this
2 Commonwealth as an agent of an insurance entity without a
3 license as required by this chapter.

4 § 1106. Penalty for advertising as agent of unauthorized
5 entity.

6 Any person who represents or advertises himself as the agent
7 of any foreign or alien insurance entity which has not complied
8 with the law of this Commonwealth commits a misdemeanor of the
9 third degree.

10 § 1107. Penalty for soliciting for nonexistent company.

11 Any individual, and the officers, managers, agents, owners or
12 representatives of and any corporation, partnership or
13 association, offering in this Commonwealth to sell, procure or
14 obtain policies, certificates, agreements, binders or
15 applications for insurance, surety or indemnity, for or on
16 behalf of any spurious, fictitious, nonexistent, dissolved,
17 inactive, liquidated, liquidating or bankrupt insurance entity,
18 society or order, commits a misdemeanor of the third degree.

19 § 1108. Licensure of nonresident agents.

20 (a) General rule.--The department may issue a license as
21 agent to a person not resident of this Commonwealth, upon
22 compliance with the applicable provisions of this chapter, if
23 the state or the province of the Dominion of Canada of the
24 person's residence accords the same privilege to a resident of
25 this Commonwealth.

26 (b) Waiver of written examination.--The department may enter
27 into reciprocal agreements with the appropriate official of any
28 such other state or province waiving the written examination of
29 any applicant resident in the other state or province if the
30 following conditions obtain:

1 (1) A written examination is required of applicants for
2 an insurance agent's license in the other state or province.

3 (2) The appropriate official certifies that the
4 applicant holds a currently valid license as an insurance
5 agent in the other state or province and either passed a
6 written examination or was the holder of an insurance agent's
7 license prior to the time a written examination was required.

8 (3) In the other state or province a resident of this
9 Commonwealth may obtain an insurance agent's license upon the
10 conditions stated in this subsection, without discrimination
11 as to fees or otherwise in favor of the residents of the
12 other state or province.

13 (c) Life insurance agents.--An applicant or licensee may not
14 have a place of business in this Commonwealth or be an officer,
15 director, stockholder or partner in any corporation or
16 partnership doing business in this Commonwealth as a life
17 insurance agency.

18 (d) Sharing of commissions.--If the law of another state or
19 province of the Dominion of Canada requires the sharing of
20 commissions with resident agents of the state or province on
21 applications for insurance written by nonresident agents, then
22 the same provisions shall apply when resident agents of that
23 state or province licensed as nonresident agents in this
24 Commonwealth write applications for insurance on residents of
25 this Commonwealth.

26 SUBCHAPTER B

27 TERMINATION OF AGENCY CONTRACTS

28 Sec.

29 1121. Definitions.

30 1122. Cancellation of contract.

1 1123. Continuation of business.

2 1124. Exclusions.

3 1125. Penalties.

4 § 1121. Definitions.

5 The following words and phrases when used in this subchapter
6 shall have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 "Agent." An insurance agent authorized to transact and
9 transacting the business of automobile insurance in this
10 Commonwealth.

11 "Insurer." An insurance entity authorized to transact and
12 transacting the business of automobile insurance in this
13 Commonwealth.

14 § 1122. Cancellation of contract.

15 (a) Notice.--After an agency contract has been in effect for
16 a period of five years, no insurer shall terminate its contract
17 with an agent without first providing the agent and the
18 department with written notification at least 90 days prior to
19 the date of termination. The notification shall set forth the
20 insurer's reason for the action.

21 (b) Privileged information.--Any information, document,
22 record or statement so furnished or disclosed to the department
23 shall be absolutely privileged and shall not be admissible as
24 evidence in or as basis for any action against the appointing
25 insurer or against any representative of that insurer.

26 (c) Administrative review.--Any agent may, within 30 days of
27 receipt of notice of termination, request in writing to the
28 department that it review the action of the insurer for the
29 purpose of determining whether the termination was in compliance
30 with this section.

1 (d) Restriction on termination.--An insurer shall not
2 terminate its contract with an agent due to the adverse
3 experience of a single year. Prior to termination it is the
4 obligation of the insurer to demonstrate that it has made a
5 reasonable attempt to rehabilitate the agent.

6 § 1123. Continuation of business.

7 (a) Policies.--If an insurer notifies an agent that its
8 contract will be terminated, the insurer shall offer to continue
9 the policies and any amendments thereto made through the agent
10 for a period of 12 months from the effective date of
11 termination, subject to the insurer's current underwriting
12 standards.

13 (b) Commissions.--The terminated agent shall be entitled to
14 receive commissions on account of all business continued or
15 written pursuant to this section at the insurer's prevailing
16 commission rate for the business.

17 (c) Application of section.--This section does not apply to
18 a business owned by the insurer, and not by the agent, if the
19 insurer offers to continue policies through another of its
20 agents.

21 § 1124. Exclusions.

22 (a) Construction of subchapter.--This subchapter does not
23 prohibit an amendment or addendum subsequent to the inception
24 date of the original agency agreement providing that the
25 original agency agreement may be terminated at a sooner time
26 than is required by this subchapter if the agent agrees in
27 writing to the termination.

28 (b) Certain terminations excepted.--This subchapter does not
29 apply to an agent:

30 (1) whose license has been revoked by the department;

1 (2) whose contract has been terminated for insolvency,
2 abandonment, gross and willful misconduct or failure to pay
3 over to the insurer moneys due to the insurer after his
4 receipt of a written demand therefor; or

5 (3) who has demonstrated gross incompetence which would
6 normally be cause for agency contract termination.

7 § 1125. Penalties.

8 (a) Summary offense.--Any person, agent or insurer who
9 willfully violates this subchapter commits a summary offense. A
10 conviction under this subsection does not bar administrative
11 action by the department under this section.

12 (b) Administrative action.--Upon satisfactory evidence of a
13 violation of this subchapter, the department may do any or all
14 of the following:

15 (1) Suspend or revoke the license of the person, agent
16 or insurer.

17 (2) Refuse, for a period not to exceed one year
18 thereafter, to issue him a new license or to renew his
19 license.

20 (3) Impose a civil penalty of not more than \$500 for
21 each act in violation of this subchapter.

22 (c) Review and appeal.--Any adjudication of the department
23 under subsection (b) shall be subject to review and appeal in
24 accordance with Title 2 (relating to administrative law and
25 procedure).

26 SUBCHAPTER C

27 INSURANCE BROKERS

28 Sec.

29 1131. Definition and applicability.

30 1132. Licenses of brokers.

1 1133. Penalty for acting as broker without license.

2 1134. Doing business with unlicensed brokers.

3 1135. Payment of commissions to brokers.

4 § 1131. Definition and applicability.

5 (a) Definition.--As used in this subchapter and Subchapter D
6 (relating to prohibited activities), the term "insurance broker"
7 means a person, not an officer or agent of the entity
8 interested, who, for compensation, acts or aids in any manner in
9 obtaining insurance, other than title insurance, for a person
10 other than himself.

11 (b) Applicability.--This subchapter does not apply to title
12 insurance brokers.

13 § 1132. Licenses of brokers.

14 (a) Power to issue licenses.--The department may issue to
15 any individual of at least 18 years of age or to any partnership
16 or corporation a license to act as an insurance broker to
17 negotiate contracts of insurance or reinsurance with any
18 insurance entity or the agents thereof authorized by law to
19 transact business in this Commonwealth.

20 (b) Limitations.--A license shall not be issued to any
21 corporation to act as an insurance broker unless by its charter
22 it is authorized to engage in the business of insurance or real
23 estate.

24 (c) Application for license.--Before the license is issued,
25 the applicant shall first complete an application in a form
26 determined by the department. The application shall be verified
27 by the applicant, and the answers shall be vouched for by an
28 endorsement made by at least two agents or the officers of any
29 insurance entity acquainted with the applicant, further stating
30 that the applicant is of good business reputation, has

1 experience in underwriting, other than soliciting, and is worthy
2 of a license. Brokers' license fees shall be paid in full at the
3 time of issuance and shall not be apportioned pro rata over the
4 initial license period.

5 (d) License.--When the department is satisfied that the
6 applicant is worthy of a license and that he is reasonably
7 familiar with the insurance law of this Commonwealth, it shall
8 issue a broker's license to expire annually one year from date
9 of issue, unless sooner revoked by the department for cause.

10 § 1133. Penalty for acting as broker without license.

11 Any person transacting business as an insurance broker in
12 this Commonwealth, or soliciting insurance or transmitting for
13 another partnership, association or corporation an application
14 for a policy of insurance, or offering or assuming to act in the
15 negotiation of such insurance or in any manner aiding in
16 transacting an insurance business, or negotiating for or placing
17 risks, or delivering policies or collecting premiums for
18 policies which are effective in this Commonwealth without a
19 license as broker, or in the case of title insurance without
20 being admitted to practice as an attorney at law or being
21 licensed as a real estate broker or real estate agent, unless
22 the person is acting as a licensed agent and then only for the
23 companies the person is licensed by this Commonwealth to
24 represent, commits a misdemeanor of the third degree.
25 Prosecutions for violations under this section may be instituted
26 by the department.

27 § 1134. Doing business with unlicensed brokers.

28 Any entity or the agent of any entity accepting applications
29 or orders for insurance or securing any insurance business
30 through anyone acting without a license commits a misdemeanor of

1 the third degree. Prosecutions for violations under this section
2 may be instituted by the department.

3 § 1135. Payment of commissions to brokers.

4 Any insurance entity or the agent thereof may pay money,
5 commission or brokerage, or give or allow anything of value to a
6 duly licensed insurance broker for the solicitation or
7 negotiation of contracts for insurance on property or risks in
8 this Commonwealth.

9 SUBCHAPTER D

10 PROHIBITED ACTIVITIES

11 Sec.

12 1141. (Reserved).

13 1142. Theft offense.

14 1143. Commingling funds.

15 1144. Paying or receiving compensation for certain life
16 insurance.

17 1145. Offering rebates and inducements.

18 1146. Acceptance of rebates.

19 1147. Misrepresentation of policy terms.

20 1148. Misrepresentation to induce change of insurers.

21 1149. Penalties imposed by department.

22 1150. Lending institutions, public utilities and holding
23 companies not to be licensed.

24 § 1141. (Reserved).

25 § 1142. Theft offense.

26 An insurance agent or broker who acts in negotiating a
27 contract of insurance for an insurance entity lawfully doing
28 business in this Commonwealth and who embezzles or fraudulently
29 converts to his own use or who, with intent to use or embezzle,
30 takes, secretes or otherwise disposes of, or fraudulently

1 withholds, appropriates, lends, invests or otherwise uses or
2 applies, any money or substitutes for money received by him as
3 agent or broker, contrary to the instructions or without the
4 consent of the entity for or on account of which the same was
5 received him, commits theft and shall be punished as required
6 under Title 18 (relating to crimes and offenses).

7 § 1143. Commingling funds.

8 Every insurance agent and broker acting as such in this
9 Commonwealth shall be responsible in a fiduciary capacity for
10 all funds received or collected as insurance agent or broker and
11 shall not, without the express consent of his principal, mingle
12 any such funds with his own funds or with funds held by him in
13 any other capacity. This section does not require the agent or
14 broker to maintain a separate bank deposit for the funds of each
15 principal if the funds held for each principal are reasonably
16 ascertainable from the books of account and records of the agent
17 or broker.

18 § 1144. Paying or receiving compensation for certain life
19 insurance.

20 (a) General rule.--A person, insurance agent, broker,
21 solicitor or representative shall not pay or cause to be paid
22 any commission or compensation to any attorney at law, partner,
23 clerk, servant, employee or other person, however hired or
24 employed by or with any insured or any beneficiary named in any
25 policy of life insurance. An attorney at law, partner, clerk,
26 servant, employee or any other person, however hired or employed
27 by or with any insured or any beneficiary named in any policy of
28 life insurance shall not receive, directly or indirectly, any
29 commission, compensation or other benefit by reason of the life
30 insurance being placed, sold or solicited on the life or for the

1 benefit of their respective clients, employers or masters. An
2 attorney at law, officer, clerk, servant or employee of any
3 corporation, partnership, association or individual shall not
4 receive, directly or indirectly, any commission, compensation or
5 benefit by reason of any life insurance being placed, sold or
6 solicited on the life or for the benefit of any attorney at law,
7 officer, clerk, servant or employee of the same corporation,
8 partnership, association or individual, whether or not the
9 attorney, partner, officer, clerk, servant, employee or other
10 person hired or employed by or with the insured or of any
11 beneficiary named in any policy of life insurance is duly
12 licensed by the proper authority in this Commonwealth to place,
13 sell or solicit life insurance.

14 (b) Applicability.--Every such attorney at law, partner,
15 officer, clerk, servant, employee or other person hired or
16 employed or continuing to be hired or employed in that capacity
17 within 90 days before or after the placing, selling or
18 soliciting of life insurance on the life or for the benefit of
19 their respective clients, partners, officers, employees, masters
20 or person in that capacity or any of them, shall be subject to
21 the provisions of this section.

22 (c) Penalty.--Every person, partnership or corporation
23 participating in the payment or receipt of any compensation or
24 benefit in violation of this section commits a misdemeanor of
25 the third degree.

26 § 1145. Offering rebates and inducements.

27 An insurance agent, solicitor or broker shall not offer or
28 give, directly or indirectly, any rebate of, or part of, the
29 premium payable on the policy or the agent's commission thereon,
30 or earnings, profit, dividends or other benefit founded,

1 arising, accruing or to accrue thereon or therefrom, or any
2 special advantage in date of policy or age of issue, or any paid
3 employment or contract for services of any kind, or any other
4 valuable consideration or inducement, to or for insurance on any
5 risk in this Commonwealth, which is not specified in the policy
6 contract of insurance. An insurance agent, solicitor or broker
7 shall not personally or otherwise offer, give, option, sell or
8 purchase any stocks, bonds, securities or property, or any
9 dividends or profits accruing or to accrue thereon, or other
10 thing of value, as inducement to insurance or in connection
11 therewith. This section does not prevent the taking of a bona
12 fide obligation, with legal interest, in payment of any premium.

13 § 1146. Acceptance of rebates.

14 An insured person or party or applicant for insurance shall
15 not directly or indirectly receive or accept, or agree to
16 receive or accept, any rebate of premium or any part thereof, or
17 all or any part of any agent's, solicitor's or broker's
18 commission thereon, or any favor, advantage or share in any
19 benefit to accrue under any policy of insurance, or any valuable
20 consideration or inducement, other than those specified in the
21 policy.

22 § 1147. Misrepresentation of policy terms.

23 An agent of an insurance entity or an insurance broker shall
24 not issue, circulate, use or cause or permit to be issued,
25 circulated or used, any written or oral statement or circular
26 misrepresenting the terms of any policy issued or to be issued
27 by the entity or make an estimate, with intent to deceive, of
28 the future dividends payable under the policy.

29 § 1148. Misrepresentation to induce change of insurers.

30 An agent of an insurance entity or an insurance broker, or

1 any person, partnership, association or corporation in behalf of
2 the agent, solicitor or broker, shall not make any
3 misrepresentation or incomplete comparison of policies, oral,
4 written or otherwise, to any person insured by any entity for
5 the purpose of inducing or tending to induce a policyholder in
6 the entity to lapse, forfeit or surrender his insurance therein
7 and to take out a policy of insurance in another entity insuring
8 against similar risks.

9 § 1149. Penalties imposed by department.

10 (a) General rule.--Upon satisfactory evidence of the
11 violation of section 1104 (relating to penalty for doing
12 business as agent without license), 1106 (relating to penalty
13 for advertising as agent of unauthorized entity), 1107 (relating
14 to penalty for soliciting for nonexistent company), 1133
15 (relating to penalty for acting as broker without license), 1134
16 (relating to doing business with unlicensed brokers) or 1142
17 (relating to theft offense) through 1148 (relating to
18 misrepresentation to induce change of insurers) by any agent of
19 any insurance entity or by any insurance broker or upon
20 satisfactory evidence of such conduct as would disqualify the
21 agent or broker from initial issuance of a license under section
22 1103 (relating to licenses of agents) or 1132 (relating to
23 licenses of brokers), the department may pursue any one or more
24 of the following courses of action regardless of whether the
25 agent or broker was licensed by the department:

26 (1) Suspend or revoke or refuse to renew the license of
27 offending party or parties.

28 (2) Impose a civil penalty of not more than \$1,000 for
29 each act in violation of any of the criminal provisions.

30 (b) Hearing.--The department shall hold a hearing before

1 taking action under subsection (a). It shall give written notice
2 of the hearing to the person or entity accused, stating
3 specifically the nature of the alleged violation and fixing a
4 time and place, at least ten days thereafter, when the hearing
5 shall be held.

6 (c) Criminal penalty.--Any agent of any insurance entity,
7 insurance broker or other person or corporation violating
8 section 1143 (relating to commingling funds), 1145 (relating to
9 offering rebates and inducements), 1146 (relating to acceptance
10 of rebates), 1147 (relating to misrepresentation of policy
11 terms) or 1148 (relating to misrepresentation to induce change
12 of insurers) commits a misdemeanor of the third degree.

13 (d) Production of evidence.--A person shall not be excused
14 from testifying, or from producing any books, papers, contracts
15 or documents, at any hearing held by the department or at the
16 trial or hearing before any magistrate or judge, of any person
17 charged with violating section 1145, 1146, 1147 or 1148 on the
18 ground that the testimony or evidence may tend to incriminate
19 himself, but no person shall be prosecuted for any act
20 concerning which he shall be compelled to testify or produce
21 evidence except for perjury committed in testifying.

22 § 1150. Lending institutions, public utilities and holding
23 companies not to be licensed.

24 (a) General rule.--No lending institution, public utility,
25 bank holding company, savings and loan holding company or any
26 subsidiary or affiliate of the foregoing, or officer or employee
27 thereof, may, directly or indirectly, be licensed or admitted as
28 an insurer or be licensed to sell insurance in this Commonwealth
29 either as a broker or as an agent except that a lending
30 institution or bank holding company, subsidiary or affiliate of

1 a lending institution may be licensed to sell credit life,
2 health and accident insurance and to sell and underwrite title
3 insurance in accordance with regulations promulgated by the
4 department.

5 (b) Authority of department.--The department is authorized
6 to promulgate regulations in order to effectuate the purposes of
7 this section, which are to help maintain the separation between
8 lending institutions and public utilities and the insurance
9 business and to minimize the possibilities of unfair competitive
10 practices by lending institutions and public utilities against
11 insurance companies, agents and brokers.

12 (c) Exclusion.--The provisions of this section do not apply
13 to any lending institution, bank holding company, savings and
14 loan holding company, public utility or public utility holding
15 company, or any subsidiary or affiliate of the foregoing, or any
16 officer, director or employee thereof licensed as an insurance
17 agent or broker or insurer in this Commonwealth on or before
18 February 28, 1975.

19 (d) Definitions.--As used in this section the following
20 words and phrases shall have the meanings given to them in this
21 subsection:

22 "Bank holding company." As defined in section 2 of the Bank
23 Holding Company Act of 1956 (70 Stat. 133, 12 U.S.C. § 1841).
24 However, if on or before February 28, 1975, a bank holding
25 company has been granted an exemption by the Board of Governors
26 of the Federal Reserve System pursuant to section 4(d) of the
27 Bank Holding Company Act of 1956 (12 U.S.C. § 1843(d)), such
28 bank holding company shall not be held to be a bank holding
29 company within the meaning of section 2 of the Bank Holding
30 Company Act of 1956 (12 U.S.C. § 1841).

1 "Credit life, health and accident insurance." Insurance on
2 the life and health of a borrower from a lending institution to
3 secure the repayment of the amount borrowed, in accordance with
4 regulations promulgated by the department.

5 "Deposits." As defined in section 2(3)(1) of the Federal
6 Deposit Insurance Act (64 Stat. 873, 12 U.S.C. § 1813(1)).

7 "Lending institution." Any institution that accepts deposits
8 and lends money in this Commonwealth, including banks and
9 savings and loan associations, but excluding insurance
10 companies.

11 "Public utility." A private employer subject to the
12 jurisdiction of the Pennsylvania Public Utility Commission and
13 engaged in the business of rendering electric, gas, water and
14 steam heat services to the public in this Commonwealth. However,
15 the term does not include rural electrification cooperatives.

16 "Public utility holding company." As defined in section
17 2(a)(7) of the Public Utility Holding Company Act of 1935 (49
18 Stat. 838, 15 U.S.C. § 79b(a)(7)), including electric, gas,
19 water and steam heat services.

20 "Savings and loan holding company." As defined in section
21 408(a)(1)(D), (E) and (F) of the act of June 27, 1934 (48 Stat.
22 1255, 12 U.S.C. § 1730a(a)(1)(D), (E) and (F)).

23 "Subsidiary" or "affiliate." As defined in the regulations
24 promulgated by the department, except that "affiliate" does not
25 apply to an entity which owns an interest in another company or
26 corporation where the ownership interest is not sufficient to
27 permit exercise of effective control, and does not involve
28 direct or indirect ownership or control of 5% or more of the
29 voting stock of such company or corporation, nor does it apply
30 to an entity whose stock is owned by another, if the amount of

1 stock owned by any one company or corporation does not permit
2 effective control and does not exceed 5% of the voting stock of
3 the entity. The term "affiliate" does, subject to the provisions
4 to invest in stock contained in this subsection, include bank
5 holding company, savings and loan holding company, and public
6 utility holding company as defined in this subsection.

7 "Title insurance." As defined in section 6701 (relating to
8 definitions).

9 SUBCHAPTER E

10 MANAGERS AND EXCLUSIVE GENERAL AGENTS

11 Sec.

12 1161. Certification.

13 1162. Licensure.

14 1163. Exclusion, sale or transfer.

15 1164. Revocation and suspension of license.

16 1165. Penalties.

17 § 1161. Certification.

18 Every domestic insurance company operating under a management
19 contract or an exclusive general agency agreement entered into
20 after December 22, 1965, shall certify to the department the
21 name of the manager or exclusive general agent within ten days
22 from the effective date of the contract or agreement and within
23 ten days after the renewal of the license of the manager or
24 exclusive general agent. Certification is not required for an
25 agent or general agent whose authority is limited primarily to
26 production of insurance business with limited underwriting
27 authority. For the purpose of this subchapter the terms
28 "manager" and "exclusive general agent" include partnerships or
29 corporations.

30 § 1162. Licensure.

1 (a) General rule.--A manager or exclusive general agent,
2 except an agent or general agent whose authority is limited
3 primarily to production of insurance business with limited
4 underwriting authority, shall not engage in any activities for
5 which the manager or exclusive general agent is authorized,
6 empowered or designated by a domestic insurance company unless
7 he has been licensed as such by the department.

8 (b) Qualifications.--Upon application filed under rules and
9 regulations prescribed by the department, a manager's license or
10 an exclusive general agent's license may be issued if the
11 department is satisfied that the applicant is of good business
12 reputation and has the responsibility, general character and
13 fitness for the business and that the applicant is worthy of the
14 license.

15 (c) Duration and fee.--Licenses issued under this section
16 shall be in effect for a period of one year from date of
17 issuance. The department shall charge and collect the annual
18 license fee.

19 § 1163. Exclusion, sale or transfer.

20 A manager or exclusive general agent operating under any
21 management contract or exclusive general agency agreement
22 entered into prior to December 22, 1965, shall not be subject to
23 section 1162 (relating to licensure). However, any sale,
24 assignment or transfer of any management contract or exclusive
25 general agency agreement, whether or not the contract or
26 agreement was entered into before December 22, 1965, shall make
27 the purchaser, assignee or transferee subject to the licensing
28 provisions of section 1162, and the companies shall make the
29 certification under section 1161 (relating to certification).

30 § 1164. Revocation and suspension of license.

1 (a) Power to discipline licensee.--The department, upon
2 satisfactory evidence of conduct that would disqualify a
3 licensed manager or exclusive general agent from initial
4 issuance of a license under section 1162 (relating to
5 licensure), may suspend or revoke or refuse to renew the license
6 of the manager or exclusive general agent.

7 (b) Hearing.--The department shall hold a hearing before
8 taking action under subsection (a). It shall give written notice
9 of the hearing to the manager or exclusive general agent,
10 stating specifically the nature of the alleged conduct and
11 fixing a time and place at least ten days thereafter when the
12 hearing shall be held.

13 § 1165. Penalties.

14 (a) Acting without license.--Any individual, partnership or
15 corporation acting as a manager or exclusive general agent of a
16 domestic insurance company without a license under this
17 subchapter commits a misdemeanor of the third degree. Each day
18 the violation continues constitutes a separate offense.

19 (b) Failure to certify.--Any domestic insurance company
20 which fails to file the certification required by section 1161
21 (relating to certification) commits a misdemeanor of the third
22 degree. Each day the violation continues constitutes a separate
23 offense.

24 (c) Authority to prosecute.--Prosecutions for violations
25 referred to in this section may be instituted by the department.

26 SUBCHAPTER F

27 PUBLIC ADJUSTERS AND SOLICITORS

28 Sec.

29 1171. Definitions.

30 1172. Licensure.

- 1 1173. Fees.
- 2 1174. Bonds.
- 3 1175. Contracts.
- 4 1176. Penalties.
- 5 1177. Violations.
- 6 § 1171. Definitions.

7 The following words and phrases when used in this subchapter
8 shall have the meanings given to them in this section unless the
9 context clearly indicates otherwise:

10 "Public adjuster." Any person, advertising, soliciting
11 business or holding himself out to the public as an adjuster of
12 claims for losses or damages arising out of policies of
13 insurance, surety or indemnity upon property, persons or
14 insurable business interests in this Commonwealth, and receiving
15 any compensation or reward for the giving of advice or
16 assistance to the insured in the adjustment of claims for such
17 losses, or who for compensation or reward, whether by way of
18 salary or commission or otherwise, solicits business,
19 investigates or adjusts losses or advises the insured with
20 reference to claims for losses on behalf of any other person
21 engaged in the business of adjusting losses. The term does not
22 include an agent or employee of an insurance entity through whom
23 a policy of insurance was written, in adjusting loss or damage
24 under such policy, nor does it include a broker or agent acting
25 as an adjuster if the services of the agent or broker in the
26 adjustment are without compensation.

27 "Public adjuster solicitor." Any person who solicits for a
28 fee or in any manner aids in securing for a public adjuster a
29 contract for the adjustment of a loss.

30 "Repairs." Does not include temporary or emergency repairs

1 made for the purpose of protecting the insured property or to
2 comply with policy terms and conditions.

3 § 1172. Licensure.

4 (a) Requirement of license.--A person shall not act as a
5 public adjuster or a public adjuster solicitor without first
6 procuring from the department a license as a public adjuster or
7 public adjuster solicitor, respectively.

8 (b) Power to issue licenses.--The department may issue a
9 license as a public adjuster or public adjuster solicitor to any
10 individual of at least 18 years of age and to any corporation,
11 partnership or association which maintains a bona fide office in
12 this Commonwealth, readily accessible to the general public.

13 (c) Limitations.--A license shall not be granted to any
14 corporation unless by its charter it is authorized to engage in
15 the business of insurance claim adjusting and unless individual
16 licenses are also secured for each active officer of the
17 corporation. A license shall not be granted to a partnership or
18 association unless individual licenses are also secured for each
19 active member of the partnership or association.

20 (d) Application for license.--Before the license is granted,
21 the applicant shall first complete a verified application in a
22 form determined by the department. Any applicant who has held
23 such a license for a period of at least two years prior to
24 December 20, 1983, shall be entitled upon proper application to
25 receive a license without the necessity of submitting to an
26 examination.

27 (e) Approval of license.--When the department is satisfied
28 that the applicant is trustworthy and competent to transact
29 business as a public adjuster or public adjuster solicitor,
30 respectively, it shall issue a license.

1 (f) Nonresident public adjusters and public adjuster
2 solicitors.--The department may issue a license as public
3 adjuster or public adjuster solicitor to a person not a resident
4 of this Commonwealth, upon compliance with the applicable
5 provisions of this subchapter, if the state or the province of
6 the Dominion of Canada of his residence accords the same
7 privilege to a resident of this Commonwealth. The provisions of
8 this subsection relating to noneligibility for licensure do not
9 apply to any nonresident public adjusters and public adjuster
10 solicitors who did business in this Commonwealth as licensed
11 public adjusters or public adjuster solicitors prior to December
12 20, 1983. The department may enter into reciprocal agreements
13 with the appropriate official of the other state or province
14 waiving the written examination of any applicant resident in the
15 other state if:

16 (1) a written examination is required of applicants for
17 an insurance public adjuster or public adjuster solicitor
18 license in the other state or province;

19 (2) the appropriate official of the other state or
20 province certifies that the applicant holds a currently valid
21 license as a public adjuster or public adjuster solicitor in
22 the other state or province and either passed the written
23 examination or was the holder of an insurance agent's license
24 prior to the time a written examination was required; and

25 (3) in the other state or province a resident of this
26 Commonwealth may obtain a public adjuster or public adjuster
27 solicitor license upon the foregoing conditions and without
28 discrimination as to fees or otherwise in favor of the
29 residents of the other state or province.

30 (g) Persons ineligible for license.--A license as a public

1 adjuster or public adjuster solicitor shall not be issued to any
2 person engaged or interested in, or receiving any profit from,
3 nor shall the holder of a license engage or be interested in, or
4 receive any profit from, any salvage or similar business.

5 § 1173. Fees.

6 (a) Public adjuster's license.--The applicant shall pay the
7 fee to the department for a public adjuster's license at the
8 time application is made and annually thereafter for renewal. If
9 the applicant is a corporation, partnership or association, the
10 fee shall be paid for each individual specified in the license.

11 (b) Public adjuster solicitor's license.--The applicant
12 shall pay the fee to the department for a public adjuster
13 solicitor's license at the time application is made and annually
14 thereafter for renewal. If the applicant is a corporation,
15 partnership or association, the fee shall be paid for each
16 individual specified in the license.

17 § 1174. Bonds.

18 (a) Public adjuster's bond.--Each person receiving a public
19 adjuster's license shall before transacting any business
20 thereunder execute and deliver to the department a bond in the
21 minimum penal sum of \$40,000 with such sureties as the
22 department approves.

23 (b) Public adjuster solicitor's bond.--Each person receiving
24 a public adjuster solicitor's license shall before transacting
25 any business thereunder execute and deliver to the department a
26 bond in the minimum penal sum of \$8,000 with such sureties as
27 the department approves.

28 (c) Condition of bond.--The bond of the public adjuster and
29 the public adjuster solicitor shall be conditioned that the
30 public adjuster or public adjuster solicitor will faithfully

1 comply with all the requirements of this subchapter and shall
2 not embezzle, take, secrete or otherwise dispose of or
3 fraudulently withhold, appropriate, lend, invest or otherwise
4 use or apply any money or substitutes for money or any salvage,
5 goods or property received by him as a public adjuster or public
6 adjuster solicitor or employee of a public adjuster, contrary to
7 the instructions or without the consent of the insured or his
8 legal representative.

9 (d) Intervention in action by Commonwealth.--Any person,
10 firm or corporation who has entered into a contract with a
11 public adjuster, as provided in section 1175 (relating to
12 contracts), and who suffers loss by reason of the failure of the
13 public adjuster to comply with this subchapter or to faithfully
14 perform his duties may intervene and be made a party to any
15 action instituted by the Commonwealth on the bond of the public
16 adjuster, but his claims shall be subject to the priority of the
17 claim and judgment of the Commonwealth. If the amount of the
18 liability of the surety on the bond is sufficient to pay the
19 full amount due the Commonwealth, the remainder shall be
20 distributed pro rata among the intervenors.

21 (e) Private action.--If no action is brought by the
22 Commonwealth, upon application therefor and furnishing affidavit
23 to the department that loss has been suffered by reason of
24 failure of the public adjuster to comply with this subchapter or
25 faithfully perform his duties, the insured shall be furnished
26 with a certified copy of the bond, upon which he shall have a
27 right of action and may bring action in the name of the
28 Commonwealth for his use and benefit against the public adjuster
29 and his sureties. An action by any insureds on the bond of the
30 public adjuster shall be commenced within one year after the

1 performance and final settlement of the contract. Where an
2 action is so instituted by an insured, no other action shall be
3 brought by any other claimant, but the claimant may file his
4 claim in the action first brought and be made party thereto
5 within one year from the completion of the work under the
6 contract. If two or more actions are brought on the same day,
7 the action in which the largest claim is demanded shall be
8 regarded as the first action. Any creditor who has brought an
9 action within one year but after action brought by another
10 creditor, may intervene in the action first brought within the
11 year, notwithstanding the fact that the intervention in such
12 case is after the expiration of the year, but only within 30
13 days after the expiration of the year. If the recovery on the
14 bond is inadequate to pay the amounts found due to all of the
15 creditors, judgment shall be given to each creditor pro rata of
16 the amount of the recovery.

17 (f) Payment into court.--The surety on the bond may pay into
18 the court for distribution among the claimants and creditors,
19 the penalty named in the bond, less any amount which the surety
20 is or was required to pay to the Commonwealth by reason of the
21 execution of the bond. Upon so doing, the surety will be
22 relieved from further liability.

23 (g) Notice.--In all actions instituted under this
24 subchapter, such personal notice of the pendency of the action,
25 informing them of their right to intervene, as the court may
26 order, shall be given to all known creditors. Notice shall be
27 given by publication in newspapers of general circulation
28 published in the municipality where the contract was performed
29 once a week for at least three successive weeks; however, if the
30 action is begun within three weeks of the end of the year within

1 which action may be brought, notice by publication shall be only
2 for the period intervening between the time of instituting the
3 action and the end of the year.

4 § 1175. Contracts.

5 (a) Form of contract.--A public adjuster shall not, directly
6 or indirectly, act in this Commonwealth as a public adjuster
7 without having entered into a written contract on a form
8 approved by the department and executed in duplicate by the
9 public adjuster and the insured or a duly authorized
10 representative. One copy of this contract shall be kept on file
11 by the public adjuster and available at all times for inspection
12 without notice by the department. A public adjuster solicitor
13 shall not use any form of contract other than that approved for
14 the public adjuster for whom he is soliciting, nor shall he make
15 any contracts or agreements for himself or for the public
16 adjuster other than those specified in the approved contract.

17 (b) Solicitation.--A public adjuster or public adjuster
18 solicitor shall not solicit a client for employment within 24
19 hours of a fire or other catastrophe or occurrence which is the
20 basis of the solicitation. With respect to a fire, the 24-hour
21 period shall begin at such time as the fire department in charge
22 determines that the fire is extinguished.

23 (c) Rescission.--Any contract with a public adjuster may be
24 rescinded by any person signing the contract. Such action must
25 be taken within four calendar days after signature.

26 (d) Limitations on authority.--A public adjuster or public
27 adjuster solicitor shall not adjust or solicit a contract for
28 the adjustment of any claim for losses or damages on behalf of
29 any person except claims by an insured against his own insurance
30 carrier. A public adjuster or public adjuster solicitor shall

1 not act in any manner in relation to claims for personal injury
2 or automobile property damage. A public adjuster or public
3 adjuster solicitor shall not, directly or indirectly, through or
4 with any person in which it has an indirect or beneficial
5 interest, enter into any contract with any insured for the
6 repair, replacement, restoration, renovation or demolition of
7 damaged real or personal property at any time prior to the date
8 a verdict or award is entered or payment is received from the
9 insurance carrier, whichever occurs first.

10 § 1176. Penalties.

11 (a) Grounds.--The following acts shall be grounds for a fine
12 or suspension or revocation of a public adjuster's or public
13 adjuster solicitor's license:

14 (1) Material misrepresentation of the terms and effect
15 of any insurance contract.

16 (2) Engaging in, or attempting to engage in, any
17 fraudulent transaction with respect to a claim or loss that
18 licensee is adjusting.

19 (3) Misrepresentation of the services offered or the
20 fees or commission to be charged.

21 (4) Conviction by any court of or a plea of nolo
22 contendere to a felony under the laws of this Commonwealth,
23 any other state, the United States or any foreign country.

24 (5) Misappropriation, conversion to his own use or
25 improper withholding of moneys held on behalf of another
26 party to the contract.

27 (6) Paying or causing to be paid any commission or any
28 other compensation or thing of value to any agent, broker,
29 attorney at law, partner, employee or any other person, hired
30 by or employed by or with any insured named in any policy of

1 insurance as an inducement or solicitation to influence the
2 contracting of services for the services of public adjuster
3 or public adjuster solicitor with any insured. A public
4 adjuster may utilize the services of any person authorized by
5 the insurer to assist in connection with an insurance claim
6 if those services do not conflict with the services required
7 to be rendered by a public adjuster.

8 (7) Receiving, directly or indirectly, any compensation,
9 commission or thing of value or profit from any person
10 engaged or interested in the business of salvage, repair,
11 replacement, restoration, renovation or demolition of damaged
12 real or personal property, unless disclosed to the insured
13 and agreed to in the contract.

14 (8) Removal of a public adjuster's or a public adjuster
15 solicitor's office, accounts or records from this
16 Commonwealth.

17 (9) Closure of a licensee's office for a period in
18 excess of 30 days, unless granted permission to do so by the
19 department.

20 (10) Violation of any provision of this subchapter or
21 any rule or regulation promulgated thereunder.

22 (11) Making a material misstatement in the application
23 for any license under this subchapter.

24 (12) Commission of fraudulent practices.

25 (13) Incompetency or untrustworthiness to transact the
26 business of a public adjuster.

27 (b) Civil penalty.--Regardless of whether or not the public
28 adjuster or public adjuster solicitor was licensed, the
29 department may impose a civil penalty of not more than \$1,000
30 for each violation of this subchapter.

1 (c) Notice and hearing.--The department shall hold a hearing
2 before taking any action under this section. It shall give
3 written notice of the hearing to the person accused of violating
4 the law, stating specifically the nature of the alleged
5 violation and fixing a time and place, at least ten days
6 thereafter, when the hearing shall be held.

7 (d) Responsibility of adjusters and solicitors.--Any public
8 adjuster or public adjuster solicitor employing or using the
9 services of any person to solicit business shall be held
10 responsible for the conduct of that person in connection with
11 business dealings, including, but not limited to, making certain
12 that he has a valid license as a public adjuster or public
13 adjuster solicitor.

14 § 1177. Violations.

15 Any person violating any of the provisions of this subchapter
16 commits a misdemeanor of the third degree. Prosecutions for
17 violations under this section may be instituted by the
18 department or an authorized representative.

19 SUBCHAPTER G

20 MOTOR VEHICLE PHYSICAL DAMAGE APPRAISERS

21 Sec.

22 1181. Short title of subchapter.

23 1182. Legislative intent.

24 1183. Definitions.

25 1184. Licensure.

26 1185. Expiration and renewal.

27 1186. Denial, suspension, revocation or refusal to renew
28 license.

29 1187. Hearings and appeals.

30 1188. Conduct of business.

1 1189. Penalty.

2 § 1181. Short title of subchapter.

3 This subchapter shall be known and may be cited as the Motor
4 Vehicle Physical Damage Appraiser Act.

5 § 1182. Legislative intent.

6 This subchapter does not apply unless an appraisal has been
7 assigned. Recognition is given to the fact that many minor
8 damage claims do not require a formal appraisal, and to require
9 such an appraisal would be an undue burden upon the parties
10 involved.

11 § 1183. Definitions.

12 The following words and phrases when used in this subchapter
13 shall have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Appraiser." A person who practices the appraisal of motor
16 vehicle physical damage.

17 "Insurer." Includes self-insurers.

18 § 1184. Licensure.

19 (a) General rule.--A person shall not, directly or
20 indirectly, act or hold himself out as an appraiser unless he
21 has first secured a license from the department under this
22 subchapter. The department shall issue an appraiser's license to
23 every person who applies therefor, pays the fee, passes the
24 required examinations and otherwise is found by the department
25 to possess the qualifications for licensure under this
26 subchapter.

27 (b) Qualifications.--No person shall be licensed as an
28 appraiser unless he first establishes his qualifications
29 therefor and passes the examination. The applicant for the
30 license shall be at least 18 years of age, shall be a resident

1 of this Commonwealth or a resident of any other state or country
2 which permits residents of this Commonwealth to act as
3 appraisers in that state or country, shall be trustworthy and
4 shall otherwise establish to the satisfaction of the department
5 that he has had sufficient experience or special education or
6 training with reference to appraising of physical damage to
7 motor vehicles to permit him to fulfill competently the
8 responsibilities of an appraiser.

9 (c) Applications.--Applications for the license shall be
10 made to the department upon forms prescribed and furnished by
11 the department and shall be accompanied by the fee required
12 under section 612-A(5) of the act of April 9, 1929 (P.L.177,
13 No.175), known as The Administrative Code of 1929. The fee shall
14 not be returnable upon failure to pass the examination. Each
15 applicant shall provide the department with such information
16 concerning his identity and personal history, and such other
17 information as shall be necessary to establish his
18 qualifications.

19 (d) Examinations.--The examination for licensure shall be
20 given under the supervision of the department. It shall consist
21 of a written examination that shall include the appraisal of one
22 or more damaged motor vehicles and an oral examination. At the
23 discretion of the department, an oral examination in lieu of the
24 written examination may be given, but only for reason of the
25 physical handicap of the applicant. An oral examination shall
26 include the appraisal of one or more damaged motor vehicles. The
27 examinations shall be given at reasonable times and places
28 within this Commonwealth. Any applicant who fails to pass the
29 examination may not retake the examination for 30 days from the
30 date of his failure. The department shall prepare and make

1 available to applicants a manual setting forth in general terms
2 the subject matter to be covered in the examination.

3 (e) Form of license.--The department shall prescribe the
4 form of the license, which shall contain:

5 (1) The name of the appraiser.

6 (2) The address of the appraiser's place of business.

7 (3) The date of issuance and the expiration date of the
8 license.

9 (4) Any other information which the department
10 determines is necessary.

11 § 1185. Expiration and renewal.

12 Each appraiser's license shall expire annually on June 30.

13 Subject to the right of the department to suspend, revoke or

14 refuse to renew an appraiser's license, any such license may be

15 renewed for another annual period commencing July 1 and expiring

16 on June 30 next following by filing with the department on or

17 before the expiration date a written request for renewal, by or

18 on behalf of the licensee, accompanied by payment of the renewal

19 fee required under section 612-A(5) of the act of April 9, 1929

20 (P.L.177, No.175), known as The Administrative Code of 1929. If

21 the request, accompanied by the renewal fee, is filed with the

22 department prior to the expiration of the existing license, the

23 licensee may continue to act under the license, unless sooner

24 revoked or suspended, until the issuance of the renewal license

25 or until five days after the department has refused to renew the

26 license and has mailed notice of refusal to the licensee. Any

27 request for renewal not so filed until after the date of

28 expiration may be considered by the department as an application

29 for a new license.

30 § 1186. Denial, suspension, revocation or refusal to renew

1 license.

2 (a) Grounds.--The department may deny initial issuance of,
3 suspend, revoke or refuse to renew any appraiser's license for
4 any cause specified in this subchapter, or for any of the
5 following causes:

6 (1) For any cause for which issuance of the license
7 could have been refused had it existed and been known to the
8 department.

9 (2) The licensee has willfully violated or failed to
10 comply with or has knowingly participated in the violation of
11 or failure to comply with this subchapter or any regulation
12 promulgated thereunder.

13 (3) The licensee has obtained or attempted to obtain any
14 such license through willful misrepresentation or fraud, or
15 has failed to pass any examination required under this
16 subchapter.

17 (4) The licensee has, with intent to deceive, materially
18 misrepresented the terms or effect of any insurance contract,
19 or has engaged or is about to engage in any fraudulent
20 transaction.

21 (5) The licensee has been convicted of a felony.

22 (6) In the conduct of his affairs under the license, the
23 licensee has shown himself to be, and is so deemed by the
24 department, incompetent, untrustworthy or a source of injury
25 and loss to the public.

26 (b) Period of suspension.--Any order suspending the license
27 shall specify the period during which the suspension will be
28 effective, which shall not exceed 12 months.

29 (c) Surrender of license.--The holder of any license which
30 has been revoked or suspended shall surrender the license to the

1 department at the department's request.

2 (d) Reinstatement or relicensure.--The department shall not
3 reinstate the license or relicense any person whose license has
4 been suspended or revoked or the renewal of whose license has
5 been refused while the cause for the suspension, revocation or
6 refusal of renewal persists.

7 § 1187. Hearings and appeals.

8 Except as otherwise provided in this subchapter, all actions
9 of the department shall be taken subject to the right of notice,
10 hearing and adjudication, and the right of appeal therefrom as
11 provided by law.

12 § 1188. Conduct of business.

13 (a) Display of license.--An appraiser, while engaged in
14 appraisal duties, shall carry the license and shall display it,
15 upon request, to an owner whose vehicle is being inspected, to
16 the repair shop representative involved or to any authorized
17 representative of the department.

18 (b) Appraisals.--The appraiser shall leave a legible copy of
19 his appraisal with that of the repair shop selected by the
20 consumer to make the repairs and furnish a copy to the owner of
21 the vehicle. This appraisal shall contain the name of the
22 insurance company ordering it, if any, the insurance file
23 number, the number of the appraiser's license and the
24 identification number of the vehicle being inspected. All
25 unrelated or old damage should be clearly indicated on the
26 appraisal. The appraisal shall include an itemized listing of
27 all damages, specifying those parts to be replaced or repaired.
28 Because an appraiser is charged with a high degree of regard for
29 the public safety, the operational safety of the vehicle shall
30 be paramount in considering the specification of new parts. This

1 consideration is vitally important where the parts involved
2 pertain to the drive train, steering gear, suspension units,
3 brake system or tires.

4 (c) Required acts.--Every appraiser shall do the following:

5 (1) Conduct himself in such a manner as to inspire
6 public confidence by fair and honorable dealings.

7 (2) Approach the appraisal of damaged property without
8 prejudice against, or favoritism toward, any party involved
9 in order to make fair and impartial appraisals.

10 (3) Disregard any efforts on the part of others to
11 influence his judgment in the interest of the parties
12 involved.

13 (4) Prepare an independent appraisal of damage.

14 (5) Inspect a vehicle within six working days of
15 assignment to him unless such circumstances as catastrophe,
16 death or failure of the parties to cooperate render such
17 inspection impossible.

18 (6) Promptly reinspect damaged vehicles prior to repair
19 when a supplementary allowance is requested by a repair shop
20 and the amount or extent of damage is in dispute.

21 (d) Prohibited acts.--An appraiser shall not do the
22 following:

23 (1) Receive, directly or indirectly, any gratuity or
24 other consideration in connection with his appraisal services
25 from any person except his employer or, if self-employed, his
26 customer.

27 (2) Traffic in automobile salvage if such salvage is
28 obtained as a result of appraisal services rendered by him
29 for his own benefit.

30 (3) Obtain or use repair estimates that have been

1 obtained by the use of photographs, telephone calls or in any
2 manner other than a personal inspection.

3 An appraiser or employer of an appraiser shall not require that
4 repairs be made in any specified repair shop.

5 § 1189. Penalty.

6 Any person who violates this subchapter commits a misdemeanor
7 of the third degree.

8 SUBCHAPTER H

9 PUBLIC REMEDIES FOR UNLICENSED ACTIVITY

10 Sec.

11 1191. Injunction or other process.

12 § 1191. Injunction or other process.

13 (a) Authority to file.--The department, upon advice of the
14 Attorney General, may maintain an action in the name of the
15 Commonwealth for an injunction or other process against any
16 person to restrain and prevent him from transacting business as
17 an agent of any insurance entity or as an insurance broker,
18 manager or exclusive general agent of a domestic insurance
19 entity, or as a public adjuster or public adjuster solicitor
20 without a license, in violation of this chapter.

21 (b) Bonds and costs.--A bond shall not be required of and
22 costs shall not be taxed against the department on account of
23 any such action.

24 (c) Construction of section.--An action brought under this
25 section does not prevent the prosecution or institution of any
26 civil or criminal action otherwise provided by law for violation
27 of any licensing statute or departmental regulation promulgated
28 thereunder.

29 CHAPTER 13

30 UNLICENSED INSURERS

- 1 Sec.
- 2 1301. Purpose of chapter.
- 3 1302. Definitions.
- 4 1303. Aiding unlicensed insurers.
- 5 1304. Surplus lines insurance.
- 6 1305. Exclusions.
- 7 1306. Declarations.
- 8 1307. Eligible surplus lines insurers.
- 9 1308. Licensure of surplus lines agents.
- 10 1309. Bond of surplus lines agents.
- 11 1310. Penalties.
- 12 1311. Surplus lines tax.
- 13 1312. Information required on contract.
- 14 1313. (Reserved).
- 15 1314. Rights of insured.
- 16 1315. Penalties.

17 § 1301. Purpose of chapter.

18 The purpose of this chapter is to:

19 (1) Promote the public welfare and to protect the public
20 interest by regulating, taxing, supervising and controlling
21 the placing of insurance on risks located in this
22 Commonwealth with insurers not licensed to transact insurance
23 business in this Commonwealth.

24 (2) Protect citizens of this Commonwealth purchasing
25 insurance from unlicensed insurers.

26 (3) Define and regulate the persons through whom
27 insurance may be placed.

28 (4) Protect licensed insurers from unregulated and
29 unfair competition from unlicensed insurers.

30 (5) Establish reasonable standards to be met by

1 unlicensed insurers.

2 § 1302. Definitions.

3 The following words and phrases when used in this chapter
4 shall have the meanings given to them in this section unless the
5 context clearly indicates otherwise:

6 "Eligible surplus lines insurer." An unlicensed entity which
7 has been so designated by the department under this chapter.

8 "Insured." Any person who procures insurance on a subject of
9 insurance resident, located or to be performed in this
10 Commonwealth.

11 "Licensed insurer." An entity licensed and authorized by the
12 department to transact any insurance business in this
13 Commonwealth.

14 "Producing broker." A person licensed as an insurance broker
15 under this title, who is acting as a representative of the
16 insured or prospective insured in a transaction involving
17 placement of insurance coverage with an unlicensed insurer and
18 who may receive a commission therefor.

19 "Surplus lines activity." Any business activity incident to
20 the placement of insurance with an unlicensed insurer, except
21 the performance of routine accounting or clerical tasks.

22 "Surplus lines agent." A person who is licensed as such by
23 the department to effect placement of insurance coverage with an
24 unlicensed insurer and who may receive a commission therefor.

25 "Unlicensed insurer." An entity which is not a licensed
26 insurer.

27 § 1303. Aiding unlicensed insurers.

28 (a) General rule.--A person in this Commonwealth shall not
29 directly or indirectly act as agent for, or otherwise represent
30 or aid on behalf of another, any insurer not licensed to

1 transact insurance in this Commonwealth in the solicitation,
2 negotiation, procurement, effectuation or renewal of insurance,
3 forwarding of applications, delivery of policies or contracts or
4 inspection of risks, fixing of rates, investigation or
5 adjustment of claims or losses, collection or forwarding of
6 premiums, or in any other manner represent or assist the insurer
7 in the transaction of insurance.

8 (b) Exceptions.--Subsection (a) does not apply to:

9 (1) Surplus lines insurance effected and written under
10 this chapter.

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

14 § 1304. Surplus lines insurance.

15 (a) Requirements for placement.--Insurance shall not be
16 placed with an unlicensed insurer by a surplus lines agent
17 unless the insurance meets each of the following requirements:

18 (1) The full amount of insurance required is not
19 procurable, after the producing broker has made a diligent
20 effort to do so, from licensed insurers authorized to
21 transact the class of insurance involved and which actually
22 do accept in the usual course of business insurance on risks
23 of the same class as the particular risk proposed.

24 (2) The surplus lines agent handling the transaction is
25 not aware of any licensed insurer satisfactory to the insured
26 from which the desired coverage may be obtained.

27 (3) The premium rate at which insurance is placed in an
28 unlicensed insurer is not lower than the lowest published
29 rate which has been approved by the department for use by any
30 licensed insurer.

1 (4) The policy or contract form used by the insurer does
2 not differ materially from policies or contracts customarily
3 used by licensed insurers for the class of insurance for the
4 class of insurance involved. However, coverage may be placed
5 with an unlicensed insurer using a unique form of policy
6 designed for the particular subject of insurance if a copy of
7 the form is first filed with the department by the surplus
8 lines agent desiring to use it. The form shall be deemed
9 approved by the department unless within ten days after
10 receipt the department finds that the use of the form will be
11 contrary to law or public policy.

12 (b) Diligent effort.--The requirements for the diligent
13 effort to procure insurance from licensed insurers under
14 subsection (a)(1) shall be as follows:

15 (1) At least three licensed insurers, all of which
16 actually issue insurance on the class in question in their
17 normal course of business, refuse to insure the particular
18 risk or refuse to increase the amount of insurance on the
19 risk.

20 (2) This refusal is made by a full-time employee of the
21 insurer in question, or a full-time employee of a firm acting
22 in the capacity of underwriting manager for the insurer;
23 refusal by the producing broker in his capacity as an agent
24 of an insurer, or by any other "local agent," as the term is
25 generally used in the insurance business, shall not be deemed
26 a refusal for the purpose of this section.

27 (c) Renewals.--Any insurance which has been placed
28 continuously with an unlicensed insurer for a period of not less
29 than three consecutive years immediately preceding the current
30 placement may be placed with the unlicensed insurer. In this

1 case, neither the producing broker nor the surplus lines agent
2 shall be required to execute the declaration required by section
3 1306(a) (relating to declarations).

4 § 1305. Exclusions.

5 The provisions of this chapter do not apply to the following:

6 (1) Life insurance and annuities.

7 (2) Reinsurance.

8 (3) Insurance on the property and operation of railroads
9 or aircraft engaged in interstate or foreign commerce,
10 insurance of vessels, crafts or hulls, cargoes, marine
11 builders' risks, marine protection and indemnity, lessees and
12 charterers' liability or other risks, including strikes and
13 war risks commonly insured under ocean or wet marine forms of
14 policies.

15 (4) Insurance on subjects located, resident or to be
16 performed wholly outside this Commonwealth.

17 (5) Title insurance.

18 § 1306. Declarations.

19 (a) Initial placements.--In the case of each placement of
20 insurance with an unlicensed insurer under section 1304(a) or
21 (b) (relating to surplus lines insurance), both the producing
22 broker and surplus lines agent shall execute written
23 declarations in a form prescribed by the department, the
24 producing broker as to his having made a diligent effort to
25 procure the desired coverage from licensed insurers, and the
26 surplus lines agent as to his lack of knowledge as to how the
27 coverage can be obtained from licensed insurers. If the
28 producing broker and surplus lines agent are one and the same
29 entity, he shall execute both declarations. Within 21 days after
30 insurance which has been placed with an unlicensed insurer

1 becomes effective, the surplus lines agent shall file with the
2 department his own written declaration and the written
3 declaration of the producing broker, as set forth in this
4 subsection, and shall at that time advise the department of the
5 identity of any unlicensed insurer from which he has obtained
6 the insurance and other information in such form as the
7 department shall prescribe. The surplus lines agent shall
8 maintain in his office written records showing the exact amount
9 of insurance placed, the name of the insured, the subject of the
10 insurance, a description of the coverage, the gross premium, the
11 name of the insurer and the number, effective date and term of
12 the policy, cover note or other instrument of insurance.

13 (b) Continuation of placement.--In the case of each
14 placement of insurance with an unlicensed insurer under the
15 provisions of section 1304(c) within 21 days after insurance
16 which has been placed with an unlicensed insurer becomes
17 effective, the surplus lines agent shall file with the
18 department his written declaration setting forth the identity of
19 each unlicensed insurer with which the insurance has been placed
20 for the three years immediately preceding the current placement,
21 the identity of each unlicensed insurer with which the current
22 placement is made and the fact that the current placement is the
23 renewal or replacement of prior existing coverage on the same
24 subject of insurance.

25 (c) Perjury.--Declarations wherever required by this section
26 shall be made subject to the penalties provided for perjury and
27 are to be construed in the same way as affidavits.

28 (d) Availability of records.--Records required under this
29 section shall be made available at any time during normal
30 business hours to the department and shall be kept in the office

1 of the surplus lines agent for not less than three years after
2 the expiration or cancellation of the insurance.

3 (e) Notice of change of insurer.--If there is any change in
4 the insurer or in the distribution of the risk among two or more
5 insurers during the term of an insurance policy or contract, the
6 surplus lines agent shall notify the insured and the department
7 to that effect within ten days of his knowledge thereof.

8 § 1307. Eligible surplus lines insurers.

9 (a) Prohibition on placement.--A surplus lines agent shall
10 not place any insurance with any unlicensed insurer who is not
11 then an eligible surplus lines insurer.

12 (b) Determination of eligibility.--An unlicensed insurer
13 shall not be an eligible surplus lines insurer unless declared
14 eligible by the department in accordance with the following
15 conditions:

16 (1) A licensed surplus lines agent shall request the
17 department, in writing, to declare the particular unlicensed
18 insurer eligible.

19 (2) The insurer shall be currently a licensed insurer in
20 the state or country of its domicile as to the kind or kinds
21 of insurance which it proposes to provide and shall have been
22 so currently licensed for a period of time sufficient for the
23 department to ascertain that the other requirements of this
24 chapter have been met, including operational procedures and
25 claims practices.

26 (3) The surplus lines agent requesting such declaration
27 shall furnish the department with duly authenticated copies
28 of the insurer's current annual financial statement, one in
29 the language and currency of the country of its domicile and
30 the other in the English language and United States currency

1 at the current exchange rate, and such additional information
2 relative to the insurer as the department may require.

3 (4) The insurer shall have a surplus as to policyholders
4 of not less than the amount required of a like foreign
5 insurer licensed in this Commonwealth and, if an alien
6 insurer, shall have and maintain, in a bank or trust company
7 which is a member of the United States Federal Reserve
8 System, a trust fund established under terms reasonably
9 adequate for the protection of all of its policyholders in
10 the United States in an amount of not less than \$400,000. In
11 the case of a group of individual unincorporated insurers,
12 the trust fund shall be not less than \$50,000,000. The
13 department may require larger trust funds than those required
14 under this paragraph if the volume of business being
15 transacted or proposed to be transacted warrants larger
16 amounts. To the extent of these minimum amounts, the trust
17 funds shall consist of United States currency, public
18 obligations of the United States or a political subdivision
19 thereof, or other investments of the same general character
20 and quality as are required for like funds of the same class
21 of insurers licensed in this Commonwealth.

22 (5) The insurer shall be of good reputation as to the
23 providing of service to its policyholders and the payment of
24 losses and claims.

25 (6) An insurer shall not be eligible if its management
26 is considered by the department to be incompetent,
27 untrustworthy or lacking in sufficient managerial experience,
28 or if the department has reason to believe the insurer is
29 affiliated directly or indirectly through ownership, control,
30 reinsurance transactions or other insurance or business

1 relationships, with any entity whose business operations may
2 be or have been detrimental to the interests of
3 policyholders, stockholders, investors, creditors or the
4 public.

5 (c) List of eligible insurers.--The department shall from
6 time to time publish a list of all currently eligible surplus
7 lines insurers and shall mail a copy thereof to each licensed
8 surplus lines agent at his last office of record with the
9 department.

10 (d) Determination of ineligibility.--An eligible surplus
11 lines insurer shall furnish at least annually to the department
12 the information required by subsection (b)(3). If the department
13 has reason to believe that any unlicensed insurer then on the
14 list of eligible surplus lines insurers is impaired financially
15 or no longer meets the requirements for eligibility, it shall
16 declare the insurer ineligible as a surplus lines insurer. If,
17 after a hearing of which reasonable notice is given to all
18 licensed surplus lines agents, the department determines that an
19 insurer currently eligible as a surplus lines insurer has
20 willfully violated the law or has failed to make reasonably
21 prompt settlement of just claims for losses or return premiums,
22 it may declare the insurer no longer an eligible surplus lines
23 insurer. The department shall promptly mail notice of all such
24 declarations to each surplus lines agent at his last address of
25 record with the department.

26 (e) Significance of eligibility.--This section does not
27 impose on the department any duty or responsibility to determine
28 the actual financial condition or claims practices of any
29 unlicensed insurer. The status of eligible surplus lines
30 insurer, if granted by the department, shall mean only that the

1 insurer appears to be sound financially and to have satisfactory
2 claims practices and that the department has no credible
3 evidence to the contrary.

4 § 1308. Licensure of surplus lines agents.

5 (a) Individuals.--Any individual licensed insurance broker
6 who is a resident of this Commonwealth and who is found by the
7 department to have had sufficient experience in the insurance
8 business to be competent for the purpose, may be licensed as a
9 surplus lines agent upon passing a written examination on his
10 knowledge of this chapter and his general knowledge of surplus
11 lines activity, the content of such examination to be prescribed
12 by the department.

13 (b) Partnerships and corporations.--Any partnership or
14 corporation licensed insurance broker resident of this
15 Commonwealth may become licensed as a surplus lines agent if all
16 members of the partnership or all officers of the corporation,
17 as the case may be, who are actively engaged in the surplus
18 lines activity of the partnership or corporation possess the
19 requisite experience and pass the written examination described
20 in subsection (a). The department shall issue a certificate of
21 eligibility to all such partners or officers who so qualify to
22 handle surplus lines activity. Partners or officers not holding
23 the certificate of eligibility shall not engage in any phase of
24 the partnership's or corporation's surplus lines activity.

25 (c) Exemption from examination.--Any person who held a valid
26 excess insurance broker's license on March 1, 1966, shall be
27 deemed qualified for a license as a surplus lines agent without
28 the necessity of passing an examination. Partners of
29 partnerships and officers of corporations who were certified to
30 the department as having been actively engaged in the surplus

1 lines activity of the partnership or corporation on March 1,
2 1966, shall be considered qualified for a certificate of
3 eligibility without the necessity of passing an examination.

4 (d) Forms.--Initial and renewal applications for the
5 licenses and certificates shall be made to the department on
6 forms prescribed and furnished by it.

7 (e) Renewal.--The licenses and certificates shall be issued
8 for a term of 12 months and shall be renewable upon written
9 request therefor filed with the department and accompanied by
10 payment of the license fee prior to expiration.

11 (f) Payment of fees.--The fees required by the department to
12 administer this section, including the surplus lines agent's
13 annual license fee, the fee for the annual certificate of
14 eligibility and the examination fee, shall be paid in advance.

15 § 1309. Bond of surplus lines agents.

16 Prior to the issuance of a license, the applicant shall
17 furnish the department and shall keep in force for as long as
18 any such license remains in effect a bond in favor of the
19 Commonwealth in the amount of not less than \$25,000 aggregate
20 liability, such bond to be issued by a licensed and authorized
21 corporate surety or sureties approved by the department. The
22 bond shall be conditioned that the surplus lines agent will
23 comply with all the requirements of section 1311 (relating to
24 surplus lines tax). The department may require a bond in a
25 larger amount if the volume of business transacted or to be
26 transacted by a particular surplus lines agent warrants a larger
27 amount. The aggregate liability of the surety for any and all
28 claims on any such bond shall not exceed the amount thereof. The
29 bond shall not be terminated except upon not less than 30 days'
30 prior written notice thereof given to the licensee, the

1 department and the Department of Revenue.

2 § 1310. Penalties.

3 (a) Surplus lines agents.--The department may suspend,
4 revoke or refuse to renew the license of a surplus lines agent
5 or impose a fine of not more than \$1000 for each violation of
6 this chapter upon any one or more of the following grounds:

7 (1) Removal of the licensee's office or of the accounts
8 and records of his surplus lines activity from this
9 Commonwealth.

10 (2) Closure of the licensee's office for a period in
11 excess of 30 consecutive days, unless granted permission by
12 the department to close the office for a longer period.

13 (3) Failure to file reports when due or to remit taxes
14 under section 1311 (relating to surplus lines tax).

15 (4) Failure to maintain the bond under section 1309
16 (relating to bond of surplus lines agents).

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

20 (6) Suspension, revocation or refusal to renew any other
21 license or certificate issued by the department to the
22 licensee.

23 (7) Violation of any provision of this chapter.

24 (b) Other agents.--When any licensed insurance agent, broker
25 or licensed insurer violates this chapter, the department may
26 suspend, revoke or refuse to renew the license of the agent or
27 broker or impose a fine of not more than \$1000 upon the agent,
28 broker or licensed insurer for each violation of this chapter.

29 (c) Notice and hearing.--The department shall hold a hearing
30 before taking any action under subsections (a) and (b). It shall

1 give written notice of the hearing to the person charged with
2 the violation, stating specifically the nature of the alleged
3 violation and fixing a time and place at least ten days
4 thereafter when the hearing shall be held.

5 § 1311. Surplus lines tax.

6 (a) Imposition.--A tax of 3% shall be levied on all premiums
7 charged for insurance which is placed with an unlicensed insurer
8 under this chapter, based on the gross premiums charged less any
9 return premiums. This tax shall be in addition to the full
10 amount of the gross premium charged by the insurer for the
11 insurance, except that the tax on any unearned portion of the
12 premium shall be returned to the insured.

13 (b) Payment.--A surplus lines agent or producing broker
14 shall not directly or indirectly pay the tax or any portion
15 thereof, either as an inducement to the insured to purchase the
16 insurance or for any other reason. In the case where a
17 transaction is handled by a licensed surplus lines agent for
18 another licensed surplus lines agent, the surplus lines agent
19 dealing directly with the insurer is responsible to the
20 Commonwealth for reporting the transaction and paying the tax.

21 (c) Return by agent.--The surplus lines agent shall collect
22 from the insured or the producing broker the amount of the tax
23 at the time of delivery of the initial policy, cover note or
24 other instrument of insurance or at such time thereafter as is
25 reasonably consistent with normal credit terms customary in the
26 business. Each surplus lines agent shall, on or before January
27 31 of each year, file with the Department of Revenue on forms
28 prescribed and furnished by the Department of Revenue a report
29 of all transactions involving the placement of insurance with
30 unlicensed insurers during the previous calendar year. This

1 report shall set forth the name of the insured, the
2 identification of the insurer, the type of insurance, the gross
3 premiums charged less any return premiums allowed and the tax
4 due as provided in this section. The remittance for the taxes
5 due shall accompany this report. A copy of the report shall be
6 filed with the department by the surplus lines agent.

7 (d) Return by insured.--The tax provided by subsection (a)
8 shall be imposed upon an insured who procures insurance on a
9 subject of insurance which is resident, located or to be
10 performed in this Commonwealth from an unlicensed insurer or
11 continues or renews such insurance, other than insurance
12 procured through a surplus lines agent in accordance with this
13 chapter. The insured shall, within 30 days after the date when
14 the insurance was procured, continued or renewed, report the
15 transaction on forms prescribed by the Department of Revenue.
16 This report shall set forth the information required of surplus
17 lines agents as required in subsection (c). The tax shall be
18 paid on the date the report is due under this section. A copy of
19 the report shall be filed with the department by the insured.

20 (e) Risks related in other states.--In the case where a
21 placement of insurance, either by a surplus lines agent or by
22 the insured himself, involves subjects of insurance resident,
23 located or to be performed in one or more other states the
24 premium taxes shall be levied only on that portion of the
25 premium reasonably ascribable to that portion of the risk
26 situated in this Commonwealth.

27 (f) Applicability of Fiscal Code.--The settlement and
28 resettlement of taxes under this section, including the granting
29 of extensions of time to file reports and the rights of the
30 taxpayers to present and prosecute a petition for resettlement,

1 a petition for review or an appeal to court or to file a
2 petition for refund and the imposition of interest and
3 penalties, shall be governed by the act of April 9, 1929
4 (P.L.343, No.176), known as The Fiscal Code, as approved in the
5 case of capital stock and franchise taxes.

6 § 1312. Information required on contract.

7 Every policy, cover note or other instrument of insurance
8 delivered to the insured and placed with an unlicensed insurer
9 in accordance with this chapter shall have printed, typed or
10 stamped on it, in not less than ten-point print, the following
11 legend: "This insurance contract is issued by an insurer neither
12 licensed by nor under the jurisdiction of the Pennsylvania
13 Insurance Department and is written pursuant to the Pennsylvania
14 Surplus Lines Law. Placed by (name and office address of surplus
15 lines agent)." This legend shall not be concealed by a policy
16 label or sticker or in any other manner.

17 § 1313. (Reserved).

18 § 1314. Rights of insured.

19 This chapter does not prevent an insured from enforcing his
20 rights under the terms and conditions of a contract of insurance
21 entered into in violation of this chapter.

22 § 1315. Penalties.

23 Any person who in this Commonwealth violates any provision of
24 this chapter commits a misdemeanor of the third degree.

25 CHAPTER 15

26 UNFAIR INSURANCE PRACTICES

27 Sec.

28 1501. Short title of chapter.

29 1502. Purpose of chapter.

30 1503. Definitions.

- 1 1504. Unfair practices.
- 2 1505. Immunity for statements or information.
- 3 1506. Powers of department.
- 4 1507. Administrative action.
- 5 1508. Injunction.
- 6 1509. Civil penalties.
- 7 1510. Exclusions.

8 § 1501. Short title of chapter.

9 This chapter shall be known and may be cited as the Unfair
10 Insurance Practices Act.

11 § 1502. Purpose of chapter.

12 The purpose of this chapter is to regulate trade practices in
13 the business of insurance in accordance with the intent of
14 Congress as expressed in the Federal act of March 9, 1945
15 (Public Law 79-15, 15 U.S.C. § 1011 et seq.) by defining or
16 providing for the determination of all practices in this
17 Commonwealth which constitute unfair methods of competition or
18 unfair or deceptive acts or practices and by prohibiting those
19 practices.

20 § 1503. Definitions.

21 The following words and phrases when used in this chapter
22 shall have the meanings given to them in this section unless the
23 context clearly indicates otherwise:

24 "Insurance policy" or "insurance contract." Any contract of
25 insurance, indemnity, health care, suretyship, title insurance
26 or annuity issued, proposed for issuance or intended for
27 issuance by any person.

28 "Person." Any partnership, reciprocal exchange, inter-
29 insurer, Lloyds insurer, fraternal benefit society as defined in
30 section 4502 (relating to definitions), beneficial society or

1 association, health maintenance organization as defined in
2 section 7303 (relating to definitions), hospital plan
3 corporation as defined in section 7501 (relating to definitions)
4 and professional health service corporation as defined in
5 section 7702 (relating to definitions) and any other legal
6 entity engaged in the business of insurance, including agents,
7 brokers and adjusters. For the purposes of this chapter, health
8 care plans, fraternal benefit societies and beneficial societies
9 shall be deemed to be engaged in the business of insurance.

10 "Renewal" or "to renew." The issuance and delivery by an
11 insurer of a policy superseding at the end of the policy period
12 a policy previously issued and delivered by the same insurer,
13 such renewal policy to provide types and limits of coverage at
14 least equal to those contained in the policy being superseded,
15 or the issuance and delivery of a certificate or notice
16 extending the term of a policy beyond its policy period or term
17 with types and limits of coverage at least equal to those
18 contained in the policy being extended. Any policy with a policy
19 period or term of less than 12 months or any period with no
20 fixed expiration date shall for the purpose of this chapter be
21 considered as if written for successive policy periods or terms
22 of 12 months.

23 § 1504. Unfair practices.

24 (a) Practices included.--A person shall not engage in this
25 Commonwealth in any trade practice which is determined to be an
26 unfair method of competition or an unfair or deceptive act or
27 practice in the business of insurance. An unfair method of
28 competition or an unfair or deceptive act or practice in the
29 business of insurance is defined to be:

30 (1) Making, publishing, issuing or circulating any

1 estimate, illustration, circular, statement, sales
2 presentation or omission comparison which does any of the
3 following:

4 (i) Misrepresents the benefits, advantages,
5 conditions or terms of any insurance policy.

6 (ii) Misrepresents the premium overcharge commonly
7 called dividends or share of the surplus to be received
8 on any insurance policy.

9 (iii) Misrepresents the facts regarding the
10 dividends or share of surplus previously paid on any
11 insurance policy.

12 (iv) Misleads or misrepresents as to the financial
13 condition of any person or as to the legal reserve system
14 upon which any insurer operates.

15 (v) Uses any name or title of any insurance policy
16 or class of insurance policies misrepresenting the true
17 nature thereof.

18 (vi) Misrepresents for the purpose of inducing or
19 tending to induce the lapse, forfeiture, exchange,
20 conversion or surrender of any insurance policy.

21 (vii) Misrepresent for the purpose of effecting a
22 pledge or assignment of or effecting a loan against any
23 insurance policy.

24 (viii) Misrepresents any insurance policy as being
25 shares of stock.

26 (2) Making, issuing, publishing or circulating in any
27 manner an advertisement, announcement or statement containing
28 any representation or statement with respect to the business
29 of insurance or with respect to any person in the conduct of
30 his insurance business which is untrue, deceptive or

1 misleading.

2 (3) Making, issuing, publishing or circulating any oral
3 or written statement which is false or maliciously critical
4 of or derogatory to the financial condition of any person and
5 which is calculated to injure the person.

6 (4) Entering into any agreement to commit, or by any
7 concerted action committing, any act of boycott, coercion or
8 intimidation resulting in or tending to result in
9 unreasonable restraint of, or monopoly in, the business of
10 insurance.

11 (5) Knowingly filing with any supervisory or other
12 public official, or knowingly making, issuing, publishing or
13 circulating any false material statement of fact as to the
14 financial condition of a person, or knowingly making any
15 false entry of a material fact in any book, report or
16 statement of any person or knowingly omitting to make a true
17 entry of any material fact pertaining to the business of such
18 person in any book, report or statement of such person.

19 (6) Issuing or delivering or permitting agents, officers
20 or employees to issue or deliver agency company stock or
21 other capital stock, or benefit certificates or shares in any
22 corporation, or securities or any special or advisory board
23 contracts or other contracts of any kind promising returns
24 and profits as an inducement to insurance.

25 (7) Unfairly discriminating in any of the following
26 ways:

27 (i) Making or permitting any unfair discrimination
28 between individuals of the same class and equal
29 expectation of life in the rates charged for any contract
30 of life insurance or of life annuity or in the dividends

1 or other benefits payable thereon, or in any other of the
2 terms and conditions of such contract.

3 (ii) Making or permitting any unfair discrimination
4 between individuals of the same class and of essentially
5 the same hazard in the amount of premium, policy, fees or
6 rates charged for any policy or contract of insurance or
7 in the benefits payable thereunder, in any of the terms
8 or conditions of the contract or in any other manner.

9 (iii) Making or permitting any unfair discrimination
10 between individuals of the same class and essentially the
11 same hazard with regard to underwriting standards and
12 practices or eligibility requirements by reason of race,
13 religion, nationality or ethnic group, age, sex, family
14 size, occupation, place of residence or marital status.
15 The terms "underwriting standards and practices" and
16 "eligibility rules" do not include the promulgation of
17 rates if made or promulgated under Chapter 19 (relating
18 to insurance rates).

19 (8) Except as otherwise provided by law, knowingly
20 permitting or offering to make or making any contract of
21 insurance or agreement as to such contract other than as
22 plainly expressed in the insurance contract issued thereon,
23 or paying or allowing or giving or offering to pay, allow or
24 give, as inducement to such insurance, any rebate of premiums
25 payable on the contract, or any special favor or advantage in
26 the dividends or other benefits thereon, or any valuable
27 consideration, inducement or anything of value which is not
28 specified in the contract.

29 (9) Canceling any policy of insurance covering owner-
30 occupied private residential properties or personal property

1 of individuals that has been in force for 60 days or more or
2 refusing to renew any policy unless:

3 (i) the policy was obtained through material
4 misrepresentation, fraudulent statements or omissions or
5 concealment of fact material to the acceptance of the
6 risk or to the hazard assumed by the company;

7 (ii) there has been a substantial change or increase
8 in hazard in the risk assumed by the company subsequent
9 to the date the policy was issued;

10 (iii) there is a substantial increase in hazards
11 insured against by reason of willful or negligent acts or
12 omissions by the insured;

13 (iv) the insured has failed to pay any premium when
14 due whether the premium is payable directly to the
15 company or its agent or indirectly under any premium
16 finance plan or extension of credit; or

17 (v) the policy may be canceled on other grounds
18 under regulations promulgated by the department.

19 (10) Any of the following acts in connection with the
20 compromise or settlement of claims by insured arising under
21 insurance policies, if committed or performed with such
22 frequency as to indicate a business practice:

23 (i) Misrepresenting pertinent facts or policy or
24 contract provisions relating to coverages at issue.

25 (ii) Failing to acknowledge and act promptly upon
26 written or oral communications with respect to the
27 claims.

28 (iii) Failing to adopt and implement reasonable
29 standards for the prompt investigation of the claims.

30 (iv) Refusing to pay the claims without conducting a

1 reasonable investigation based upon all available
2 information.

3 (v) Failing to affirm or deny coverage of the claims
4 within a reasonable time after proof of loss statements
5 have been completed and communicated to the company or
6 its representative.

7 (vi) Not attempting in good faith to effectuate
8 prompt, fair and equitable settlements of the claims in
9 which the liability of the company under the policy has
10 become reasonably clear.

11 (vii) Compelling persons to institute litigation to
12 recover amounts due under an insurance policy by offering
13 substantially less than the amounts due and recovered in
14 actions brought by such persons.

15 (viii) Attempting to settle a claim for less than
16 the amount to which a reasonable man would have believed
17 he was entitled by reference to written or printed
18 advertising material accompanying or made part of an
19 application.

20 (ix) Attempting to settle or compromise claims on
21 the basis of an application which was altered without
22 notice to or knowledge or consent of the insured of the
23 alteration at the time the alteration was made.

24 (x) Making claims payments to insureds or
25 beneficiaries not accompanied by a statement setting
26 forth the coverage under which payments are being made.

27 (xi) Making known to insureds or claimants a policy
28 of appealing from arbitration awards in favor of insureds
29 or claimants to induce or compel them to accept
30 settlements or compromises less than the amount awarded

1 in arbitration.

2 (xii) Delaying the investigation or payment of
3 claims by requiring the insured, claimant or the
4 physician of either to submit a preliminary claim report
5 and then requiring the subsequent submission of formal
6 proof of loss forms, both of which submissions contain
7 substantially the same information.

8 (xiii) Failing to promptly settle claims, where
9 liability has become reasonably clear, under one portion
10 of the insurance policy coverage in order to influence
11 settlements under other portions of the insurance policy
12 coverage or under other policies of insurance.

13 (xiv) Failing to promptly provide a reasonable
14 explanation of the basis in the insurance policy in
15 relation to the facts or applicable law for denial of a
16 claim or for the offer of a compromise settlement.

17 (xv) Refusing payment of a claim solely on the basis
18 of an insured's request to do so unless:

19 (A) the insured claims sovereign, diplomatic,
20 military service or other immunity from suit or
21 liability with respect to the claim;

22 (B) the insured is granted the right under the
23 policy of insurance to consent to settlement of
24 claims; or

25 (C) the refusal of payment is based upon the
26 insurer's independent evaluation of the insured's
27 liability based upon all available information.

28 (11) Failure of any person to maintain a complete record
29 of all the complaints which it has received during the
30 preceding four years. This record shall indicate the total

1 number of complaints, their classification by line of
2 insurance, the nature of each complaint, the disposition of
3 these complaints and the time it took to process each
4 complaint. For the purposes of this paragraph, the term
5 "complaint" means any written communication primarily
6 expressing a grievance.

7 (12) Making false or fraudulent statements or
8 representations on or relative to an application for an
9 insurance policy for the purpose of obtaining a fee,
10 commission, money or other benefit from any insurer, agent,
11 broker or individual.

12 (13) Making, issuing, publishing or circulating an
13 advertisement, announcement or statement offering permanent
14 life insurance to persons 50 years of age or older without
15 accompanying disclosures of any applicable reduction in the
16 face amount payable and the period thereof.

17 (b) Exclusions.--

18 (1) Subsection (a)(7) or (8) does not include within the
19 definition of discrimination or rebates any of the following
20 practices:

21 (i) In the case of any contract of life insurance or
22 life annuity, paying bonuses to policyholders or
23 otherwise abating their premiums out of surplus
24 accumulated from nonparticipating insurance if any such
25 bonuses or abatement of premiums are fair and equitable
26 to policyholders and for the best interests of the
27 company and its policyholders.

28 (ii) In the case of life insurance policies issued
29 on the industrial or debit plan, making allowance to
30 policyholders who have continuously for a specified

1 period made premium payments directly to an office of the
2 insurer in an amount which fairly represents the saving
3 in collection expense.

4 (iii) Readjustment of the rate of premium for a
5 group insurance policy based on the loss or expense
6 experience thereunder, at the end of the first or any
7 subsequent policy year of insurance thereunder, which may
8 be made retroactive only for such policy year.

9 (2) Subsection (a)(9) does not apply under any of the
10 following circumstances:

11 (i) If the insurer has manifested its willingness to
12 renew by issuing or offering to issue a renewal policy,
13 certificate or other evidence of renewal, including the
14 mailing of a renewal premium notice to the insured not
15 less than 30 days in advance of the expiration date of
16 the policy.

17 (ii) If the named insured has demonstrated by some
18 overt action to the insurer or its agent other than mere
19 nonpayment of premium that he wishes the policy to be
20 canceled or that he does not wish the policy to be
21 renewed.

22 (iii) To any policy of insurance which has been in
23 effect less than 60 days, including any notice of
24 termination period, unless it is a renewal policy. Any
25 declination of coverage within the 60-day period provided
26 in this clause shall, for purposes of review by the
27 department, be deemed a refusal to write and shall not be
28 subject to the provisions of subsection (a)(9).

29 (c) Cancellation of homeowner policies.--In the case of any
30 policy of insurance covering owner-occupied private residential

1 properties or personal property of individuals, the insured may,
2 within ten days of the receipt by the insured of notice of
3 cancellation or notice of intention not to renew, request in
4 writing to the department that it review that action of the
5 insurer. A cancellation or refusal to renew by any person shall
6 not be effective unless a written notice of the cancellation or
7 refusal to renew is received by the insured either at the
8 address shown in the policy or at a forwarding address. The
9 notice shall:

10 (1) Be approved as to form by the department prior to
11 use.

12 (2) State the date, not less than 30 days after the date
13 of delivery or mailing, on which such cancellation or refusal
14 to renew shall become effective.

15 (3) State the specific reason or reasons of the insurer
16 for cancellation or refusal to renew.

17 (4) Advise the insured of his right to file a written
18 request for review under this subsection, within ten days of
19 the receipt of the notice.

20 (5) Advise the insured of his possible eligibility for
21 insurance under Chapter 57 (relating to Pennsylvania Fair
22 Plan) or the Pennsylvania Assigned Risk Plan.

23 (6) Advise the insured in a form commonly understandable
24 of the provisions of paragraphs (2), (3) and (4) as they
25 limit permissible time and reasons for cancellation.

26 (7) Advise the insured of the procedures to be followed
27 in prosecuting an appeal.

28 § 1505. Immunity for statements or information.

29 There shall be no liability on the part of and no cause of
30 action of any nature shall arise against the commissioner, any

1 insurer, the authorized representatives, agents and employees of
2 the department or the insurer, or of any firm or person
3 furnishing to the insurer information as to reasons for
4 cancellation or refusal to renew for any statement made by them
5 in complying with this chapter or for providing information
6 pertaining thereto.

7 § 1506. Powers of department.

8 The department may examine and investigate the affairs of
9 every person engaged in the business of insurance in this
10 Commonwealth in order to determine whether such person has been
11 or is engaged in any unfair method of competition or in any
12 unfair or deceptive act or practice prohibited by this chapter.

13 § 1507. Administrative action.

14 (a) Notice and hearing.--If, as a result of investigation,
15 the department has good cause to believe that any person is
16 violating any provision of this chapter, the department shall
17 send notice of the violation by registered mail to the person
18 believed to be in violation. The notice shall state the time and
19 place for hearing which shall not be less than 30 days from the
20 date of the notice. At the hearing, the person shall have an
21 opportunity to be heard and to show cause why an order should
22 not be made by the department to cease and desist from acts
23 constituting a violation of this chapter and why administrative
24 penalties should not be assessed.

25 (b) Intervention.--Upon good cause shown, the department
26 shall permit any person to intervene, appear and be heard at the
27 hearing, either in person or by counsel.

28 (c) Procedure.--The department may administer oaths, examine
29 and cross-examine witnesses, receive oral and documentary
30 evidence and subpoena witnesses, compel their attendance and

1 require the production of books, papers, records or other
2 documents which it deems relevant to the hearing. The department
3 shall cause a record of all evidence and all proceedings at the
4 hearing to be kept.

5 (d) Order.--Following the hearing, the department shall
6 issue a written order resolving the factual issues presented at
7 the hearing and stating what remedial action, if any, is
8 required of the person charged. The department shall send a copy
9 of the order to those persons participating in the hearing.

10 (e) Administrative penalty.--Upon a determination that this
11 chapter has been violated, the department may issue an order
12 requiring the person to cease and desist from engaging in the
13 violation or, if such violation is a method of competition, act
14 or practice defined in section 1504 (relating to unfair
15 practices), the department may suspend or revoke the person's
16 license.

17 § 1508. Injunction.

18 If the alleged violator fails to comply with an order of the
19 department following hearing to cease and desist from unfair
20 methods of competition or an unfair or deceptive act or
21 practice, the department may cause an action for injunction to
22 be filed in the Commonwealth Court or the court of the county in
23 which the violation occurred.

24 § 1509. Civil penalties.

25 In addition to any penalties imposed pursuant to this
26 chapter, the court may, in an action filed by the department,
27 impose the following civil penalties:

28 (1) For each method of competition, act or practice
29 referred to in section 1504 (relating to unfair practices) or
30 otherwise in violation of this chapter which the person knew

1 or reasonably should have known was such a violation, a
2 penalty of not more than \$5,000 for each violation but not to
3 exceed an aggregate penalty of \$50,000 in any six-month
4 period.

5 (2) For each such method of competition, act or practice
6 which the person did not know nor reasonably should have
7 known was a violation, a penalty of not more than \$1,000 for
8 each violation but not to exceed an aggregate penalty of
9 \$10,000 in any six-month period.

10 (3) For each violation of an order issued by the
11 department pursuant to section 1507(e) (relating to
12 administrative action) while such order is in effect, a
13 penalty of not more than \$10,000.

14 § 1510. Exclusions.

15 Health care plans administered by joint boards of trustees
16 pursuant to section 302 of the Labor Management Relations Act of
17 1947 (61 Stat. 157, 29 U.S.C. § 186) and health care plans
18 administered by the employer pursuant to collective bargaining
19 agreements which pay benefits from the assets of the trust or
20 the funds of the employer as opposed to payments through an
21 insurance company are not subject to this chapter.

22 CHAPTER 17

23 REPORTING REQUIREMENTS

24 Sec.

25 1701. Definitions.

26 1702. Disposal of assets.

27 1703. Ceding or reinsurance.

28 1704. Business operations.

29 1705. Reports of financial condition.

30 1706. Additional reports from foreign or alien entities.

1 § 1701. Definitions.

2 The following words and phrases when used in this chapter
3 shall have the meanings given to them in this section unless the
4 context clearly indicates otherwise:

5 "Assets." All the property and rights of every kind held by
6 the entity.

7 "Disposal." Any sale, transfer, exchange, assignment,
8 alienation or other conveyance of an interest in assets. The
9 term does not include a ceding of policies pursuant to a
10 reinsurance contract.

11 "Total assets." The dollar amount of the entity's total
12 assets as reported in its most recent convention statement.

13 § 1702. Disposal of assets.

14 Any domestic insurance entity which within any period of 30
15 days, by one or more transactions, disposes of assets which, in
16 the aggregate, amount to more than 10% of its total assets,
17 shall send written notification thereof to the department. The
18 notification shall be given within ten business days prior to
19 the making of the disposal, specify the nature and amount
20 thereof and identify all of the parties thereto.

21 § 1703. Ceding or reinsurance.

22 Any domestic insurance entity, except a domestic life
23 insurance company, which during any period of 12 consecutive
24 months, by any contract of reinsurance, cedes an amount of its
25 insurance on which the total gross reinsurance premiums are more
26 than 50% of the unearned premiums on the net amount of its
27 insurance in force at the beginning of such period, shall give
28 written notification thereof to the department. Any domestic
29 life insurance company which reinsures its whole risk on any
30 individual life or joint lives or reinsures policies which,

1 during any period of 12 consecutive months, in the aggregate,
2 amount to more than 50% of its insurance in force shall give
3 written notification thereof to the department. The notification
4 required hereunder shall be given at least ten business days
5 before the date the reinsurance takes effect and shall specify
6 the nature and amount thereof and identify the parties thereto.
7 The requirements of this section do not apply to reinsurance
8 made in the ordinary course of business covering reinsurance of
9 specified individual risks under agreements relating to current
10 business and shall be in addition to the requirements contained
11 in section 3512 (relating to reinsurance).

12 § 1704. Business operations.

13 (a) General rule.--Each stock or mutual insurance entity or
14 employers mutual liability association and organization,
15 including the State Workmen's Insurance Fund, which is subject
16 to Chapter 19 (relating to insurance rates) or section 5523
17 (relating to rating plans) shall maintain uniform
18 classifications of accounts and records as may be prescribed by
19 the department and shall file such uniform reports relative to
20 their business and transactions as the department deems
21 necessary. These reports, except when otherwise provided by law,
22 shall be filed on the date and in the form determined by the
23 department.

24 (b) Penalties.--Any insurance entity or organization which
25 violates subsection (a) shall pay a sum not to exceed \$100 per
26 day for each day during which the violation continues and, upon
27 notice by the department, its authority to do new business shall
28 cease during that time. For willfully making false reports, any
29 insurance entity or organization subject to this section and the
30 persons making oath to or subscribing the same shall severally

1 be punished by a fine of not less than \$500 nor more than
2 \$5,000. A person who willfully makes oath to such false report
3 commits perjury.

4 (c) Procedures.--An action shall not be taken by the
5 department under subsection (b) except after a hearing held upon
6 ten days' written notice to the parties concerned.

7 Classifications of accounts and records or reports shall be
8 prescribed by the department under subsection (a) only upon
9 notice and after hearing to all parties affected thereby and
10 regulations relating thereto shall be promulgated by the
11 department at least six months before the effective date
12 thereof.

13 § 1705. Reports of financial condition.

14 (a) General rule.--Every stock and mutual insurance entity,
15 if subject to Part III (relating to organization of insurance
16 entities), shall annually, by March 1, file with the department
17 a statement showing its financial condition on December 31 of
18 the previous year and its business of that year. These entities
19 shall, within 30 days after requested by the department, render
20 any additional statement concerning its affairs and financial
21 condition which the department may require. The department shall
22 prescribe and furnish forms to each of the entities for their
23 statements. Any alien insurance company, if subject to Part III
24 and doing business in this Commonwealth, shall disclose only the
25 business done in the United States and the assets held by and
26 for it within the United States for the protection of
27 policyholders in the United States.

28 (b) Failure to file.--Any entity which neglects to timely
29 file a statement required under subsection (a) in the required
30 form shall pay to the department a sum not to exceed \$100 for

1 each day during which the neglect continues. Upon notice by the
2 department, its authority to do new business shall cease while
3 the default continues.

4 (c) False statements.--For willfully making false entries in
5 a statement filed under subsection (a), the entity and the
6 individuals making oath to or subscribing to the oath shall
7 severally be subject to a fine of not less than \$500 nor more
8 than \$5,000.

9 § 1706. Additional reports from foreign or alien entities.

10 (a) General rule.--Every foreign or alien stock or mutual
11 insurance entity authorized to do business in this Commonwealth,
12 if subject to Part III (relating to organization of insurance
13 entities), shall annually report to the Department of Revenue by
14 March 15 under oath of its president, secretary or attorney. The
15 report shall show the gross premiums of every character and
16 description received from business transacted in this
17 Commonwealth during the year ending the preceding December 31,
18 whether the premiums were received in money or in the form of
19 notes, credits or any other substitute for money and whether
20 they were collected in this Commonwealth or elsewhere.

21 (b) Taxation.--The entity shall pay to the State Treasury
22 the requisite tax upon all these premiums. In making the report,
23 the entities may deduct, from the gross premiums received, all
24 premiums returned on policies canceled or not taken and all
25 premiums actually received for reinsurances. Stock companies
26 with participating features may also deduct that portion of the
27 premiums returned to the policyholders. Life insurance companies
28 may deduct dividends declared and actually used by policyholders
29 in payment of renewal premiums. Mutual entities may deduct that
30 proportion of the advance premium or deposit returned to members

1 upon the expiration of termination of their contracts. To the
2 extent the provisions of this section supply provisions of the
3 act of April 9, 1929 (P.L.343, No.176), known as The Fiscal
4 Code, relating to amounts which foreign entities may deduct from
5 gross premiums received from business transacted in this
6 Commonwealth in making reports with the Department of Revenue,
7 the provisions of this section shall supersede those provisions
8 of The Fiscal Code.

9 (c) Applicability.--This section does not apply to domestic
10 fire insurance companies as to policies covering only those
11 classes of insurance authorized by section 3302(b)(1), (2) or
12 (3) (relating to authorized classes of insurance), other than
13 insurance upon automobiles.

14 (d) Definition.--As used in this section the term "gross
15 premium" means the amount of dues, fees and premiums stated in
16 the policy contracts.

17 CHAPTER 19

18 INSURANCE RATES

19 Sec.

20 1901. General provisions.

21 1902. Scope of chapter.

22 1903. Ratemaking.

23 1904. Rate filings.

24 1905. Disapproval of filings.

25 1906. Rating organizations.

26 1907. Deviations.

27 1908. Appeal by minority.

28 1909. Information to be furnished insureds.

29 1910. Hearings and appeals of insureds.

30 1911. Advisory organizations.

1 1912. Joint underwriting or joint reinsurance.
2 1913. Examinations.
3 1914. Recording and reporting of loss and expense experience.
4 1915. False or misleading information.
5 1916. Assigned risks.
6 1917. Penalties.
7 1918. Hearing procedure and judicial review.
8 § 1901. General provisions.

9 (a) Short title of chapter.--This chapter shall be known and
10 may be cited as the Insurance Rate Regulatory Act.

11 (b) Purpose of chapter.--The purpose of this chapter is to
12 promote the public welfare by regulating insurance rates to the
13 end that they shall not be excessive, inadequate or unfairly
14 discriminatory, to enable authorized insurers to meet all
15 requirements of the insuring public of this Commonwealth, and to
16 authorize and regulate cooperative action among insurers in
17 ratemaking and in other matters within the scope of this
18 chapter. This chapter is not intended to prohibit or discourage
19 reasonable competition or prohibit or encourage uniformity in
20 insurance rates, rating systems, rating plans or practices. This
21 chapter shall be liberally interpreted to carry into effect its
22 purposes as set forth in this section.

23 § 1902. Scope of chapter.

24 (a) Casualty insurance.--This chapter applies to all classes
25 and kinds of insurance which may be written by stock or mutual
26 casualty insurance entities, including fidelity, surety and
27 guaranty bonds and all other forms of motor vehicle insurance,
28 and to title insurance on risks or operations in this
29 Commonwealth.

30 (b) Fire and marine insurance.--This chapter also applies to

1 all classes and kinds of insurance which may be written by stock
2 or mutual fire, marine or fire and marine insurance entities on
3 risks located in this Commonwealth. Inland marine insurance
4 shall be deemed to include insurance defined by law or by ruling
5 of the department or as established by general custom of the
6 business as inland marine insurance.

7 (c) Exclusions relating to casualty insurance.--With respect
8 to insurance described in subsection (a), this chapter does not
9 apply to:

10 (1) Reinsurance, other than joint reinsurance to the
11 extent stated in section 1912 (relating to joint underwriting
12 or joint reinsurance).

13 (2) Accident and health insurance.

14 (3) Insurance against loss or damage to aircraft or
15 against liability arising out of the ownership, maintenance
16 or use of aircraft.

17 (4) Workmen's compensation insurance.

18 (5) Insurance covering loss in excess of at least
19 \$10,000 from any one event issued to self-insurers as defined
20 in regulations which the department shall promulgate where
21 the rate is not made by a rating organization.

22 (d) Exclusions relating to fire and marine insurance.--With
23 respect to insurance described in subsection (b), this chapter
24 does not apply to:

25 (1) Reinsurance, other than joint reinsurance to the
26 extent stated in section 1912.

27 (2) Insurance of vessels or craft, their cargoes, marine
28 builders' risks, marine protection and indemnity, or other
29 risks commonly insured under marine as distinguished from
30 inland marine insurance policies.

1 (3) Insurance of hulls of aircraft, including their
2 accessories and equipment, or against liability arising out
3 of the ownership, maintenance or use of aircraft.

4 (4) Motor vehicle insurance or insurance against
5 liability arising out of the ownership, maintenance or use of
6 motor vehicles.

7 (5) Perpetual policies of insurance issued in
8 consideration of an initial deposit of moneys with the
9 insurer to be held by it during the time such policies are in
10 force and to be returned to the insureds, in whole or in
11 part, upon cancellation of the policies.

12 (e) Conflicting regulation.--If any kind of insurance,
13 subdivision or combination thereof, or type of coverage subject
14 to this chapter, is also subject to regulation by any other
15 provision of this title which regulates rates, an insurer to
16 which both provisions are otherwise applicable shall file with
17 the department a designation as to which set of provisions shall
18 be applicable to it with respect to the kind of insurance,
19 subdivision or combination thereof, or type of coverage.

20 § 1903. Ratemaking.

21 All rates shall be made in accordance with the following
22 provisions:

23 (1) Due consideration shall be given to past and
24 prospective loss experience in and outside this Commonwealth;
25 to physical hazards; to safety and loss prevention factors;
26 to underwriting practice and judgment to the extent
27 appropriate; to conflagration and catastrophe hazards, if
28 any; to a reasonable margin for underwriting profit and
29 contingencies; to dividends, savings or unabsorbed premium
30 deposits allowed or returned by insurers to their

1 policyholders, members or subscribers; to past and
2 prospective expenses in and outside this Commonwealth; and to
3 all other relevant factors in and outside this Commonwealth.
4 In the case of fire insurance rates, consideration shall be
5 given to the experience of the fire insurance business during
6 a period of not less than the most recent five-year period
7 for which such experience is available.

8 (2) In the case of insurance described in section
9 1902(a) (relating to scope of chapter), the systems of
10 expense provisions included in the rates for use by any
11 insurer or group of insurers may differ from those of other
12 insurers or groups of insurers to reflect the requirements of
13 the operating methods of any such insurer or group with
14 respect to any kind of insurance, or with respect to any
15 subdivision or combination thereof for which subdivision or
16 combination separate expense provisions are applicable.

17 (3) In the case of insurance described in section
18 1902(a), risks may be grouped by classifications for the
19 establishment of rates and minimum premiums. Classification
20 rates may be modified to produce rates for individual risks
21 in accordance with rating plans which establish standards for
22 measuring variations in hazards or expense provisions, or
23 both. These standards may measure any differences among risks
24 that can be demonstrated to have a probable effect upon
25 losses or expenses.

26 (4) In the case of insurance described in section
27 1902(b), manual, minimum, class rates, rating schedules or
28 rating plans shall be made and adopted, except in the case of
29 specific inland marine rates on risks specially rated, and
30 except in the case of special rates on other than inland

1 marine risks where manual, minimum, class rates, rating
2 schedules or rating plans are not applicable.

3 (5) Rates shall not be excessive, inadequate or unfairly
4 discriminatory.

5 (6) No rate shall be held to be unfairly discriminatory
6 unless, allowing for practical limitations, it clearly fails
7 to reflect with reasonable accuracy the differences in
8 expected losses and expenses. A rate is not unfairly
9 discriminatory because different premiums result for
10 policyholders with like loss exposures but different expense
11 factors, so long as the rate reflects the differences with
12 reasonable accuracy. A rate is not unfairly discriminatory if
13 it is averaged broadly among persons insured under a group,
14 franchise or blanket policy. This paragraph applies to
15 insurance described in section 1902(a).

16 (7) This section does not prohibit rates for automobile
17 insurance which are based, in whole or in part, on factors,
18 including, but not limited to, sex, if the use of such a
19 factor is supported by sound actuarial principles or is
20 related to actual or reasonable anticipated experience;
21 however, such factors shall not include race, religion or
22 national origin.

23 § 1904. Rate filings.

24 (a) General rule.--Every insurer shall file with the
25 department, except as to inland marine risks which by general
26 custom of the business are not written according to manual rates
27 or rating plans, every manual, minimum, class rate, rating
28 schedule or rating plan, every other rating rule and every
29 modification of any of the foregoing which it proposes to use,
30 and shall file every special rate on other than inland marine

1 risks as mentioned in section 1903(4) (relating to ratemaking).
2 Every such filing shall state the proposed effective date
3 thereof and shall indicate the character and extent of the
4 coverage contemplated. When a filing is not accompanied by
5 supporting information and the department lacks sufficient
6 information to determine whether the filing meets the
7 requirements of this chapter, it may require the insurer to
8 furnish that information. Any filing may be supported by the
9 experience or judgment of the insurer or rating organization
10 making the filing, the experience of other insurers or rating
11 organizations, or any other factors which the insurer or rating
12 organization deems relevant. A filing and any supporting
13 information shall be open to public inspection after the filing
14 becomes effective. Specific inland marine rates on risks
15 specially rated, made by a rating organization, shall be filed
16 with the department. An insurer shall not make or issue a
17 contract or policy except in accordance with filings or rates
18 which are in effect for the insurer under this chapter, unless
19 permitted to do so under this chapter.

20 (b) Rating organization.--An insurer may satisfy its
21 obligations to make the required filings by becoming a member
22 of, or a subscriber to, a licensed rating organization which
23 makes such filings, and by authorizing the department to accept
24 the organization's filings on its behalf.

25 (c) Review.--The department shall review such of the filings
26 as may be necessary to review in order to carry out the purposes
27 of this chapter.

28 (d) Effect of filing.--Subject to the exceptions under
29 subsections (e) and (f), each filing shall be on file for a
30 waiting period of 30 days before it becomes effective, which

1 period may be extended by the department for an additional
2 period not to exceed 30 days upon written notice within the
3 waiting period to the insurer or rating organization which made
4 the filing. Upon written application by the insurer or rating
5 organization, the department may authorize a filing or a part
6 thereof which it has reviewed to become effective before the
7 expiration of the waiting period or any extension thereof. A
8 filing shall be deemed to meet the requirements of this chapter
9 and to become effective unless disapproved by the department
10 within the waiting period or any extension thereof.

11 (e) Special filings.--With respect to insurance described in
12 section 1902(a) (relating to scope of chapter), any filing with
13 respect to a surety or guaranty bond required by law or by court
14 or executive order or by order, rule or regulation of a public
15 body, not covered by a previous filing, or any filing with
16 respect to a contract or a policy covering any risk or kind of
17 insurance or subdivision thereof for which classification rates
18 do not generally exist in the industry, or which by reason of
19 rarity or peculiar characteristics does not lend itself to
20 normal classification or rating procedure, shall become
21 effective when filed and shall be deemed to meet the
22 requirements of this chapter.

23 (f) Fire and marine insurance.--With respect to insurance
24 described in section 1902(b), specific inland marine rates on
25 risks specially rated by a rating organization shall become
26 effective when filed and shall be deemed to meet the
27 requirements of this chapter until such time as the department
28 reviews the filing and so long thereafter as the filing remains
29 in effect. Any special rate mentioned in section 1903(4) on a
30 contract or policy covering other than inland marine risks shall

1 be deemed to meet the requirements of this chapter until such
2 time as the department reviews the filing and so long thereafter
3 as the filing remains in effect.

4 (g) Waiver or modification.--Under such rules and
5 regulations as it shall adopt, the department may by written
6 order suspend or modify the requirement of filing as to any kind
7 of insurance, subdivision or combination thereof, or as to
8 classes of risks, the rates for which cannot practicably be
9 filed before they are used. These orders, rules and regulations
10 shall be made known to insurers and rating organizations
11 affected thereby. The department may make such examination as it
12 may deem advisable to ensure that any rates affected by the
13 order are not excessive, inadequate or unfairly discriminatory.

14 (h) Modification for specific risks.--Upon the written
15 consent of the insured stating his reasons therefor, filed with
16 and approved by the department, a rate in excess of that
17 provided by a filing otherwise applicable may be used on any
18 specific risk. The rate shall become effective when the consent
19 is filed and shall be deemed to meet the requirements of this
20 chapter until such time as the department reviews the filing and
21 so long thereafter as the filing remains in effect.

22 § 1905. Disapproval of filings.

23 (a) Standard of review.--A filing or modification thereof
24 shall not be disapproved if the rates in connection therewith
25 meet the requirements of this chapter.

26 (b) Hearing for insurer.--Upon the review at any time by the
27 department of a filing, it shall, before issuing an order of
28 disapproval, hold a hearing upon not less than ten days' written
29 notice, specifying the matters to be considered at the hearing,
30 to every insurer and rating organization which made the filing.

1 An insurer or organization may at any time withdraw a filing or
2 a part thereof, subject to the provisions of section 1907
3 (relating to deviations) in the case of a deviation filing.

4 (c) Hearing for aggrieved parties.--Any person or
5 organization aggrieved with respect to any filing which is in
6 effect, except the insurer or rating organization which made the
7 filing, may make written application to the department for a
8 hearing thereon. The application shall specify the grounds to be
9 relied upon. If the department finds that the application may
10 justify relief it shall, within 30 days after receipt of the
11 application, hold a hearing upon not less than ten days' written
12 notice to the applicant and to every insurer and rating
13 organization which made the filing.

14 (d) Decision of department.--If, after the hearing, the
15 department finds that the filing or a part thereof does not meet
16 the requirements of this chapter, it shall issue an order
17 specifying in what respects it is found that the filing or part
18 thereof fails to meet those requirements. If the filing has
19 become effective under section 1904 (relating to rate filings)
20 or otherwise, the order shall state a time within a reasonable
21 period thereafter, at which the filing or part thereof shall be
22 deemed no longer effective. Copies of the order shall be sent to
23 the applicant and to every insurer and rating organization
24 affected. The order shall not affect any contract or policy made
25 or issued prior to the expiration of the period set forth in the
26 order.

27 § 1906. Rating organizations.

28 (a) General rule.--Any person located in or outside this
29 Commonwealth may apply to the department for a license as a
30 rating organization for the kinds of insurance or subdivisions,

1 classes of risk or part or combination thereof specified in its
2 application. The application shall include:

3 (1) A copy of the applicant's constitution, its articles
4 of agreement or association, or its certificate of
5 incorporation, and of its bylaws, rules and regulations
6 governing the conduct of its business.

7 (2) A list of its members and subscribers.

8 (3) The name and address of a resident of this
9 Commonwealth upon whom notices or orders of the department or
10 process affecting the rating organization may be served.

11 (4) A statement of its qualifications as a rating
12 organization.

13 If the department finds that the applicant is competent,
14 trustworthy and otherwise qualified to act as a rating
15 organization and that the documents submitted under paragraph
16 (1) conform to the requirements of law, it shall issue a license
17 specifying the kinds of insurance or subdivisions, classes of
18 risk or part or combination thereof for which the applicant is
19 authorized to act as a rating organization. The application
20 shall be granted or denied in whole or in part by the department
21 within 60 days of the date of its filing with it. Licenses
22 issued under this section shall remain in effect for three years
23 unless sooner suspended or revoked by the department. The fee
24 for the license shall be \$25. Licenses may be suspended or
25 revoked by the department after hearing upon notice, if the
26 rating organization ceases to meet the requirements for
27 licensure under this section. Every rating organization shall
28 notify the department promptly of every change in the items
29 listed in paragraph (1), (2) or (3).

30 (b) Subscribers.--Subject to rules and regulations approved

1 by the department, each rating organization shall permit any
2 insurer, not a member, to be a subscriber to its rating services
3 for any kind of insurance, subdivision, class of risk or part or
4 combination thereof for which it is authorized to act as a
5 rating organization. Notice of proposed changes in its rules and
6 regulations shall be given to subscribers. Each rating
7 organization shall furnish its rating services without
8 discrimination to its members and subscribers. The
9 reasonableness of any rule or regulation in its application to
10 subscribers or the refusal of any rating organization to admit
11 an insurer as a subscriber shall, at the request of any
12 subscriber or any such insurer, be reviewed by the department at
13 a hearing held upon at least ten days' written notice to the
14 rating organization and to the subscriber or insurer. If the
15 department finds that the rule or regulation is unreasonable in
16 its application to subscribers, it shall order that the rule or
17 regulation shall not apply to the subscribers. If the rating
18 organization fails to grant or reject an insurer's application
19 for subscribership within 30 days after it is made, the insurer
20 may request a review by the department as if the application had
21 been rejected. If the department finds that the insurer has been
22 refused admittance to the rating organization as a subscriber
23 without justification, it shall order the rating organization to
24 admit the insurer as a subscriber. If the department finds that
25 the action of the rating organization was justified, it shall
26 make an order affirming its action.

27 (c) Limitations on certain payments.--A rating organization
28 shall not adopt any rule the effect of which would be to
29 prohibit or regulate the payment of dividends, savings or
30 unabsorbed premium deposits allowed or returned by insurers to

1 their policyholders, members or subscribers.

2 (d) Cooperative activities.--Cooperation among rating
3 organizations or among rating organizations and insurers, and
4 concert of action among insurers under the same general
5 management and control in ratemaking or in other matters within
6 the scope of this chapter is permitted, but the filings
7 resulting therefrom are subject to this chapter. The department
8 may review these activities and practices and, if after a
9 hearing it finds that any activity or practice is unfair,
10 unreasonable or otherwise inconsistent with this chapter, it may
11 issue a written order specifying its objections and requiring
12 the discontinuance thereof.

13 (e) Fire and marine insurance.--With respect to activities
14 of rating organizations relating to insurance described in
15 section 1902(b) (relating to scope of chapter):

16 (1) The rating organization may provide for the
17 examination of policies, daily reports, binders, renewal
18 certificates, endorsements or other evidences of insurance,
19 or the cancellation thereof and may make reasonable rules
20 governing their submission. The rules shall contain a
21 provision that if any insurer does not within 60 days furnish
22 satisfactory evidence to the rating organization of the
23 correction of any error or omission previously called to its
24 attention by the rating organization, the rating organization
25 shall notify the department thereof. All information so
26 submitted for examination shall be confidential.

27 (2) The rating organization may subscribe for or
28 purchase actuarial, technical or other services, which shall
29 be available to all members and subscribers without
30 discrimination.

1 § 1907. Deviations.

2 Every member of or subscriber to a rating organization shall
3 adhere to the filings made on its behalf by the organization
4 except as follows:

5 (1) In the case of insurance described in section
6 1902(a) (relating to scope of chapter), the insurer may file
7 with the department a uniform percentage decrease or increase
8 to be applied to the premiums produced by the rating system
9 so filed for a kind of insurance, or for a class of insurance
10 which is found by the department to be a proper rating unit
11 for the application of such uniform percentage decrease or
12 increase, or for a subdivision of a kind of insurance either
13 comprised of a group of manual classifications which is
14 treated as a separate unit for ratemaking purposes or for
15 which separate expense provisions are included in the filings
16 of the rating organization. The deviation filing shall
17 specify the basis for the modification and shall be
18 accompanied by the data upon which the applicant relies. A
19 copy of the filing and data shall be sent simultaneously to
20 the rating organization.

21 (2) In the case of insurance described in section
22 1902(b) the insurer may file with the department a deviation
23 from the class rates, schedules, rating plans or rules,
24 respecting any kind of insurance, or class of risk within a
25 kind of insurance or combination thereof. The deviation
26 filing shall specify the basis for the modification, and a
27 copy thereof shall be sent to the rating organization at the
28 time of filing.

29 Each deviation filing shall be on file for 30 days before it
30 becomes effective, unless the department reviews and authorizes

1 the filing to become effective sooner, and shall be subject to
2 the provisions of section 1905 (relating to disapproval of
3 filings). Each deviation shall be effective for a period of not
4 less than one year from the date the deviation is filed unless
5 terminated sooner with the approval of the department or under
6 section 1905.

7 § 1908. Appeal by minority.

8 (a) Right of appeal.--Any member of or subscriber to a
9 rating organization may appeal to the department from any action
10 or decision of the rating organization approving or rejecting
11 any proposed change in or addition to the filings of the rating
12 organization. The failure of a rating organization to take
13 action or make a decision within 30 days after submission to it
14 of a proposal under this section shall be deemed a rejection of
15 the proposal.

16 (b) Decision by department.--The department shall, after a
17 hearing held upon not less than ten days' written notice to the
18 appellant and to the rating organization, issue an order
19 approving the decision of the rating organization or directing
20 it to give further consideration to the proposal and to take
21 action upon it within 30 days. If the appeal is from a decision
22 of the rating organization rejecting a proposed addition to its
23 filings, the department may issue an order directing the rating
24 organization to make an addition to its filings on behalf of its
25 members and subscribers consistent with its findings within a
26 reasonable time. If the appeal is from a decision of the rating
27 organization with regard to a rate on a proposed change in or
28 addition to its filings relating to the character and extent of
29 coverage, it shall approve the rate applied by the rating
30 organization or the rate suggested by the appellant if either

1 rate is in accordance with this chapter.

2 (c) Casualty insurance.--In the case of insurance described
3 in section 1902(a) (relating to scope of chapter), if the appeal
4 is based upon the failure of the rating organization to make a
5 filing on behalf of the member or subscriber which is based on a
6 system of expense provisions which differs, in accordance with
7 section 1903(2) (relating to ratemaking), from the system of
8 expense provisions included in a filing made by the rating
9 organization, the department shall, if it grants the appeal,
10 order the rating organization to make the requested filing for
11 use by the appellant. In deciding the appeal, the department
12 shall apply the standards set forth in section 1903.

13 § 1909. Information to be furnished insureds.

14 Every rating organization and every insurer which makes its
15 own rates shall, within a reasonable time after receiving
16 written request therefor and upon payment of such reasonable
17 charge as it may make, furnish all pertinent information as to
18 the rate to any insured affected by a rate made by it or to the
19 authorized representative of such an insured. Any rating
20 organization or insurer which makes its own rate, with respect
21 to rates of fire insurance on property located in this
22 Commonwealth, is subject to section 12 of the act of April 27,
23 1927 (P.L.450, No.291), referred to as the State Fire Marshal
24 Law.

25 § 1910. Hearings and appeals of insureds.

26 Every rating organization and every insurer which makes its
27 own rates shall provide, within this Commonwealth, reasonable
28 means whereby any person aggrieved by the application of its
29 rating system may be heard, in person or by his authorized
30 representative, on his written request to review the manner in

1 which the rating system has been applied in connection with the
2 insurance afforded him. If the rating organization or insurer
3 fails to grant or reject such request within 30 days after it is
4 made, the applicant may proceed as if his application had been
5 rejected. Any party affected by the action of the rating
6 organization or insurer on the request may, within 30 days after
7 written notice of the action, appeal to the department, which,
8 after a hearing held upon not less than ten days' written notice
9 to the appellant and to the rating organization or insurer, may
10 affirm or reverse the action.

11 § 1911. Advisory organizations.

12 (a) Filing with department.--Every advisory organization
13 shall file with the department:

14 (1) A copy of its constitution, its articles of
15 agreement or association or its certificate of incorporation
16 and of its bylaws, rules and regulations governing its
17 activities.

18 (2) A list of its members.

19 (3) The name and address of a resident of this
20 Commonwealth upon whom notices or orders of the department or
21 process issued at his discretion may be served.

22 (4) An agreement that the department may examine the
23 advisory organization in accordance with section 1913
24 (relating to examinations).

25 (b) Unreasonable practices.--If, after a hearing, the
26 department finds that the furnishing of such information or
27 assistance involves any act or practice which is unfair or
28 unreasonable or otherwise inconsistent with the provisions of
29 this chapter, it may issue a written order specifying in what
30 respects the act or practice is unfair or unreasonable or

1 otherwise inconsistent with the provisions of this chapter and
2 requiring the discontinuance of the act or practice.

3 (c) Violation of orders.--An insurer which makes its own
4 filings or rating organization shall not support its filings by
5 statistics or adopt ratemaking recommendations furnished to it
6 by an advisory organization if the organization has failed to
7 comply with this section or with an order under subsection (b)
8 involving its statistics or recommendations. If the department
9 finds the insurer or rating organization to be in violation of
10 this subsection, it may issue an order requiring the
11 discontinuance of the violation.

12 (d) Definition.--As used in this section the term "advisory
13 organization" means any group, association or other organization
14 of insurers, located in or outside this Commonwealth, which
15 assists insurers which make their own filings or rating
16 organizations in ratemaking, by the collection and furnishing of
17 loss or expense statistics or by the submission of
18 recommendations, but does not make filings under this chapter.
19 § 1912. Joint underwriting or joint reinsurance.

20 (a) Applicability.--Every group, association or other
21 organization of insurers which engages in joint underwriting or
22 joint reinsurance shall be subject to this section and shall be
23 subject, with respect to joint underwriting, to all provisions
24 of this chapter and, with respect to joint reinsurance, to
25 sections 1913 (relating to examinations), 1917 (relating to
26 penalties) and 1918 (relating to hearing procedure and judicial
27 review). This section does not apply to the group action of
28 insurers under the same general management and control.

29 (b) Administrative action.--If, after a hearing, the
30 department finds that any activity or practice of any such

1 group, association or other organization is unfair or
2 unreasonable or otherwise inconsistent with the provisions of
3 this chapter, it may issue a written order specifying its
4 objections and requiring the discontinuance of the activity or
5 practice.

6 § 1913. Examinations.

7 The department shall, at least once in five years, make an
8 examination of each rating organization licensed in this
9 Commonwealth under section 1906 (relating to rating
10 organizations), and may, as often as necessary, make an
11 examination of each advisory organization referred to in section
12 1911 (relating to advisory organizations) and of each group,
13 association or other organization referred to in section 1912
14 (relating to joint underwriting or joint reinsurance). The
15 reasonable costs of any examination shall be paid by the
16 organization examined upon presentation to it of a detailed
17 account of these costs. The officers, managers, agents and
18 employees of any such organization may be examined at any time
19 under oath and shall exhibit all books, records, accounts,
20 documents or agreements governing its method of operation. The
21 department shall furnish two copies of the examination report to
22 the organization examined and shall notify it that it may,
23 within 20 days thereafter, request a hearing on the report or on
24 any facts or recommendations therein. Before filing a report for
25 public inspection, the department shall grant a hearing to the
26 organization examined. The report of any examination, when filed
27 for public inspection, shall be admissible in evidence in any
28 action or proceeding brought by the department against the
29 organization examined or its officers or agents and shall be
30 prima facie evidence of the facts stated therein. The department

1 may withhold the report of any examination from public
2 inspection for such time as it deems proper. In lieu of an
3 examination, the department may accept the report of an
4 examination made by the insurance supervisory official of
5 another state pursuant to the laws of that state.

6 § 1914. Recording and reporting of loss and expense experience.

7 The department shall promulgate reasonable rules and
8 statistical plans, reasonably adapted to each of the rating
9 systems on file with it, which may be modified from time to time
10 and which shall be used by each insurer in the recording and
11 reporting of its loss and countrywide expense experience, in
12 order that the experience of all insurers may be made available
13 at least annually in such form and detail as necessary to aid it
14 in determining whether rating systems comply with the standards
15 set forth in this chapter. These rules and plans may also
16 provide for the recording and reporting of expense experience
17 items which are specifically applicable to this Commonwealth and
18 are not susceptible of determination by a prorating of
19 countrywide expense experience. In promulgating the rules and
20 plans, the department shall give due consideration to the rating
21 systems on file with it and, in order that the rules and plans
22 may be as uniform as practicable among the several states, to
23 the rules and the form of the plans used for rating systems in
24 other states. The rules and plans shall be drafted so as not to
25 place an unreasonable burden of expense on any insurer. An
26 insurer shall not be required to record or report its loss
27 experience on a classification basis that is inconsistent with
28 the rating system filed by it, nor shall any insurer be required
29 to report its experience to any agency of which it is not a
30 member or subscriber. The department may designate one or more

1 rating organizations or other agencies to assist it in making
2 compilations of experience information; these compilations shall
3 be made available, subject to reasonable regulations promulgated
4 by the department, to insurers and rating organizations.

5 § 1915. False or misleading information.

6 A person or organization shall not willfully withhold
7 information from, or knowingly give false or misleading
8 information to, the department, any statistical agency
9 designated by the department, any rating organization or any
10 insurer, which will affect the rates or premiums chargeable
11 under this chapter.

12 § 1916. Assigned risks.

13 With respect to insurance described in section 1902(a)
14 (relating to scope of chapter), agreements may be made among
15 insurers with respect to the equitable apportionment among them
16 of insurance which may be afforded applicants who are in good
17 faith entitled to but who are unable to procure such insurance
18 through ordinary methods, and the insurers may agree among
19 themselves on the use of reasonable rate modifications for such
20 insurance. These agreements and rate modifications shall be
21 subject to the approval of the department.

22 § 1917. Penalties.

23 (a) Fines.--The department may, if it finds that any person
24 or organization has violated this chapter, impose a penalty of
25 not more than \$50 for each violation, but, if it finds the
26 violation to be willful, it may impose a penalty of not more
27 than \$500 for the violation. These penalties may be in addition
28 to any other penalty provided by law.

29 (b) Suspension of license.--The department may suspend the
30 license of any rating organization or insurer which fails to

1 comply with an order of the department within the time limited
2 by the order or any extension thereof granted by the department.
3 The department shall not suspend the license of any rating
4 organization or insurer for failure to comply with an order
5 until the time prescribed for an appeal therefrom has expired
6 or, if an appeal has been taken, until the order has been
7 affirmed. The department may determine when a suspension of
8 license shall become effective, and it shall remain in effect
9 for the period fixed by it, unless it modifies or rescinds the
10 suspension, or until the order upon which suspension is based is
11 modified, rescinded or reversed by a court.

12 (c) Procedure.--A penalty shall not be imposed or a license
13 shall not be suspended or revoked except upon a written order of
14 the department, stating its findings, made after a hearing held
15 upon not less than ten days' written notice to the person or
16 organization specifying the alleged violation.

17 § 1918. Hearing procedure and judicial review.

18 (a) Right to hearing.--Any insurer, rating organization or
19 other person aggrieved by any action of the department, except
20 disapproval of a filing or a part thereof under section 1905
21 (relating to disapproval of filings), or by any rule or
22 regulation promulgated by the department, may file a complaint
23 with the department and have a hearing thereon before it.
24 Pending the hearing and the decision thereon, the department may
25 suspend or postpone the effective date of its previous action,
26 rule or regulation.

27 (b) Procedure.--All such hearings and all hearings provided
28 for in section 1905 shall be conducted, and the decision of the
29 department on the issue or filing involved shall be rendered,
30 under Title 2 (relating to administrative law and procedure).

1 (c) Right to appeal.--Any insurer, rating organization or
2 person aggrieved by any adjudication, including a disapproval of
3 a filing or portion thereof under section 1905, may appeal to
4 the court therefrom.

5 CHAPTER 21

6 RECIPROCAL AND INTER-INSURANCE EXCHANGES

7 Sec.

8 2101. General provisions.

9 2102. Authority to exchange.

10 2103. Declarations.

11 2104. Certificates of attorney.

12 2105. Statements to be filed by attorney.

13 2106. Examination by department.

14 2107. Reserves.

15 2108. Fees and taxes.

16 2109. Penalty.

17 § 2101. General provisions.

18 (a) Definitions.--The following words and phrases when used
19 in this chapter shall have the meanings given to them in this
20 subsection unless the context clearly indicates otherwise:

21 "Attorney." The attorney, agent or other representative
22 authorized by the subscribers to perform the duties set forth in
23 this chapter on their behalf.

24 "Subscriber." Any person who exchanges reciprocal or inter-
25 insurance contracts.

26 (b) Applicability.--This chapter does not apply to title
27 insurance agents and brokers or to the business of title
28 insurance.

29 § 2102. Authority to exchange.

30 (a) General rule.--Persons of this Commonwealth may exchange

1 reciprocal or inter-insurance contracts with each other, or with
2 persons of other states and countries, providing indemnity among
3 themselves from any loss on any insurance under this title,
4 except life insurance.

5 (b) Corporations.--Any corporation organized under the laws
6 of this Commonwealth shall, in addition to the rights, powers
7 and franchises specified in its articles of incorporation, have
8 full power and authority to exchange insurance contracts of the
9 kind and character mentioned in this chapter.

10 (c) Execution of contracts.--Contracts authorized by this
11 chapter may be executed by the attorney.

12 § 2103. Declarations.

13 The subscribers shall, through their attorney, file with the
14 department a declaration verified by the attorney, setting forth
15 the following:

16 (1) The name of the office at which the subscribers
17 propose to exchange the indemnity contracts. This name shall
18 not be so similar to any other name previously adopted by a
19 similar exchange or association or by any insurance company
20 as, in the opinion of the department, to result in confusion
21 or deception.

22 (2) The kind or kinds of insurance to be effected or
23 exchanged.

24 (3) A copy of the form of policy, contract or agreement
25 by which the insurance is to be effected or exchanged.

26 (4) A copy of the form of power of attorney, or other
27 authority of the attorney, under which the insurance is to be
28 effected or exchanged, and which shall provide that the
29 liability of the subscribers, exchanging contracts of
30 indemnity, shall make provision for contingent liability

1 equal to not less than one additional annual premium or
2 deposit charged. If an exchange has a surplus equal to the
3 minimum capital and surplus required of a stock insurance
4 company transacting the same kind or kinds of business, its
5 power of attorney need not provide for contingent liability
6 of subscribers, and the exchange, so long as it maintains the
7 surplus, may issue to its subscribers policies or contracts
8 without contingent liability.

9 (5) The location of each office from which the contracts
10 or agreements are to be issued.

11 (6) A statement that applications have been made for
12 indemnity upon at least 100 separate risks, aggregating not
13 less than \$1,500,000, as represented by executed contracts or
14 bona fide applications to become concurrently effective, or,
15 in the case of employees' liability or workmen's compensation
16 insurance, covering a total payroll of not less than
17 \$1,500,000.

18 (7) A statement that there is in the possession of the
19 attorney, available for the payment of losses, a sum of not
20 less than \$100,000.

21 § 2104. Certificates of attorney.

22 Each attorney shall annually obtain from the department a
23 certificate of authority stating that all the requirements of
24 this chapter have been complied with. Upon the payment of the
25 fees required, the department shall issue the certificate. The
26 department may revoke or suspend any certificate of authority.

27 § 2105. Statements to be filed by attorney.

28 (a) Indemnity.--The attorney shall file with the department
29 his verified statement showing the maximum amount of indemnity
30 upon any single risk. Whenever required by the department, the

1 attorney shall file his verified statement to the effect that he
2 has examined the commercial rating of the subscribers, as shown
3 by the reference book of a commercial agency having at least
4 100,000 subscribers, and that, from his examination or from
5 other information in his possession, it appears that no
6 subscriber has assumed on any single risk an amount greater than
7 10% of the net worth of such subscriber.

8 (b) Statement of conditions.--The attorney shall make a
9 report to the department for each calendar year, on or before
10 March 1, showing the financial condition of the office where the
11 contracts are issued, and shall furnish such additional
12 information and reports as the department requires. The attorney
13 shall not be required to furnish the names and addresses of any
14 subscribers, nor the loss ratio of any particular subscriber.

15 § 2106. Examination by department.

16 The business affairs and assets of organizations under this
17 chapter shall be subject to examination by the department.

18 § 2107. Reserves.

19 There shall at all times be maintained as a reserve a sum in
20 cash, or in securities of the character permitted by the law of
21 the state under which the exchange is organized for the
22 investment of the capital and funds of an insurance company,
23 equal to 50% of the aggregate net annual deposits collected and
24 credited to the account of the subscribers on policies having
25 one year or less to run, and pro rata on those for longer
26 periods. As used in this section the term "net annual deposits"
27 shall mean the advance payments of subscriber, after deducting
28 therefrom the amounts specifically provided in the subscribers'
29 agreements for expenses. If the reserves at any time do not
30 amount to \$100,000, then there shall be maintained on deposit at

1 the exchange at all times additional funds in cash or such
2 securities which together with the reserves will equal \$100,000.
3 In calculating the foregoing reserves, the funds or amounts
4 provided for under section 2103(7) (relating to declarations)
5 shall be included. There shall also be maintained as a claim or
6 loss reserve, cash or such securities, as authorized, sufficient
7 to discharge all liabilities on all outstanding losses arising
8 under policies issued. If at any time the amounts on hand are
9 less than the foregoing requirements, the subscribers or their
10 attorney shall make up the deficiency under penalty of
11 revocation of the license. These advances shall be repaid only
12 out of the surplus funds of the exchange.

13 § 2108. Fees and taxes.

14 The attorney shall pay to the Commonwealth the same fees and
15 taxes as are now required by law to be paid by stock and mutual
16 companies transacting like kinds of business in this
17 Commonwealth. In the payment of taxes, he may deduct from the
18 gross premiums or deposits received during the calendar year,
19 all amounts returned to subscribers or credited to their
20 accounts, other than for losses.

21 § 2109. Penalty.

22 Any attorney who, except for the purpose of applying for a
23 certificate of attorney under section 2104 (relating to
24 certificates of attorney), exchanges any contracts of indemnity
25 of the kind specified in this chapter, or directly or indirectly
26 solicits or negotiates any applications therefor, without first
27 complying with this chapter, commits a misdemeanor of the third
28 degree.

29

CHAPTER 23

30

LLOYDS ASSOCIATIONS

- 1 Sec.
- 2 2301. Definition.
- 3 2302. Authorization.
- 4 2303. Declarations.
- 5 2304. Certification to do business.
- 6 2305. Examination by department.
- 7 2306. Deposits by alien underwriters.
- 8 2307. Return of deposits.
- 9 2308. Additional and substituted underwriters.
- 10 2309. Information to be furnished to department.
- 11 2310. Maximum amount of risks.
- 12 2311. Applicability of other provisions.
- 13 2312. Penalties.
- 14 § 2301. Definition.

15 As used in this chapter, the term "underwriter" means any
16 individual, partnership or association of individuals which
17 engages in the business of insurance as insurers on the Lloyds
18 plan.

19 § 2302. Authorization.

20 (a) General rule.--Individuals, partnerships or associations
21 of individuals are authorized to engage in the business of
22 insurance as insurers on the Lloyds plan in accordance with this
23 chapter.

24 (b) Authorized classes of insurance.--Underwriters, when
25 authorized under this chapter, may insure the following classes
26 of risks:

27 (1) On dwelling houses, stores and all kinds of
28 buildings and household furniture and other property, against
29 loss or damage, including loss of use or occupancy, by fire,
30 lightning and explosion, except by explosion on risks

1 specified in section 3302(c)(5) (relating to authorized
2 classes of insurance), and by storms, earthquakes, hail,
3 frost, sleet, snow or flood; against loss or damage by water
4 to any goods or premises arising from the breakage, leakage
5 of sprinklers, pumps or other apparatus erected for
6 extinguishing fires and of water pipes; against accidental
7 injury to sprinklers, pumps or other apparatus; against loss
8 or damage caused by the caving in of the surface of the earth
9 above coal mines; against loss or damage caused by
10 bombardment, invasion, insurrection, riot, civil war or
11 commotion, and military or usurped power; and to effect
12 reinsurance of any risk provided for in this paragraph.

13 (2) The risks listed in section 3302(b)(2).

14 (3) The risks listed in section 3302(b)(3).

15 (4) Any form of insurance other than life insurance, not
16 included in this section, if the insurance is not contrary to
17 law and is allied or in harmony with the classes of insurance
18 listed in this section. This insurance shall be transacted
19 only on express license by the department and upon the terms
20 and conditions prescribed by it.

21 § 2303. Declarations.

22 The underwriters shall file with the department a
23 declaration, verified by their duly authorized attorney-in-fact,
24 setting forth:

25 (1) The name or title under which the business is to be
26 conducted, which name shall not be so similar to any existing
27 association of insurers on the Lloyds or inter-insurance plan
28 or insurance corporation as to result in confusion or
29 deception, in the opinion of the department.

30 (2) The location of the principal office at which the

1 business is to be conducted.

2 (3) A copy of the form of power of attorney, agreement
3 or other authority of the attorney-in-fact, setting forth the
4 character of their representatives and their authority and
5 the agreement between the underwriters.

6 (4) Copies of the forms of policy, contracts or
7 agreements under which insurance is to be effected.

8 (5) The names and addresses of all the underwriters
9 proposing to engage in the business.

10 (6) If a foreign association, the designation and
11 appointment of the department for service of legal process.

12 (7) Each kind of insurance to be written.

13 (8) That a fund for the protection of policyholders is
14 in the possession, within the United States, of the attorney-
15 in-fact or a committee for the underwriters and is either in
16 cash or invested as required by the law of the state in which
17 the principal office of the underwriters is located in
18 respect to securities deposited by the insurance corporations
19 authorized to transact similar kinds of insurance. The fund
20 shall be in an amount not less than \$100,000 if the
21 applicants desire to be authorized to insure any single class
22 of risk mentioned in section 2302(b)(1), (2) or (3) (relating
23 to authorization), respectively, or in section 2302(b)(1) and
24 (3) only or section 2302(b)(2) and (3) only. The fund shall
25 be in an amount not less than \$200,000 if the applicants
26 desire to be authorized to insure all the classes of risk
27 mentioned in section 2302(b)(1), (2) and (3) or those classes
28 mentioned in section 2302(b)(1) and (2) only.

29 (9) The number of underwriters, which shall not be less
30 than 25, and that each underwriter is worth, in his own

1 right, not less than \$20,000 over and above all his debts and
2 liabilities.

3 (10) A statement showing a list of all cash and invested
4 assets owned by the associated underwriters as such, and
5 their estimated value.

6 § 2304. Certification to do business.

7 Upon the filing of the documents specified in section 2303
8 (relating to declarations), the department shall examine them,
9 and, if it appears that all the statements made in the
10 declaration are true and that the rights of the policyholders
11 will be protected thereunder, it may issue a certificate of
12 authority to the underwriters, under the name chosen and
13 approved, stating that they are authorized to transact the
14 business of insurance specified in the declaration. The
15 certificate of authority shall be renewed annually. An
16 underwriter, attorney-in-fact, agent or other person shall not
17 transact the business of insurance in this Commonwealth for the
18 underwriters until the certificate has been issued, nor during
19 its suspension or revocation.

20 § 2305. Examination by department.

21 Prior to the issuance of the certificate of authority, the
22 department may cause an examination to be made of the affairs
23 and assets of the underwriters applying for the certificate.

24 § 2306. Deposits by alien underwriters.

25 If any of the underwriters applying for a certificate of
26 authority is not a citizen of the United States, each alien
27 underwriter shall, at the time of the making of the application
28 for certificate of authority, deposit with the department \$5,000
29 in cash or in the kinds of securities required for the
30 investment of the capital of insurance corporations authorized

1 to do similar kinds of insurance business in this Commonwealth,
2 or in the kinds of securities approved by it. The provisions of
3 this section as to deposits shall not apply if the alien
4 underwriter:

5 (1) is one of an association of underwriters having on
6 deposit with the insurance department of any state, or in the
7 hands of a bank or trust company as trustee, a cash deposit
8 or approved securities, worth not less than \$100,000, held in
9 trust for the benefit of all their policyholders in the
10 United States; or

11 (2) is one of an association of underwriters 90% of whom
12 are at all times citizens of the United States and who have
13 complied with all other provisions of this chapter.

14 § 2307. Return of deposits.

15 After the conditions of any deposits made under this chapter
16 have been fulfilled and the certificate of authority granted to
17 the underwriters has been canceled or they have voluntarily
18 withdrawn from and have ceased doing business in this
19 Commonwealth, the department shall return to the underwriters,
20 or their authorized representative for this purpose specifically
21 designated by them or their principal attorney-in-fact, all
22 securities and cash so deposited in this Commonwealth.

23 § 2308. Additional and substituted underwriters.

24 Whenever underwriters applying for certificates of authority
25 under this chapter, after the issue of the certificate, are
26 joined by additional or substituted underwriters, the additional
27 or substituted underwriters shall comply with the provisions of
28 this chapter and shall be bound by the documents on file with
29 the department concerning such authorized underwriters, to the
30 same extent as though they had been original applicants for the

1 certificates of authority.

2 § 2309. Information to be furnished to department.

3 Any association of underwriters authorized under this chapter
4 shall from time to time furnish to the department, under oath of
5 their attorney-in-fact, such information as the department
6 requires respecting the conduct of their affairs, changes in the
7 name under which the business is done, the establishment of
8 branch offices and their location and any change in the
9 membership of the underwriters and their attorney-in-fact,
10 including any amendment to the power of attorney, agreements or
11 articles of association of underwriters.

12 § 2310. Maximum amount of risks.

13 An association of underwriters authorized to do business in
14 this Commonwealth under this chapter shall not expose themselves
15 to loss on any one risk in an amount in excess of 20% of their
16 cash and invested assets, including therein the underwriting
17 liability of the individual underwriters, unless any excess is
18 promptly reinsured by the underwriters.

19 § 2311. Applicability of other provisions.

20 (a) General rule.--All associations of underwriters
21 authorized under this chapter and their representatives shall be
22 subject to the same supervision by and shall be required to make
23 the same reports to the department and shall pay the same taxes
24 and license fees as are required of foreign insurance companies
25 and their representatives transacting the same or similar kinds
26 of insurance in this Commonwealth.

27 (b) Inter-insurers or reciprocal underwriters.--This chapter
28 does not apply to inter-insurers or reciprocal underwriters.

29 § 2312. Penalties.

30 (a) Certificate of authority.--Upon violation of any

1 provision of this chapter, the department may revoke or suspend
2 any certificate of authority issued under this chapter.

3 (b) Criminal penalty.--Any person who, as principal,
4 attorney, agent, broker or other representatives, engages in the
5 business contemplated by this chapter, or any variety or part
6 thereof, without complying with the requirements thereof, or who
7 violates any provision of this chapter commits a misdemeanor of
8 the third degree and, upon conviction, shall be sentenced to pay
9 a fine not exceeding \$500.

10 PART III

11 ORGANIZATION OF INSURANCE ENTITIES

12 Chapter

- 13 31. General Provisions
- 14 33. Incorporation of Insurance Companies
- 15 35. Corporate Operations
- 16 37. International Operations
- 17 39. Suspension of Business and Dissolution
- 18 41. Beneficial Societies
- 19 43. (Reserved)
- 20 45. Fraternal Benefit Society Code
- 21 47. Mutual Companies

22 CHAPTER 31

23 GENERAL PROVISIONS

24 Sec.

- 25 3101. Scope of part.
- 26 3102. Acceptance of part.
- 27 3103. Exemption from part.
- 28 3104. Power of General Assembly regarding charters.
- 29 3105. Persons prohibited from insurance business.
- 30 3106. Judicial proceedings.

1 § 3101. Scope of part.

2 (a) Applicability.--Except as provided in this part, this
3 part applies to all of the following:

4 (1) Domestic insurance companies incorporated under the
5 provisions of this part.

6 (2) Domestic insurance companies incorporated under
7 general or special laws since October 13, 1857.

8 (3) Domestic insurance corporations which have accepted
9 the provisions of the Constitution of Pennsylvania and the
10 general insurance laws enacted since October 13, 1857.

11 (4) Domestic insurance corporations incorporated prior
12 to October 13, 1857, which, by the terms of their charters or
13 the statutes under which they were incorporated hold charters
14 subject to alteration or revocation.

15 (5) Other domestic insurance corporations incorporated
16 prior to October 13, 1857, which accept the provisions of
17 this part.

18 (6) Foreign insurance companies doing business in this
19 Commonwealth.

20 (7) Domestic and foreign associations and exchanges
21 doing insurance business in this Commonwealth.

22 (b) Authority.--All insurance companies to which this part
23 applies and which have the required capital and reserve may
24 transact any one or more of the classes of insurance authorized
25 by section 3302 (relating to authorized classes of insurance) in
26 the same manner and to the same extent as insurance companies
27 incorporated under the provisions of this part.

28 (c) Exemptions.--An insurance company created before May 21,
29 1921, to which this part applies, shall not be deprived of any
30 right which it enjoys under its charter to engage in any

1 business other than insurance. This title shall not interfere
2 with the charter provisions or operations of any domestic mutual
3 fire insurance company organized before May 21, 1921, under any
4 general or special law of this Commonwealth.

5 (d) Business Corporation Law.--The act of May 5, 1933
6 (P.L.364, No.106), known as the Business Corporation Law, does
7 not apply to corporations organized under Chapter 33 (relating
8 to incorporation of insurance companies), except for section
9 1014B of that act.

10 § 3102. Acceptance of part.

11 Any insurance company organized before May 21, 1921, under
12 any general or special law of this Commonwealth to transact any
13 of the classes of insurance authorized in this part and to which
14 this part does not apply may transact any one or more of the
15 classes of insurance authorized by section 3302 (relating to
16 authorized classes of insurance) and become subject to the
17 provisions of this part, by providing the capital and reserve
18 required for such companies organized under this title and by
19 filing with the department a resolution of the board of
20 directors or trustees, approved by the stockholders or members
21 at a meeting specially called for that purpose, accepting the
22 provisions of the Constitution and of this part, and agreeing to
23 be governed thereby as fully as though organized hereunder. The
24 charters of all insurance companies accepting the provisions of
25 this part shall, after such acceptance, be repealed and of no
26 effect insofar as these are inconsistent with this part. Any
27 domestic mutual fire company or association may elect to become
28 subject to the provisions of this part, in lieu of any acts
29 previously governing the company or association, by resolution
30 of its board of directors, duly approved by a majority of the

1 members present at any annual meeting or special meeting called
2 for that purpose, of which all members shall be given at least
3 two weeks notice by mail. These resolutions and the vote
4 approving them certified to by the president and secretary shall
5 be filed with the department, and, when approved by it, the
6 company shall become subject to the provisions of this part.

7 § 3103. Exemption from part.

8 Except for Chapters 41 (relating to beneficial societies) and
9 45 (relating to Fraternal Benefit Society Code), this part does
10 not apply to assessment associations or to fraternal benefit
11 societies, orders or associations having a lodge system with
12 ritualistic form of work and representative form of government;
13 or to beneficial and relief associations formed by churches or
14 societies, partnerships, associations or corporations, with or
15 without ritualistic form of work, the privileges and membership
16 in which are confined to the members of those churches or
17 societies, and to members and employees of those partnerships,
18 associations or corporations.

19 § 3104. Power of General Assembly regarding charters.

20 The General Assembly may alter, revoke or annul any charter
21 granted or accepted under this part whenever, in the opinion of
22 the General Assembly, it may be injurious to the citizens of
23 this Commonwealth, in such manner that no injustice shall be
24 done to the incorporators or their successors.

25 § 3105. Persons prohibited from insurance business.

26 (a) General rule.--Except as provided in this part, the
27 doing of any insurance business in this Commonwealth as
28 prescribed in this part, for insurance companies by any private
29 individual, association or partnership is prohibited.

30 (b) Enforcement--Any person who solicits or obtains in this

1 Commonwealth applications for insurance by any such private
2 individual, association or partnership, in violation of this
3 part shall be liable to pay \$100 for the use of the Commonwealth
4 for every application obtained. This penalty shall be sued for
5 and recovered by the Attorney General or district attorney of
6 the proper county, either by civil action or by criminal
7 prosecution. Any person who has paid to any agent of an
8 unauthorized individual, association or partnership any premiums
9 for insurance granted or to be granted may recover them by an
10 action at law from such agent or from the person, association or
11 partnership for which he acted.

12 (c) Exemptions.--This section does not prohibit the doing of
13 insurance business by Lloyds associations or the exchange of
14 inter-insurance or reciprocal contracts of insurance authorized
15 by Chapter 21 (relating to reciprocal and inter-insurance
16 exchanges), nor does this part prohibit anyone from becoming or
17 being accepted as personal surety or guarantor. This section
18 does not apply to title insurance companies or to the business
19 of title insurance.

20 § 3106. Judicial proceedings.

21 Any person transacting business under this title may maintain
22 or defend judicial proceedings.

23 CHAPTER 33

24 INCORPORATION OF INSURANCE COMPANIES

25 Subchapter

26 A. Formation of Corporations

27 B. Promotion

28 C. Authorization

29 D. Valuation of Securities

30 E. Conversion of Mutual Companies to Corporations

1 SUBCHAPTER A

2 FORMATION OF CORPORATIONS

3 Sec.

4 3301. Classes of insurance companies.

5 3302. Authorized classes of insurance.

6 3303. Articles of agreement.

7 3304. Name of company.

8 3305. Capital stock.

9 3306. Minimum capital stock and financial requirements.

10 3307. Officers and directors.

11 3308. Subscriptions.

12 § 3301. Classes of insurance companies.

13 Subject to this title, insurance companies of any of the
14 following classes may be incorporated:

15 (1) Stock life insurance companies.

16 (2) Mutual life insurance companies.

17 (3) Stock fire, stock marine, and stock fire and marine
18 insurance companies.

19 (4) Stock casualty insurance companies.

20 (5) Mutual insurance companies of any kind other than
21 mutual life insurance companies.

22 § 3302. Authorized classes of insurance.

23 (a) Life insurance companies.--Stock or mutual life
24 insurance companies may be incorporated for any or all of the
25 following purposes:

26 (1) To insure the lives of persons and every insurance
27 appertaining thereto; to grant and dispose of annuities,
28 variable life insurance contracts and variable annuity
29 contracts under which values or payments or both vary in
30 relation to the investment experience of the issuer or a

1 separate account or accounts maintained by the issuer; and to
2 insure against the risks listed in paragraph (2) when written
3 as a part of a policy of life insurance.

4 (2) To insure against personal injury, disability or
5 death resulting from traveling or general accidents and
6 against disability resulting from sickness and every
7 insurance appertaining thereto, but no life insurance company
8 may be incorporated for the purposes mentioned in this
9 paragraph unless it is also incorporated for the purposes
10 mentioned in paragraph (1).

11 (b) Fire and marine insurance companies.--Stock fire
12 insurance companies may be incorporated for any or all of the
13 purposes mentioned in paragraphs (1) and (2); stock marine
14 insurance companies may be incorporated for any or all of the
15 purposes mentioned in paragraphs (2) and (3); and stock fire and
16 marine insurance companies may be incorporated for any or all of
17 the purposes mentioned in paragraphs (1), (2) and (3). The
18 permissible subjects and risks under this subsection are:

19 (1) Insuring dwelling houses, stores and all kinds of
20 buildings and household furniture and other property against
21 loss or damage, including loss of use or occupancy, by any or
22 all risks, and effecting reinsurance of any such risk.

23 (2) Insuring vessels, boats, cargoes, goods, personal
24 property, merchandise, freight and other property, against
25 loss or damage by all or any of the risks of lake, river,
26 canal and inland navigation and transportation, including all
27 personal property floater risks, upon automobiles or
28 aircraft, whether stationary, in operation or in transit,
29 against loss or damage by fire, explosion, transportation,
30 collision, burglary, larceny or theft, not including, in any

1 case, insurances against loss by reason of bodily injury; and
2 effecting reinsurance of any such risk.

3 (3) Insuring vessels, freight, goods, wares,
4 merchandise, specie, bullion, jewels, profits, commissions,
5 bank notes, bills of exchange and other evidence of debt,
6 bottomry and respondentia interests; providing insurance upon
7 or connected with marine risks and risks of transportation
8 and navigation; and effecting reinsurance of any such risk.

9 (c) Casualty insurance.--Stock casualty insurance companies
10 may be incorporated for any or all of the following purposes:

11 (1) To guarantee the fidelity of persons holding places
12 of public or private trust; to guarantee the performance of
13 contracts other than insurance policies; to guarantee the
14 performance of insurance contracts where surety bonds are
15 accepted from insurance companies by states or municipalities
16 in lieu of actual deposits; to execute or guarantee bonds and
17 undertakings required or permitted in all actions or
18 proceedings or permitted by law; and to indemnify banks,
19 bankers, brokers, financial associations or financial
20 corporations against the loss of any bills of exchange,
21 notes, drafts, acceptances of drafts, bonds, securities,
22 evidences of debt, deeds, mortgages, warehouse receipts,
23 bills of lading, documents, currency, money, gold, platinum,
24 silver and other precious metals and articles made therefrom;
25 jewelry, watches, necklaces, bracelets, gems and precious and
26 semi-precious stones, and also against loss resulting from
27 damage, except by fire, to the insured's premises,
28 furnishings, fixtures, equipment, safes and vaults therein,
29 caused by burglary, robbery, theft or larceny, or attempt
30 thereat, except against loss caused by marine risks or risks

1 of transportation or navigation, but indemnification against
2 the loss of such property may include loss occurring during
3 transportation by an armored motor vehicle accompanied by one
4 or more armed guards.

5 (2) To insure against injury, disability or death
6 resulting from traveling or general accident, and against
7 disability resulting from sickness, and every insurance
8 appertaining thereto, including a funeral benefit to an
9 amount not exceeding \$100.

10 (3) To insure against loss of and damage to glass,
11 including lettering and ornamentation thereon, and the frame
12 in which the glass is set, resulting from breakage of the
13 insured glass.

14 (4) To insure against loss or damage resulting from
15 accident to, or injury, fatal or nonfatal, suffered by any
16 person for which the person insured is liable; to insure
17 against medical, hospital, surgical and funeral expenses
18 incurred by or on behalf of the persons accidentally injured,
19 including the person insured; to insure against loss or
20 damage to property caused by horses, or by any vehicle drawn
21 by animal power, for which loss or damage the person insured
22 is liable; and to insure against loss or damage to property,
23 for which loss or damage the person insured is liable, but
24 not including any kind of property damage insurance specified
25 in other paragraphs. This paragraph does not apply to any
26 kind of insurance against loss or damage resulting from the
27 ownership, maintenance or use of a motor vehicle. This
28 paragraph does not apply to workmen's compensation insurance
29 against loss or damage resulting from accident to, or injury,
30 fatal or nonfatal, suffered by an employee for which the

1 person insured is liable or against medical, hospital,
2 surgical and funeral expenses incurred by or on behalf of the
3 employe accidentally injured as provided for in paragraph
4 (14).

5 (5) To insure steam boilers, pipes and machinery
6 connected therewith or operated thereby, against loss caused
7 by explosion or accident, against loss of or damage to life,
8 person or property resulting therefrom and against loss of
9 use and occupancy caused thereby; and to make inspection of,
10 and issue certificates of inspection upon, such boilers,
11 pipes and machinery.

12 (6) To insure against loss or damage by burglary,
13 larceny, theft, robbery, forgery, fraud, vandalism or
14 malicious mischief; to insure against loss or damage to
15 moneys, securities, currencies, scrip, coins, bullion, bonds,
16 notes, drafts, acceptance drafts, bills of exchange and other
17 valuable papers or documents, except while in the custody or
18 possession of, and being transported by, a carrier for hire
19 or in the mail; and to insure against loss or damage to
20 automobiles and aircraft by burglary, larceny, theft,
21 vandalism or malicious mischief, confiscation or wrongful
22 conversion, disposal or concealment, whether held under
23 conditional sale contract or subject to a security interest
24 or otherwise.

25 (7) To carry on the business of credit insurance or
26 guaranty, either by agreeing to purchase uncollectible debts
27 or otherwise; and to insure against loss or damage from the
28 failure of persons indebted to the insured to meet their
29 liabilities.

30 (8) To insure any goods or premises against loss or

1 damage by water or other fluid, caused by the breakage or
2 leakage of sprinklers, pumps or other apparatus erected for
3 extinguishing fires, or of other conduits or containers, or
4 of water pipes, or caused by casual water entering through
5 leaks or openings in buildings; and to insure them against
6 accidental injury from causes other than fire or lightning to
7 sprinklers, pumps, water pipes, conduits, containers or other
8 apparatus; and to insure them against damage from use or
9 occupancy of premises by reason of such loss or damage.

10 (9) To insure against loss or damage to elevators or
11 other property, except loss or damage by fire, caused by the
12 maintenance, operation or use of elevators and machinery; and
13 to insure against legal liability for damage to property
14 resulting from such operation, maintenance or use of
15 elevators.

16 (10) To insure livestock.

17 (11) To insure against loss or damage to motor vehicles
18 or aircraft, except loss or damage by fire or while being
19 transported in any conveyance by land or water, including
20 loss by legal liability for damage to property resulting from
21 the maintenance and use of motor vehicles or aircraft; to
22 insure against loss or damage resulting from accident to, or
23 injury, fatal or nonfatal, suffered by another person, for
24 which the person insured is liable resulting from the
25 ownership, maintenance or use of a motor vehicle; and to
26 insure against medical, hospital, surgical and funeral
27 expenses incurred by or on behalf of the persons accidentally
28 injured as a result of the ownership, maintenance or use of a
29 motor vehicle, including the person insured, and, in the case
30 of motor vehicle liability insurance, including also an

1 obligation of the insurer to pay disability benefits to
2 injured persons and death benefits to dependents,
3 beneficiaries or personal representatives of persons who are
4 killed, irrespective of the legal liability of the insured
5 when such insurance is issued with and supplemental to such
6 liability insurance.

7 (12) To insure against loss or damage to machinery,
8 pumps, transporting, hoisting and ventilating apparatus, and
9 equipment of mines while located underground, and loss or
10 damage to underground passageways, gangways, airways, drifts,
11 slopes, shafts, overcasts and stoppings in the mines. An
12 authorized casualty company shall not expose itself to any
13 loss or hazard on any one risk authorized by this paragraph
14 in an amount exceeding 10% of its capital and surplus unless
15 it is protected in excess of that amount by reinsurance.

16 (13) To insure by means of an all-risk type of policy,
17 commonly known as the "personal property floater policy,"
18 against all risks of loss of or damage to personal property
19 owned by any individual other than merchandise, motor
20 vehicles, aircraft, watercraft (except canoes, rowboats,
21 sailboats less than 21 feet in length and outboard motor
22 boats) or personal property pertaining to the business, trade
23 or profession of the insured, except professional books,
24 instruments and other professional equipment owned by the
25 insured.

26 (14) To insure against loss or damage resulting from
27 accident to, or injury, fatal or nonfatal, suffered by an
28 employee for which the person insured is liable and to insure
29 against medical, hospital, surgical and funeral expenses
30 incurred by or on behalf of the employee accidentally

1 injured, including the person insured.

2 (d) Mutual companies.--Mutual insurance companies of any
3 kind, other than life insurance companies, may be incorporated
4 to make contracts of insurance, or to reinsure and accept
5 reinsurance, for any and all kinds of insurance, other than life
6 insurance, which are not prohibited by statute or at common law
7 from being the subject of insurance, but no such mutual company
8 may transact any kind of insurance other than those which may be
9 transacted by a corporation writing the same kinds of insurance.
10 A mutual company possessing charter powers set forth in
11 subsection (b)(2) or (c)(11) shall not write assessable bodily
12 injury and property damage liability insurance policies upon
13 automobiles or motor vehicles, except insurance coverage
14 providing for collision damage or other direct loss or damage to
15 the insured automobile or motor vehicle; or a mutual company
16 possessing the charter powers set forth in subsection (c)(14)
17 shall not write assessable workmen's compensation policies. All
18 assessable policies shall have the words "This is an assessable
19 policy" printed prominently on the backer or policy panel, as
20 well as on the face of the policy in letters not less than
21 sixteen point in size. An assessable policy upon automobiles and
22 motor vehicles shall not be written, issued, reissued or
23 renewed, except insurance coverage providing for collision
24 damage or other direct loss or damage to the insured automobile
25 or motor vehicle.

26 (e) Other forms of insurance.--Domestic stock and mutual
27 insurance companies, other than life, and, if their charters
28 permit, foreign or alien companies may transact any form of
29 insurance not included in this section if the insurance is not
30 contrary to law and is allied or in harmony with the classes of

1 insurance provided in this section. This additional insurance
2 shall be transacted only on express license by the department
3 and upon such terms and conditions as are from time to time
4 prescribed by it.

5 (f) Fire, marine and casualty insurance.--Domestic stock and
6 mutual insurance companies, other than life or title, and, if
7 their charters permit, foreign or alien companies may transact
8 any or all of the kinds of insurance included in subsections (b)
9 and (c) upon compliance with all of the financial and other
10 requirements prescribed by the law of this Commonwealth for
11 fire, marine, fire and marine, and casualty insurance companies
12 transacting those kinds of insurance. Stock fire, stock marine,
13 stock fire and marine, and stock casualty insurance companies
14 may be incorporated for any or all of the purposes mentioned in
15 subsections (b) and (c).

16 § 3303. Articles of agreement.

17 Any ten or more individuals of full age and either sex,
18 married or single, at least two-thirds of whom are citizens of
19 the United States or its territories or possessions, may
20 associate in accordance with this part and form a corporation of
21 any of the classes enumerated in section 3301 (relating to
22 classes of insurance companies). The persons shall associate by
23 written articles of agreement, which shall specify:

24 (1) The name by which the company shall be known.

25 (2) The class of insurance for the transaction of which
26 it is constituted.

27 (3) The plan or principle upon which the business is to
28 be conducted.

29 (4) The place in which it is to be established or
30 located.

1 (5) In the case of a stock company, the amount of its
2 capital.

3 (6) The general objects of the company.

4 (7) The proposed duration of the company, which may be
5 limited or perpetual.

6 (8) The powers it proposes to have and exercise.

7 § 3304. Name of company.

8 The subscribers to the articles of agreement of any company
9 to be incorporated under this part may adopt any name not
10 previously used by any existing company, but the name must
11 clearly designate the object and purpose of the company. In the
12 case of a mutual company, the word "mutual" shall appear in its
13 name. The department may prohibit the use of any name when, in
14 its judgment, it too closely resembles that of any existing
15 company or is likely to confuse or mislead the public.

16 § 3305. Capital stock.

17 (a) Par value.--The capital stock of all stock insurance
18 companies shall be divided into shares with par value of not
19 less than \$1 a share.

20 (b) Payment of subscriptions.--All payments on accounts of
21 capital stock in any stock insurance company, except for stock
22 issued in connection with an authorized merger or consolidation
23 or as consideration for the purchase or acquisition of
24 authorized investments or as a stock dividend, shall be made in
25 lawful money. A note or obligation given by a stockholder,
26 whether secured by pledge or otherwise, shall not be considered
27 as a payment of any part of the capital stock. Ten percent of
28 the total subscription price shall be paid on each share at the
29 time of subscribing, and the balance on such shares shall be
30 paid at such times as the company may direct, but full payments

1 on all shares shall be made within a period of nine months from
2 the date of organization.

3 (c) Forfeitures.--Any stock insurance company may prescribe
4 rules with regard to the forfeiture of partial payments on
5 subscriptions, which rules shall be binding upon subscribers if
6 made known at the time of the subscription.

7 § 3306. Minimum capital stock and financial requirements.

8 (a) Life insurance companies.--Stock life insurance
9 companies organized under section 3302(a)(1) (relating to
10 authorized classes of insurance) shall have a paid-up capital
11 stock of at least \$1,000,000. Stock life insurance companies
12 organized under this part for all of the purposes mentioned in
13 section 3302(a) shall have a paid-up capital stock of at least
14 \$1,100,000. Every such company shall, in addition thereto, have
15 a surplus paid in at least equal to 50% of the subscribed
16 capital stock.

17 (b) Fire and marine insurance companies.--Stock fire, stock
18 marine and stock fire and marine insurance companies organized
19 under this part for any of the purposes mentioned in section
20 3302(b)(1) or (2) shall have paid-up capital stock of at least
21 \$100,000; if organized for all the purposes mentioned in section
22 3302(b)(1) and (2) or in section 3302(b)(3), at least \$200,000;
23 and, if organized for all of the purposes mentioned in section
24 3302(b)(1), (2) and (3), at least \$400,000. Every such company
25 shall, in addition thereto, have a surplus paid in at least
26 equal to 50% of the subscribed capital stock.

27 (c) Casualty insurance companies.--

28 (1) Stock casualty companies organized under this part
29 for any of the purposes of insurance mentioned in section
30 3302(c) shall have a paid-up capital stock of at least

1 \$100,000, except:

2 (i) Companies organized for the purpose of credit
3 insurance, which shall have a paid-up capital stock of at
4 least \$200,000.

5 (ii) Companies organized for the purposes mentioned
6 in section 3302(c)(11), which shall have a paid-up
7 capital stock of at least \$500,000.

8 (iii) Companies organized for the purpose of
9 workmen's compensation insurance as provided for in
10 section 3302(c)(14), which shall have a paid-up capital
11 stock of at least \$750,000.

12 (iv) Companies organized to guarantee the fidelity
13 of persons and contracts of suretyship, which shall have
14 a paid-up capital stock of at least \$250,000.

15 (2) Stock casualty companies organized under this part
16 may undertake two or more classes of insurance mentioned in
17 section 3302(c) by providing at least \$50,000 additional
18 paid-up capital stock for each additional class of insurance,
19 except as follows:

20 (i) If credit or fidelity and surety insurance is
21 added to any other line or lines, in which case the
22 additional paid-up capital stock for credit insurance
23 shall be at least \$100,000, and the additional paid-up
24 capital stock for fidelity and surety insurance shall be
25 at least \$200,000.

26 (ii) If insurance for the purposes mentioned in
27 section 3302(c)(11) is added to any other line or lines,
28 in which case the additional paid-up capital stock shall
29 be at least \$500,000.

30 (iii) If workmen's compensation insurance as

1 provided for in section 3302(c)(14) is added to any other
2 line or lines, in which case the additional paid-up
3 capital stock shall be at least \$750,000.

4 (3) Any such stock casualty company with a paid-up
5 capital stock of at least \$300,000 may transact all of the
6 classes of insurance mentioned in section 3302(c) except
7 credit, livestock and fidelity and surety insurance, and
8 except insurance for the purposes mentioned in section
9 3302(c)(11) and except workmen's compensation insurance as
10 provided for in section 3302(c)(14). A company with a paid up
11 capital stock of at least \$1,950,000 may transact all of the
12 classes of insurance mentioned in section 3302(c).

13 (4) Every such company shall, in addition to the paid-up
14 capital stock required under this subsection, have a surplus
15 paid in at least equal to 50% of the subscribed capital
16 stock.

17 (d) Mutual companies generally.--Companies organized under
18 this part to insure lives on the mutual plan must have
19 applications for insurance, in the amount of at least
20 \$1,000,000, by not less than 400 individuals. Companies
21 organized under this part to insure lives on the mutual plan
22 shall also have a guarantee capital before commencing business
23 of at least \$500,000 and shall maintain unimpaired a
24 policyholders' surplus of at least \$250,000 out of guarantee
25 capital, surplus or any combination thereof.

26 (e) Certain mutual companies.--Mutual companies, other than
27 mutual life companies and title insurance companies, organized
28 under this part, and mutual companies which determine to add a
29 line or lines of insurance business shall comply with the
30 following conditions:

1 (1) The company shall hold bona fide applications for at
2 least 20 policies, to be issued promptly and simultaneously
3 to at least 20 policyholders or members upon not less than
4 200 separate risks, each within the maximum single risk
5 described in this paragraph upon the granting of the
6 certificate of authority to do business. The maximum single
7 risk shall not exceed three times the average risk or 1% of
8 the total insurance applied for, whichever is greater.

9 (2) It shall have collected at least an annual cash
10 premium upon each of such applications, which shall be held
11 in cash or securities in which such insurance companies are
12 authorized to invest. In the case of companies organized for
13 any of the purposes mentioned in section 3302(b)(1), (2) or
14 (3), the cash premiums, together with any amounts advanced
15 under section 4710 (relating to loans to companies), shall be
16 at least \$25,000 for the purpose mentioned in each paragraph
17 of section 3302(b). If organized for all of the purposes
18 mentioned in section 3302(b)(1), (2) and (3), the cash
19 premiums, together with any amounts advanced under section
20 4710, shall be at least \$50,000. In the case of companies
21 organized for any one of the purposes mentioned in section
22 3302(c), except paragraphs (1), (4), (11) and (14), the cash
23 premiums collected, together with any amounts advanced under
24 section 4710, shall be at least \$10,000 for the purpose
25 mentioned in each paragraph of section 3302(c). In the case
26 of companies authorized to issue nonassessable policies of
27 insurance for the purposes mentioned in section 3302(c)(11)
28 or (14), the cash premiums collected, together with any
29 amounts advanced under section 4710, shall be \$750,000. For
30 the purpose mentioned in section 3302(c)(1) or (4) the cash

1 premiums collected, together with any amounts advanced under
2 section 4710, shall be at least \$25,000. A company shall not
3 be organized for any of the purposes mentioned in section
4 3302(c) unless the cash premiums collected, together with the
5 amounts advanced under section 4710, are at least \$50,000;
6 nor shall a company be organized for all of the purposes
7 mentioned in section 3302(c), except paragraph (11) or (14),
8 unless the cash premiums collected together with the amounts
9 advanced under section 4710 are at least \$350,000.

10 (3) In the case of companies hereafter organized under
11 this part for the purposes mentioned in section 3302(b) and
12 (c), the company shall meet the requirements of paragraphs
13 (1) and (2) of this subsection, and the cash premiums
14 collected, together with any amounts advanced under section
15 4710, shall be at least the aggregate of the sums required
16 under this paragraph for the purposes for which the company
17 is to be incorporated.

18 (4) For the purpose of transacting employers' liability
19 and workmen's compensation insurance, the application shall
20 cover not less than 5,000 employees, and each employee shall
21 be considered a separate risk for determining the maximum
22 single risk.

23 (5) A company writing nonassessable policies shall
24 maintain unimpaired so much of its surplus as is equal to the
25 minimum capital required for stock companies authorized to
26 transact the same class or classes of insurance. A company
27 writing assessable policies shall maintain unimpaired 50% of
28 its required surplus.

29 (f) Fire, marine and casualty companies.--A stock fire,
30 stock marine, stock fire and marine or stock casualty company,

1 organized under this part for any or all of the purposes
2 mentioned in both section 3302(b) and (c), shall have paid-up
3 capital and paid-in surplus of not less than the aggregate
4 amount of paid-up capital and paid-in surplus required for such
5 purpose or purposes of a stock fire, stock marine and stock fire
6 and marine insurance company in subsection (b) and of a stock
7 casualty insurance company in subsection (c).

8 § 3307. Officers and directors.

9 The subscribers to the articles of agreement shall choose
10 from their number a president, a secretary and a treasurer. The
11 subscribers shall also choose from their number the number of
12 directors or trustees they deem advisable, but not less than
13 seven. Any person chosen, elected or appointed as director,
14 trustee, president, secretary or treasurer by the subscribers
15 shall continue in office unless the department, after such
16 investigation as it deems proper, determines that his
17 responsibility, character and general fitness for the business
18 are not such as to command the confidence of the public and to
19 warrant the belief that the business of the company will be
20 honestly and efficiently conducted in accordance with this
21 title. The officers and directors so chosen shall continue in
22 office until the first annual meeting of the stockholders or, in
23 the case of a mutual company, of the members, and until their
24 successors are duly chosen and qualified. Any adjudication by
25 the department under this section shall be subject to Title 2
26 (relating to administrative law and procedure).

27 § 3308. Subscriptions.

28 (a) Stock companies.--In any case where a stock insurance
29 company is to be organized, the subscribers shall open books for
30 the subscription to stock in the company at such times and

1 places as they deem convenient and proper and shall keep them
2 open until the full amount of capital stock specified in the
3 articles of agreement is subscribed.

4 (b) Mutual companies.--In any case where any mutual
5 insurance company is to be organized, the subscribers to the
6 articles of agreement shall open books to receive applications
7 for insurance at such times and places as they shall deem
8 convenient and proper and shall keep them open until
9 applications for insurance have been obtained in sufficient
10 number and amount to comply with the requirements of this title.
11 In the case of mutual life insurance companies, the subscribers
12 shall also, in the same manner as in the case of a stock
13 company, open books to receive subscriptions to the guarantee
14 capital as provided for in this title.

15 SUBCHAPTER B

16 PROMOTION

17 Sec.

18 3321. Definitions.

19 3322. Prohibited acts.

20 3323. Limitation on promotional expenses.

21 3324. Form of application or contract.

22 3325. Depositories.

23 3326. Disclosure of interest.

24 3327. Prohibited terms.

25 3328. Advertisements and prospectuses.

26 3329. Remedies.

27 3330. Criminal penalties.

28 § 3321. Definitions.

29 The following words and phrases when used in this subchapter
30 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Insurance corporation." A corporation organized to transact
3 the business of insurance or for the principal purpose of
4 holding and dealing in the stocks and securities of such a
5 corporation.

6 "Stock." Bonds and any other evidence of indebtedness or of
7 interest in the profits of any insurance corporation.

8 § 3322. Prohibited acts.

9 A person shall not as principal or agent, directly or
10 indirectly, for the purpose of promoting or organizing any
11 insurance corporation to be organized in or outside this
12 Commonwealth, or of promoting the sale of stock of such a
13 corporation after organization, sell, or agree or attempt to
14 sell, or secure subscriptions or applications for any stock in
15 the insurance corporation without complying in all respects with
16 this subchapter.

17 § 3323. Limitation on promotional expenses.

18 The application, subscription or sale contract shall be in
19 writing and shall contain a provision in the following language:
20 "No sum shall be used for commission, promotion and organization
21 expenses, on account of any share of stock in this corporation,
22 in excess of 10% of the amount actually paid upon separate
23 subscriptions for the stock. The remainder of these payments
24 shall be deposited or invested as authorized by law governing
25 such insurance corporation and shall be held by the organizers
26 or trustees, as the case may be, and the directors and officers
27 of the corporation after organization, as bailees for the
28 subscriber, to be used only in the conduct of the business of
29 insurance by the corporation after having been licensed therefor
30 by proper authority."

1 § 3324. Form of application or contract.

2 The application or the subscription contract shall contain a
3 statement giving:

4 (1) The names of the organizers or trustees, as the case
5 may be, and their residence.

6 (2) The par value of the shares, and the prices at which
7 shares shall be sold.

8 (3) The number of shares at each price.

9 (4) The total number of shares.

10 (5) The percentage which may be used for commission,
11 promotion or organization expenses, which together shall not
12 exceed 10% of the amount actually paid upon separate
13 subscriptions for the stock.

14 § 3325. Depositories.

15 Funds and securities held by organizers, trustees, directors
16 or officers as bailees shall be deposited with a bank or trust
17 company of this Commonwealth until the corporation has been
18 licensed.

19 § 3326. Disclosure of interest.

20 A person shall not participate in, receive or accept any part
21 or the promise of any part of any of the commission or reward of
22 any organizer, promoter or agent, for the sale of stock, unless
23 the name of the person and the fact of his interest in the
24 commission or reward appear upon the application or the
25 subscription. The omission of this statement shall, in addition
26 to the penalty provided in this subchapter, make the person
27 liable to the purchaser or his assignees for all sums paid by
28 the purchasers, with interest at the legal rate from date of
29 payment, upon the assignment or tender of assignment of the
30 stock so purchased.

1 § 3327. Prohibited terms.

2 A person receiving any commission or other profit or
3 advantage as organizer, promoter or agent, selling or agreeing
4 or attempting to sell any such stock, or in consideration of or
5 in connection with any such sale or any subscription contract
6 shall not, directly or indirectly, make or offer to make any
7 contract or agreement other than as plainly expressed therein;
8 nor shall the contract or subscription contain any agreement for
9 employment or for any deposit or for any special advantage to
10 the person purchasing or contracting for the stock.

11 § 3328. Advertisements and prospectuses.

12 A person shall not issue, deliver, circulate or publish in
13 this Commonwealth any advertisement in any newspaper or
14 periodical or any circular or prospectus for the sale of stock
15 of any insurance corporation, whether organized or proposed to
16 be organized in or outside this Commonwealth, for the purpose of
17 soliciting or securing applications or subscriptions to, or
18 contracts for the purchase of stock in, any such corporation,
19 unless a copy of the circular, prospectus or other advertisement
20 is first filed with the department, containing the name and
21 address of the person issuing, delivering, circulating or
22 publishing it, with a consecutive serial number for each
23 separate form of the circular, prospectus or other
24 advertisement.

25 § 3329. Remedies.

26 In the event of any violation of this subchapter, the
27 subscriber or purchaser affected thereby may elect to rescind
28 the contract and recover from the company or the agent all
29 payments, with interest at the legal rate from time of payment,
30 or he may elect to treat the contract as valid and enforceable

1 in his favor, but the contract shall not in either case be valid
2 or enforceable against the subscriber or purchaser.

3 § 3330. Criminal penalties.

4 Any person violating this subchapter commits a summary
5 offense.

6 SUBCHAPTER C

7 AUTHORIZATION

8 Sec.

9 3341. Certification to department.

10 3342. Approval of articles of agreement and letters patent.

11 3343. Recording of articles of agreement and letters patent.

12 3344. Information filed with the Auditor General.

13 3345. Certificate of authority.

14 § 3341. Certification to department.

15 (a) Corporations.--Whenever one-half of the capital stock
16 and paid-in surplus of any stock insurance company mentioned in
17 the articles of agreement has been subscribed and 20% of the
18 total subscription price on each share has been paid to the
19 treasurer of the company, the president, treasurer and a
20 majority of the directors shall, under their respective oaths,
21 make a certificate to the department stating:

22 (1) The number and par value of the shares of stock in
23 the company.

24 (2) The names and residences of the subscribers.

25 (3) The number of shares subscribed by each.

26 (4) The amount paid in on each share.

27 (5) The amount of money in the hands of the treasurer on
28 account of such payments.

29 (6) Where the amount is deposited.

30 (b) Mutual companies prior to subscription.--In the case of

1 a mutual insurance company, whenever applications for insurance
2 have been received in sufficient number and amount, the
3 president, treasurer and the majority of the directors of the
4 company shall, under their respective oaths, make a certificate
5 to the department stating:

6 (1) The names and residences of the persons applying for
7 insurance in the company.

8 (2) The amount agreed to be taken by each.

9 (3) The amount of money in the hands of the treasurer.

10 (c) Mutual companies after subscription.--In the case of
11 mutual life insurance companies, in addition to the certificate
12 required under subsection (b), as soon as the guarantee capital
13 has been subscribed and 50% thereof has been paid in lawful
14 money to the treasurer and the subscribers' obligations given
15 for the remaining 50% thereof, the president, treasurer and a
16 majority of the directors shall, under their respective oaths,
17 make a certificate to the department stating the following:

18 (1) The number and par value of the shares of guaranty
19 stock in the company.

20 (2) The names and residences of the subscribers.

21 (3) The number of shares subscribed by each.

22 (4) The amount paid in on each share.

23 (5) The form of obligations taken for the unpaid amount.

24 (6) The amount of money in the hands of the treasurer.

25 (7) Where the amount is deposited.

26 § 3342. Approval of articles of agreement and letters patent.

27 The subscribers to the articles of agreement of any insurance
28 company shall acknowledge the articles in duplicate before a
29 person empowered to take acknowledgments of deeds and forward
30 the articles in duplicate to the department. If it approves the

1 articles, the department shall certify in duplicate that the
2 requirements of this chapter in relation to the incorporation of
3 insurance companies have been complied with. The department
4 shall submit the articles of agreement to the Attorney General
5 for examination, and, if the Attorney General finds the same
6 articles in accordance with the law, he shall endorse his
7 approval thereon and certify them in duplicate to the Governor.
8 Upon receipt of the articles of agreement the Governor shall, if
9 he approves them, endorse his approval thereon in duplicate and
10 cause letters patent to issue. The letters patent shall
11 designate the subscribers to the articles and their associates
12 as a body corporate, with succession under the name designated
13 in the articles. A company receiving letters patent may not
14 engage in the business of insurance until all provisions of this
15 chapter have been complied with.

16 § 3343. Recording of articles of agreement and letters patent.

17 In any incorporation of an insurance company, the Secretary
18 of the Commonwealth shall cause the articles of agreement,
19 together with the proceedings thereon, and the certificate of
20 the Governor to be recorded in a book kept for that purpose. The
21 Secretary of the Commonwealth shall return one of the articles
22 and the letters patent to the company, which shall have them
23 recorded in the county of the company's principal place of
24 business. The Secretary of the Commonwealth shall furnish the
25 department with a certified copy of the letters patent and shall
26 certify the duplicate articles of agreement, with all
27 endorsements thereon, and file the articles with the department.
28 Copies of the records certified by the Secretary of the
29 Commonwealth may be used in evidence with the same effect as the
30 original.

1 § 3344. Information filed with the Auditor General.

2 (a) General rule.--A stock or mutual insurance company
3 incorporated under the law of this Commonwealth shall not go
4 into operation without first having the following registered in
5 the office of the Auditor General:

6 (1) The name of the company.

7 (2) The date of incorporation.

8 (3) The statute or authority under which incorporated or
9 organized.

10 (4) The place of business.

11 (5) The post office address and names of the president,
12 secretary and treasurer.

13 (6) The amount of capital stock, if any, authorized by
14 its charter.

15 (7) The amount of capital stock and paid-in surplus paid
16 into the treasury of the company.

17 (b) Penalty.--A company which neglects or refuses to comply
18 with this section shall be subject to a penalty of \$500, which
19 shall be collected on an account settled by the Auditor General
20 and State Treasurer in the same manner as taxes on stock are
21 settled and collected.

22 § 3345. Certificate of authority.

23 (a) Corporations.--When the entire amount of the authorized
24 capital of a stock insurance company incorporated under this
25 chapter has been paid in, certificates shall be issued therefor
26 to the persons entitled to receive the certificates,
27 transferable upon the books of the company. The president or
28 secretary of the company shall at that time notify the
29 department that the entire capital stock and paid-in surplus of
30 the company has been paid in and that it is ready to commence

1 business. Upon receipt of this notice, the department shall
2 examine the company. If it finds that it has complied with the
3 provisions and meets the requirements of this chapter and is
4 possessed of funds, invested in accordance with this title,
5 equal to the amount of its capital stock and paid in surplus,
6 the department shall issue to the company a certificate showing
7 that it has been organized in accordance with this chapter and
8 that it has the requisite amount of capital stock and paid in
9 surplus for the transaction of business in this Commonwealth.
10 The certificate shall be required to authorize the company to
11 issue policies and otherwise transact the business of insurance
12 for which it was incorporated.

13 (b) Mutual companies.--In the case of a mutual life
14 insurance company incorporated under this title, upon the
15 receipt of a notice from the president or secretary of the
16 company, the department shall make an examination. If it finds
17 that the necessary amount of insurance has been applied for and
18 that 50% of the guarantee capital has been paid in and invested,
19 less the necessary expenses of organization, and that
20 obligations have been given for the remaining 50% of the
21 guarantee capital, it shall issue a certificate authorizing the
22 company to commence business. The department shall, upon the
23 receipt of a notice from the president or secretary of any
24 mutual company, other than a mutual life insurance company,
25 incorporated under this subchapter, make an examination of the
26 company, and if it finds that the company has complied with the
27 provisions of this subchapter, it shall issue a certificate
28 authorizing the company to commence business.

29 (c) Examination by department.--In addition to its other
30 powers under this section, the department may conduct such

1 examination of any proposed company as it deems necessary to
2 determine whether the responsibility, character and general
3 fitness for the business of the incorporators and directors are
4 such as to command the confidence of the public and to warrant
5 the belief that the business of the proposed company will be
6 conducted honestly, efficiently and in accordance with this
7 title.

8 SUBCHAPTER D

9 VALUATION OF SECURITIES

10 Sec.

11 3351. Valuation of securities.

12 § 3351. Valuation of securities.

13 All bonds or other evidences of debt held by any domestic or
14 foreign stock or mutual insurance entity authorized to do
15 business in this Commonwealth shall, if amply secured and if not
16 in default as to principal or interest, be valued:

17 (1) If purchased at par, at the par value.

18 (2) If purchased above or below par, either:

19 (i) on the basis of the purchase price adjusted so
20 as to bring the value to par at maturity and so as to
21 yield, meantime, the effective rate of interest at which
22 the purchase was made; or

23 (ii) on the basis of the method of calculation
24 commonly known as the pro rata method.

25 The purchase price shall be taken at a higher figure than the
26 actual market value at the time of purchase. The department may
27 determine the eligibility of any such investments for valuation
28 on the basis of amortization and may by regulation prescribe or
29 limit the classes of securities eligible for amortization. The
30 insurer may return the bonds or other evidences of debt at their

1 market value or their book value but not at an aggregate value
2 exceeding the aggregate of the values calculated according to
3 the method employed by it in conformity with this section. If a
4 bond or evidence of debt amply secured and not in default as to
5 principal or interest has been acquired by a domestic stock or
6 mutual entity as a result of an exchange of securities, and the
7 department has determined the transaction to be an exchange and
8 to be for the betterment of the portfolio of the insurer, the
9 purchase price of the bond or evidence of debt shall be deemed
10 to be the value of the security or securities exchanged
11 therefor, as shown in the last preceding annual statement of the
12 domestic stock or mutual entity filed with the department.

13 SUBCHAPTER E

14 CONVERSION OF MUTUAL COMPANIES TO CORPORATIONS

15 Sec.

16 3361. Definitions.

17 3362. Valuation of interest of owner.

18 3363. Documentation filed with department.

19 3364. Determination by department.

20 3365. Hearing on approval.

21 3366. Approval of plan of conversion by policyholders.

22 3367. Recording plan of conversion.

23 3368. Legal effect of conversion.

24 3369. Subscriptions to capital stock of company.

25 3370. Survival of mutual policies.

26 3371. Laws applicable to converted companies.

27 3372. Commencement of business.

28 § 3361. Definitions.

29 The following words and phrases when used in this subchapter
30 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Company." A mutual insurance company organized by or under
3 any law of this Commonwealth, other than a mutual life insurance
4 company or a company which operates exclusively on the basis of
5 perpetual policies issued in consideration of an initial deposit
6 of moneys with the insurer to be held by it during the time the
7 policies are in force and to be returned to the insureds, in
8 whole or in part, upon cancellation of the policies.

9 "Owner." A policyholder of the company or the holder of a
10 certificate issued by the company pursuant to section 4710
11 (relating to loans to companies).

12 § 3362. Valuation of interest of owner.

13 In valuing the interest of each owner in the surplus of the
14 company, surplus shall be allocated:

15 (1) To holders of certificates issued under section 4710
16 (relating to loans to companies) to the full extent of the
17 face value thereof.

18 (2) The balance of the surplus, if any, remaining after
19 the allocation provided in paragraph (1), to policyholders on
20 the basis of the ratio which the net premium which each
21 policyholder has paid to the company during the three years
22 ending with the fiscal year of the company immediately
23 preceding that in which the allocation is made bears to the
24 total net premiums received by the company during that three-
25 year period. As used in this paragraph the term "net premium"
26 means gross premium less return premium and dividends
27 received.

28 § 3363. Documentation filed with department.

29 Any company intending a conversion pursuant to this
30 subchapter shall file with the department:

1 (1) A resolution passed by the board of directors of the
2 company to the effect that the conversion of the company to a
3 stock insurance company is advisable, and stating the reasons
4 therefor.

5 (2) A comprehensive plan of conversion of the company
6 into a stock insurance company, which shall contain the
7 following information:

8 (i) A statement of all the assets and liabilities of
9 the company, setting forth the current fair market value
10 of each of the assets.

11 (ii) A list of the owners of the company together
12 with the value of the interest of each owner in the
13 surplus of the company determined as set forth in section
14 3362 (relating to valuation of interest of owner).

15 (iii) The number of shares of capital stock to be
16 issued and the manner of converting the interest in the
17 surplus of each owner of the company into shares of the
18 company under the stock plan.

19 (iv) The manner of making payment in cash to owners
20 of the company who fail or refuse within a specified
21 period of time to convert their interest in the surplus
22 into stock and the amount of the payment.

23 (v) The amount of the new capital stock for which
24 each owner may subscribe and how and when the
25 subscriptions are payable, including the procedure for
26 buying or selling rights to subscribe to less than a full
27 share so that no fractional shares of capital stock will
28 be issued.

29 (vi) The manner of providing for paid-in surplus and
30 appropriate reserves in amounts at least sufficient to

1 comply with the requirements of section 3306 (relating to
2 minimum capital stock and financial requirements).

3 (vii) A list of all persons who are directors or
4 executive officers of the company or who perform similar
5 functions, and all persons who have been chosen to become
6 directors or executive officers or to perform similar
7 functions after the conversion, but who have not yet
8 assumed their positions.

9 (viii) Such plans and arrangements as the company
10 may have for its future business and management,
11 including those with respect to total or partial
12 liquidation, sale of assets, merger, material change in
13 business, corporate structure, management or composition
14 of the board of directors.

15 (ix) Information as to any contracts or arrangements
16 with respect to any securities of the company, including,
17 but not limited to, contracts or arrangements with
18 respect to transfer of any securities, joint ventures,
19 loan or option agreements, puts or calls, guaranties of
20 loans, guaranties against loss or guaranties of profits,
21 division of losses or profits, or the giving or
22 withholding of proxies, naming the parties to such
23 contracts or arrangements and giving the details thereof.

24 (x) Such proposed amendments to the charter of the
25 company as may be necessary for the purpose of changing
26 its name, changing the location of its principal office
27 or place of conducting its business, changing its purpose
28 or purposes or for any other purpose.

29 (xi) Such additional information as the department
30 may require to enable it to make a determination under

1 section 3364 (relating to determination by department).

2 § 3364. Determination by department.

3 (a) General rule.--The department after making an
4 examination of the company and holding a hearing shall determine
5 if:

6 (1) The plan of conversion is fair to the owners and
7 creditors of the company and complies with the requirements
8 of section 3363 (relating to documentation filed with
9 department).

10 (2) The department has any reason to believe that after
11 the conversion the company will not continue to comply in all
12 respects with the laws and regulations of this Commonwealth
13 governing insurance.

14 (b) Notice.--The department shall notify the company of its
15 determination.

16 § 3365. Hearing on approval.

17 (a) Notice.--Notice of the hearing required by section 3364
18 (relating to determination by department) shall be served as
19 follows:

20 (1) By publication not less than three times in one
21 newspaper of general circulation published in the county in
22 which the principal office of the company is located, and in
23 the legal periodical, if any, designated by the rules of
24 court of the county for the publication of legal notices.

25 (2) By written or printed notice addressed and mailed by
26 certified mail, with return receipt requested, to each owner
27 at his address as shown on the books of the company at least
28 ten days before the hearing date. The form of the notice
29 shall be approved in advance of mailing by the department and
30 shall be accompanied by a copy of the plan of conversion.

1 (b) Procedure.--Any hearing held pursuant to this subchapter
2 shall be conducted, and the determination of the department
3 shall be rendered, in accordance with Title 2 (relating to
4 administrative law and procedure).

5 § 3366. Approval of plan of conversion by policyholders.

6 (a) Submission of plan.--If an approving determination is
7 made by the department, and not otherwise, the plan of
8 conversion shall be submitted to the policyholders of the
9 company for approval at the regular annual meeting of the
10 company or at a meeting specially called for the purpose of
11 approval. At least four weeks' previous notice of this meeting
12 shall be given by publication not less than three times in a
13 newspaper of general circulation, published in the county in
14 which the principal office of the company is located, and by
15 written or printed notice addressed and mailed by certified
16 mail, with return receipt requested, to each policyholder at his
17 address as shown on the books of the company.

18 (b) Approval of plan.--If a quorum is present at the special
19 meeting and the majority of the policyholders who attend the
20 meeting, either in person or by proxy, approve the plan of
21 conversion following due proof of the adequacy of the notice and
22 the results of the meeting being made to the department in a
23 form satisfactory to it, the directors of the company shall, at
24 such times and places as they deem convenient and proper, open
25 books and receive subscriptions to the stock of the company and
26 shall keep the books open until the full amount of capital stock
27 specified in the plan of conversion is subscribed.

28 § 3367. Recording plan of conversion.

29 Upon approval of the plan of conversion by the policyholders,
30 the fact of approval shall be set forth in duplicate

1 certificates to be executed by the secretary of the company
2 under the seal thereof. The certificates, with a copy of the
3 approved plan of conversion attached to each, shall be filed
4 with the department which shall then certify in duplicate that
5 all of the requirements of this subchapter have been complied
6 with. The department shall submit the certified plan of
7 conversion to the Secretary of the Commonwealth for recording.
8 The certified plan shall be recorded by the company in the
9 office of the recorder of deeds in the county in which the
10 principal office of the company is located.

11 § 3368. Legal effect of conversion.

12 When the plan of conversion has been recorded as provided in
13 section 3367 (relating to recording plan of conversion):

14 (1) Any amendments to the charter of the company set
15 forth in the plan of conversion shall be deemed to form part
16 of the charter of the company.

17 (2) All rights of the policyholders of the company to
18 vote at any meeting of the company or to retain any interest
19 in the company or in the property or assets thereof shall
20 absolutely cease and determine.

21 The company shall at that time become a stock insurance company
22 under the corporate name adopted under the plan of conversion.
23 The Secretary of the Commonwealth shall issue to the company a
24 certificate, under his hand and the seal of his office,
25 evidencing the right of the company to use the corporate name.

26 § 3369. Subscriptions to capital stock of company.

27 Owners of the company may subscribe to its capital stock at
28 par value in proportion to their respective interests in the
29 surplus of the company, as set forth in the plan of conversion
30 approved by the department. No share of stock shall be disposed

1 of or a certificate issued therefor unless the actual par value
2 thereof has been paid to the company in cash, except stock
3 issued to owners of the company in conversion of their
4 respective interests in its surplus. Subscriptions shall be made
5 in writing and filed with the proper officer of the company in
6 accordance with the plan of conversion. Stock issued to the
7 owners of the company in conversion of their respective
8 interests in its surplus pursuant to this section shall not be
9 subject to the act of December 5, 1972 (P.L.1280, No.284), known
10 as the Pennsylvania Securities Act of 1972, or to regulation by
11 the Pennsylvania Securities Commission.

12 § 3370. Survival of mutual policies.

13 The issued and outstanding mutual policies of the company and
14 all the rights and liabilities attached thereto, and all the
15 powers and obligations of the company with reference to them,
16 shall survive and be powers and obligations of the stock
17 insurance company so long as the policies remain in force,
18 except that the stock insurance company shall have no power to
19 levy any assessment against any policyholder.

20 § 3371. Laws applicable to converted companies.

21 Except as otherwise specified in this subchapter, a company
22 converted into a stock insurance company under this subchapter
23 shall have all the rights and privileges and shall be subject to
24 all the requirements and regulations imposed upon stock
25 insurance companies formed under this title, but it shall
26 exercise no rights or privileges which other stock insurance
27 companies may not exercise.

28 § 3372. Commencement of business.

29 A company may not engage in the business of insurance as a
30 stock insurance company until this subchapter has been complied

1 with.

2

CHAPTER 35

3

CORPORATE OPERATIONS

4 Subchapter

5 A. Conduct of Business

6 B. Election of Directors and Officers

7 C. Fundamental Changes

8 D. Merger, Consolidation and Voluntary Dissolution

9 E. Foreign or Alien Companies

10 F. Violations and Penalties

11

SUBCHAPTER A

12

CONDUCT OF BUSINESS

13 Sec.

14 3501. Use of company name.

15 3502. Stock and stockholders.

16 3503. Ownership of stock.

17 3504. Bylaws and seal.

18 3505. Administrative affairs.

19 3506. Salaries of employees in military service.

20 3507. Pensions.

21 3508. Execution of insurance policies.

22 3509. Joint policies.

23 3510. Incorporation of documents in policy.

24 3511. Lost insurance policies.

25 3512. Reinsurance.

26 3513. Reinsurance credits.

27 3514. Reinsurance among affiliates.

28 3515. Approval of contracts by department.

29 3516. Mortgage insurance.

30 3517. Distribution of dividends on group insurance.

1 § 3501. Use of company name.

2 The department may prohibit the use, by any domestic stock or
3 mutual insurance company or association and the use in this
4 Commonwealth by any foreign or alien stock or mutual insurance
5 company or association, of any name adopted on or after December
6 30, 1959, when, in its judgment, the name too closely resembles
7 that of an existing company or association authorized to do
8 business in this Commonwealth or is likely to confuse or mislead
9 the public.

10 § 3502. Stock and stockholders.

11 (a) Rights of stockholders.--Any stockholder shall be
12 entitled to receive a certificate of the number of shares
13 standing to his credit on the books of the company. This
14 certificate shall be signed by the president, vice president or
15 other officer designated by the board of directors,
16 countersigned by the treasurer and sealed with the seal of the
17 company which may be a facsimile, engraved or printed. This
18 certificate or evidence of stock ownership may be transferred
19 upon the books of the company in person or by attorney in such a
20 manner as the bylaws prescribe, subject to all payments to
21 become due thereon.

22 (b) Certificate.--If a certificate is signed by a transfer
23 agent or by a transfer clerk of the company and a registrar, the
24 signature of any company officer upon the certificate may be a
25 facsimile, engraved or printed. In case any officer who has
26 signed or whose facsimile signature has been placed upon any
27 share certificate has ceased to be an officer for any reason
28 before the certificate is issued, it may nevertheless be issued
29 by the company.

30 (c) Limitations on rights.--Stock shall not be transferred

1 until all previous calls on it have been fully paid in. Stock
2 which has been declared forfeited for nonpayment of calls shall
3 not be transferable. The assignee or party to whom the stock is
4 transferred shall be a member of the company and enjoy the
5 rights and be subject to the liabilities thereof. Upon a sale of
6 stock in satisfaction of any debt for which it is pledged, the
7 purchaser may compel a transfer of the stock upon the books of
8 the company and the delivery of the proper certificate.

9 § 3503. Ownership of stock.

10 (a) Filing of statement.--Every person who is directly or
11 indirectly the beneficial owner of more than 10% of any class of
12 any equity security of a domestic stock insurance company, or
13 who is a director or an officer of a company, shall file a
14 statement with the department in such form as the department
15 shall prescribe. The statement shall be filed within ten days
16 after the person becomes a beneficial owner, director or
17 officer, listing the amount of all equity securities of the
18 company of which he is the beneficial owner. A statement in such
19 form as the department shall prescribe shall also be filed
20 within ten days after the close of each calendar month, if there
21 has been a change in ownership during that month, indicating
22 each person's ownership at the close of the calendar month and
23 such changes in his ownership as have occurred during the
24 calendar month.

25 (b) Limitations on short-term transactions.--For the purpose
26 of preventing the unfair use of information which may have been
27 obtained by a beneficial owner, director or officer by reason of
28 his relationship to the company, any profit realized by him from
29 any purchase and sale, or any sale and purchase, of any equity
30 security of the company within any period of less than six

1 months, unless the security was acquired in good faith in
2 connection with a debt previously contracted, shall inure to and
3 be recoverable by the company. This is the case irrespective of
4 any intention on the part of the beneficial owner, director or
5 officer in entering into the transaction of holding the security
6 purchased or of not repurchasing the security sold for a period
7 exceeding six months. An action to recover this profit may be
8 instituted at law or in equity in any court of competent
9 jurisdiction by the company, or by the owner of any security of
10 the company in the name and on behalf of the company, if the
11 company fails or refuses to bring the action within 60 days
12 after request or fails to prosecute the suit diligently.

13 However, no action shall be brought more than two years after
14 the date the profit was realized. This subsection does not cover
15 any transaction where the beneficial owner was not such at the
16 time of the purchase and sale, or the sale and purchase, of the
17 security, or any transaction which the department by regulation
18 exempts as not within the purpose of this subsection.

19 (c) Sale of securities.--A beneficial owner, director or
20 officer shall not sell, directly or indirectly, any equity
21 security of the company if the person selling the security or
22 his principal does not own the security sold or, if owning the
23 security, he fails to deliver it against the sale within 20 days
24 after the sale or fails within five days after the sale to
25 deposit it in the mail or another usual channel of
26 transportation. However, a person shall not be deemed to have
27 violated this subsection if, notwithstanding the exercise of
28 good faith, he was unable to make the delivery or deposit within
29 the required time or if doing so would have caused undue
30 inconvenience or expense.

1 (d) Dealers.--Subsection (b) does not apply to any purchase
2 and sale, or sale and purchase, and subsection (c) does not
3 apply to any sale, of an equity security of a domestic stock
4 insurance company not then or theretofore held by him in an
5 investment account, by a dealer in the ordinary course of his
6 business and incident to the establishment or maintenance by him
7 of a primary or secondary market, other than on an exchange as
8 defined in section 3 of Securities Exchange Act of 1934 (48
9 Stat. 882, 15 U.S.C. § 78c(a)(1)) for the security. The
10 department may by regulation define and prescribe terms and
11 conditions with respect to securities which shall be held in an
12 investment account and transactions made in the ordinary course
13 of business and incident to the establishment or maintenance of
14 a primary or secondary market.

15 (e) Arbitrage transactions.--Subsections (a), (b) and (c) do
16 not apply to foreign or domestic arbitrage transactions unless
17 made in contravention of any regulations the department
18 promulgates in order to carry out the purposes of this section.

19 (f) Limitation on the applicability of section.--The
20 provisions of subsections (a), (b) and (c) do not apply to
21 equity securities of a domestic stock insurance company if:

22 (1) the securities are registered or are required to be
23 registered pursuant to the Federal Securities Exchange Act of
24 1934 (48 Stat. 881, 15 U.S.C. § 78 et seq.); or

25 (2) the domestic stock insurance company does not have
26 any class of its equity securities held of record by 100 or
27 more persons on the last business day of the year next
28 preceding the year in which equity securities of the company
29 would be subject to the provisions of subsections (a), (b)
30 and (c) except for the provisions of this paragraph.

1 (g) Regulations.--No provision of subsections (a), (b), and
2 (c) imposing any liability shall apply to any act done or
3 omitted in good faith in conformity with any rule or regulation
4 of the department, notwithstanding that the rule or regulation
5 may, after the act or omission, be amended or rescinded or
6 determined by judicial or other authority to be invalid for any
7 reason.

8 (h) Criminal penalty.--Any person violating this section
9 commits a summary offense.

10 (i) Definition.--As used in this section the term "equity
11 security" means any of the following:

12 (1) A stock or similar security.

13 (2) A security convertible, with or without
14 consideration, into such a security or carrying a warrant or
15 right to subscribe to or purchase such a security.

16 (3) Any such warrant or right.

17 (4) Any other security which the department by
18 regulation deems to be of similar nature and considers
19 necessary or appropriate.

20 § 3504. Bylaws and seal.

21 A company incorporated under Chapter 33 (relating to
22 incorporation of insurance companies) may make any bylaws
23 necessary for the government of its officers and the conduct of
24 its affairs, alter and amend the bylaws, have a common seal and
25 change the seal.

26 § 3505. Administrative affairs.

27 (a) Officers.--The directors or trustees shall annually
28 choose by ballot a president, who shall be a member of the
29 board, a secretary and a treasurer, who may also be either the
30 president or the secretary, and such other officers as the

1 bylaws provide. The directors or trustees shall fix the salaries
2 of the president, secretary and treasurer and the salaries or
3 compensation of such other officers and agents as the bylaws
4 prescribe. The treasurer shall give bond in a sum and with the
5 sureties prescribed by the bylaws.

6 (b) Vacancies.--Vacancies in any office may be filled by the
7 directors or trustees or by the stockholders or members as the
8 bylaws prescribe.

9 (c) Removal.--Any person chosen, either annually or to fill
10 a vacancy, as president, secretary, treasurer or as any other
11 officer shall continue to serve in the office unless the
12 department, after investigation, determines that the
13 responsibility, character and general fitness for the business
14 of the individual are not such as to command the confidence of
15 the public and to warrant the belief that the business of the
16 company will be honestly and efficiently conducted. Any
17 adjudication by the department pursuant to this subsection shall
18 be subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and
19 procedure of Commonwealth agencies).

20 § 3506. Salaries of employees in military service.

21 Any stock or mutual insurance company may continue the
22 salaries of any employee which he serves as a member of any
23 branch of the armed service of the United States or of any state
24 or in any other organization established for the protection of
25 the lives and property of citizens of the United States.

26 § 3507. Pensions.

27 Any stock or mutual insurance company may, out of the
28 earnings of the company, grant retirement allowances, pensions
29 or disability pay to officers and employees. This section does
30 not apply to any director who is not an officer or employee of

1 the company.

2 § 3508. Execution of insurance policies.

3 Policies of insurance, made or entered into by any stock or
4 mutual insurance company, may be made either with or without the
5 company seal. The policies shall be subscribed by the president
6 or any other officer designated by the directors or trustees.
7 The policies shall be attested by the secretary or other
8 designated officer and, when so subscribed and attested, shall
9 be obligatory on the company.

10 § 3509. Joint policies.

11 Two or more insurance entities authorized to transact the
12 same kinds of insurance business in this Commonwealth may issue
13 a combination policy, using a distinctive title. The title shall
14 follow the titles of the several entities so obligated. The
15 policy shall be executed by each entity in the same manner as it
16 would execute its individual policy. The policy shall state that
17 it is a joint contract and that each entity is only liable for a
18 specific percentage of any loss or damage occurring under it.
19 Before any entity issues a combination policy, it shall receive
20 the express permission of the department to issue the policy and
21 the title shall be approved by it.

22 § 3510. Incorporation of documents in policy.

23 Any insurance policy issued by a stock or mutual insurance
24 company or association doing business in this Commonwealth, in
25 which the application of the insured, the constitution, bylaws
26 or other rules of the company form part of the policy or
27 contract between the parties or have any bearing on the
28 contract, shall contain, or have attached copies of the
29 application as signed by the applicant, or the constitution,
30 bylaws or other rules referred to. Unless so accompanying the

1 policy, no such application, constitution, bylaws or other rules
2 shall be received in evidence in any proceeding pertaining to
3 the policy or deemed a part of the policy or contract between
4 the parties.

5 § 3511. Lost insurance policies.

6 (a) General rule.--Whenever any policy of insurance upon any
7 property, granted by any body corporate or politic, has been
8 lost or destroyed, the issuer shall, on proof of the loss or
9 destruction of the policy, furnish a copy of the policy to the
10 person whose policy has been lost or destroyed. Any transfers
11 which have been approved and recorded on the books of the
12 issuer, which have been made by the original or subsequent
13 grantee of the policy to the person having the same at the time
14 of the loss or destruction thereof, shall be included with the
15 copy. The copy made under this section shall have the same
16 effect as the original and subject to the same extent to
17 transfer to any person purchasing the property insured.

18 (b) Proceedings in case of lost policy.--The holder of the
19 policy may file a complaint with the county in which the
20 property has been insured, setting forth the loss or destruction
21 of the policy of insurance, the petitioner's demand upon the
22 insurer for a copy of the policy, a description of the property,
23 the amount for which it was insured and the person or persons to
24 whom granted, if practicable, together with any transfers
25 thereof.

26 § 3512. Reinsurance.

27 (a) Approval of department.--A domestic stock or mutual
28 insurance entity shall not reinsure its entire schedule of
29 policies except by approval of the department.

30 (b) Authorization to reinsure.--Any domestic or foreign

1 stock or mutual insurance entity authorized to transact business
2 in this Commonwealth may reinsure all or any part of its
3 liability under one or more of its policy contracts with any
4 stock or mutual insurance entity doing the same or a similar
5 kind of business and licensed to transact business in this
6 Commonwealth or in any state, if the entity maintains the same
7 standard of solvency and meets and continues to meet all other
8 requirements under the law of this Commonwealth for entities
9 transacting the same classes of business in this Commonwealth.
10 Any domestic or foreign stock or mutual insurance entity
11 authorized to transact business in this Commonwealth shall pay
12 to this Commonwealth taxes required on all business taxable in
13 this Commonwealth and reinsured under this section and may take
14 credit for the reserves of each ceded risk to the extent
15 reinsured subject to the exceptions provided in sections 3513
16 (relating to reinsurance credits) and 3514 (relating to
17 reinsurance among affiliates).

18 § 3513. Reinsurance credits.

19 (a) Qualification of reinsurer.--Unless an unlicensed
20 reinsurer is qualified to accept reinsurance from insurers
21 licensed in this Commonwealth, a credit shall not be allowed as
22 an admitted asset or as a reduction of liability relative to
23 risks ceded by the licensed insurers. Reinsurers meeting the
24 conditions for reinsurers specified by the department and
25 included on a list of qualified reinsurers published and
26 periodically reviewed by the department shall be deemed
27 qualified reinsurers.

28 (b) Reserve credit for liability assumed.--A credit shall
29 not be allowed as an admitted asset or as a deduction from
30 liability to any ceding entity for reinsurance, unless the

1 reinsurance is payable to the entity or its statutory liquidator
2 by the assuming entity on the basis of the liability of the
3 ceding entity under contract or contracts reinsured without
4 diminution because of insolvency of the ceding entity.

5 (c) Payment by assuming entity.--A credit shall not be
6 allowed for reinsurance unless the reinsurance agreement
7 provides that payment by the assuming entity shall be made
8 directly to the ceding entity or to its liquidator, receiver or
9 statutory successor.

10 § 3514. Reinsurance among affiliates.

11 (a) Exemption.--Sections 3512 (relating to reinsurance) and
12 3513 (relating to reinsurance credits) do not apply to
13 reinsurance agreements between or among affiliates covering all
14 or substantially all of one or more lines of insurance of an
15 affiliated domestic or foreign stock or mutual insurance entity.
16 However, the amount of net written premium retained and the
17 amount of the reinsurance and retrocession assumed by any
18 affiliate participating agreement shall not be unreasonably
19 large in relationship to its policyholders' surplus.

20 (b) Definitions.--As used in this section the terms
21 "affiliated" and "affiliate" shall have the meanings set forth
22 in section 3569 (relating to holding company systems), except
23 that control shall be presumed to exist if any person directly
24 or indirectly owns, controls, holds with power to vote or holds
25 shares representing 80% or more of the voting power of any other
26 person.

27 § 3515. Approval of contracts by department.

28 (a) Forms approved by department.--An insurance entity,
29 including a domestic mutual fire insurance company, doing
30 business in this Commonwealth shall not issue, sell or dispose

1 of any policy, contract or certificate of insurance or
2 pertaining to a pure endowment or annuity or use any
3 application, rider or endorsement in connection therewith,
4 unless the forms have previously been filed with and formally
5 approved by the department. This section does not apply to
6 riders and endorsements relating to the manner of distribution
7 of benefits or to the reservation of rights and benefits under
8 any policy used at the request of the individual policyholder or
9 to any forms which are exempted therefrom by the department.

10 (b) Deemed approval.--Forms filed under this section or any
11 other provision of this title except section 7524 (relating to
12 rates and contracts) or 7729 (relating to rates and contracts),
13 unless specifically provided otherwise, shall be deemed approved
14 at the expiration of 30 days after filing, unless earlier
15 approved or disapproved by the department. The department, by
16 written notice to the insurer within this 30-day period, may
17 extend the period for approval or disapproval for an additional
18 30 days. Approval under this subsection shall become void upon
19 any subsequent notice of disapproval from the department or upon
20 any subsequent withdrawal of license or refusal of the
21 department to relicense the entity or upon the subsequent
22 passage of a statute which would prohibit such contracts or
23 related forms.

24 (c) Hearing.--Upon disapproval, the department shall notify
25 the insurer in writing, specifying the reason for the
26 disapproval. Within 30 days from the date of mailing of the
27 notice to the insurer, the insurer may make a written
28 application to the department for a hearing. The hearing shall
29 be held within 30 days after receipt of the application. The
30 procedure before the department shall be in accordance with 2

1 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of
2 Commonwealth agencies), and the insurer shall be entitled to
3 judicial review under 2 Pa.C.S. Ch. 7 Subch. A (relating to
4 judicial review of Commonwealth agency action).

5 § 3516. Mortgage insurance.

6 Insurance entities may make application for and obtain
7 insurance of mortgages as provided by the National Housing Act
8 of 1934 (48 Stat. 1246, 12 U.S.C. § 1701 et seq.).

9 § 3517. Distribution of dividends on group insurance.

10 Any dividends declared or rate reductions made or continued
11 under any group insurance policy or group annuity contract
12 issued may be applied to reduce the employer's part of the cost.
13 However, if, at any time, under a policy or contract providing
14 for employee contributions, the aggregate of any dividends or
15 rate reductions so applied is in excess of the employer's share
16 of the aggregate cost, the excess shall be applied by the
17 employer for the sole benefit of the employees.

18 SUBCHAPTER B

19 ELECTION OF DIRECTORS AND OFFICERS

20 Sec.

21 3531. Annual meetings.

22 3532. Voting rights.

23 3533. Election of directors and trustees.

24 3534. Mutual fire insurance companies.

25 3535. Voting by stockholders and members.

26 3536. Proxies issued by domestic stock companies.

27 3537. Cumulative voting.

28 3538. Failure to elect directors or trustees.

29 3539. Directors and trustees.

30 § 3531. Annual meetings.

1 (a) Time.--Every insurance company shall hold an annual
2 meeting for the election of directors or trustees on or before
3 May 1 as the bylaws of the company direct.

4 (b) Notice.--At least 30 days' notice of the time and place
5 of the meeting shall be given to the stockholders or, in the
6 case of a mutual company, to the members by publication not less
7 than three times in at least two daily or weekly newspapers and
8 in the legal periodical designated by the rules of court of the
9 proper county for the publication of legal notices published in
10 the municipality where the company is domiciled.

11 (c) Quorum.--Every stock and mutual insurance company may
12 determine by its bylaws what number of members or stockholders
13 shall attend, either in person or by proxy, or what number of
14 shares or amount of interest shall be represented at any meeting
15 to constitute a quorum. If the quorum is not so determined, a
16 majority in interest of the members or stockholders shall
17 constitute a quorum.

18 § 3532. Voting rights.

19 (a) Right to vote stock.--The certificate of stock or the
20 transfer books of any stock insurance company shall be prima
21 facie evidence of the right of the person named therein to vote
22 as the owner, either personally or by proxy.

23 (b) Objections.--An objection may be taken by a stockholder
24 at the time a ballot is tendered which shall be accompanied by a
25 written statement under oath that the person who is offering to
26 vote the stock is not the owner, either in his own right or as
27 active trustee with the character of his trusteeship disclosed
28 on the face of the certificate or transfer books in connection
29 with his name. The judges of election shall immediately
30 determine whether the facts are as represented in the statement,

1 and, if so, the vote or votes shall be rejected. In any case
2 where the person named in the certificate or transfer books is
3 not permitted to vote, the beneficial owner of the stock may
4 vote, upon furnishing to the judge of election satisfactory
5 evidence of ownership.

6 (c) Powers of certain fiduciaries unaffected.--This section
7 does not prohibit executors, administrators, guardians or
8 trustees, created by a will or a decree of court, from voting
9 stock standing in the name of a decedent, minor or other
10 beneficiary.

11 (d) Pledged stock.--As between the pledgor and the pledgee
12 of capital stock pledged to secure a specific loan with a fixed
13 period or periods of maturity, the right to vote shall be
14 determined under the written agreement of the pledgor and
15 pledgee, but if no such agreement exists, the pledgor shall be
16 entitled to the right to vote.

17 § 3533. Election of directors and trustees.

18 (a) General rule.--At the annual meeting, the stockholders
19 or members shall elect by ballot from their own number not less
20 than seven directors or trustees. The directors or trustees
21 shall be natural persons of majority age and need not be
22 residents of this Commonwealth unless the articles or bylaws so
23 require, but at least two-thirds shall be citizens of the United
24 States or its territories or possessions. These persons shall
25 serve for one year and until their successors are chosen and
26 qualified.

27 (b) Classes of directors.--Any insurance company may provide
28 in its bylaws for the divisions of its board of directors or
29 trustees into as many as four classes and may provide for the
30 election thereof at its annual meetings in a manner such that

1 the members of one class only shall retire and their successors
2 shall be chosen each year.

3 (c) Vacancies.--Vacancies, including those resulting from an
4 increase in the number of directors or from failure of the
5 stockholders to fill any class of directors, may be filled by an
6 election by the board of directors or trustees for the unexpired
7 term.

8 (d) Removal.--Any stockholder or member elected to the post
9 of director or trustee shall continue in office unless the
10 department, after investigation, determines that the
11 responsibility, character and general fitness for the business
12 of the individual are not such as to command the confidence of
13 the public and to warrant the belief that the business of the
14 company will be honestly and efficiently conducted. Any
15 adjudication by the department under this subsection shall be
16 subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and
17 procedure of Commonwealth agencies).

18 § 3534. Mutual fire insurance companies.

19 A majority of the board of directors or trustees of a mutual
20 fire insurance company shall be residents of this Commonwealth.
21 The number of directors or trustees may be increased or
22 diminished by the members of the company at any regular annual
23 meeting or at any special meeting called for that purpose, of
24 which notice shall be given as required by the bylaws. The
25 company, by its bylaws, may authorize the board to increase or
26 decrease the number of directors or trustees without a vote of
27 the members. The company, by the bylaws, may provide for written
28 nominations by any of its members for election as directors or
29 trustees and for the time and manner of filing the nominations
30 with the company prior to the meeting at which the election is

1 to be held. Only persons so nominated shall be eligible for
2 election at the meeting.

3 § 3535. Voting by stockholders and members.

4 At all meetings of the company, each share of stock in a
5 stock company and each member in a mutual company shall be
6 entitled to one vote. However, in the case of mutual companies,
7 other than mutual life companies, each member shall be entitled
8 to one vote or to a number of votes based upon the insurance in
9 force, the number of policies held or the amount of premiums
10 paid. Proxies may be authorized by written power of attorney.
11 The record of the votes made by the secretary, which shall show
12 whether the votes were cast in person or by proxy, shall be
13 evidence of all elections.

14 § 3536. Proxies issued by domestic stock companies.

15 (a) Regulation.--The department may, by regulation,
16 prescribe the form, content and manner of solicitation of any
17 proxy, consent or authorization with respect to any voting
18 security issued by a domestic stock insurance company as
19 necessary or appropriate in the public interest or for the
20 proper protection of investors in the voting securities issued
21 by the insurance company or to insure the fair dealing in the
22 voting securities.

23 (b) Prohibition of solicitation.--No person or voting
24 security holder and no domestic stock insurance company or any
25 director, officer or employee of that company shall solicit or
26 permit the use of his name to solicit any person to give any
27 proxy, consent or authorization with respect to any voting
28 security issued by the insurance company in contravention of any
29 rule or regulation the department prescribes pursuant to this
30 section.

1 (c) Limitation of action.--Any action to enforce compliance
2 with any rule or regulation of the department shall be taken
3 within 30 days after exercise of the proxy, consent or
4 authorization.

5 (d) Applicability.--This section does not apply to:

6 (1) Voting securities of a domestic stock insurance
7 company if the securities are registered under section 12 of
8 the Securities Exchange Act of 1934 (48 Stat. 892, 15 U.S.C.
9 § 781).

10 (2) Voting securities of a domestic stock insurance
11 company which, because of the number of its stockholders or
12 the distribution of its stock ownership, the department, by
13 regulation, deems not necessary or appropriate to regulate in
14 the public interest or for the proper protection of investors
15 therein.

16 (e) Definition.--As used in this section the term "voting
17 security" means any instrument which, in law or by contract,
18 gives the holder the right to vote, or consent to or authorize
19 any corporate action of a domestic stock insurance company.

20 § 3537. Cumulative voting.

21 In all elections for directors or trustees of any stock or
22 mutual insurance company, each member or stockholder having a
23 right to vote may cast the whole number of his votes for one
24 candidate or distribute them upon two or more candidates.

25 § 3538. Failure to elect directors or trustees.

26 If the stockholders or members of any insurance company fail
27 to elect directors or trustees at any annual meeting, the
28 directors or trustees may call a special meeting for that
29 purpose on a subsequent day. Notice of the meeting shall be
30 given as provided in section 3531(b) (relating to annual

1 meetings).

2 § 3539. Directors and trustees.

3 (a) Acceptance.--The directors or trustees, before they are
4 qualified to act, shall file with the secretary a written
5 acceptance of the trust.

6 (b) Quorum.--A majority of the directors or trustees shall
7 constitute a quorum.

8 (c) Compensation.--Any insurance company may allow and pay
9 to directors compensation for acting as directors.

10 SUBCHAPTER C

11 FUNDAMENTAL CHANGES

12 Sec.

13 3551. Stock votes on particular subjects.

14 3552. Amendment of charter.

15 3553. Proceedings to file amended charter and certification.

16 3554. Power to increase capital stock.

17 3555. Proceedings to increase capital stock.

18 3556. Records of increases of capital stock.

19 3557. Sale of increases of capital stock.

20 3558. Reduction of capital stock.

21 § 3551. Stock votes on particular subjects.

22 Whenever a stock vote is lawfully demanded or required on any
23 subject submitted to the stockholders of any stock insurance
24 company of this Commonwealth for their action at any annual or
25 special meeting, the vote may be taken at and certified to the
26 meeting or any adjournment. If, under the corporate charter or
27 applicable law, the annual election for directors is held within
28 30 days after the annual or special meeting at which the subject
29 is be submitted to the stockholders, then the vote on the
30 subject may be taken at the same time and place, by the same

1 persons and in the same manner as the vote for directors of the
2 company is taken. If, under provisions of the charter or laws
3 governing the company, the annual election for directors is not
4 held within 30 days after the meeting at which the subject is
5 submitted to the stockholders, then the stock vote upon the
6 subject may be taken at any time within 30 days after that
7 meeting under the supervision of three judges to be appointed
8 and at a time and place to be designated by the stockholders at
9 that meeting. The result of the vote shall be certified by the
10 judges under oath and their certificates shall be filed with the
11 secretary of the company.

12 § 3552. Amendment of charter.

13 (a) Authorization.--Any domestic stock or mutual insurance
14 company may amend its charter for the purpose of changing its
15 name, changing the location of its principal office or place of
16 business, increasing or diminishing the par value of the shares
17 of its capital stock, changing its purpose or for any other
18 reason, by calling a special meeting of the stockholders or
19 members.

20 (b) Notice.--Notice of the object of the meeting shall be
21 given by advertisement for the preceding four weeks in at least
22 two daily or weekly newspapers and in the legal periodical, if
23 any, designated by the rules of court of the proper county for
24 the publication of legal notices, published in the municipality
25 where the principal office of the company is located, or by
26 circular mailed to the address of each stockholder or member.

27 (c) Procedure.--If the resolution for the amendment is
28 approved by two-thirds of the votes cast, the resolution and the
29 number of votes cast for and against it shall be recorded by the
30 company and a certified copy of the record shall be forwarded to

1 the department. If the department approves of the resolution, it
2 shall certify its approval and record it in the office of the
3 Secretary of the Commonwealth and with the recorder of deeds of
4 the proper county. The amendment shall then form part of the
5 charter of the company.

6 (d) Mutual insurance company.--A mutual insurance company,
7 other than life or title, may amend its charter to include any
8 of the kinds of insurance included in section 3302(b) and (c)
9 (relating to authorized classes of insurance) if its total
10 assets, less net liability for losses for expenses and for
11 unearned premium reserve for those premiums received on
12 nonassessable policies, are not less than the minimum premiums
13 specified in section 3306(e) (relating to minimum capital stock
14 and financial requirements) for the incorporation of new
15 companies, without the necessity of obtaining or of holding any
16 application or of issuing any policy as specified in section
17 3306(e) for the incorporation of new companies.

18 (e) Amendment of charter by certain stock companies.--Before
19 any domestic stock fire, stock marine, stock fire and marine, or
20 stock casualty insurance company transacting business under
21 section 3302(b) or (c) may amend its charter for the transaction
22 of additional kinds or classes of business under section 3302(b)
23 or (c) or both, it shall have a paid-up capital and a paid-in or
24 accumulated surplus in amounts required under section 3306(b) or
25 (c) for incorporation for its present and proposed additional
26 purposes.

27 § 3553. Proceedings to file amended charter and certification.

28 Whenever any domestic stock or mutual insurance company
29 amends its charter under section 3552 (relating to amendment of
30 charter) or to carry out a merger or consolidation or to

1 increase or decrease the amount of its capital, the stockholders
2 or members of the company may, at the time of adopting the
3 amendment or resolutions, include therein the entire charter of
4 the company, as amended or as affected by the proposed change.
5 The amended charter or consolidation proceedings shall
6 completely set forth all the terms and conditions of the charter
7 under which the company shall thereafter transact business.
8 However, the amended charter or consolidation proceedings shall
9 contain only those provisions an original charter may lawfully
10 contain and shall be filed in the office of the Secretary of the
11 Commonwealth, in the same manner as provided under section
12 3556(a) (relating to records of increases of capital stock),
13 3558(e) (relating to reduction of capital stock) or 3562(d)
14 (relating to proceedings to merge or consolidate).

15 § 3554. Power to increase capital stock.

16 The capital stock of any stock insurance company may, with
17 the consent of the persons holding more than one-half the value
18 of its stock, be increased to an amount, regardless of any
19 limitation upon the amount prescribed in any general or special
20 law regulating any such company, as it deems necessary to
21 accomplish and enlarge the business and purposes of the company.

22 § 3555. Proceedings to increase capital stock.

23 (a) General rule.--Any stock insurance company that desires
24 to increase its capital stock shall, by resolution adopted by a
25 majority of its board of directors, declare this purpose and, by
26 resolution similarly adopted, direct that the question of the
27 proposed increase be submitted to the stockholders of the
28 corporation for their consent under subsection (b) or (c).

29 (b) Regular annual meeting.--The question may be submitted
30 to the stockholders at any regular meeting. Notice of the

1 meeting shall state that the question of a capital stock
2 increase will be considered at the meeting. The president and
3 secretary of the meeting shall ascertain, by any method, whether
4 the persons holding more than one-half the value of the stock of
5 the company have consented to the increase. Upon being so
6 satisfied, these officers shall certify in duplicate the fact,
7 under oath. If a stock vote is demanded at the meeting, these
8 officers shall cause a vote to be taken at the same time and
9 place, by the same persons and in the same manner as the vote
10 for directors of the company are taken.

11 (c) Special meeting.--The question may be submitted to the
12 stockholders at a special meeting. Notice of the time, place and
13 object of the meeting shall be published in the manner
14 prescribed for the giving of notice of the regular annual
15 meeting. At the meeting a vote of the stockholders shall be
16 taken for or against the increase. The vote shall be conducted
17 by three judges, who shall be stockholders of the company,
18 appointed by the board of directors to hold the vote. If any
19 judge is absent, the judges present shall appoint a replacement.
20 The judges shall swear that they will conduct the vote according
21 to law and to the best of their ability. The company shall
22 furnish the judges at the meeting with a statement of the amount
23 of its capital stock, the names of the persons holding the stock
24 and the number of shares held by each, which statement shall be
25 signed and sworn to by one of the chief officers of the company.
26 The judges shall decide upon the qualifications of voters, count
27 the number of shares voted for and against the increase and
28 declare whether the persons holding a majority in amount of the
29 stock of the corporation have consented to the increase. They
30 shall complete duplicate returns of the vote stating the number

1 of shares of stock that voted for and against the increase and
2 subscribe and deliver the returns to one of the chief officers
3 of the company.

4 (d) Ballot.--Each ballot shall have endorsed on it the
5 number of shares represented, but no shares transferred within
6 30 days prior to the meeting shall entitle the holder to vote on
7 the capital stock increase. A proxy shall not be received nor
8 shall the holder be entitled to vote unless the proxy has been
9 executed within four months preceding the meeting.

10 § 3556. Records of increases of capital stock.

11 (a) Filing with Secretary of Commonwealth.--If consent is
12 given to a capital stock increase, the company shall file in the
13 office of the Secretary of the Commonwealth, within 30 days
14 after the vote, one copy each of the certificates of the
15 president and secretary of the annual meeting or one copy of the
16 return completed at the special meeting, with a copy of the
17 resolution and the meeting notice. Thereafter, the increase may
18 be made at such time or times as the directors determine. The
19 Secretary of the Commonwealth shall furnish a certified copy of
20 the proceedings to the department.

21 (b) (Reserved).

22 (c) Penalty.--In case of neglect or omission to make the
23 return, a company shall be subject to a penalty of \$5,000. The
24 penalty shall be collected on an account settled by the Auditor
25 General and State Treasurer, in the same manner as accounts for
26 taxes due the Commonwealth are settled and collected. The
27 Secretary of the Commonwealth shall record the return and
28 furnish a copy of the return to the Auditor General.

29 § 3557. Sale of increases of capital stock.

30 (a) Subscription.--Any increase of capital stock made by any

1 stock insurance company may be issued at such price not less
2 than par as the stockholders may direct or as the board of
3 directors may direct under authority conferred by the
4 stockholders. Unless otherwise provided in the charter or
5 articles of agreement, each stockholder shall have the right to
6 first subscribe for the new shares in proportion to his interest
7 in the company.

8 (b) Exchange.--A stockholder shall not have the right to
9 first subscribe for new shares if the stockholders holding more
10 than one-half the value of the stock of the company direct,
11 subject to such equitable regulations as the directors
12 prescribe, that the new shares are to be issued in exchange for
13 one or more outstanding shares of another insurance company in
14 which the issuing company is authorized to invest, or partly in
15 exchange and partly for cash.

16 (c) Approval of exchange by department.--The department
17 shall examine the terms and conditions of any exchange described
18 in subsection (b) and, after holding a hearing at which all
19 persons to whom it is proposed to issue shares in exchange shall
20 have the right to appear, shall approve or disapprove the
21 fairness of the terms and conditions.

22 (d) Notice of right to subscribe.--Except when an exchange
23 described in subsection (b) is to be effected, notice to the
24 stockholders to exercise their rights to subscribe for and to
25 take the stock at the price so fixed shall be mailed to each
26 stockholder, at the last address of the stockholder appearing on
27 the books or records of the company, 30 days prior to the date
28 fixed by the board of directors for the expiration of the right
29 to subscribe. This notice shall also be given by publication
30 once a week for three weeks in a newspaper of general

1 circulation published in the municipality in which the company
2 has its principal office.

3 (e) Sale of unsubscribed stock.--Any stock not subscribed
4 for and taken by the stockholders may be sold and disposed of by
5 the board of directors, in such manner as the stockholders
6 direct. However, the stock shall not be sold or disposed of at a
7 price less than that originally fixed by the stockholders.

8 (f) Issuance to officers or employees.--Notwithstanding
9 anything in this section to the contrary, any stock insurance
10 company may issue to its officers or employees, to the officers
11 or employees of any subsidiary corporation or to a trustee on
12 their behalf, the number of its authorized but unissued shares
13 prescribed by the stockholders having the majority interest.
14 These shares shall be issued at such times and in such manner as
15 the board of directors determines. Any stock authorized to be
16 issued to officers or employees and not taken by those entitled
17 to it may be sold and disposed of in such manner as the board of
18 directors determines.

19 § 3558. Reduction of capital stock.

20 (a) General rule.--The capital stock of any stock insurance
21 company may be reduced at any time by the consent of the persons
22 holding more than one-half the value of the stock of the
23 company. However, this reduction shall not be below the minimum
24 amount of capital stock required by law for the formation of
25 such companies.

26 (b) Meeting.--Any stock insurance company that desires to
27 reduce its capital stock shall, by a resolution of its board of
28 directors, call a meeting of its stockholders. The meeting shall
29 be held at its chief office or place of business in this
30 Commonwealth. Notice of the time, place and object of the

1 meeting shall be given in the manner prescribed for the giving
2 of notice of the regular annual meeting.

3 (c) Voting procedure.--At the meeting a vote of the
4 stockholders of the company shall be taken on the question of
5 the reduction. The vote shall be conducted by three judges, who
6 shall be stockholders of the company, appointed by the board of
7 directors to hold the vote. If any judge is absent, the judges
8 present shall appoint a replacement. The judges shall swear that
9 they will conduct the vote according to law and to the best of
10 their ability. The company shall furnish the judges at the
11 meeting with a statement of the amount of its capital stock,
12 with the names of the persons holding the stock and the number
13 of shares held by each, which statement shall be signed and
14 sworn to by one of the chief officers of the company. The judges
15 shall decide upon the qualification of voters, count the number
16 of shares voted for and against the reduction and declare
17 whether the persons holding more than one-half the value of the
18 stock of the company have consented to the reduction. They shall
19 complete duplicate returns of the vote, stating the number of
20 shares of stock that voted for and against the reduction, and
21 subscribe and deliver the returns to one of the chief officers
22 of the company.

23 (d) Stock entitled to vote.--Each ballot shall have endorsed
24 on it the number of shares represented, but no shares
25 transferred within 60 days prior to the meeting shall entitle
26 the holder to vote on the capital stock reduction. A proxy shall
27 not be received nor shall the holder be entitled to vote unless
28 it has been executed within three months preceding the meeting.

29 (e) Filing, approval and recording of proceedings.--If
30 consent is given to the reduction, the company shall file in the

1 office of the department within 30 days after the vote one copy
2 each of the resolution, the meeting notice and the return. The
3 department shall, if it finds the transaction regular in form
4 and consistent with the interest of the policyholders and
5 creditors, endorse its approval and file it in the office of the
6 Secretary of the Commonwealth. Upon the reduction of the capital
7 stock of the company, the president or treasurer of the company
8 shall file, within 30 days, a return with the department and the
9 Secretary of the Commonwealth, under oath, stating the amount of
10 the reduction.

11 (f) Penalty.--In case of neglect or omission to timely file
12 the documents listed in subsection (e), the company shall be
13 subject to a penalty of \$5,000. This penalty shall be collected
14 on an account settled by the Auditor General and State
15 Treasurer, in the same manner as accounts for taxes due the
16 Commonwealth are settled and collected. The Secretary of the
17 Commonwealth shall record the return and furnish a certified
18 copy of the return to the Auditor General. The company shall,
19 after the receipt of the return from the Secretary of the
20 Commonwealth, have it recorded in the office of the recorder of
21 deeds of the county in which the company has its principal
22 office.

23 SUBCHAPTER D

24 MERGER, CONSOLIDATION AND VOLUNTARY DISSOLUTION

25 Sec.

26 3561. Power to merge or consolidate.

27 3562. Proceedings to merge or consolidate.

28 3563. Dissenters' rights upon merger or consolidation.

29 3564. Merger of domestic and foreign insurance companies.

30 3565. Protection of competition.

- 1 3566. Merger by acquisition of stock.
2 3567. Dissenters' rights upon merger by acquisition of stock.
3 3568. Approval of acquisitions by department.
4 3569. Holding company systems.
5 3570. Voluntary dissolution.
6 3571. Dissolution for failure to do business.
7 § 3561. Power to merge or consolidate.

8 Any two or more domestic stock insurance companies and any
9 two or more domestic mutual insurance companies transacting the
10 same or similar classes of insurance may be merged into one of
11 such domestic companies or consolidated into a new company to be
12 formed as provided in the consolidation agreement. The
13 consolidation agreement shall include all of the statements
14 required by section 3303 (relating to articles of agreement) to
15 be set forth in original articles of incorporation in the case
16 of the formation of a new insurance company, so that all the
17 property, rights, franchises and privileges vested in any of the
18 companies so merged or consolidated shall be transferred to and
19 vested in the surviving or new company. This section does not
20 permit the merging or consolidating of a stock insurance company
21 with a mutual insurance company.

22 § 3562. Proceedings to merge or consolidate.

23 (a) Joint agreement.--The directors or trustees of each
24 company shall enter into a joint agreement, under the corporate
25 seal of each company, for the merger or consolidation of the
26 companies. The agreement shall prescribe:

- 27 (1) The terms and conditions of the merger or
28 consolidation.
29 (2) The mode of carrying it into effect.
30 (3) The name of the surviving or new company.

1 (4) The number and names of the directors or trustees
2 and other officers thereof, and who shall be the directors or
3 trustees and officers, and their places of residence.

4 (5) The number of shares of the capital stock, if any.

5 (6) The amount of par value of each share.

6 (7) The manner of converting the capital stock of each
7 of the companies into the stock of the surviving or new
8 company.

9 (8) How and when directors or trustees and officers
10 shall be chosen.

11 (9) Any other details necessary to perfect the merger or
12 consolidation.

13 The agreement shall not be effective unless it is approved by
14 the stockholders or members of the companies under subsection
15 (b) or (c).

16 (b) Stock companies.--The agreement shall be submitted to
17 the stockholders of each of the stock companies at separate
18 special meetings or at any annual meetings. Notice of the time,
19 place and object of each meeting shall be given by publication
20 once a week for three consecutive weeks in at least two
21 newspapers in the county in which the principal office of the
22 company is located. At each meeting the agreement of the
23 directors or trustees shall be considered, and a vote by ballot
24 of the stockholders, in person or by proxy, shall be taken. If a
25 majority in interest of the entire capital stock of each of the
26 companies votes in favor of the agreement, then the result shall
27 be certified by the secretary of each company under the
28 corporate seal thereof. The certificates and a copy of the
29 agreement shall be filed in the office of the department. The
30 department shall examine the proceedings, and, if it finds that

1 the proceedings were in accordance with law and not injurious to
2 the interests of the policyholders and creditors, it shall
3 endorse its approval and immediately forward the certificates
4 and agreement to the Governor for his approval. Upon approval by
5 the Governor, the agreement shall be deemed to be the act of
6 merger or consolidation of the surviving or new company.

7 (c) Mutual companies.--The agreement shall be submitted to
8 the members of each of the mutual companies at separate special
9 meetings or at any annual meetings. Notice of the time, place
10 and object of each meeting shall be given by publication once a
11 week for three consecutive weeks in at least two newspapers in
12 the county in which the principal office of the company is
13 located; additional 30 days' notice of the time, place and
14 object of the meeting shall be given by first class mail to all
15 members of each company, requesting them to vote in person or by
16 proxy on the agreement. The notice shall be mailed by the
17 company to the last known address of the members on the records
18 of the company. At each meeting the agreement of the directors
19 or trustees shall be considered, and a vote by ballot of the
20 members, in person or by proxy, shall be taken. If two-thirds of
21 the amount of the members of each company who are present at the
22 meeting in person or by proxy vote in favor of the agreement of
23 merger or consolidation, then the result shall be certified by
24 the secretary of each company under the corporate seal. The
25 certificate and a copy of the agreement shall be filed with the
26 department. The department shall examine the proceedings. If the
27 department finds that the proceedings were in accordance with
28 law and not injurious to the interests of the policyholders and
29 creditors, it shall endorse its approval and immediately forward
30 the certificates and agreement to the Governor for his approval.

1 Upon approval by the Governor, the agreement shall be deemed to
2 be the act of merger or consolidation of the surviving or new
3 company.

4 (d) Filing, approval and recording of documents.--The
5 Governor, upon the approval of the certificates and agreement,
6 shall issue letters patent. The letters patent, the certificates
7 and a copy of the agreement shall be filed and recorded in the
8 office of the Secretary of the Commonwealth. A certified copy of
9 the certificates and agreement so filed in the office of the
10 Secretary of the Commonwealth shall be evidence of the lawful
11 holding and action of the meetings and of the merger or
12 consolidation of the companies. Upon the issuance of the letters
13 patent by the Governor, the entire proceeding shall also be
14 recorded in the office of the recorder of deeds of the proper
15 county. When so recorded, the merger or consolidation shall be
16 deemed to have taken place with the companies to be one company
17 under the name adopted under the agreement, possessing all the
18 rights, privileges and franchises vested in each of them. All
19 the real and personal property and rights of action of each
20 company shall be deemed transferred to the surviving or new
21 company without any further act or deed.

22 (e) Rights of creditors and lienholders.--All rights of
23 creditors and all liens upon the property of each company shall
24 continue unimpaired, limited in lien to the property affected by
25 the liens at the time of their creation. The respective
26 constituent companies may be deemed to be in existence to
27 preserve those liens. All debts not of record, duties and
28 liabilities of each of the constituent companies shall attach to
29 the surviving or new company and may be enforced against it to
30 the same extent, and by the same process, as if the debts,

1 duties and liabilities had been contracted by it.

2 § 3563. Dissenters' rights upon merger or consolidation.

3 (a) Petition to appraise damages.--Any stockholder or member
4 of any insurance company who objects to the merger or
5 consolidation and who voted against it at the appropriate
6 meeting may, within 30 days after the adoption of the agreement
7 and upon reasonable notice to the company, petition the court of
8 the county in which the chief office of the company is located
9 to appoint three disinterested persons to appraise the damages
10 caused him by the merger or consolidation. Upon the petition,
11 the court shall make the appointment, and the award of the
12 persons so appointed, or of a majority of them, when confirmed
13 by the court, shall be final and conclusive.

14 (b) Appraisal of shares or interest.--The persons so
15 appointed shall also appraise the shares of the stockholder or
16 the interest of the member in the company at full market value
17 without regard to any appreciation or depreciation in
18 consequence of the merger or consolidation. This appraisal, when
19 confirmed by the court, shall be final and conclusive.

20 (c) Election of company.--The company may pay to the
21 stockholder or member either the amount of damages awarded or
22 the value of the stock or interest ascertained. Upon the payment
23 of the value of the stock, the stockholder shall transfer the
24 stock held by him to the company, to be disposed of by the
25 directors or to be retained for the benefit of the other
26 stockholders. Upon the payment of the value of any interest of
27 any member, the interest of the member in the company shall
28 cease. In case the value of the stock or interest is not paid
29 within 30 days after the award is confirmed by the court, the
30 damages found and confirmed shall be a judgment against the

1 company.

2 § 3564. Merger of domestic and foreign insurance companies.

3 (a) Authority to merge.--Any domestic life, fire or marine
4 insurance company or casualty or surety company authorized to do
5 business under this title may merge or consolidate, as provided
6 in this section, with a company organized under the laws of
7 another state if the merger or consolidation is authorized by
8 the laws or approved by the insurance supervising officials of
9 the state in which the foreign company is incorporated.

10 (b) Domestic company.--A domestic company shall comply with
11 all the requirements of this chapter with respect to the merger
12 or consolidation of two or more domestic companies.

13 (c) Foreign company.--The foreign company shall comply with
14 all of the requirements of the law or of the supervising
15 insurance officials of the state under which it is incorporated
16 with respect to such a merger or consolidation. The agreement
17 shall first be submitted for approval by the department.

18 (d) Domicile of surviving company.--The domicile of the
19 surviving or new company shall be located in this Commonwealth,
20 unless the department consents, in writing endorsed on the
21 merger or consolidation agreement, that the merged or
22 consolidated company may be domiciled in some other state.

23 (e) Foreign surviving company.--A merged or consolidated
24 company, domiciling in another state, shall not have any
25 authority to transact business in this Commonwealth unless the
26 company complies with the law of this Commonwealth with respect
27 to its admission to transact business here.

28 (f) (Reserved).

29 (g) Substituted certificates.--If the merger or
30 consolidation involves a stock company, the surviving or new

1 company may require the return of the original certificates of
2 stock held by each stockholder in each of the companies to be
3 merged or consolidated and issue new certificates for the number
4 of shares of its own stock that the stockholders may be entitled
5 to receive.

6 (h) Effect of a merger or consolidation.--Upon a merger or
7 consolidation, all the rights, franchises and interests of the
8 companies so merging or consolidating in any property belonging
9 to them shall be deemed to be transferred to and vested in the
10 surviving or new company without any other deed or transfer. The
11 surviving or new company shall succeed to all the obligations
12 and liabilities of the old companies and shall be held liable to
13 pay and discharge all debts and liabilities in the same manner
14 as if they had been incurred or contracted by it. The
15 stockholders or members of the old companies shall continue,
16 subject to all the liabilities, claims and demands existing
17 against them at or before the merger or consolidation. An action
18 or proceeding pending at the time of merger or consolidation, in
19 which any or all of the old companies may be a party, shall not
20 abate or discontinue by reason of the merger or consolidation;
21 any such action or proceeding may be prosecuted to final
22 judgment in the same manner as if the merger or consolidation
23 had not taken place, or the surviving or new company may be
24 substituted in place of any company so merged or consolidated by
25 order of the court in which the action or proceeding is pending.
26 § 3565. Protection of competition.

27 (a) Holding capital stock of other companies.--Any domestic
28 insurance company may retain or acquire the whole or any part of
29 the capital stock of any other insurance company; however, no
30 insurance company shall, by reason of this retention or

1 acquisition of capital stock, conduct its business in a manner
2 which substantially lessens competition or tends to create a
3 monopoly. Any retention or acquisition shall comply with the
4 provisions of this title relating to the investment of the funds
5 of domestic insurance companies.

6 (b) Interlocking directorates.--Any person otherwise
7 qualified may be a director of two or more insurance companies
8 when this interlocking directorate is not used as a means of
9 substantially lessening competition or tending to create a
10 monopoly.

11 (c) Enforcement proceedings.--Whenever the department has
12 reason to believe that there is a violation of subsection (a) or
13 (b), it shall serve upon the insurance company, or the director
14 concerned, a complaint setting forth the facts alleged to
15 constitute the violation. With the complaint, there shall be
16 notice in writing of a time and place of a hearing before the
17 department. The hearing shall not be held less than 30 days
18 after the service of the complaint. The complaint shall require
19 the insurance company or director to show cause why an order
20 should not be made by the department directing the insurance
21 company or director to cease and desist from the violation. The
22 hearing shall be conducted, and the decision of the department
23 on the issue involved shall be rendered, in accordance with the
24 provisions of 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and
25 procedure of Commonwealth agencies).

26 (d) Order.--If, after the hearing, the department finds that
27 there has been such a violation, it shall issue and serve upon
28 the insurance company or director an order reciting the facts
29 found by it, setting forth the violation, directing the
30 insurance company or director to cease and desist from the

1 violation.

2 (e) Divestiture.--This section does not authorize any order,
3 judgment or decree directing any domestic insurance company to
4 divest itself of the capital stock of another insurance company.
5 § 3566. Merger by acquisition of stock.

6 (a) General rule.--Any business or insurance corporation
7 seeking to acquire, in exchange for shares of its capital stock,
8 other securities, cash or other consideration, all of the shares
9 of the capital stock of any insurance company organized under
10 the law of this Commonwealth, may elect to acquire those shares
11 as provided in this section.

12 (b) Acquiring corporation not 90% owner.--If the acquiring
13 corporation does not own, directly or indirectly, at least 90%
14 of the aggregate issued and outstanding shares of all classes of
15 voting stock of the company to be acquired, the boards of
16 directors, trustees or other governing bodies of the acquiring
17 corporation and the corporation to be acquired shall by
18 resolution approve a proposed exchange offer. The proposed offer
19 shall specify the stock or classes of stock to be acquired, the
20 terms and conditions of the offer, the method of acceptance and
21 the procedure to be followed to effect the exchange. It may fix
22 or provide for the fixing of record dates for the determination
23 of stockholders to whom offers, notices and other communications
24 shall be mailed, and it may provide for the determination of
25 stockholders who shall be entitled to exercise rights under this
26 subchapter.

27 (c) Acquiring corporation 90% owner.--Where the acquiring
28 corporation owns, directly or indirectly, 90% of the aggregate
29 issued and outstanding shares of all classes of voting stock of
30 the acquired corporation, the board of directors, trustees or

1 other governing body of the acquiring corporation may, by
2 resolution, adopt a plan for the acquisition of minority
3 interests in the corporation to be acquired. The plan shall set
4 forth:

5 (1) The name of the corporation to be acquired.

6 (2) The total number of issued and outstanding shares of
7 each class of voting stock of the corporation to be acquired,
8 the number of its shares owned by the acquiring corporation
9 and, if either of the foregoing is subject to change prior to
10 the effective date of acquisition, the manner in which any
11 change may occur.

12 (3) The terms and conditions of the plan, including the
13 manner and basis of exchanging the shares to be acquired, the
14 proposed effective date of acquisition and a statement
15 clearly describing the rights of dissenting stockholders to
16 demand appraisal.

17 (4) If the acquiring corporation is neither a domestic
18 corporation nor an insurer authorized to do business in this
19 Commonwealth, its agreement to be bound by subsection (j) and
20 section 3567 (relating to dissenters' rights upon merger by
21 acquisition of stock) with respect to the plan and its
22 consent to the enforcement against it in this Commonwealth of
23 the rights of stockholders pursuant to the plan.

24 (5) Such other provisions with respect to the plan as
25 the board of directors, trustees or other governing body
26 believes necessary or desirable or as the department
27 prescribes.

28 (d) Submission of proposal.--The acquiring corporation shall
29 submit the terms and conditions of the proposed offer or plan to
30 the department for its approval. The department shall hold a

1 hearing upon at least ten days' notice to all stockholders of
2 the corporation to be acquired any of whom may appear. After the
3 hearing, the department shall either approve or disapprove the
4 terms and conditions. If the terms and conditions are approved
5 by the department, the acquiring corporation shall submit by
6 mail a written offer or plan of acquisition to the stockholders
7 of the corporation to be acquired, addressed to each stockholder
8 at his address of record.

9 (e) Corporate acceptance.--If prior to the termination date
10 of an exchange offer under subsection (b) or any extension
11 thereof, which shall be no later than 120 days after the date of
12 the initial mailing of the offer, the offer is accepted by the
13 holders of not less than the percentage of the outstanding
14 shares of capital stock specified in the terms and conditions of
15 the proposed offer, which shall be at least 80% of the total
16 combined voting power of all classes of stock entitled to vote
17 and 80% of the total number of shares of all other classes of
18 stock, the acquiring corporation shall, within 150 days after
19 the date of the initial mailing, notify the corporation to be
20 acquired of the acceptance and furnish to the acquired
21 corporation a list of all stockholders who accepted the offer
22 and of the numbers and classes of shares covered by their
23 respective acceptances. Thereupon, the acquiring corporation
24 shall automatically become the holder of all shares of all
25 classes of capital stock of the corporation to be acquired
26 included in the list, except to the extent that it has notified
27 the corporation to be acquired that shares are to be issued to
28 specified persons in order to qualify them or to maintain their
29 qualification as directors of the corporation to be acquired.
30 Certificates representing all outstanding shares of capital

1 stock of the corporation to be acquired included in this list
2 shall immediately be issued to the acquiring corporation and
3 those persons it has specified. The formerly outstanding
4 certificates shall represent only the right to receive shares of
5 capital stock or other securities of the acquiring corporation,
6 cash, other consideration or a combination thereof as specified
7 in the offer.

8 (f) Notice of dissenters' rights.--Within 30 days after the
9 notification from the acquiring corporation, the corporation to
10 be acquired shall notify by mail each of its stockholders who
11 has not accepted the offer that, subject to subsections (g) and
12 (j) and section 3567, a copy of which shall be included with the
13 notice, the stockholder may receive payment in cash of the full
14 market value of his shares and may not vote, receive dividends
15 or other distributions or exercise any rights with respect to
16 these shares other than those set forth in subsections (g) and
17 (j) and section 3567.

18 (g) Deemed stockholder acceptances.--A stockholder who does
19 not otherwise accept an exchange offer described under
20 subsection (b) shall be deemed to have accepted it if, following
21 the mailing of the notice under subsection (f), any of the
22 following conditions occur:

23 (1) He fails to make written demand as provided in
24 section 3567(a).

25 (2) He fails to surrender his certificate for notation
26 as provided in section 3567(b) unless the corporation to be
27 acquired waives this failure or relief from the failure is
28 granted by the court of the county in which the chief office
29 of the corporation to be acquired is located.

30 (3) The full market value of his shares not having been

1 agreed upon as provided in section 3567(c), he fails to
2 comply with the provisions thereof with respect to the filing
3 of a petition for the appointment of appraisers and the
4 corporation to be acquired does not waive this failure.

5 The acquiring corporation shall automatically become the holder
6 of all shares of all classes of capital stock of the corporation
7 to be acquired held by any stockholder who is deemed to have
8 accepted the exchange offer under this subsection.

9 (h) Certification to department.--On or before the date of
10 acquisition proposed in a plan adopted pursuant to subsection
11 (c), the acquiring corporation shall file with the department a
12 certificate stating that it has submitted the written offer or
13 plan of acquisition to the stockholders of the corporation to be
14 acquired, as required by subsection (d). This certificate shall
15 be executed by the president of the acquiring corporation and
16 attested by its secretary or other corresponding executive
17 officers.

18 (i) Ownership of acquired shares.--Upon compliance with this
19 subsection and with subsections (a), (c), (d) and (j) and
20 section 3567, ownership of the shares to be acquired pursuant to
21 the plan shall vest in the acquiring corporation on the date of
22 acquisition proposed in the plan whether or not the certificates
23 for the shares have been surrendered for exchange. The acquiring
24 corporation may have new certificates registered in its name,
25 except to the extent it has notified the acquired corporation
26 that shares are to be issued to specified persons in order to
27 qualify them or to maintain their qualification as directors of
28 the acquired corporation. Stockholders whose shares have been so
29 acquired shall retain only the right to receive the
30 consideration to be paid in exchange for their shares pursuant

1 to the plan or to demand appraisal pursuant to section 3567.

2 (j) Distribution of stock shares and consideration.--If the
3 acquiring corporation has notified the acquired corporation of
4 the acceptance of an exchange offer made under subsection (b) or
5 if a plan has been adopted pursuant to subsection (c), on or
6 after the date of acquisition proposed in the plan, the
7 acquiring corporation shall issue, in the name of each
8 stockholder who has accepted the offer or who has not made
9 timely demand for appraisal, certificates for the shares of its
10 capital stock or other securities as provided in the exchange
11 offer or plan, or shall set aside the cash or other
12 consideration to which he is entitled. The certificates, cash or
13 other consideration shall be delivered to the stockholder if he
14 has surrendered the certificates for his shares of the acquired
15 corporation for exchange and shall otherwise be held in trust
16 for delivery to the stockholder upon surrender of the
17 certificates.

18 § 3567. Dissenters' rights upon merger by acquisition of stock.

19 (a) Written demand for redemption.--A stockholder of the
20 acquired corporation who wishes to be paid the full market value
21 of his shares shall make written demand for this payment upon
22 the corporation to be acquired in the case of an exchange offer
23 made pursuant to section 3566(b) (relating to merger by
24 acquisition of stock) within 30 days after the mailing of the
25 notice by the corporation to be acquired, or in the case of a
26 plan adopted pursuant to section 3566(c) within 30 days after
27 the mailing of the plan of acquisition by the acquiring
28 corporation pursuant to section 3566(d). A stockholder may
29 demand payment as to all or less than all of those shares
30 registered in his name of which he is not the beneficial owner,

1 but demand may not be made with respect to some but less than
2 all shares of the same class owned by any given beneficial owner
3 of shares, whether or not the shares so owned by him are
4 registered in his name.

5 (b) Notation on share certificates.--Within 20 days after
6 demanding payment for his shares, each stockholder demanding
7 payment shall submit the certificate representing his share to
8 the corporation to be acquired for notation that a demand has
9 been made. If a share represented by a certificate on which
10 notation has been so made is transferred, each new certificate
11 issued for the share shall bear a similar notation, together
12 with the name of the original holder of the share who demanded
13 payment. The transferee of the share shall acquire by the
14 transfer no rights other than those which the stockholder who
15 demanded payment had after making demand for payment of the full
16 market value.

17 (c) Appraisal procedure.--Any stockholder of the acquired
18 corporation who has not accepted the exchange offer and is not
19 deemed to have accepted it or who has made timely demand for
20 appraisal under subsection (a) may receive payment for his
21 shares of capital stock of the acquired corporation as provided
22 in this subsection. If, within 40 days after making demand under
23 subsection (a), the stockholder and the acquired corporation
24 have not agreed as to the full market value of the shares, the
25 stockholder may, within 60 days after making the demand,
26 petition the court of the county in which the chief office of
27 the acquired corporation is located to appoint three
28 disinterested persons to appraise the shares of the stockholder
29 at the full market value. The appraisal shall be made as of the
30 day prior to the day on which the exchange offer or plan of

1 acquisition was mailed, without regard to any appreciation or
2 depreciation in consequence of the exchange offer or plan of
3 acquisition. The appraisal, when confirmed by the court, shall
4 be final and conclusive. The full market value of the shares as
5 agreed upon or as so determined shall be paid by the acquired
6 corporation to the stockholder upon surrender to the acquired
7 corporation of his certificates for the shares. The acquired
8 corporation may retain, cancel, dispose of or take other action
9 with respect to the shares. However, there shall be no reduction
10 in the capital stock of the acquired corporation without
11 compliance with other applicable provisions of law, and the
12 acquired corporation may not vote these shares.

13 (d) Reimbursement of shareholder.--Any stockholder who has
14 had his shares of stock appraised and the appraisal confirmed
15 shall be reimbursed by the acquiring corporation, in an amount
16 not in excess of \$10,000, for his reasonable expenses, including
17 attorney fees, in obtaining the appraisal, if the amount of the
18 appraisal exceeds by 10% the value of the securities, cash or
19 other consideration the stockholder would have received under
20 the terms of the offer or plan. For the purpose of determining
21 if a shareholder is entitled to reimbursement for his expenses,
22 the value of the securities which the shareholder would have
23 received under the term of the offer or plan shall be deemed to
24 be their average market value on the initial mailing date of an
25 offer or on the effective date of acquisition as set forth in a
26 plan.

27 (e) Exclusive rights and remedies.--Any stockholder who
28 desires to object to or dissent from any proposed exchange
29 authorized under section 3566 shall be limited to the rights and
30 remedies provided in this section.

1 § 3568. Approval of acquisitions by department.

2 (a) Applicability of requirements.--Without first complying
3 with all applicable provisions of this section:

4 (1) A person shall not, directly or indirectly through
5 an intermediary or otherwise, acquire or offer to acquire
6 beneficial ownership of insurance stock or insurance holding
7 company stock if the acquisition, together with any past or
8 proposed acquisitions from others, would cause the person to
9 have beneficial ownership of more than 10% of the outstanding
10 insurance stock or insurance holding company stock of any
11 class of any issuer.

12 (2) A person who beneficially owns 10% or more of the
13 outstanding insurance stock or insurance holding company
14 stock of any class of any issuer shall not, directly or
15 indirectly through an intermediary or otherwise, increase or
16 attempt to increase his beneficial ownership of stock of the
17 class by acquisition of additional stock of the class.

18 (3) A person shall not, directly or indirectly through
19 an intermediary or otherwise, acquire or offer to acquire
20 beneficial ownership of insurance stock or insurance holding
21 company stock pursuant to a plan whereby he would become the
22 beneficial owner of more than 10% of the outstanding
23 insurance stock or insurance holding company stock of any
24 class of any issuer. However, in a case where it is proposed
25 to acquire or offer to acquire beneficial ownership of
26 insurance holding company stock and neither the insurance
27 holding company nor any affiliate which it controls are
28 incorporated under the law of this Commonwealth, the
29 restrictions set forth in this paragraph shall apply only if
30 those to whom an offer to acquire the insurance holding

1 company stock is to be made include one or more residents of
2 this Commonwealth.

3 (b) Filing of statement with department.--There shall be
4 filed with the department a statement, signed and verified by
5 the person proposing to make the acquisition, which shall
6 contain the information specified in this subsection and copies
7 of all material proposed to be used in connection with the offer
8 or acquisition, which shall set forth the information contained
9 in the statement filed with the department. Copies of the
10 statement and material and all amendments thereto shall
11 simultaneously also be sent by registered mail to the issuer of
12 the insurance stock or insurance holding company stock proposed
13 to be acquired. The statement filed with the department shall be
14 filed on a form prescribed by the department and shall contain
15 the following information and such additional information as the
16 department requires by regulation:

17 (1) The name and address of each person who proposes to
18 acquire or offer to acquire insurance stock or insurance
19 holding company stock.

20 (2) If the person is an individual, his principal
21 occupation during the past five years.

22 (3) If the person is not an individual, a description of
23 the business done and intended to be done by the person and
24 the person's subsidiaries and the general development of the
25 business during the past five years.

26 (4) If the person is not an individual, a list of all
27 its directors or executive officers or those who perform
28 similar functions and all persons who have been chosen to
29 hold such positions. The list shall include all positions and
30 offices held by the persons named in the particular

1 organization and their principal occupations during the past
2 five years.

3 (5) The terms and conditions of any proposed offer and
4 acquisition and the manner in which the offer and acquisition
5 are to be made.

6 (6) The source of the funds to be used in the proposed
7 acquisition and, if the funds are to be borrowed, the name of
8 the lender and a summary of the terms and conditions of the
9 loan transactions.

10 (7) The plans which the person has for the future
11 business and management of the issuer whose capital stock is
12 to be acquired and, if the issuer is an insurance holding
13 company, of any prospective subsidiary including the plans
14 with respect to total or partial liquidation, sale of assets,
15 merger or material change in business, corporate structure,
16 management or composition of the board of directors.

17 (8) The number of shares of each class of insurance
18 stock or insurance holding company stock proposed to be
19 acquired which are beneficially owned by the person proposing
20 to acquire the insurance stock or insurance holding company
21 stock or which are subject to rights of acquisition by that
22 person, the dates of any sales and purchases of the stock by
23 the person and each associate of the person within the past
24 two years and the prices received or paid in connection with
25 such sales and purchases.

26 (9) Information as to any contracts or arrangements with
27 any person with respect to any securities of the insurance
28 company of insurance holding company whose capital stock is
29 to be acquired, including, but not limited to, those with
30 respect to:

- 1 (i) Transfer of such securities.
- 2 (ii) Joint ventures.
- 3 (iii) Loan or option arrangements.
- 4 (iv) Puts or calls.
- 5 (v) Guaranties of loans.
- 6 (vi) Guaranties against loss or guaranties of
- 7 profits.
- 8 (vii) Division of losses or profits.
- 9 (viii) The giving or withholding of proxies.
- 10 (ix) Names of the persons with whom these contracts
- 11 or arrangements have been entered into.

12 (10) Complete audited statements as to the earnings and
13 financial condition of the person for the preceding five
14 fiscal years of the person and similar unaudited information
15 as of a date not more than 90 days prior to the filing of the
16 statement with the department.

17 (c) Criteria for approval.--The department shall approve the
18 acquisition if it determines that all of the following
19 requirements are met:

20 (1) The statement and other material filed under
21 subsection (b) comply with the requirements thereof.

22 (2) The department has no reason to believe that after
23 the acquisition the insurance company whose capital stock is
24 to be acquired or the prospective subsidiary will not
25 continue to comply with the law of this Commonwealth.

26 (3) Upon completion of the acquisition, the insurance
27 company whose capital stock is to be acquired or the
28 prospective subsidiary would satisfy the requirements for the
29 issuance of a license to write any line of insurance which it
30 is presently licensed to write in this Commonwealth.

1 (4) The effect of the acquisition will not be
2 substantially to lessen competition in insurance in this
3 Commonwealth or to tend to create a monopoly.

4 (5) The financial condition of the person proposing to
5 make the acquisition is not such as might jeopardize the
6 financial stability of the insurance company whose capital
7 stock is to be acquired or the prospective subsidiary or
8 prejudice the interests of the policyholders of the insurance
9 company or, in the case of an acquisition of control other
10 than by merger or consolidation, prejudice the interests of
11 any remaining shareholders of the insurance company who are
12 unaffiliated with the person proposing to make the
13 acquisition.

14 (6) The plans or proposals which the person proposing to
15 make the acquisition has to liquidate the insurance company
16 whose capital stock is to be acquired or the prospective
17 subsidiary, to sell the assets of the insurance company, to
18 merge or consolidate it with any person or to make any other
19 material change in its business or corporate structure or
20 management, are fair and reasonable to its policyholders and
21 shareholders.

22 (7) The competence, experience and integrity of those
23 persons who control or manage the person proposing to make
24 the acquisition and of those persons who would control or
25 manage the operation of the insurance company indicate that
26 it would be in the interest of the policyholders and
27 shareholders of the insurance company and of the general
28 public to permit such acquisition to be made.

29 (8) The interests of the policyholders, shareholders and
30 general public would not otherwise be prejudiced or impaired.

1 (d) Procedure.--The department shall notify the person
2 filing the statement, the issuer whose stock is proposed to be
3 acquired and, if the issuer is an insurance holding company, the
4 prospective subsidiary of the department's approval or
5 disapproval of the proposed acquisition. If the department gives
6 notice of approval, the proposed offer and acquisition may be
7 made and consummated on the terms and conditions and in the
8 manner described in the statement, subject to any conditions
9 prescribed by the department under this subsection. An approval
10 by the department shall extend to offers or acquisitions made
11 pursuant to it within one year following the date of
12 determination. The department may, as a condition of approval,
13 require the inclusion in any offer of provisions requiring the
14 offer to remain open a specified minimum length of time,
15 permitting withdrawal of shares deposited prior to the time the
16 offeror becomes bound to consummate the acquisition and
17 requiring pro rata acceptance of any shares deposited pursuant
18 to the offer. The department shall hold a hearing before
19 approving or disapproving the proposed acquisition if, within
20 ten days following the filing with the department of the
21 statement called for by subsection (b), written request for a
22 hearing is made either by the person proposing to make the
23 acquisition, by the issuer whose stock is proposed to be
24 acquired or, if the issuer is an insurance holding company, by
25 the prospective subsidiary; otherwise, the department may hold
26 such a hearing. Sixty days' notice of the hearing shall be given
27 to the person proposing to make the acquisition to the issuer
28 whose stock is proposed to be acquired and, if the issuer is an
29 insurance holding company, to the prospective subsidiary. The
30 department may give notice of the hearing to other persons. Any

1 hearing held pursuant to this section shall be governed by 2
2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of
3 Commonwealth agencies).

4 (e) Regulations.--The department may promulgate regulations
5 with respect to solicitations and recommendations for the
6 acceptance of offers made pursuant to this section.

7 (f) Prohibitions.--A person who acquires or offers to
8 acquire insurance stock or insurance holding company stock
9 pursuant to this section shall not make in connection therewith
10 any false, deceptive or misleading statement, or omit to state
11 any material fact necessary in order to make the statements made
12 not misleading, or engage in any act or practice which is
13 fraudulent, deceptive or manipulative or violate the regulations
14 made under subsection (e).

15 (g) Remedy for violations.--If any person acquires or offers
16 to acquire insurance stock or insurance holding company stock in
17 violation of this section, the issuer of the stock so acquired
18 or proposed to be acquired, any stockholder of the issuer and,
19 if the issuer is an insurance holding company, the prospective
20 subsidiary or any of its stockholders or the department may
21 petition the court for a decree enjoining the acquisition or
22 offer and for further relief.

23 (h) Criminal penalties.--Any person who knowingly makes or
24 causes to be made any false statement in any statement or other
25 document filed with the department under this section or who
26 violates subsection (a), (b), (c) or (f) commits a misdemeanor
27 of the first degree. However, a broker or dealer whose
28 participation in an offer or acquisition is limited to the
29 performance of the customary broker's function in transactions
30 effected on a stock exchange or in the over-the-counter market,

1 who receives no more than the customary broker's commission, who
2 does not solicit or arrange for the solicitation of orders to
3 sell shares of capital stock of the corporation whose shares are
4 being purchased and who is without knowledge that his principal
5 has solicited or arranged to solicit any such orders shall not
6 be deemed guilty of any violation of this section. This
7 exemption of the broker or dealer does not exempt his principal.

8 (i) Exemptions.--This section does not apply to any of the
9 following acquisitions of or offers to acquire insurance stock
10 or insurance holding company stock:

11 (1) Any acquisition or offer by the issuer of such stock
12 or by a person who at the time owns beneficially at least
13 two-thirds of the shares of each class proposed to be
14 acquired.

15 (2) Any acquisition or offer to acquire insurance stock
16 pursuant to section 3566 (relating to merger by acquisition
17 of stock).

18 (3) Any offer or acquisition which the department by
19 order exempts from this section as:

20 (i) not entered into for the purpose of, and not
21 having the effect of, changing or influencing the control
22 of an insurance company organized under the laws of this
23 Commonwealth or an insurance holding company; and

24 (ii) not requiring the procedures described in this
25 section for the protection of stockholders whose shares
26 are to be acquired.

27 However, prior to the issuance of such an order, notice that
28 it is considering the exemption shall be given by the
29 department to the person proposing to make the offer or
30 acquisition, to the issuer whose stock is proposed to be

1 acquired and, if the issuer is an insurance holding company,
2 to the prospective subsidiary. The department shall hold a
3 hearing for the purpose of determining whether an exemption
4 order should be granted if, within ten days of the mailing of
5 the notice that it is considering the exemption, written
6 request for a hearing is made to the department by the issuer
7 whose stock is proposed to be acquired or, if the issuer is
8 an insurance holding company, by the prospective subsidiary.

9 (j) Definitions.--As used in this section, the following
10 words and phrases shall have the meanings given to them in this
11 subsection:

12 "Associate of a person."

13 (1) Any corporation or other organization of which the
14 person is an officer, director or partner, or of which the
15 person is, directly or indirectly, the beneficial owner of
16 10% or more of any class of its capital stock.

17 (2) Any person who is, directly or indirectly, the
18 beneficial owner of 10% or more of any class of capital stock
19 of such person.

20 (3) Any trust or other estate in which the person serves
21 as trustee or in a similar fiduciary capacity.

22 (4) Any relative or spouse of the person or any relative
23 of the spouse who has the same home as the person.

24 "Beneficial ownership." Includes the beneficial ownership of
25 capital stock by a person and of each associate of that person
26 and shares of capital stock as to which that person or any
27 associate of that person has the right of acquisition. A person
28 who has beneficial ownership of convertible securities shall
29 also be deemed to be the beneficial owner of any shares of
30 capital stock into which the securities are convertible.

1 "Insurance holding company." Any corporation which owns
2 beneficially 66 2/3% or more of any class of the outstanding
3 capital stock of any insurance company organized under the law
4 of this Commonwealth.

5 "Insurance holding company stock." Any capital stock of an
6 insurance holding company.

7 "Insurance stock." Any capital stock of any insurance
8 company organized under the law of this Commonwealth.

9 "Offer to acquire." Any attempt or offer to acquire, or
10 solicitation of an offer to dispose of, insurance stock or
11 insurance company stock, or any interest therein for value.

12 "Outstanding." With respect to capital stock of an issuer,
13 means that the capital stock is not beneficially owned by the
14 issuer or by any wholly owned subsidiary of the issuer.

15 "Person." Includes any trust or any group or combination of
16 persons which, directly or indirectly, through any intermediary
17 or otherwise:

18 (1) acts together or in concert for the purpose of
19 acquiring insurance stock or insurance holding company stock;
20 or

21 (2) has the purpose of exercising together or in concert
22 voting rights attaching to such stock.

23 "Prospective subsidiary." An insurance company 66 2/3% or
24 more of whose outstanding capital stock of any class is
25 beneficially owned by an insurance holding company whose capital
26 stock is to be acquired pursuant to an offer or acquisition
27 described in subsection (a).

28 § 3569. Holding company systems.

29 (a) Registration.--Every authorized insurer which is a
30 member of an insurance holding company system shall register

1 with the department, except a foreign insurer domiciled in a
2 jurisdiction which has in force by law disclosure requirements
3 and standards substantially similar to those contained in this
4 section or an alien insurer whose state of original entry has
5 such requirements and standards. Any insurer subject to
6 registration under this section shall register within 15 days
7 after it becomes subject to registration, unless the department
8 extends the time for registration. The department may require
9 any authorized insurer which is a member of an insurance holding
10 company system and is not subject to registration under this
11 section to submit to the department a copy of the registration
12 statement or other information filed by the insurer with the
13 insurance regulatory authority of its state of domicile.

14 (b) Information and form required.--Every insurer subject to
15 registration shall file a registration statement on a form
16 prescribed by the department. The form shall contain current
17 information about:

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

21 (2) The identity of every member of the insurance
22 holding company system.

23 (3) The following current agreements, relationships and
24 transactions between the insurer and its affiliates:

25 (i) Loans, other investments, or purchases, sales or
26 exchanges of securities of the affiliates by the insurer
27 of the insurer by its affiliates.

28 (ii) Purchases, sales or exchanges of assets.

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

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

6 (v) Management and service contracts and cost-
7 sharing arrangements, other than cost allocation
8 arrangements based upon generally accepted accounting
9 principles.

10 (vi) Reinsurance agreements covering all or
11 substantially all of one or more lines of insurance of
12 the ceding company.

13 (4) Other material matters concerning transactions
14 between registered insurers and any affiliates as required by
15 the department.

16 Information need not be disclosed on the registration statement
17 filed pursuant to this subsection if the information is not
18 material for the purposes of this section. Unless the department
19 by regulation provides otherwise, sales, purchases, exchanges,
20 loans or extensions of credit, or investments involving 0.5% or
21 less of an insurer's admitted assets as of the preceding
22 December 31 shall not be deemed material for purposes of this
23 section.

24 (c) Amendments to registration statement.--Each registered
25 insurer shall report all material changes in the information
26 required to be disclosed in its registration statement within 15
27 days after the end of the month in which it learns of the change
28 on amendment forms prescribed by the department. However, each
29 registered insurer shall report all extraordinary dividends and
30 other extraordinary distributions to shareholders promptly to

1 the department upon the declaration thereof under subsection
2 (i).

3 (d) Termination of registration.--The department shall
4 terminate the registration of any insurer which demonstrates
5 that it no longer is a member of an insurance holding company
6 system.

7 (e) Consolidated filing.--The department may allow two or
8 more affiliated insurers to file a consolidated registration
9 statement or consolidated reports amending their consolidated
10 registration statement or their individual registration
11 statements.

12 (f) Alternative registration.--The department may allow any
13 insurer which is part of an insurance holding company system to
14 register on behalf of any affiliated insurer which is required
15 to register under subsection (a) and to file all information and
16 material required to be filed under this section.

17 (g) Transactions with affiliates.--Material transactions by
18 registered insurers with their affiliates are subject to the
19 following requirements:

20 (1) The terms shall be fair and reasonable.

21 (2) The books, accounts and records of each party shall
22 be so maintained as to disclose clearly and accurately the
23 precise nature and details of the transactions.

24 (3) The insurer's surplus as regards policyholders
25 following any such transaction, including the payment of
26 dividends or distributions to shareholder affiliates, shall
27 be reasonable in relation to the insurer's outstanding
28 liabilities and adequate to its financial needs.

29 (h) Adequacy of surplus.--In determining whether subsection
30 (g)(3) is complied with, the department shall consider all

1 relevant factors, including, but not limited, to the following:

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

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

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

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

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

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

15 (7) The recent past and projected future trend in the
16 size of the insurer's surplus as regards policyholders.

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

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

20 (10) The quality and liquidity of investments in
21 affiliated persons. The department may treat any such
22 investment as a disallowed asset for purposes of determining
23 the adequacy of surplus as regards policyholders whenever in
24 its judgment the investment so warrants.

25 (i) Dividends and other distributions.--An insurer required
26 to register under subsection (a) shall not pay any extraordinary
27 dividend to its stockholders until:

28 (1) the department has received 30 days' written notice
29 from the insurer of the declaration thereof and has not
30 within the period disapproved the payment; or

1 (2) the department has approved the payment within the
2 30-day period.

3 (j) Examinations.--The department may order any insurer
4 registered under subsection (a) to produce any records, books or
5 papers in the possession of the insurer or its affiliates
6 necessary to ascertain the financial condition or legality of
7 conduct of the insurer. These books, records, papers and
8 information shall be examined in the manner prescribed in
9 sections 511 (relating to examination of companies) and 512
10 (relating to powers with regard to examinations). The department
11 may retain at the registered insurer's expense any attorneys,
12 actuaries, accountants and other experts not otherwise a part of
13 the department's staff reasonably necessary to assist in the
14 conduct of this examination. Any persons so retained shall be
15 under the direction and control of the department and shall only
16 act in an advisory capacity. Each registered insurer producing
17 for examination records, books and papers shall be liable for
18 and shall pay the expense of the examination in accordance with
19 section 512.

20 (k) Confidential treatment.--All information reported
21 pursuant to subsections (a) through (f) and all information and
22 documents obtained by or disclosed to the department or any
23 other person in the course of an examination made pursuant to
24 subsection (j) shall be given confidential treatment. They shall
25 not be subject to subpoena or be made public by the department
26 or any other person without the prior written consent of the
27 insurer. However, if the department, after giving the insurer
28 and its affiliates notice and an opportunity to be heard,
29 determines that the interests of policyholders, shareholders or
30 the public will be served by the publication thereof, it may

1 publish all or any part in any manner it deems appropriate.

2 (l) Injunctions.--Whenever it appears to the department that
3 any person has committed or is about to commit a violation of
4 this section or any regulation or order issued by the department
5 pursuant thereto, the department may petition the Commonwealth
6 Court to enjoin the person from continuing the violation and to
7 obtain other equitable relief.

8 (m) Penalties.--Upon satisfactory evidence of a violation by
9 any person of this section or of any regulation or order of the
10 department pursuant thereto, the department may, following a
11 hearing in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to
12 practice and procedure of Commonwealth agencies), impose a
13 penalty of not more than \$25,000 for each violation. In
14 addition, if the offending person is an insurer, the department
15 may, following the hearing, suspend or revoke its license or
16 refuse, for a period not to exceed one year, to issue it a new
17 license. In determining the nature and amount of any penalty,
18 consideration shall be given to whether or not the violation was
19 willful.

20 (n) Definitions.--As used in this section the following
21 words and phrases shall have the meanings given to them in this
22 subsection:

23 "Affiliate." A person who directly, or indirectly through
24 one or more intermediaries, controls, or is controlled by, or is
25 under common control with, a specified person.

26 "Control." The possession, direct or indirect, of the power
27 to direct the management and policies of a person, whether
28 through the ownership of voting securities, by contract or
29 otherwise, unless the power is the result of an official
30 position with or corporate office held by the person. Control is

1 presumed to exist if any person, directly or indirectly, owns,
2 controls, holds with the power to vote or holds proxies
3 representing 10% or more of the voting securities of any other
4 person. This presumption may be rebutted by a showing that
5 control does not exist in fact. The department may, after
6 furnishing all persons in interest notice and an opportunity to
7 be heard, determine that control exists in fact, notwithstanding
8 the absence of a presumption to that effect.

9 "Extraordinary dividend." Any dividend or other distribution
10 which, together with other dividends and distributions made
11 within the preceding 12 months, exceeds the greater of:

12 (i) ten percent of the insurer's surplus as regards
13 policyholders as shown on its last annual statement on file
14 with the department; or

15 (ii) the net gain from operations of the insurer, if the
16 insurer is a life insurer, or the net investment income, if
17 the insurer is not a life insurer, for the period covered by
18 the statement, not including pro rata distributions of any
19 class of the insurer's own securities.

20 "Insurance company" or "insurer." Any entity authorized by
21 the department to transact the business of insurance in this
22 Commonwealth, not including any instrumentality of the Federal
23 Government.

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

26 "Subsidiary." An affiliate controlled by a specified person
27 directly, or indirectly through one or more intermediaries.

28 § 3570. Voluntary dissolution.

29 A stock or mutual insurance company may file with the court
30 of common pleas in the county in which the principal business of

1 the company is conducted or of the county in which its principal
2 office of place of business is located a petition in equity
3 praying for the dissolution of the company. The petition may be
4 granted only if it is filed with the consent of a majority of
5 the members or stockholders obtained at a meeting duly convened.
6 A copy of the petition shall be filed with the department. If
7 the court is satisfied that the petition may be granted without
8 prejudice to the public welfare or to the interests of the
9 members or stockholders, the court shall grant the petition,
10 whereupon the company shall be dissolved. The accounts of the
11 officers, directors or trustees of any dissolved company shall
12 be settled and approved by the court. Dividends of the assets
13 shall, in the case of stock insurance companies, be made among
14 the stockholders or, in the case of mutual life insurance
15 companies, among the members, as in the case of the accounts of
16 assignees and trustees; however, assets of mutual life insurance
17 companies derived from a health and accident business, other
18 than those properly credited to the members or policyholders on
19 policies covering the business, and the assets of other mutual
20 companies, not creditable to policyholders and members, shall be
21 escheated to the Commonwealth. The decree of the court shall not
22 go into effect until the Auditor General, State Treasurer and
23 Attorney General have filed in court their certificate showing
24 that all taxes due the Commonwealth have been paid and a
25 certified copy of the decree has been filed and recorded in the
26 office of the Secretary of the Commonwealth.

27 § 3571. Dissolution for failure to do business.

28 If any stock or mutual insurance company does not commence to
29 issue policies within one year from the date of its letters
30 patent, or if any insurance company ceases for one year to write

1 new insurance policies, its corporate powers and existence shall
2 cease. The court, upon petition of the Attorney General, may fix
3 by decree the time within which it shall settle and close its
4 affairs.

5 SUBCHAPTER E

6 FOREIGN OR ALIEN COMPANIES

7 Sec.

8 3576. Government-owned companies.

9 3577. Conditions for authorization of foreign or alien
10 companies.

11 3578. Power of foreign or alien insurance companies as to
12 real property.

13 § 3576. Government-owned companies.

14 (a) Prohibition.--A domestic, foreign or alien insurance
15 entity, in which the major financial interest is held, directly
16 or indirectly, by another state or by a foreign government or by
17 any political subdivision, instrumentality or agency of either,
18 shall not be admitted and authorized to do business. A
19 certificate of authority to transact any kind of insurance
20 business in this Commonwealth shall not be issued, renewed or
21 continued in effect for any such insurance entity.

22 (b) Applicability.--This section does not apply to any
23 insurance entity which was so owned, controlled or constituted
24 prior to January 1, 1958, and was authorized to do business in
25 this Commonwealth and was issued a certificate of authority to
26 do so prior to January 1, 1958.

27 § 3577. Conditions for authorization of foreign or alien
28 companies.

29 A foreign or alien stock or mutual insurance company or
30 association shall not be admitted and authorized to do business

1 until it has complied with the following requirements:

2 (1) It has filed with the department:

3 (i) A certified copy of its charter or deed of
4 settlement.

5 (ii) A statement of its financial condition and
6 business, signed and sworn to by its proper officers.

7 (iii) Copies of forms of all policies it proposes to
8 issue in this Commonwealth.

9 (iv) Any other information the department requires.

10 (2) It has satisfied the department that it is fully and
11 legally organized under the laws of its state or government
12 to do the business it proposes to transact and if a stock
13 company has the requisite amount of capital fully paid up and
14 unimpaired.

15 (3) It has filed in the office of the Auditor General a
16 statement showing:

17 (i) The name of the company or association.

18 (ii) The date of incorporation or organization.

19 (iii) The statute or authority under which
20 incorporated or organized.

21 (iv) The place of business.

22 (v) The post office address and names of the
23 president, secretary and treasurer.

24 (vi) The amount of capital authorized by its
25 charter.

26 (vii) The amount of capital paid into the treasury
27 of the company.

28 Any company or association which neglects or refuses to file
29 this statement shall be subject to a penalty of \$500, which
30 shall be collected, on an account settled by the Auditor

1 General and State Treasurer, in the same manner as taxes on
2 stock are settled and collected.

3 (4) It has actually engaged in doing an insurance
4 business and has complied with applicable law in its state of
5 domicile for a period of at least one year immediately
6 preceding its seeking admission to this Commonwealth. The
7 requirements of this paragraph may be partly or entirely
8 waived by the department with respect to any company or
9 association which is affiliated with one or more insurers
10 already authorized in this Commonwealth.

11 § 3578. Power of foreign or alien insurance companies as to
12 real property.

13 (a) General rule.--Any foreign or alien insurance
14 corporation or company, joint stock company or association
15 authorized to transact business within this Commonwealth may,
16 subject to the same limitations for domestic insurance
17 companies:

18 (1) Acquire, hold, mortgage, lease and transfer real
19 property in this Commonwealth.

20 (2) Enter into agreements with one more other authorized
21 insurance companies, whereby the parties to the agreements
22 participate in ownership, management and control of real
23 estate held by the company, or by a corporation whose stock
24 is held by the company.

25 (3) Invest in the capital stock and obligations of
26 corporations organized for the purpose of acquiring real
27 estate in this Commonwealth.

28 (4) Exercise all rights, privileges and duties accorded
29 to and imposed upon lien creditors purchasing at judicial
30 sales.

1 (b) Taxation.--This title does not exempt real estate
2 acquired, held, mortgaged, leased or conveyed by any insurance
3 company under this section from being taxed in the same manner
4 as other real estate within this Commonwealth.

5 SUBCHAPTER F

6 VIOLATIONS AND PENALTIES

7 Sec.

8 3581. Embezzlement by officers or agents.

9 3582. Rebates and inducements.

10 3583. Misrepresentations.

11 3583.1. Immunity from liability.

12 3584. Penalties for deceptive practices.

13 3585. Unfair discrimination.

14 3586. Unauthorized business practices.

15 3587. Buying proxies.

16 3588. Unauthorized motor vehicle services.

17 3589. Fraud in obtaining licenses or certificates.

18 3590. Securities transactions.

19 § 3581. Embezzlement by officers or agents.

20 Any director, officer, agent or other person connected with
21 or doing business for or with any foreign or domestic insurance
22 entity which has complied with this title, who fraudulently
23 embezzles or appropriates to his use or the use of any other
24 person any money or other property belonging to the entity or
25 left with or held by the entity in trust, commits a misdemeanor
26 of the first degree. It is not necessary, in order to establish
27 a prima facie case for the Commonwealth, to set forth or prove
28 the incorporation of the company, except by the verbal testimony
29 of any competent witness.

30 § 3582. Rebates and inducements.

1 An insurance entity shall not offer or pay, directly or
2 indirectly, any rebate of the premium payable on the policy or
3 any other valuable consideration as an inducement for insurance
4 on any risk in this Commonwealth which is not specified in the
5 insurance policy or contract. This section does not prohibit the
6 taking of a bona fide obligation, with legal interest, in
7 payment of any premium or prohibit a company transacting
8 industrial life insurance on a weekly payment plan from
9 returning to policyholders who have made a premium payment for a
10 period of at least one year the percentage of premium which the
11 company would otherwise have paid for the weekly collection of
12 the premium.

13 § 3583. Misrepresentations.

14 (a) Policy terms.--An insurance entity or individual in its
15 behalf shall not issue any written or oral statement or circular
16 misrepresenting the terms of any policy issued or to be issued
17 by the entity or make an estimate, with intent to deceive, of
18 the future dividends payable under any policy.

19 (b) Inducing policyholders to change insurers.--An insurance
20 entity or individual in its behalf shall not make any
21 misrepresentation or incomplete comparison of policies to any
22 person insured by any other entity for the purpose of inducing
23 the person to terminate his present insurance and to take out a
24 policy of insurance in another entity insuring against similar
25 risks.

26 § 3583.1. Immunity from liability.

27 (a) Private persons.--In the absence of fraud or bad faith,
28 no person or his employees or agents shall be subject to civil
29 liability, and no civil cause of action shall arise against any
30 of them for any of the following:

1 (1) Information relating to any suspected fraudulent
2 insurance act furnished by them to or received from law
3 enforcement officials, their agents and employees.

4 (2) Information relating to any suspected fraudulent
5 insurance act furnished by them to or received from other
6 persons subject to the provisions of this title.

7 (3) Information furnished by them in reports to the
8 department, the National Association of Insurance
9 Commissioners or any other organization established to detect
10 and prevent fraudulent insurance acts, their agents,
11 employees or designees.

12 (b) Commissioner and department.--The commissioner and the
13 employees of the department, in the absence of fraud or bad
14 faith, shall not be subject to civil liability. No civil cause
15 of action shall arise against any of them by virtue of the
16 publication of a report or bulletin related to the official
17 activities of the department.

18 (c) Effect on present law.--Nothing in this section is
19 intended to abrogate or modify a common law or statutory
20 immunity enjoyed by any person.

21 (d) Definitions.--As used in this section, the following
22 words and phrases shall have the meanings given to them in this
23 subsection:

24 "Bad faith." Serious doubt as to the truth of the
25 information furnished or received, or the report or bulletin
26 published.

27 "Fraud." Knowledge that the information furnished or
28 received, or the report or bulletin published, is not true.

29 "Fraudulent insurance act." An act committed by a person
30 who, knowingly and with intent to defraud, presents, causes to

1 be presented, or prepares with knowledge or belief that it will
2 be presented to or by an insurer, purported insurer or broker,
3 or an agent of an insurer, purported insurer or broker, a
4 written statement as part or in support of, an application for
5 the issuance or rating of an insurance policy for commercial
6 insurance, or a claim for payment or other benefit pursuant to
7 an insurance policy for commercial or personal insurance which
8 he knows to contain materially false information concerning a
9 fact material to the statement or claim, or to conceal, for the
10 purpose of misleading, information concerning a fact material to
11 the statement or claim.

12 § 3584. Penalties for deceptive practices.

13 (a) General rule.--Upon satisfactory evidence of the
14 violation of section 3582 (relating to rebates and inducements)
15 or 3583 (relating to misrepresentations) or 18 Pa.C.S. § 3922
16 (relating to theft by deception) or 4114 (relating to securing
17 execution of documents by deception) by any insurance entity or
18 any officer, director or attorney-in-fact thereof, the
19 department may take any one or more of the following actions
20 against an offending person:

21 (1) Revoke an entity's certificate of authority.

22 (2) Refuse, for a period of not to exceed one year, to
23 issue an entity a new license.

24 (3) Impose a penalty of not more than \$1,000 for each
25 violation.

26 (b) Hearing.--The department shall give written notice to
27 the person accused of the violation, stating specifically the
28 nature of the alleged violation and fixing a time and place, at
29 least ten days thereafter, when a hearing shall be held. After
30 the hearing or upon failure of the accused to appear at the

1 hearing, the department may impose a penalty described in
2 subsection (a).

3 (c) Criminal penalties.--Any person who violates section
4 3582 or 3583 commits a summary offense.

5 (d) Testimony and production of documents.--A person shall
6 not be excused from testifying or from producing any books or
7 documents at any hearing held by the department or at the trial
8 or hearing before any court or district justice or any person or
9 company charged with violating section 3582 or 3583 or 18
10 Pa.C.S. § 3922 or 4114 on the ground that the testimony or
11 evidence may tend to incriminate himself. However, no person
12 shall be prosecuted for any act concerning which he shall be
13 compelled so to testify or produce evidence, documentary or
14 otherwise, except for perjury committed in so testifying.

15 § 3585. Unfair discrimination.

16 (a) General rule.--Unfair discrimination between individuals
17 of the same class in the amount of premiums or rates charged for
18 any policy of life, health and accident insurance and any other
19 lines and kinds of insurance not within the scope of Chapter 19
20 (relating to insurance rates), or in the benefits payable
21 thereon, or in the terms or conditions of the policy or in any
22 other manner is prohibited.

23 (b) Criminal penalty.--Any person who issues or causes to be
24 issued, either as principal or agent, any policy or contract of
25 insurance in this Commonwealth in violation of this section
26 commits a summary offense.

27 (c) Civil penalties.--Upon satisfactory evidence of the
28 violation of this section by any person, the department may take
29 any one or more of the following actions:

30 (1) Suspend or revoke the license of the offending

1 person.

2 (2) Refuse, for a period of not to exceed one year, to
3 issue a new license to the person.

4 (3) Impose a penalty of not more than \$500 for each
5 violation.

6 § 3586. Unauthorized business practices.

7 (a) Criminal penalty.--Any person who issues or causes to be
8 issued, either as principal or agent, any policy or contract of
9 insurance in this Commonwealth in violation of section 3515
10 (relating to approval of contracts by department) commits a
11 summary offense.

12 (b) Civil penalties.--Upon satisfactory evidence of the
13 violation of section 3515 by any person, the department may take
14 any one or more of the following actions:

15 (1) Suspend or revoke the license of the offending
16 person.

17 (2) Refuse, for a period of not to exceed one year, to
18 issue a new license to the person.

19 (3) Impose a fine of not more than \$1,000 for each
20 violation.

21 § 3587. Buying proxies.

22 A person shall not give or promise money or anything of value
23 to the owners or holders of capital stock of any insurance
24 company, or to the members of any mutual insurance company,
25 incorporated under the law of this Commonwealth, with intent to
26 secure the voting proxy of any share of the capital stock or of
27 any member. A proxy so obtained shall not be voted at any
28 stockholders' or members' meeting of any domestic insurance
29 company. Any person violating this section commits a misdemeanor
30 of the third degree.

1 § 3588. Unauthorized motor vehicle services.

2 (a) General rule.--A person, other than an authorized
3 insurance entity or an automobile club organized as a
4 corporation not-for-profit, shall not:

5 (1) guarantee to owners of motor vehicles the services
6 of an attorney in the event of damage to persons or property
7 arising out of the operation of the motor vehicle; or

8 (2) provide for the towing of any damaged motor vehicle.

9 (b) Violations.--Any person who violates this section
10 commits a misdemeanor of the third degree.

11 § 3589. Fraud in obtaining licenses or certificates.

12 (a) Unlawful acts.--Any person commits a summary offense if
13 he commits any of the following acts:

14 (1) Misrepresenting his, their or its qualifications to
15 the department or making false statements in applications for
16 any license or certificate.

17 (2) Impersonating or attempting or offering to
18 impersonate another person in taking or attempting or
19 offering to take any examination held in accordance with the
20 regulations of the department.

21 (3) Taking, attempting or offering or inducing another
22 person to take such an examination in the name of any other
23 person.

24 (4) Having in his possession examination papers to be
25 used in any such examination when not contained in their
26 sealed wrappers, or copies of these papers, prior to the
27 examination, unless duly authorized by the department.

28 (5) Selling or offering to sell, prior to the
29 examination, examination papers or any question prepared for
30 use in any such examination.

1 (6) Using in any such examination any question papers or
2 questions or securing or preparing the answers to the
3 questions prior to the examination.

4 (7) Transmitting to the department answers to questions
5 used in any such examination which are prepared or written
6 outside of the period of examination or altering any answer
7 after the period is closed.

8 (8) Securing or attempting to secure fraudulently any
9 credential regularly issued by the department which is based
10 upon such an examination.

11 (9) Altering licenses or certificates in a manner as to
12 misrepresent the authority granted under the license or
13 certificate.

14 (b) Civil penalties.--Upon satisfactory evidence of the
15 violation of this section by any person, the department may take
16 any of the following actions:

17 (1) Suspend or revoke the license of the offending
18 person.

19 (2) Refuse, for a period not to exceed one year, to
20 issue a new license to the person.

21 (3) Impose a fine of not more than \$1,000 for each
22 violation.

23 (c) Hearing.--Before the department takes any action under
24 subsection (b), it shall give written notice to the person
25 accused of the violation, stating specifically the nature of the
26 alleged violation, and fixing a time and place, at least ten
27 days thereafter, when a hearing of the of the matter shall be
28 held. After the hearing or upon failure of the accused to appear
29 at the hearing, the department shall impose the penalty listed
30 in subsection (b).

1 § 3590. Securities transactions.

2 (a) Fraudulent use of securities.--Any member, officer,
3 director or attorney-in-fact of any authorized entity who, on
4 behalf of the entity, borrows, rents, hires, leases or otherwise
5 engages the use of securities, notes or other obligations or
6 evidences of indebtedness owned or issued by any other entity or
7 individual, or of the Federal Government, a government agency or
8 agency of any state with intent to injure or defraud any person
9 or to deceive the department or other person legally authorized
10 to examine the affairs of the entity, commits a felony of the
11 third degree.

12 (b) Aiding and abetting.--Any domestic or foreign
13 corporation which engages in or purports to be engaged in
14 organizing or receiving subscriptions for or disposing of stocks
15 of, or in any manner aiding or taking part in the formation or
16 in the business of an insurance entity either as agent or
17 otherwise, or which holds capital stock of one or more insurance
18 companies for the purpose of controlling the management thereof
19 as voting trustees or otherwise, or any employee, agent or
20 attorney thereof, that aids and abets an insurance entity in
21 borrowing, renting, hiring, leasing or engaging the use of such
22 stocks, bonds, debentures, notes, investment certificates,
23 securities, notes or other obligations or evidence of
24 indebtedness, commits a felony of the third degree.

25 (c) Civil penalties.--If any insurance entity is found in
26 possession of securities, notes or other obligations or
27 evidences of indebtedness acquired in violation of subsection
28 (a) or if any of its officers, directors, members or attorneys-
29 in-fact have been convicted under subsection (a), the department
30 may suspend its certificate of authority. This section does not

1 prohibit the department from bringing an action to dissolve the
2 insurance entity under Chapter 39 (relating to suspension of
3 business and dissolution).

4 CHAPTER 37

5 INTERNATIONAL OPERATIONS

6 Sec.

7 3701. Authority to transact business outside United States.

8 3702. Domestication of alien insurers.

9 § 3701. Authority to transact business outside United States.

10 (a) General rule.--Domestic stock and mutual insurance
11 companies, other than life insurance companies, may transact
12 outside of the United States any form of insurance or
13 reinsurance, other than life insurance or annuities, on risks
14 outside of the United States. However, the company shall
15 maintain a minimum policyholders' surplus of \$2,000,000. Such
16 companies may accept any kind of reinsurance, other than life
17 insurance and annuities, if the company maintains a minimum
18 policyholders' surplus as required by law.

19 (b) Reserves.--All companies doing the business permitted by
20 this section shall maintain reserves as required under Chapter 7
21 (relating to reserve liability).

22 § 3702. Domestication of alien insurers.

23 (a) General rule.--Upon compliance with the provisions of
24 this section, an authorized alien insurer which owns
25 beneficially, directly or indirectly, all of the outstanding
26 capital stock, other than directors' qualifying shares, of any
27 domestic insurer incorporated for the purpose of transacting the
28 same or similar classes of insurance which the United States
29 branch of the alien insurer is qualified and licensed to
30 transact, may, with the prior written approval and subject to

1 the final approval of the department and of the insurance
2 supervisory official of the regulatory state of the United
3 States branch of the alien insurer, domesticate its United
4 States branch. The alien insurer shall enter into an agreement
5 in writing with the domestic insurer providing for the
6 acquisition by the domestic insurer of the business and assets
7 of the United States branch of the alien insurer and the
8 assumption by the domestic insurer of all of the liabilities of
9 the United States branch for no consideration other than the
10 assumption of the liabilities or for additional consideration
11 payable by the issuance by the domestic insurer of shares of its
12 capital stock. For the purposes of this section, those shares of
13 capital stock of the domestic insurer or voting trust
14 certificates representing the shares, which are held in trust by
15 the United States branch of the alien insurer or are held in a
16 trust created by the alien insurer and of which the alien
17 insurer is a beneficiary, shall be deemed to be shares held
18 beneficially, but indirectly, by an alien insurer. The
19 acquisition of assets and assumption of liabilities of the
20 United States branch by the domestic insurer shall be effected
21 by the filing of an instrument of transfer and assumption with
22 the insurance supervisory official of the regulatory state. The
23 instrument shall be in form satisfactory to the department and
24 the supervisory official of the regulatory state and shall be
25 executed by the alien insurer and the domestic insurer.

26 (b) Authorization and execution of domestication
27 agreement.--The domestication agreement shall be authorized,
28 adopted, approved, signed and acknowledged by the alien insurer
29 in accordance with the law of the country under which it is
30 organized. In the case of the domestic insurer, the

1 domestication agreement shall be adopted by resolution of its
2 board of directors and executed by its president or any vice
3 president and attested by its secretary or assistant secretary
4 under its corporate seal.

5 (c) Approval by department.--An executed counterpart of the
6 domestication agreement, together with certified copies of the
7 corporate proceedings of the domestic insurer and the alien
8 insurer approving, adopting and authorizing the execution of the
9 domestication agreement shall be submitted to the department for
10 its approval. If the department finds that the agreement is in
11 accordance with the provisions of this section and that the
12 interest of policyholders and creditors in this Commonwealth, of
13 the United States branch of the alien insurer and of the
14 domestic insurer are not materially adversely affected, it shall
15 approve the domestication agreement and certify the approval in
16 writing to the insurance supervisory official of the regulatory
17 state.

18 (d) Consummation of domestication agreement and transfer of
19 deposits.--Upon the filing with the department of a certified
20 copy of the instrument of transfer and assumption, pursuant to
21 which the domestic insurer succeeds to the business and assets
22 of the United States branch of an alien insurer and assumes all
23 its liabilities and upon compliance with all the requirements of
24 the laws and of the insurance supervisory official of the
25 regulatory state regulating the terms, conditions and procedure
26 of the domestication, the domestication of the United States
27 branch shall become effective. Thereupon all the rights,
28 franchises and interests and all property of the United States
29 branch shall be deemed as transferred and vested in the domestic
30 insurer, without any other deed or transfer. Simultaneously

1 therewith the domestic insurer shall be deemed to have assumed
2 all of the obligations and liabilities of the United States
3 branch and shall be held liable to pay and discharge its debts
4 and liabilities in the same manner as if they had been incurred
5 and contracted by the domestic insurer. An action or proceeding
6 pending at the time of domestication, in which either the United
7 States branch or the domestic insurer are a party, shall not
8 abate or discontinue by reason of the domestication, but may be
9 carried on as if the domestication had not taken place or the
10 domestic company may be substituted in place of the United
11 States branch by order of the court. All deposits of the United
12 States branch held by the department or other regulatory agency
13 in this Commonwealth shall be deemed held as security that the
14 domestic insurer will fully perform its obligations to all
15 policyholders and creditors within the United States of the
16 United States branch and of the domestic insurer; such deposits,
17 including all deposits of the United States branch and its
18 assets held in trust pursuant to the law of any other state,
19 shall be deemed to be assets of the domestic insurer and shall
20 be reported as such in the annual statements and other reports
21 which the domestic insurer may be required to file in this
22 Commonwealth. Upon the release by the department or other
23 governmental agency or any other state of the deposits, the
24 securities and cash constituting the released deposit shall be
25 paid over to the domestic insurer as the lawful successor in
26 interest to the United States branch.

27 (e) Definitions.--As used in this section, the following
28 words and phrases shall have the meanings given to them in this
29 subsection:

30 "Domestication." The reorganization of the United States

1 branch of an alien insurer as the result of which a domestic
2 stock insurance company succeeds to all the business and assets
3 and assumes all the liabilities of the United States branch of
4 the alien insurer.

5 "Regulatory state." The state pursuant to the law of which
6 the assets of the United States branch of the alien insurer are
7 held in trust.

8 "United States branch." The business unit through which
9 business is transacted within the United States by an alien
10 insurer and the assets and liabilities of the insurer within the
11 United States pertaining to the business.

12 CHAPTER 39

13 SUSPENSION OF BUSINESS AND DISSOLUTION

14 Subchapter

- 15 A. General Provisions
- 16 B. Judicial and Administrative Procedure
- 17 C. Summary Proceedings
- 18 D. Rehabilitation
- 19 E. Liquidation Proceedings
- 20 F. Estate of Liquidated Insurer
- 21 G. Distribution of Estate of Liquidated Insurer
- 22 H. Interstate Relations

23 SUBCHAPTER A

24 GENERAL PROVISIONS

25 Sec.

26 3901. Construction and purpose.

27 3902. Applicability of chapter.

28 3903. Definitions.

29 § 3901. Construction and purpose.

30 (a) Construction.--This chapter does not limit the power

1 granted the department by other provisions of law and shall be
2 liberally construed to effect the purpose stated in subsection
3 (b).

4 (b) Purpose.--The purpose of this chapter is the protection
5 of the interests of insureds, creditors and the public
6 generally, with minimum interference with the normal
7 prerogatives of the owners and managers of insurers, through the
8 following:

9 (1) Early detection of any potentially dangerous
10 condition in an insurer and prompt application of appropriate
11 corrective measures.

12 (2) Improved methods for rehabilitating insurers,
13 involving the cooperation and management expertise of the
14 insurance industry.

15 (3) Enhanced efficiency and economy of liquidation,
16 through clarification and specification of the law, to
17 minimize legal uncertainty and litigation.

18 (4) Equitable apportionment of any unavoidable loss.

19 (5) Lessening the problems of interstate rehabilitation
20 and liquidation by facilitating cooperation between states in
21 the liquidation process and by extending the scope of
22 personal jurisdiction over debtors of the insurer outside
23 this Commonwealth.

24 (6) Regulation of the insurance business by the impact
25 of the law relating to delinquency procedures and substantive
26 rules on the entire insurance business.

27 § 3902. Applicability of chapter.

28 The proceedings authorized by this chapter may be applied to
29 the following:

30 (1) All insurers who are doing, or have done, an

1 insurance business in this Commonwealth and against whom
2 claims arising from that business may exist.

3 (2) All insurers who purport to do an insurance business
4 in this Commonwealth.

5 (3) All insurers who have insured resident in this
6 Commonwealth.

7 (4) All other persons organized or in the process of
8 organizing with the intent to do an insurance business in
9 this Commonwealth.

10 (5) All nonprofit service plans subject to Chapters 75
11 (relating to hospital plan corporations) and 77 (relating to
12 professional health services plan corporations) and all
13 fraternal benefit societies and beneficial societies subject
14 to Chapter 45 (relating to Fraternal Benefit Society Code).

15 (6) All title insurance companies subject to Chapter 67
16 (relating to title insurance).

17 § 3903. Definitions.

18 The following words and phrases when used in this chapter
19 shall have the meanings given to them in this section unless the
20 context clearly indicates otherwise:

21 "Admitted assets."

22 (1) Includes all of the following assets of an insurer:

23 (i) Cash in the possession of the insurer, or in
24 transit under its control, including the balance of any
25 deposit in a solvent bank or trust company.

26 (ii) Investments, securities, properties and loans
27 acquired or held in accordance with this title including:

28 (A) Interest due or accrued on any bond or
29 evidence of indebtedness which is not in default and
30 which is not valued on a basis including accrued

1 interest.

2 (B) Declared and unpaid dividends on stocks and
3 shares, unless this amount has otherwise been allowed
4 as an asset.

5 (C) Interest due or accrued upon a collateral
6 loan in an amount not to exceed one year's interest.

7 (D) Interest due or accrued on deposits in any
8 solvent financial institution and interest due or
9 accrued on other assets, if the interest is in the
10 judgment of the department a collectible asset.

11 (E) Interest due or accrued on a mortgage loan,
12 in an amount not exceeding the amount of the excess
13 of the value of the property less delinquent taxes
14 thereon over the unpaid principal, not to exceed
15 interest accrued for a period of 12 months.

16 (F) Rent due or accrued on real property if the
17 rent is not in arrears for more than three months,
18 and rent more than three months in arrears if the
19 payment of the rent is adequately secured by property
20 held in the name of the tenant and conveyed to the
21 insurer as collateral.

22 (G) The unaccrued portion of taxes paid prior to
23 the due date on real property.

24 (iii) Premium notes, policy loans and other policy
25 assets and liens on policies and certificates of life
26 insurance and annuity contracts and accrued interest
27 thereon, in an amount not exceeding the legal reserve and
28 other policy liabilities carried on each individual
29 policy.

30 (iv) The net amount of uncollected and deferred

1 premiums and annuity consideration in the case of a life
2 insurer.

3 (v) Premiums in the course of collection, other than
4 for life insurance, not more than three months past due,
5 less commissions payable thereon. This limitation does
6 not apply to premiums payable directly or indirectly by
7 the Federal Government.

8 (vi) Installment premiums other than life insurance
9 premiums to the extent of the unearned premium reserve
10 carried on the policy to which the premiums apply.

11 (vii) Notes and similar written obligations, not
12 past due, taken for premiums other than life insurance
13 premiums, on policies permitted to be issued on that
14 basis, to the extent of the unearned premium reserves
15 carried thereon.

16 (viii) The full amount of reinsurance recoverable by
17 a ceding insurer from a solvent reinsurer if the
18 reinsurance is authorized under section 3512 (relating to
19 reinsurance).

20 (ix) Amounts receivable by an assuming insurer
21 representing funds withheld by a solvent ceding insurer
22 under a reinsurance treaty.

23 (x) Deposits or equities recoverable from
24 underwriting associations, syndicates and reinsurance
25 funds, or from a suspended banking institution, to the
26 extent deemed by the department available for the payment
27 of losses and claims and at values to be determined by
28 it.

29 (xi) Electronic and mechanical machines constituting
30 a data processing and accounting system if the cost of

1 the system is at least \$10,000 which shall be amortized
2 in full over a period not to exceed ten years.

3 (xii) All assets allowed pursuant to the annual
4 statement form approved by the department for use in this
5 Commonwealth for the kinds of insurance to be reported
6 upon.

7 (xiii) Other assets, not inconsistent with this
8 definition, deemed by the department to be available for
9 the payment of losses and claims, at values to be
10 determined by it.

11 (2) The term does not include:

12 (i) Good will, trade names and other similar
13 intangible assets.

14 (ii) Advances, other than policy loans, to officers,
15 directors and controlling stockholders, whether secured
16 or not, and advances to employees, agents and other
17 persons on personal security only.

18 (iii) Stock of the insurer, owned by it, or any
19 material equity in the stock or loans secured thereby, or
20 any material proportionate interest in such stock
21 acquired or held through the ownership by the insurer of
22 an interest in another firm, corporation or business
23 unit.

24 (iv) Furniture, fixtures, furnishings, safes,
25 vehicles, libraries, literature and supplies, other than
26 data processing and accounting systems authorized under
27 31 Pa. Code § 11.4, except in the case of title insurers
28 such materials and plants as the insurer is expressly
29 authorized to invest in section 6738(21) (relating to
30 investment of capital) and, except in the case of any

1 insurer, any property which is acquired through
2 foreclosure of chattel mortgage or security interest
3 acquired pursuant to sections 5305 (relating to
4 authorized holdings of real estate), 5506 (relating to
5 authorized holdings of real estate), 5926 (relating to
6 authorized holdings of real estate) and 6738 or which is
7 reasonably necessary for the maintenance and operation of
8 real estate lawfully acquired and held by the insurer
9 other than real estate used by it for home office, branch
10 office or similar purposes.

11 (v) The amount, if any, by which the aggregate book
12 value of investments as carried in the ledger assets of
13 the insurer exceeds their aggregate value as determined
14 under this chapter.

15 "Ancillary state." Any state other than a domiciliary state.

16 "Creditor." A person having any claim, whether matured or
17 unmatured, liquidated or unliquidated, secured or unsecured,
18 absolute, fixed or contingent.

19 "Delinquency proceeding." Any proceeding instituted against
20 an insurer for the purpose of liquidating, rehabilitating,
21 reorganizing or conserving such insurer and any summary
22 proceeding under Subchapter C (relating to summary proceedings).

23 "Doing business." Includes any of the following acts,
24 whether effected by mail or otherwise:

25 (1) The issuance or delivery of contracts or
26 certificates of insurance to persons resident in this
27 Commonwealth.

28 (2) The solicitation of applications for such contracts
29 or other negotiations preliminary to the execution thereof.

30 (3) The collection of premiums, membership fees,

1 assessments or other consideration for such contracts.

2 (4) The transaction of matters subsequent to execution
3 of such contracts and arising therefrom.

4 "Domiciliary state." The state in which an insurer is
5 incorporated or organized or, in the case of an alien insurer,
6 its state of entry.

7 "Fair consideration." Consideration given for property of
8 obligation:

9 (1) when, in exchange for the property or obligation as
10 a fair equivalent therefor and in good faith, property is
11 conveyed or services are rendered or an obligation is
12 incurred or an antecedent debt is satisfied; or

13 (2) when the property or obligation is received in good
14 faith to secure a present advance or antecedent debt in
15 amount not disproportionately small as compared to the value
16 of the property or obligation obtained therefor.

17 "General assets." All property, real, personal or otherwise,
18 not specifically mortgaged, pledged, deposited or otherwise
19 encumbered for the security or benefit of specified persons or
20 classes of persons. As to specifically encumbered property, the
21 term includes all such property or its proceeds in excess of the
22 amount necessary to discharge the sum secured. Assets held in
23 trust and on deposit for the security or benefit of all
24 policyholders and creditors shall be treated as general assets.

25 "Guaranty association." The Property and Casualty Insurance
26 Guaranty Association provided for under Chapter 81 (relating to
27 Property and Casualty Insurance Guaranty Association), the Life
28 and Health Insurance Guaranty Association provided for under
29 Chapter 83 (relating to Life and Health Insurance Guaranty
30 Association) and the Workmen's Compensation Security Fund

1 provided for under the act of July 1, 1937 (P.L.2532, No.470),
2 known as the Workmen's Compensation Security Fund Act, and any
3 other similar entity created under the statutes of this
4 Commonwealth or any other state for the payment of claims of
5 insolvent insurers.

6 "Insolvency."

7 (1) In the case of an insurer issuing only assessable
8 fire insurance policies:

9 (i) the inability to pay any obligation within 30
10 days after it becomes payable; or

11 (ii) if an assessment is made within 30 days after
12 such date, the inability to pay the obligation 30 days
13 following the date specified in the first assessment
14 notice issued after the date of loss pursuant to section
15 4709 (relating to assessments).

16 (2) In the case of any other insurer, the inability to
17 pay its obligations when they are due, or having admitted
18 assets which do not exceed its liabilities plus the greater
19 of any capital and surplus required by law for its
20 organization or its authorized and issued capital stock.

21 "Insurer." Any person who is doing, has done, purports to
22 do, or is licensed to do an insurance business, and is or has
23 been subject to the authority of, or to liquidation,
24 rehabilitation, reorganization or conservation by any insurance
25 department and any person included under section 3902 (relating
26 to applicability of chapter).

27 "Liabilities." Includes, but is not limited to, reserves
28 required by statute or by regulations or specific requirements
29 of the department upon a subject company at the time of
30 admission or subsequent thereto, and any other capital and

1 surplus requirements.

2 "Preferred claim." Any claim with respect to which this
3 chapter accords priority of payment from the general assets of
4 the insurer.

5 "Receiver." Receiver, liquidator, rehabilitator or
6 conservator.

7 "Reciprocal state." Any state other than this Commonwealth
8 in which in substance and effect sections 3942(a) (relating to
9 liquidation orders), 3984 (relating to ancillary formal
10 proceedings) and 3986 (relating to claims of nonresidents
11 against domiciliary insurers) through 3988 (relating to
12 execution proceedings) are in force, in which provisions are in
13 force requiring that the department or equivalent office or
14 official be the receiver of a delinquent insurer and in which
15 some provision exists for the avoidance of fraudulent
16 conveyances and preferential transfers.

17 "Secured claim." Any claim secured by mortgage, trust deed,
18 pledge, deposit as security, escrow or otherwise, but not
19 including special deposit claims or claims against general
20 assets. The term also includes claims which have become liens
21 upon specific assets by reason of judicial process.

22 "Special deposit claim." Any claim secured by a deposit made
23 pursuant to statute for the security or benefit of a limited
24 class of persons, but not including any claim secured by general
25 assets.

26 "Transfer." Includes, but is not limited to, the creation of
27 any lien upon a property interest. The retention of a security
28 title to property delivered to a debtor shall be deemed a
29 transfer suffered by the debtor.

30

SUBCHAPTER B

JUDICIAL AND ADMINISTRATIVE PROCEDURE

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Sec.

3911. Jurisdiction and venue.

3912. Injunctions and orders.

3913. Cooperation of officers and employees.

3914. Bonds.

3915. Reports of department.

§ 3911. Jurisdiction and venue.

(a) General rule.--A court shall not have jurisdiction to entertain, hear or determine any delinquency proceeding other than as provided in this chapter.

(b) Jurisdiction.--In addition to other grounds for jurisdiction provided by the law of this Commonwealth, a court of this Commonwealth having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Pennsylvania Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this Commonwealth if:

(1) the person served is obligated to the insurer as an incident to any agency or brokerage arrangement between the insurer and the agent or broker, in any action on or incident to the obligation;

(2) the person served is a reinsurer who has written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker for the reinsurer, in any action on or incident to the reinsurance contract; or

(3) the person served is or has been an officer,

1 manager, trustee, organizer or person in a position of
2 comparable authority or influence in an insurer against which
3 a rehabilitation or liquidation order is in effect when the
4 action is commenced, in any action resulting from the
5 relationship with the insurer.

6 (c) Change of venue.--If the court on motion of any party
7 finds that any action should as a matter of substantial justice
8 be tried in a forum outside this Commonwealth, the court may
9 enter an appropriate order to stay further proceedings on the
10 action in this Commonwealth.

11 (d) Commonwealth Court.--Actions authorized in this section
12 shall be brought in the Commonwealth Court.

13 § 3912. Injunctions and orders.

14 (a) Applications to Commonwealth Court.--Any receiver
15 appointed in a proceeding under this chapter may at any time
16 apply for, and the Commonwealth Court may grant, such
17 restraining orders, preliminary and permanent injunctions, and
18 other orders as are necessary and proper to prevent any of the
19 following:

20 (1) The transaction of further business.

21 (2) The transfer of property.

22 (3) Interference with the receiver or with the
23 proceeding.

24 (4) Waste of the insurer's assets.

25 (5) Dissipation and transfer of bank accounts.

26 (6) The institution or further prosecution of any
27 actions or proceedings.

28 (7) The obtaining of preferences, judgments,
29 attachments, garnishments or liens against the insurer, its
30 assets or its policyholders.

1 (8) The levying of execution against the insurer, its
2 assets or its policyholders.

3 (9) The making of any sale or deed for nonpayment of
4 taxes or assessments that would lessen the value of the
5 assets of the insurer.

6 (10) The withholding from the receiver of books,
7 accounts, documents or other records relating to the business
8 of the insurer.

9 (11) Any other threatened or contemplated action that
10 might lessen the value of the insurer's assets or prejudice
11 the rights of policyholders, creditors or shareholders or the
12 administration of the proceeding.

13 (b) Applications to foreign courts.--The receiver may apply
14 to any court outside this Commonwealth for the relief described
15 in subsection (a) or suspension of any insurance licenses issued
16 by the department.

17 § 3913. Cooperation of officers and employees.

18 (a) General rule.--Any employee, officer, manager, trustee
19 or general agent of any insurer, and any other person with
20 executive authority over any segment of the insurer's affairs,
21 including any person exercising direct or indirect control over
22 activities of an insurer through any holding company or other
23 affiliate, shall cooperate with the department in any proceeding
24 under this chapter or any investigation preliminary or
25 incidental to the proceeding. Any person described in this
26 subsection shall reply promptly in writing to any inquiry from
27 the department requesting a reply and make available to the
28 department any books, accounts, documents, records, information
29 or property of or pertaining to the insurer and in his
30 possession, custody or control.

1 (b) Obstruction of department.--A person shall not obstruct
2 or interfere with the department in the conduct of any
3 delinquency proceeding or any investigation preliminary or
4 incidental thereto.

5 (c) Attorney fees and incidental orders.--In any case where
6 an insurer engages counsel for defense of and appeal with
7 respect to a delinquency proceeding, reasonable costs and fees
8 for such representation may be paid from the general assets of
9 the insurer, subject to the approval of the Commonwealth agency
10 or court to which the appeal was made. If proceedings result in
11 a declaration of insolvency or are subsequent thereto, the
12 approved costs thereof shall be treated as administrative costs
13 or expenses under section 3968(2) (relating to order of
14 distribution). The insurer may petition the court or
15 Commonwealth agency for a stay of proceedings or other order.

16 (d) Penalties.--Any person described in subsection (a) who
17 violates its provisions or any person who obstructs or
18 interferes with the department in the conduct of any delinquency
19 proceeding or any investigation preliminary or incidental
20 thereto or who violates any valid order the department issued
21 under this chapter commits a misdemeanor of the third degree, or
22 shall, after a hearing, be subject to the imposition by the
23 department of a civil penalty not to exceed \$10,000 and shall be
24 subject further to the revocation or suspension of any insurance
25 license issued by the department.

26 § 3914. Bonds.

27 In any proceeding under this chapter, the department shall be
28 responsible on its official bonds for the faithful performance
29 of its duties. If desirable for the protection of the assets,
30 the court may at any time require an additional bond from the

1 department. The additional bond shall be paid for out of the
2 assets of the insurer as a cost of administration.

3 § 3915. Reports of department.

4 The department shall as receiver make reports to the court at
5 the times and in the manner the court requires.

6 SUBCHAPTER C

7 SUMMARY PROCEEDINGS

8 Sec.

9 3921. Summary orders of department.

10 3922. Supervision by department.

11 3923. Seizure orders.

12 3924. Conduct of hearings.

13 § 3921. Summary orders of department.

14 (a) Issuance of order.--Whenever the department has
15 reasonable cause to believe, and determines after a hearing,
16 that any insurer has committed or engaged in any act or practice
17 that would subject it to formal delinquency proceedings under
18 this chapter, it may issue an order against the insurer and any
19 other persons involved, including an order suspending the
20 business of an insurer, if doing so is reasonably necessary to
21 correct, eliminate or remedy the conduct, condition or ground.
22 If the department also has reasonable grounds to believe that
23 irreparable harm to the property or business of the insurer or
24 to the interests of its policy or certificate holders, creditors
25 or the public may occur unless it issues with immediate effect
26 such an order, it may issue and serve the order without notice
27 and before hearing, simultaneously serving upon the insurer
28 notice of hearing under subsection (b).

29 (b) Notice.--The notice of hearing and the summary order
30 issued shall be served under applicable law. The notice of

1 hearing shall state the time and place of hearing, and the
2 conduct, condition or ground upon which the department would
3 base its order, except where irreparable harm is alleged, in
4 which case the notice shall state the time and place of hearing.
5 Unless otherwise agreed between the department and the insurer,
6 the hearing shall occur not more than 15 days after notice is
7 served. The department shall not publicize these hearings and
8 shall hold all hearings in summary proceedings privately unless
9 the insurer requests a public hearing, in which case the hearing
10 shall be public.

11 (c) Notice of suspension order.--Any suspension order made
12 by the department under subsection (a) shall prohibit issuance
13 of policies, transfers of property and payments of moneys
14 without prior written approval of the department. Notice of this
15 suspension shall be given, by first class mail within 15 days
16 thereof, by the suspended organization to those who were
17 creditors, policyholders, members and certificate holders at the
18 date of suspension. Notice of the suspension shall be given,
19 within 15 days thereof, by the department to creditors,
20 policyholders, members and certificate holders by one
21 publication in a newspaper of general circulation in the county
22 where the suspended organization has its principal office.

23 (d) Insolvent insurers.--From the date of such suspension on
24 the ground that the insurer is insolvent or is in such a
25 condition that its further transaction of business will be
26 hazardous financially to its policyholders, creditors or the
27 public, an action at law or equity shall not be commenced or
28 prosecuted nor shall any judgment be entered against nor shall
29 any execution or attachment be issued or prosecuted against the
30 suspended insurer, or against its property, in any court.

1 However, if such a suspension order is vacated by the
2 Commonwealth Court for the reason that the suspended insurer is
3 no longer insolvent or in a hazardous condition, restraints upon
4 legal process provided in the order shall cease to be operative.

5 (e) Waiver of hearing.--If the department issues a summary
6 order before hearing under this section, the insurer may waive
7 the department's hearing and apply for immediate judicial relief
8 by means of any remedy afforded by law without first exhausting
9 administrative remedies.

10 (f) Civil penalty.--Any person who has violated any order
11 issued under this section shall be liable to pay a civil penalty
12 imposed by the Commonwealth Court not to exceed \$10,000.

13 (g) Enforcement of summary orders.--The department may apply
14 for, and any court of general jurisdiction may grant, any
15 restraining orders, preliminary and permanent injunctions and
16 other orders necessary and proper to enforce a summary order.
17 § 3922. Supervision by department.

18 (a) Examination by department.--If upon examination or at
19 any other time the department determines that an insurer has
20 committed, engaged or is about to engage in any act, transaction
21 or practice that would subject it to formal delinquency
22 proceedings under this chapter, the department shall notify the
23 insurer of its determination and furnish to the insurer an order
24 containing a written list of the department's requirements to
25 abate its determination. If the department after a hearing under
26 section 3921(b) (relating to summary orders of department) makes
27 a further determination to supervise, the department shall issue
28 an order to the insurer notifying it that it is under the
29 supervision of the department and that the department is acting
30 under this section. The department may issue an order under this

1 section without a hearing under the conditions of irreparable
2 harm as described in section 3921(a), and shall simultaneously
3 serve upon the insurer notice of a hearing to be held in
4 accordance with the provisions of section 3921(b); in this
5 event, the insurer may file an appeal under section 3921(e). The
6 insurer shall comply with the lawful requirements of the
7 department and, if placed under an order of supervision, shall
8 have 90 days from the date of service of the order within which
9 to comply with the requirements of the department. If the
10 insurer fails to comply within this time, the department may
11 institute proceedings in the Commonwealth Court to have a
12 rehabilitator or liquidator appointed under the provisions of
13 this chapter or issue an order extending an existing order of
14 supervision. The order extending any existing order shall be
15 issued prior to the end of each 90-day period, unless otherwise
16 agreed to by the insurer.

17 (b) Supervisor.--The department may appoint a supervisor to
18 supervise the insurer and may provide that the insurer may not
19 do any of the following acts, during the period of supervision,
20 without the prior written approval of the department or the
21 supervisor:

22 (1) Dispose of, convey or encumber any of its assets or
23 its business in force.

24 (2) Withdraw any of its bank accounts.

25 (3) Lend any of its funds.

26 (4) Invest any of its funds.

27 (5) Transfer any of its property.

28 (6) Incur any debt, obligation or liability.

29 (7) Merge or consolidate with another company.

30 (8) Enter into any new reinsurance contract or treaty.

1 (c) Liability.--If any person, subject to the provisions of
2 this chapter, including any person described in section 3913(a)
3 (relating to cooperation of officers and employees), violates
4 any valid order of the department issued under this section and,
5 as a result, the net worth of the insurer is reduced or the
6 insurer otherwise suffers a loss, the person shall become
7 personally liable to the insurer for the amount of any such
8 reduction or loss. The department or supervisor may bring an
9 action on behalf of the insurer in the Commonwealth Court to
10 recover the amount of the reduction or loss together with any
11 costs.

12 § 3923. Seizure orders.

13 (a) Issuance of orders.--If the department files in the
14 Commonwealth Court a petition alleging any ground that would
15 justify a court order for a formal delinquency proceeding
16 against an insurer under this chapter, and that the interests of
17 policyholders, creditors or the public will be endangered by
18 delay, which petition shall include the order deemed necessary
19 by the department, the court may immediately issue the order
20 without a hearing. The order shall direct the department to take
21 possession and control of all or a part of the property, books,
22 accounts, documents, other records of an insurer and of the
23 premises occupied by it for the transaction of its business and,
24 until further order of the court, enjoin the insurer and its
25 officers, managers, agents and employees from disposition of its
26 property and from transaction of its business except with the
27 written consent of the department.

28 (b) Duration of order.--The court shall specify in the order
29 what its duration shall be, which shall be such time as the
30 court believes necessary for the department to ascertain the

1 condition of the insurer. The initial duration or any extension
2 shall not exceed 90 days. On motion of either party or on its
3 own motion, the court may hold such hearings as are desirable,
4 after appropriate notice, and may extend, shorten or modify the
5 terms of the seizure order. The court shall vacate the seizure
6 order if the department fails to commence a formal proceeding
7 under this chapter prior to the expiration of a seizure order or
8 any extension. An order of the court pursuant to a formal
9 proceeding under this chapter shall vacate the seizure order.

10 (c) Anticipatory breach.--Entry of a seizure order under
11 this section shall not constitute an anticipatory breach of any
12 contract of the insurer.

13 (d) Petition for review.--An insurer subject to an ex parte
14 order of the Commonwealth Court issued under this section may
15 petition the court at any time after the issuance of the order
16 for a hearing and review. The court shall grant the hearing and
17 review within ten days of the filing of the petition.

18 § 3924. Conduct of hearings.

19 (a) Private hearing.--The Commonwealth Court may hold all
20 hearings in summary proceedings and judicial review privately in
21 chambers, and shall do so on request of the insurer proceeded
22 against.

23 (b) Confidentiality of records.-In all summary proceedings
24 and judicial reviews, all records of the insurer, other
25 documents and department files and court records and papers, so
26 far as they pertain to or are a part of the record of the
27 summary proceedings, shall be confidential except as is
28 necessary to obtain compliance therewith, unless and until the
29 Commonwealth Court, after hearing arguments from the parties in
30 chambers, shall order otherwise or unless the insurer requests

1 that the matter be made public.

2 (c) Penalty.--Any person having possession or custody of and
3 refusing to deliver any of the property, books, accounts,
4 documents or other records of or relating to an insurer against
5 which a seizure order or a summary order has been issued by the
6 department or by the Commonwealth Court commits a misdemeanor of
7 the third degree.

8 SUBCHAPTER D

9 REHABILITATION

10 Sec.

11 3931. Grounds for rehabilitation.

12 3932. Rehabilitation orders.

13 3933. Powers and duties of rehabilitator.

14 3934. Actions by and against rehabilitator.

15 3935. Termination of rehabilitation.

16 § 3931. Grounds for rehabilitation.

17 An order of rehabilitation may be based on any of the
18 following grounds:

19 (1) The insurer is insolvent or is in such a condition
20 that the further transaction of business would be financially
21 hazardous to its policyholders, its creditors or the public.

22 (2) There is reasonable cause to believe that there has
23 been embezzlement from the insurer, wrongful sequestration or
24 diversion of the insurer's assets, forgery or fraud affecting
25 the insurer or other illegal conduct by or with respect to
26 the insurer that would endanger assets in an amount
27 threatening the solvency of the insurer.

28 (3) The insurer fails to remove any person who has
29 executive authority in the insurer if the person has been
30 found after notice and hearing to be dishonest or

1 untrustworthy in a way affecting the business of the insurer.

2 (4) Control of the insurer, whether by stock ownership
3 or otherwise and whether direct or indirect, is in a person
4 found after notice and hearing to be dishonest or
5 untrustworthy.

6 (5) Any person who has executive authority in the
7 insurer has refused to be examined under oath by the
8 department concerning its affairs, whether in this
9 Commonwealth or elsewhere, and after reasonable notice of the
10 fact the insurer fails to promptly and effectively terminate
11 the employment and status of the person and his influence on
12 management.

13 (6) After demand, the insurer fails to submit promptly
14 for examination any of its own property, books, accounts,
15 documents or other records or those of any subsidiary or
16 related company within the control of the insurer or those of
17 any person having executive authority in the insurer so far
18 as they pertain to the insurer. If the insurer is unable to
19 submit the property, books, accounts, documents or other
20 records of a person having executive authority in the
21 insurer, it shall be excused from doing so if it promptly and
22 effectively terminates the relationship of the person to the
23 insurer.

24 (7) Without first obtaining the written consent of the
25 department, the insurer transfers, or attempts to transfer,
26 substantially its entire property or business, or enters into
27 any transaction the effect of which is to merge, consolidate
28 or reinsure substantially its entire property or business in
29 or with the property or business of any other person.

30 (8) The insurer or its property is the subject of an

1 application for the appointment of a receiver, trustee,
2 custodian, conservator, sequestrator or similar fiduciary of
3 the insurer or its property otherwise than as authorized
4 under this title, and the appointment has been made or is
5 imminent, and the appointment might oust the court of
6 jurisdiction or prejudice orderly delinquency proceedings
7 under this chapter.

8 (9) Within the previous four years the insurer has
9 willfully violated its charter, articles of incorporation,
10 bylaws or this title in a manner which may result or has
11 resulted in substantial harm to the property or business of
12 an insurer or to the interests of its policy or certificate
13 holders, creditors or the public, or any valid order of the
14 department under sections 3921 (relating to summary orders of
15 department) and 3922 (relating to supervision by department).

16 (10) The insurer fails to pay within 60 days after due
17 date any obligation to any government agency or any judgment
18 entered in this Commonwealth. However, the nonpayment shall
19 not be deemed a ground for rehabilitation until 60 days after
20 any good faith effort by the insurer to contest the
21 obligation has been terminated, whether it is before the
22 department or in the courts.

23 (11) The insurer has systematically attempted to
24 compromise or renegotiate previously agreed settlements with
25 its creditors on the ground that it is financially unable to
26 pay its obligations in full.

27 (12) The insurer has failed to file its annual report or
28 other report within the time allowed by law and, after
29 written demand by the department, fails to give a
30 satisfactory explanation immediately.

1 (13) The board of directors, the holders of a majority
2 of the shares entitled to vote or a majority of those
3 individuals entitled to the control of any entity subject to
4 this chapter request or consent to rehabilitation.

5 § 3932. Rehabilitation orders.

6 (a) Petition.--The department may petition the Commonwealth
7 Court for an order authorizing it to rehabilitate a domestic
8 insurer or an alien insurer domiciled in this Commonwealth,
9 alleging that the insurer has committed one or more acts which
10 may constitute grounds for rehabilitation.

11 (b) Hearing.--An order of the Commonwealth Court to
12 rehabilitate the business of an insurer shall be issued only
13 after a hearing before the court or pursuant to a written
14 consent of the insurer.

15 (c) Filing of order.--The order to rehabilitate the business
16 of such an insurer shall appoint the department as the
17 rehabilitator. The order shall direct the rehabilitator to take
18 possession of the assets of the insurer immediately, including
19 any deposits held by the department, and to administer them
20 under the orders of the court. The filing or recording of the
21 order with the clerk of the Commonwealth Court or recorder of
22 deeds of the county in which the principal business of the
23 company is conducted or the county in which its principal office
24 or place of business is located shall impart the same notice as
25 a deed, bill of sale or other evidence of title filed or
26 recorded with that recorder of deeds would have imparted. Entry
27 of an order of rehabilitation does not constitute an
28 anticipatory breach of any contracts of the insurer.

29 § 3933. Powers and duties of rehabilitator.

30 (a) Special deputy.--The department as rehabilitator may

1 appoint a special deputy who shall have all the powers of the
2 rehabilitator granted under this section. The department shall
3 make such arrangements for compensation as are necessary to
4 obtain a special deputy of proven ability. The special deputy
5 shall serve at the pleasure of the department.

6 (b) General powers and duties.--The rehabilitator may take
7 any action he deems necessary to correct the conditions which
8 constituted the grounds for the order of the court to
9 rehabilitate the insurer. He shall have all the powers of the
10 directors, officers and managers, whose authority shall be
11 suspended, except as they are redelegated by the rehabilitator.
12 He shall have full power to direct and manage, to hire and
13 discharge employees subject to any contract rights they may have
14 and to deal with the property and business of the insurer.

15 (c) Remedial powers.--If it appears to the rehabilitator
16 that there has been criminal or tortious conduct, or breach of
17 any contractual or fiduciary obligation detrimental to the
18 insurer by any officer, manager, agent, broker, employee or
19 other person, he may pursue all appropriate legal remedies on
20 behalf of the insurer.

21 (d) Plan of rehabilitator.--The rehabilitator may prepare a
22 plan for the reorganization, consolidation, conversion,
23 reinsurance, merger or other transformation of the insurer. Upon
24 application of the rehabilitator for approval of the plan, and
25 after such notice and hearing as the court may prescribe, the
26 court may either approve or disapprove the plan proposed, or may
27 modify it and approve it as modified. If it is approved, the
28 rehabilitator shall carry out the plan. In the case of a life
29 insurer, the plan proposed may include the imposition of liens
30 upon the equities of policyholders of the company, provided that

1 all rights of shareholders are first relinquished. A plan for a
2 life insurer may also propose imposition of a moratorium upon
3 loan and cash surrender rights under policies for any period and
4 to any extent necessary.

5 (e) Avoidance of fraudulent transfers.--The rehabilitator
6 shall have the power to avoid fraudulent transfers under
7 sections 3952 (relating to fraudulent transfers prior to
8 petition) and 3953 (relating to fraudulent transfers after
9 petition).

10 § 3934. Actions by and against rehabilitator.

11 On request of the rehabilitator, any court before which any
12 action or proceeding by or against an insurer is pending when a
13 rehabilitation order against the insurer is entered shall stay
14 the action or proceeding for such time as necessary for the
15 rehabilitator to obtain proper representation and prepare for
16 further proceedings. The Commonwealth Court shall order the
17 rehabilitator to take such action respecting the pending
18 litigation as is necessary in the interests of justice and for
19 the protection of creditors, policyholders and the public. The
20 rehabilitator shall immediately consider all litigation pending
21 outside this Commonwealth and shall petition the courts having
22 jurisdiction over that litigation for stays whenever necessary
23 to protect the estate of the insurer. The time between the
24 filing of a petition for rehabilitation against an insurer and
25 denial of the petition or an order of rehabilitation shall not
26 be considered to be a part of the time within which any action
27 may be commenced by or against the insurer. Any action by or
28 against the insurer that might have been commenced when the
29 petition was filed may be commenced for at least 60 days after
30 the order of rehabilitation is entered.

1 § 3935. Termination of rehabilitation.

2 (a) Petition for order of liquidation.--Whenever he has
3 reasonable cause to believe that further attempts to
4 rehabilitate an insurer would substantially increase the risk of
5 loss to creditors, policy and certificate holders or the public,
6 or would be futile, the rehabilitator may petition the
7 Commonwealth Court for an order of liquidation. A petition under
8 this subsection shall have the same effect as a petition under
9 section 3942 (relating to liquidation orders). The Commonwealth
10 Court shall permit the directors to take any action reasonably
11 necessary to defend against the petition and may order payment
12 from the estate of the insurer of costs and other expenses of
13 defense.

14 (b) Petition for order terminating rehabilitation.--The
15 rehabilitator may at any time petition the Commonwealth Court
16 for an order terminating rehabilitation of an insurer. If the
17 Commonwealth Court finds that rehabilitation has been
18 accomplished and that grounds for rehabilitation under section
19 3931 (relating to grounds for rehabilitation) no longer exist,
20 it shall order that the insurer be restored to possession of its
21 property and the control of its business. The Commonwealth Court
22 may also make that finding and issue that order at any time upon
23 its own motion.

24 SUBCHAPTER E

25 LIQUIDATION PROCEEDINGS

26 Sec.

27 3941. Grounds for liquidation.

28 3942. Liquidation orders.

29 3943. Continuation of coverage.

30 3944. Dissolution of insurer.

- 1 3945. Powers of liquidator.
- 2 3946. Notice to creditors and others.
- 3 3947. Duties of agents.
- 4 3948. Actions by and against liquidator.
- 5 § 3941. Grounds for liquidation.

6 Any ground on which an order of rehabilitation may be based,
7 as specified in section 3931 (relating to grounds for
8 rehabilitation), whether or not there has been a prior order of
9 rehabilitation of the insurer, shall be grounds for liquidation.

10 § 3942. Liquidation orders.

11 (a) Petition.--The department may petition the Commonwealth
12 Court for an order directing the department to liquidate a
13 domestic insurer domiciled in this Commonwealth, alleging that
14 the insurer has committed any act which may constitute grounds
15 for liquidation under this chapter.

16 (b) Hearing.--An order of the Commonwealth Court to
17 liquidate the business of an insurer shall be issued only after
18 a hearing before the court or pursuant to a written consent of
19 the insurer.

20 (c) Nature of order.--An order to liquidate the business of
21 a domestic insurer shall appoint the department as liquidator
22 and shall direct the liquidator to take possession of the assets
23 of the insurer immediately and to administer them under the
24 orders of the court. The liquidator is vested with the title to
25 all of the property, contracts and rights of action and all of
26 the books and records of the insurer ordered liquidated,
27 wherever located, as of the date of the filing of the petition
28 for liquidation. The liquidator may recover and reduce the same
29 to possession except that ancillary receivers in reciprocal
30 states shall have, as to assets located in their respective

1 states, the rights and powers which are prescribed in section
2 3984(c) (relating to ancillary formal proceedings) for ancillary
3 receivers appointed in this Commonwealth as to assets located in
4 this Commonwealth. The filing or recording of the order with the
5 Clerk of the Commonwealth Court or with the recorder of deeds of
6 the county in which the principal business of the company is
7 conducted or the county in which its principal office or place
8 of business is located shall impart the same notice as a deed,
9 bill of sale or other evidence of title filed or recorded that
10 the recorder of deeds would have imparted.

11 (d) Effect of order.--Upon issuance of the order, the rights
12 and liabilities of the insurer and of its creditors,
13 policyholders, shareholders, members and all other persons
14 interested in its estate shall become fixed as of the date of
15 filing of the petition for liquidation, except as provided in
16 sections 3943 (relating to continuation of coverage) and 3963
17 (relating to special claims).

18 (e) Alien insurer.--An order to liquidate the business of an
19 alien insurer domiciled in this Commonwealth shall be in the
20 same terms and have the same legal effect as an order to
21 liquidate a domestic insurer, except that the assets and the
22 business in the United States shall be the only assets and
23 business included.

24 (f) Petition for judicial declaration of insolvency.--At the
25 time of petitioning for an order of liquidation or at any time
26 thereafter, the department, after making appropriate findings of
27 an insurer's insolvency, following an administrative hearing,
28 may petition the court for a judicial declaration of insolvency.
29 After providing such notice and hearing as are permitted for
30 appeals from Commonwealth agencies, the court may make the

1 declaration.

2 § 3943. Continuation of coverage.

3 All insurance in effect at the time of issuance of an order
4 of liquidation shall continue in force only with respect to the
5 risks in effect, at that time until any of the following occurs:

6 (1) A period of 30 days expires from the date of entry
7 of the liquidation order.

8 (2) The normal expiration of the policy coverage.

9 (3) The insured replaces the insurance coverage with
10 equivalent insurance in another insurer or otherwise
11 terminates the policy.

12 (4) The liquidator effects a transfer of the policy
13 obligation under section 3945(8) (relating to powers of
14 liquidator).

15 § 3944. Dissolution of insurer.

16 The department may petition for an order dissolving the
17 corporate existence of a domestic insurer or the United States
18 branch of an alien insurer domiciled in this Commonwealth at the
19 time the department applies for a liquidation order. The court
20 shall order dissolution of the corporation upon petition by the
21 department upon or after the granting of a liquidation order. If
22 the dissolution has not previously been ordered, it shall be
23 effected by operation of law upon the discharge of the
24 liquidator.

25 § 3945. Powers of liquidator.

26 The liquidator shall have, but is not limited to, the
27 following powers and duties:

28 (1) To appoint a special deputy to act for him under
29 this chapter, and to determine his compensation. The special
30 deputy shall have all powers of the liquidator granted by

1 this section. The special deputy shall serve at the pleasure
2 of the department.

3 (2) To employ employees, agents, legal counsel,
4 actuaries, accountants, appraisers, consultants and any other
5 personnel necessary to assist in the liquidation.

6 (3) To fix the compensation of employees, agents, legal
7 counsel, actuaries, accountants, appraisers and consultants
8 without complying with civil service regulations.

9 (4) To pay compensation to persons appointed and to
10 defray all expenses of taking possession of, conserving,
11 conducting, liquidating, disposing of or otherwise dealing
12 with the business and property of the insurer. If the
13 property of the insurer does not contain sufficient cash or
14 liquid assets to defray the costs incurred, the department
15 shall advance the costs so incurred out of the appropriation
16 for the maintenance of the department. Any amounts so paid
17 shall be deemed expenses of administration and shall be
18 repaid to the department out of the first available moneys of
19 the insurer.

20 (5) To hold hearings, subpoena witnesses, compel their
21 attendance, administer oaths, examine any person under oath
22 and compel any person to subscribe to his testimony after it
23 has been correctly reduced to writing and, in connection
24 therewith, to require the production of any books, papers,
25 records or other documents which he deems relevant to the
26 inquiry.

27 (6) To collect all debts and moneys due and claims
28 belonging to the insurer which it is economical to collect,
29 wherever located, and for this purpose to institute timely
30 action in other jurisdictions, in order to forestall

1 garnishment and attachment proceedings against these debts;
2 to do any other acts necessary to collect, conserve or
3 protect its assets or property; to sell, compound, compromise
4 or assign for purposes of collection, upon those terms and
5 conditions which he deems best, any bad or doubtful debts;
6 and to pursue any creditor's remedies available to enforce
7 his claims.

8 (7) To conduct public and private sales of the property
9 of the insurer.

10 (8) To use assets of the estate to transfer policy
11 obligations to a solvent assuming insurer, if the transfer
12 can be arranged without prejudice to applicable priorities
13 under section 3968 (relating to order of distribution).

14 (9) To acquire, hypothecate, encumber, lease, improve,
15 sell, transfer, abandon or otherwise dispose of or deal with
16 any property of the insurer at its market value or upon fair
17 and reasonable terms and conditions and to execute,
18 acknowledge and deliver deeds, assignments, releases and
19 other instruments necessary or proper to effectuate any sale
20 of property or other transaction in connection with the
21 liquidation. The liquidator shall file with the recorder of
22 deeds for the county in which the property is located a
23 certified copy of the order appointing him liquidator.

24 (10) To borrow money on the security of the insurer's
25 assets or without security and to execute and deliver all
26 documents necessary to that transaction for the purpose of
27 facilitating the liquidation.

28 (11) To enter into any contracts necessary to carry out
29 the order to liquidate, and to affirm or disavow any
30 contracts to which the insurer is a party.

1 (12) To institute or continue to prosecute in the name
2 of the insurer or in his own name any suits and other legal
3 proceedings, in this Commonwealth or elsewhere, and to
4 abandon the prosecution of claims if unprofitable to pursue
5 further. If the insurer is dissolved under section 3944
6 (relating to dissolution of insurer), he shall have the power
7 to apply to any court in this Commonwealth or elsewhere for
8 leave to substitute himself for the insurer as plaintiff.

9 (13) To prosecute any action on behalf of the creditors,
10 members, policyholders or shareholders of the insurer against
11 any officer of the insurer or any other person.

12 (14) To remove any or all records and property of the
13 insurer to the offices of the department or to any other
14 convenient place for the purposes of efficient and orderly
15 execution of the liquidation.

16 (15) To deposit in one or more banks in this
17 Commonwealth the sums required for meeting current
18 administration and operating costs.

19 (16) To invest all sums not currently needed unless the
20 court orders otherwise.

21 (17) To file any necessary documents for record in the
22 office of any recorder of deeds or record office in this
23 Commonwealth or elsewhere where property of the insurer is
24 located.

25 (18) To assert all defenses available to the insurer as
26 against third persons, including statutes of limitation,
27 statutes of frauds and usury. A waiver of any defense by the
28 insurer after a petition in liquidation has been filed shall
29 not bind the department. When a guaranty association has an
30 obligation to defend a suit, the liquidator shall give

1 precedence to the obligations and shall defend only in the
2 absence of a defense by the guaranty association.

3 (19) To exercise and enforce all the rights, remedies,
4 and powers of any creditor, shareholder, policyholder or
5 member, including any power to avoid any transfer or lien
6 that may be given by law and that is not included with
7 sections 3952 (relating to fraudulent transfers prior to
8 petition) through 3954 (relating to voidable preferences and
9 liens).

10 (20) To intervene in any proceeding wherever instituted
11 that might lead to the appointment of a receiver or trustee,
12 and to act as the receiver or trustee whenever the
13 appointment is offered.

14 (21) To enter into agreements with any receiver or
15 department of any other state relating to the rehabilitation,
16 liquidation, conservation or dissolution of an insurer doing
17 business in both states.

18 (22) To exercise all powers conferred upon receivers by
19 the laws of this Commonwealth not inconsistent with the
20 provisions of this chapter.

21 § 3946. Notice to creditors and others.

22 (a) General rule.--The liquidator shall give notice of the
23 liquidation order as soon as possible by first class mail and
24 either by telegram or telephone to the insurance department of
25 each jurisdiction in which the insurer is licensed to do
26 business, by first class mail and by telephone to any
27 responsible guaranty association of this Commonwealth, by first
28 class mail to all insurance agents having a duty under section
29 3947 (relating to duties of agents) and to all known
30 policyholders, creditors and claimants.

1 (b) Duty of claimants.--Notice to potential claimants under
2 subsection (a) shall require claimants to file with the
3 liquidator their claims together with proper proofs of claims by
4 the date the liquidator specifies in the notice. All claimants
5 shall keep the liquidator informed of any change of address.
6 § 3947. Duties of agents.

7 (a) Notice to policyholders.--Every person who receives
8 notice in the form prescribed in section 3946 (relating to
9 notice to creditors and others), that an insurer which he
10 represents as an independent agent is the subject of a
11 liquidation order, shall, within 15 days of the notice, give
12 notice of the liquidation order to each policyholder or other
13 person named in any policy issued through the agent by the
14 insurer. The notice shall be sent by first class mail to the
15 last address contained in the agent's records. A policy shall be
16 deemed issued through an agent if the agent has a property
17 interest in the expiration of the policy, or if the agent has
18 had in his possession a copy of the declarations of the policy
19 at any time during the life of the policy, except where the
20 ownership of the expiration of the policy has been transferred
21 to another. The notice shall include the name and address of the
22 insurer, the name and address of the agent, identification of
23 the policy impaired and the nature of the impairment including
24 termination of coverage, as described in section 3943 (relating
25 to continuation of coverage). Notice by a general agent
26 satisfies the notice requirement for any agents under contract
27 to him.

28 (b) Penalty.--Any agent who fails to give notice as required
29 in subsection (a) shall be subject to payment of a penalty of
30 not more than \$1,000 and may have his license suspended. The

1 penalty shall be imposed only after a hearing held by the
2 department.

3 § 3948. Actions by and against liquidator.

4 (a) Stay.--Upon issuance of an order appointing the
5 department liquidator of a domestic insurer or of an alien
6 insurer domiciled in this Commonwealth, no action shall be
7 brought by or against the insurer, whether in this Commonwealth
8 or elsewhere, nor shall any such existing actions be continued
9 after issuance of the order.

10 (b) Intervention.--Whenever, in the liquidator's judgment,
11 protection of the estate of the insurer necessitates
12 intervention in an action against the insurer that is pending
13 outside this Commonwealth, he may intervene in the action with
14 approval of the court. The liquidator may defend any action in
15 which he intervenes under this section at the expense of the
16 estate of the insurer.

17 (c) Limitation of actions by liquidator.--The liquidator
18 may, upon or after an order for liquidation, within two years or
19 such additional time as the law permits, institute an action on
20 behalf of the estate of the insurer upon any cause of action if
21 the period of limitation has not expired at the time of the
22 filing of the petition upon which the order is entered. If a
23 period of limitation is fixed by agreement for instituting an
24 action or for filing any claim, proof of claim, proof of loss,
25 demand, notice or the like, or if in any proceeding, a period of
26 limitation is fixed for or doing any act, and if the period had
27 not expired at the date of the filing of the petition, the
28 liquidator may, for the benefit of the estate, take any action
29 required of or permitted to the insurer, within a period of 180
30 days subsequent to the entry of an order for liquidation, or

1 within such further period as is shown to the satisfaction of
2 the court not to be unfairly prejudicial to the other party.

3 (d) Limitation of actions against insurer.--The time between
4 the filing of a petition for liquidation against an insurer and
5 the denial of the petition shall not be considered to be a part
6 of the time within which any action may be commenced against the
7 insurer. Any action against the insurer that might have been
8 commenced when the petition was filed may be commenced for at
9 least 60 days after the petition is denied.

10 SUBCHAPTER F

11 ESTATE OF LIQUIDATED INSURER

12 Sec.

13 3951. Collection and list of assets.

14 3952. Fraudulent transfers prior to petition.

15 3953. Fraudulent transfers after petition.

16 3954. Voidable preferences and liens.

17 3955. Claims of holders of void or voidable rights.

18 3956. Setoffs and counterclaims.

19 3957. Assessments.

20 3958. Liability of reinsurer.

21 3959. Recovery of premiums.

22 3960. Proposal for distribution.

23 § 3951. Collection and list of assets.

24 (a) Filing of list.--As soon as practicable after the
25 liquidation order, the liquidator shall prepare in duplicate a
26 list of the insurer's assets. The list shall be amended or
27 supplemented from time to time as the court requires. One copy
28 shall be filed in the office of the clerk of the Commonwealth
29 Court and one copy shall be retained for the liquidator's files.
30 All amendments and supplements shall be similarly filed.

1 (b) Liquidation of assets.--The liquidator shall reduce the
2 assets to a degree of liquidity that is consistent with the
3 prompt, effective and economical execution of the liquidation.
4 § 3952. Fraudulent transfers prior to petition.

5 (a) Avoidance.--Every transfer made or suffered and every
6 obligation incurred by an insurer within one year prior to the
7 filing of a successful petition for rehabilitation or
8 liquidation under this chapter is fraudulent as to then existing
9 and future creditors if made or incurred without fair
10 consideration or with actual intent to hinder, delay or defraud
11 either existing or future creditors. A transfer made or an
12 obligation incurred by an insurer ordered to be rehabilitated or
13 liquidated under this chapter, which is fraudulent under this
14 section, may be avoided by the receiver, except as to a person
15 who in good faith is a purchaser, lienor or obligee for a
16 present fair equivalent value, and except that any purchaser,
17 lienor or obligee, who in good faith has given less than fair
18 consideration for the transfer, lien or obligation, may retain
19 it as security for repayment. The court may, on due notice,
20 order any such transfer or obligation to be preserved for the
21 benefit of the estate and, in that event, the receiver shall
22 succeed to and may enforce the rights of the purchaser, lienor
23 or obligee. Section 3954(d) (relating to voidable preferences
24 and liens) applies to determine the time when transfers are
25 deemed to be made or suffered under this section.

26 (b) Transaction with reinsurer.--Any transaction of the
27 insurer with a reinsurer shall be deemed fraudulent and may be
28 avoided by the receiver under subsection (a) if:

29 (1) the transaction consists of the termination,
30 adjustment or settlement of a reinsurance contract in which

1 the reinsurer is released from any part of its duty to pay
2 the originally specified share of losses that had occurred
3 prior to the time of the transaction, unless the reinsurer
4 gives a present fair equivalent value for the release; and

5 (2) any part of the transaction took place within one
6 year prior to the date of filing of the petition through
7 which the receivership was commenced.

8 § 3953. Fraudulent transfers after petition.

9 (a) General rule.--Except as otherwise provided in this
10 section, a transfer by or in behalf of the insurer after the
11 date of the petition for liquidation by any person other than
12 the liquidator shall not be valid against the liquidator.

13 (b) Transfer of real property.--After a petition for
14 rehabilitation or liquidation, a transfer of any of the real
15 property of the insurer made to a person acting in good faith
16 shall be valid against the receiver if made for a present fair
17 equivalent value, or, if not made for a present fair equivalent
18 value, then to the extent of the present consideration actually
19 paid, for which amount the transferee shall have a lien on the
20 property. The commencement of a proceeding for rehabilitation or
21 liquidation shall be constructive notice upon the recording of a
22 copy of the petition for or order of rehabilitation or
23 liquidation with the recorder of deeds in the county where any
24 real property in question is located. The exercise by any
25 Federal or state court of the power to authorize or effect a
26 judicial sale of real property of the insurer within any county
27 in any state shall not be impaired by the pendency of such a
28 proceeding unless the copy is recorded in the county prior to
29 the consummation of the judicial sale.

30 (c) Pending rehabilitation.--After a petition for

1 rehabilitation or liquidation and before either the receiver
2 takes possession of the property of the insurer or an order of
3 rehabilitation or liquidation is granted:

4 (1) A transfer of any of the property of the insurer,
5 other than real property, made to a person acting in good
6 faith shall be valid against the receiver if made for a
7 present fair equivalent value or, if not made for a present
8 fair equivalent value, then to the extent of the present
9 consideration actually paid, for which amount the transferee
10 shall have a lien on the property so transferred.

11 (2) A person indebted to the insurer or holding property
12 of the insurer may, if acting in good faith, pay the
13 indebtedness or deliver the property, or any part thereof, to
14 the insurer or upon his order, with the same effect as if the
15 petition were not pending.

16 (3) A person having actual knowledge of the pending
17 rehabilitation or liquidation shall be deemed not to act in
18 good faith.

19 (4) A person asserting the validity of a transfer under
20 this section shall have the burden of proof.

21 (d) Applicability.--This section does not impair the
22 negotiability of currency or negotiable instruments.

23 § 3954. Voidable preferences and liens.

24 (a) Preferences.--A preference is a transfer of any of the
25 property of an insurer to or for the benefit of a creditor, for
26 or on account of an antecedent debt, made or suffered by the
27 insurer within one year before the filing of a successful
28 petition for liquidation under this chapter, the effect of which
29 may be to enable the creditor to obtain a greater percentage of
30 this debt than another creditor of the same class would receive.

1 If a liquidation order is entered while the insurer is already
2 subject to a rehabilitation order, then transfers otherwise
3 qualifying shall be deemed preferences if made or suffered
4 within one year before the filing of the successful petition for
5 rehabilitation or within two years before the filing of the
6 successful petition for liquidation, whichever time is shorter.

7 (b) Voidable preferences.--Any preference may be avoided by
8 the liquidator if:

9 (1) the insurer was insolvent at the time of the
10 transfer;

11 (2) the transfer was made within four months before the
12 filing of the petition;

13 (3) the creditor receiving it or to be benefited thereby
14 or his agent acting with reference thereto had, at the time
15 when the transfer was made, reasonable cause to believe that
16 the insurer was insolvent or was about to become insolvent;
17 or

18 (4) the creditor receiving it was an officer, an
19 employee, attorney or other person who was in a position of
20 comparable influence to an officer whether or not he held
21 such position, or any shareholder holding directly or
22 indirectly more than 5% of any class of any equity security
23 issued by the insurer, or any other person with whom the
24 insurer did not deal at arm's length.

25 (c) Effect of voidable preferences.--If the preference is
26 voidable, the liquidator may recover the property or, if it has
27 been converted, its value from any person who has received or
28 converted the property. However, if a bona fide purchaser or
29 lienor has given less than fair equivalent value, he shall have
30 a lien upon the property to the extent of the consideration

1 actually given by him. Where a preference by way of lien or
2 security title is voidable, the court may on due notice order
3 the lien or title to be preserved for the benefit of the estate,
4 in which event the lien or title shall pass to the liquidator.

5 (d) Time transfer completed.--A transfer of property other
6 than real property shall be deemed to be made or suffered when
7 it becomes so far perfected that no subsequent lien obtainable
8 by legal or equitable proceedings on a simple contract could
9 become superior to the rights of the transferee. A transfer of
10 real property shall be deemed to be made or suffered when it
11 becomes so far perfected that no subsequent bona fide purchaser
12 from the insurer could obtain rights superior to the rights of
13 the transferee. A transfer which creates an equitable lien shall
14 not be deemed to be perfected if there are available means by
15 which a legal lien could be created. A transfer not perfected
16 prior to the filing of a petition for liquidation shall be
17 deemed to be made immediately before the filing of the
18 successful petition. The provisions of this subsection apply
19 whether or not there are or were creditors who might have
20 obtained liens or persons who might have become bona fide
21 purchasers.

22 (e) Liens.--A lien obtainable by legal or equitable
23 proceedings upon a simple contract is one arising in the
24 ordinary course of those proceedings upon the entry or docketing
25 of a judgment or decree, or upon attachment, garnishment,
26 execution or similar process, whether before, upon or after
27 judgment or decree and whether before or upon levy. It does not
28 include liens which under applicable law are given a special
29 priority over other liens which are prior in time.

30 (f) Priorities.--A lien obtainable by legal or equitable

1 proceedings could become superior to the rights of a transferee,
2 or a purchaser could obtain rights superior to the rights of a
3 transferee within the meaning of subsection (d), if these
4 consequences would follow only from the lien or purchase itself,
5 or from the lien or purchase followed by any step wholly within
6 the control of the respective lienholder or purchaser, with or
7 without the aid of ministerial action by public officials. The
8 lien could not, however, become superior and the purchaser could
9 not create superior rights for the purpose of subsection (d)
10 through any acts subsequent to the obtaining of the lien or
11 subsequent to the purchase which require the agreement or
12 concurrence of any third party or which require any further
13 judicial action or ruling.

14 (g) Transfers for new consideration.--A transfer of property
15 for or on account of a new and contemporaneous consideration
16 which is deemed under subsection (d) to be made or suffered
17 after the transfer because of delay in perfecting it does not
18 become a transfer for or on account of an antecedent debt if any
19 acts required by the law to be performed in order to perfect the
20 transfer as against liens or bona fide purchasers' rights are
21 performed within 21 days or any period expressly allowed by the
22 law, whichever is less. A transfer to secure a future loan, if
23 the loan is actually made, or a transfer which becomes security
24 for a future loan shall have the same effect as a transfer for
25 or on account of a new and contemporaneous consideration.

26 (h) Indemnifying transfers.--If any lien deemed voidable
27 under subsection (b) is dissolved by the furnishing of a bond or
28 other obligation, the surety on which is indemnified directly or
29 indirectly by the transfer of or the creation of a lien upon any
30 property of an insurer before the filing of a petition under

1 this chapter which results in a liquidation order, the
2 indemnifying transfer or lien shall also be deemed voidable.

3 (i) Discharge from lien.--The property affected by any lien
4 deemed voidable under subsections (b) and (h) shall be
5 discharged from the lien and that property and any of the
6 indemnifying property transferred to or for the benefit of a
7 surety shall pass to the liquidator. However, the court may on
8 due notice order the lien to be preserved for the benefit of the
9 estate and the court may direct that such conveyance be executed
10 as is proper to evidence the title of the liquidator.

11 (j) Summary jurisdiction of Commonwealth Court.--The
12 Commonwealth Court shall have summary jurisdiction of any
13 proceeding by the liquidator to hear and determine the rights of
14 any parties under this section. Reasonable notice of any hearing
15 in the proceeding shall be given to all parties in interest,
16 including the obligee of a releasing bond or other like
17 obligation. Where an order is entered for the recovery of
18 indemnifying property in kind or for the avoidance of an
19 indemnifying lien, the court, upon application of any party in
20 interest, shall ascertain in the same proceeding the value of
21 the property or lien. If that value is less than the amount for
22 which the property serves as indemnity or the amount of the
23 lien, the transferee or lienholder may elect to retain the
24 property or lien upon payment of its value, as ascertained by
25 the court, to the liquidator, within a reasonable time as
26 determined by the court.

27 (k) Liability of certain sureties.--The liability of a
28 surety under a releasing bond or other like obligation shall be
29 discharged to the extent of the value of the indemnifying
30 property recovered or the indemnifying lien nullified and

1 avoided by the liquidator, or where the property is retained
2 under subsection (j) to the extent of the amount paid to the
3 liquidator.

4 (l) Setoffs.--If a creditor has been preferred, and
5 afterward in good faith gives the insurer further credit without
6 security of any kind, for property which becomes a part of the
7 insurer's estate, the amount of the new credit remaining unpaid
8 at the time of the petition may be set off against the
9 preference which would otherwise be recoverable from him.

10 (m) Attorney fees.--If an insurer, within four months before
11 the filing of a successful petition for liquidation under this
12 chapter, or at any time in contemplation of a proceeding to
13 liquidate it, directly or indirectly pays money or transfers
14 property to an attorney at law for services rendered or to be
15 rendered, the transaction may be examined by the court on its
16 own motion or shall be examined by the court on petition of the
17 liquidator and shall be held valid only to the extent of a
18 reasonable amount to be determined by the court. The excess may
19 be recovered by the liquidator for the benefit of the estate.
20 However, if the attorney is in a position of influence in the
21 insurer or its affiliate, payment of any money or the transfer
22 of any property to the attorney for services rendered or to be
23 rendered shall be governed by subsection (b)(4).

24 (n) Personal liability.--Any other person acting on behalf
25 of the insurer who knowingly participates in giving any
26 preference when he has reasonable cause to believe the insurer
27 is or is about to become insolvent at the time of the preference
28 shall be personally liable to the liquidator for the amount of
29 the preference. It is permissible to infer that there is
30 reasonable cause to so believe if the transfer was made within

1 four months before the date of filing of the successful petition
2 for liquidation. Every person receiving any property from the
3 insurer or the benefit thereof as a preference voidable under
4 subsection (b) shall be personally liable therefor and shall be
5 bound to account to the liquidator. This subsection does not
6 prejudice any other claim by the liquidator against any person.
7 § 3955. Claims of holders of void or voidable rights.

8 (a) Creditor claims.--The claims of a creditor who has
9 received or acquired a voidable preference shall not be allowed
10 unless he surrenders the preference or encumbrance. If the
11 avoidance is effected by a proceeding in which a final judgment
12 has been entered, the claim shall not be allowed unless the
13 money is paid or the property is delivered to the liquidator
14 within 30 days from the date of the entering of the final
15 judgment. However, the court having jurisdiction over the
16 liquidation may allow further time if there is an appeal or
17 other continuation of the proceeding.

18 (b) Excused late filing.--A claim allowable under subsection
19 (a) by reason of the avoidance, whether voluntary or
20 involuntary, of a preference or encumbrance may be filed as an
21 excused late filing under section 3961 (relating to filing of
22 claims) if filed within 30 days from the date of the avoidance
23 or within the further time allowed by the court under subsection
24 (a).

25 § 3956. Setoffs and counterclaims.

26 (a) General rule.--Mutual debts or mutual credits between
27 the insurer and another person in connection with any action or
28 proceeding under this chapter shall be set off, and the balance
29 only shall be allowed or paid, except as provided in subsection
30 (b).

1 (b) Exceptions.--A setoff or counterclaim shall not be
2 allowed in favor of any person if:

3 (1) the obligation of the insurer to the person would
4 not at the date of the filing of a petition for liquidation
5 entitle the person to share as a claimant in the assets of
6 the insurer;

7 (2) the obligation of the insurer to the person was
8 purchased by or transferred to the person with a view to its
9 being used as a setoff;

10 (3) the obligation of the person is to pay an assessment
11 levied against the members or subscribers of the insurer, or
12 is to pay a balance upon a subscription to the capital stock
13 of the insurer, or is in any other way in the nature of a
14 capital contribution; or

15 (4) the obligation of the person is to pay premiums,
16 whether earned or unearned, to the insurer.

17 § 3957. Assessments.

18 (a) Report to Commonwealth Court.--As soon as practicable
19 but not more than two years from the date of an order of
20 liquidation under this chapter of an insurer issuing assessable
21 policies, the liquidator shall make a report to the Commonwealth
22 Court setting forth:

23 (1) The reasonable value of the assets of the insurer.

24 (2) The insurer's probable total liabilities.

25 (3) The probable aggregate amount of the assessment
26 necessary to pay all claims of creditors and expenses in
27 full, including expenses of administration and costs of
28 collecting the assessment.

29 (4) Whether or not an assessment should be made and for
30 what amount.

1 (b) Levy of assessment.--Upon the basis of the report
2 provided in subsection (a), the Commonwealth Court may levy one
3 or more assessments against all members of the insurer who are
4 subject to assessment. A member shall not be assessed for any
5 loss that occurred when his policy was not in effect. An
6 assessment shall not be made or collection procedures begun
7 after two years from the expiration date of a policy. The
8 maximum assessment against any member for each year or part
9 thereof in which a policy issued to the member was in effect
10 shall not exceed the average annual premium during the life of
11 the policy as written in the policy, including any increase or
12 reduction in premium as the result of any endorsement. Subject
13 to any applicable legal limits on assessability, the aggregate
14 assessment shall be for the amount that the sum of the probable
15 liabilities, the expenses of administration and the estimated
16 cost of collection of the assessment exceeds the value of
17 existing assets, with due regard being given to assessments that
18 cannot be collected economically.

19 (c) Order to show cause.--After levy of assessment under
20 subsection (b), the department shall issue an order directing
21 each member who has not paid the assessment pursuant to the
22 order to show cause why the liquidator should not pursue a
23 judgment. The liquidator shall give notice of the order to show
24 cause by publication and by first class mail to each member
25 liable. The notice shall be mailed to the member's last known
26 address as it appears on the records of the insurer at least 20
27 days before the return day of the order to show cause.

28 (d) Disposition.--If a member does not appear and serve
29 verified objections upon the liquidator on or before the return
30 day of the order to show cause, the court shall make an order

1 adjudging the member liable for the amount of the assessment
2 against him and other indebtedness under subsection (b),
3 together with costs, and the liquidator shall have a judgment in
4 that amount against the member. If, on or before the return day,
5 the member appears and serves verified objections upon the
6 liquidator, the department may hear and determine the matter or
7 may appoint a referee to hear it and make an order as the facts
8 warrant. If the department determines that the objections do not
9 warrant relief from assessment, the member may request the court
10 to review the matter and vacate the order to show cause.

11 (e) Enforcement.--The liquidator may enforce any order or
12 collect any judgment under subsection (d) by any lawful means.

13 § 3958. Liability of reinsurer.

14 The amount recoverable by the liquidator from reinsurers
15 shall not be reduced as a result of delinquency proceedings,
16 regardless of any provision in the reinsurance contract or other
17 agreement. Payment made directly to an insured or other creditor
18 shall not diminish the reinsurer's obligation to the insurer's
19 estate, except when the reinsurance contract provided for direct
20 coverage of an individual named insured and the payment was made
21 in discharge of that obligation.

22 § 3959. Recovery of premiums.

23 (a) General rule.--An insured, agent, broker, premium
24 finance company or other person responsible for the payment of a
25 premium shall pay any unpaid premium for the full policy term
26 due the insurer at the time of the declaration of insolvency,
27 whether earned or unearned, as shown on the records of the
28 insurer. The liquidator may recover from that person any part of
29 an unearned premium that represents its commission. Credits or
30 setoffs shall not be allowed to an agent, broker or premium

1 finance company on account of any credits volunteered by that
2 person.

3 (b) Enforcement by department.--Upon satisfactory evidence
4 of a violation of this section, the department may suspend,
5 revoke or refuse to renew the licenses of the offending party or
6 parties or impose a penalty of not more than \$1,000 for each
7 violation of this section by the party or parties.

8 (c) Notice and hearing.--Before the department takes any
9 action under subsection (b), it shall give written notice to the
10 person accused of violating the law, stating specifically the
11 nature of the alleged violation, and fixing a time and place, at
12 least ten days thereafter, when a hearing of the matter shall be
13 held.

14 (d) Appeal.--Any party aggrieved by an action taken by the
15 department under this section may appeal to the Commonwealth
16 Court.

17 § 3960. Proposal for distribution.

18 (a) Application to Commonwealth Court.--Within 120 days of a
19 final determination by the court that an insurer is insolvent or
20 in such a condition that its further transaction of business
21 will be hazardous to its policyholders, its creditors or the
22 public, the liquidator shall apply to the Commonwealth Court for
23 approval of a proposal to disburse assets out of the company's
24 marshaled assets, from time to time, as the assets become
25 available, to any guaranty association in this Commonwealth or
26 in any other state having substantially the same provision of
27 law. The liquidator need not apply if it is reasonable to
28 conclude that the assets of the insolvent insurer will not
29 exceed the amounts necessary to pay the costs of liquidation and
30 the payment of claims of creditors either secured or with a

1 priority higher than the claims of policyholders. A guaranty
2 association shall have the right to petition the Commonwealth
3 Court to review an order of the liquidator concluding the assets
4 will not exceed these costs.

5 (b) Contents of proposal.--The proposal shall at least
6 include provisions for all of the following:

7 (1) Reserving amounts for the payment of expenses of
8 administration and the payment of claims of secured creditors
9 to the extent of the value of the security held and claims
10 having a priority higher than that of the claims of
11 policyholders.

12 (2) Disbursement of assets marshaled to date and
13 subsequent disbursement of assets as they become available.

14 (3) Equitable allocation of disbursements to each of the
15 associations entitled thereto.

16 (4) The securing by the liquidator, from each of the
17 associations entitled to disbursements pursuant to this
18 section, of an agreement to return to the liquidator such
19 assets previously disbursed as are required to pay the claims
20 of secured creditors, claims falling within the priorities
21 referred to in paragraph (1) and the proportional share of
22 the assets disbursed required by the liquidator to make
23 equivalent distribution to creditors of the same class of
24 priority as policyholders if the association has received a
25 disbursement of assets in excess of that available to pay all
26 creditors of the insolvent insurer in the same class of
27 priority as policyholders. An association shall return these
28 assets to the liquidator when needed upon its own initiative
29 or upon demand of the liquidator together with any investment
30 income earned on the assets reimbursed. A bond shall not be

1 required of the association.

2 (c) Reports.--The liquidator may require reports to be made
3 by an association at the time and covering the matters he
4 determines. A full report shall be made by the association to
5 the liquidator when assets received have been disbursed or the
6 obligation of an association to pay covered claims of the
7 insolvent insurer has been fulfilled accounting for all assets
8 so disbursed to the association, all disbursements made
9 therefrom, any interest earned by the association on these
10 assets and any other matter the court directs.

11 (d) Disbursements to associations.--The proposal of the
12 liquidator shall provide for disbursements to the associations
13 in amounts estimated to be at least equal to the claim payments
14 made or to be made thereby for which the associations could
15 assert a claim against the liquidator, and shall further provide
16 that if the assets available for disbursement from time to time
17 do not equal or exceed the amount of the claim payments made or
18 to be made by the associations, then disbursements shall be in
19 the amount of available assets.

20 (e) Notice.--Notice of the application under subsection (a)
21 shall be given to the associations and to the departments of
22 insurance of each of the states where the company is licensed.
23 The notice shall be deemed to have been given when sent by
24 registered mail, first class postage prepaid, at least 30 days
25 prior to the submission of the application to the Commonwealth
26 Court. Action on the application may be taken by the court
27 provided the notice has been given and provided further that the
28 liquidator's proposal complies with subsection (b).

29

SUBCHAPTER G

30

DISTRIBUTION OF ESTATE OF LIQUIDATED INSURER

- 1 Sec.
- 2 3961. Filing of claims.
- 3 3962. Proofs of claim.
- 4 3963. Special claims.
- 5 3964. Third-party claims.
- 6 3965. Disputed claims.
- 7 3966. Claims of surety.
- 8 3967. Secured claims of creditors.
- 9 3968. Order of distribution.
- 10 3969. Liquidator's recommendations to the court.
- 11 3970. Distribution of assets.
- 12 3971. Unclaimed and withheld funds.
- 13 3972. Termination of proceedings.
- 14 3973. Reopening of liquidation.
- 15 3974. Disposition of records.
- 16 3975. External audit of receiver.
- 17 3976. Federal receivership.

18 § 3961. Filing of claims.

19 (a) Proof of claim.--Proof of all claims shall be filed with
20 the liquidator in the form required by section 3962 (relating to
21 proofs of claim) on or before the last day for filing specified
22 in the notice required under section 3946 (relating to notice to
23 creditors and others), except that proofs of claim for cash
24 surrender values or other investment values in life insurance
25 and annuities need not be filed unless the liquidator expressly
26 so requires.

27 (b) Late filing.--For good cause shown, the liquidator may
28 permit a claimant making a late filing to share in
29 distributions, whether past or future, as if he had timely
30 filed, to the extent that payment will not prejudice the orderly

1 administration of the liquidation. Good cause includes, but is
2 not limited to, the following:

3 (1) That existence of the claim was not known to the
4 claimant and that he filed his claim as promptly as
5 reasonably possible after learning of it.

6 (2) That a transfer to a creditor was avoided under
7 section 3952 (relating to fraudulent transfers prior to
8 petition), 3953 (relating to fraudulent transfers after
9 petition) or 3954 (relating to voidable preferences and
10 liens), or was voluntarily surrendered under section 3955
11 (relating to claims of holders of void or voidable rights),
12 and that the filing satisfies the conditions of section 3955.

13 (3) That valuation under section 3967 (relating to
14 secured claims of creditors) of security held by a secured
15 creditor shows a deficiency, which is filed within 30 days
16 after the valuation.

17 (4) That a claim was contingent and became absolute, and
18 was filed as promptly as reasonably possible after it became
19 absolute.

20 (5) That the claim was the claim of a guaranty
21 association for reimbursement of covered claims paid or
22 expenses incurred subsequent to the last day for filing, if
23 the payments were made and expenses incurred as a result of
24 requirements of law.

25 (c) Other late-filed claims.--The liquidator may consider
26 any claim filed late which is not covered by subsection (b), and
27 permit it to receive distributions which are subsequently
28 declared on any claims of the same or lower priority if the
29 payment does not prejudice the orderly administration of the
30 liquidation. The late-filing claimant shall receive at each

1 distribution the same percentage of the amount allowed on his
2 claim as is then being paid to other claimants of the same
3 priority, plus the same percentage of the amount allowed on his
4 claim as is then being paid to claimants of any lower priority.
5 This shall continue until his claim is paid in full.

6 § 3962. Proofs of claim.

7 (a) Contents.--A proof of claim shall consist of a statement
8 signed by the claimant that includes all of the following
9 information that is applicable:

10 (1) The particulars of the claim including the
11 consideration given for it.

12 (2) The identity and amount of the security on the
13 claim.

14 (3) The payments made on the debt.

15 (4) That the sum claimed is justly owing and that there
16 is no setoff, counterclaim or defense to the claim.

17 (5) Any right of priority of payment or other specific
18 right asserted by the claimants.

19 (6) A copy of any written instrument which is the
20 foundation of the claims.

21 (7) In the case of any third party claim based on a
22 liability policy issued by the insurer, a conditional release
23 of the insured pursuant to section 3964(a) (relating to
24 third-party claims).

25 (8) The name and address of the claimant and any
26 attorney who represents him.

27 A claim shall not be considered or allowed if it does not
28 contain all the required information which may be applicable.
29 The liquidator may require that a prescribed form be and may
30 require that other information and documents be included.

1 (b) Supplementary information.--At any time the liquidator
2 may request the claimant to present information or evidence
3 supplementary to that required under subsection (a), take
4 testimony under oath, require production of affidavits or
5 depositions or otherwise obtain additional information or
6 evidence.

7 (c) Use of judgments and orders.--A judgment or order
8 against an insured or the insurer entered after the date of
9 filing of a successful petition for liquidation, or a judgment
10 or order against an insured or the insurer entered at any time
11 by default or by collusion, need not be considered as evidence
12 of liability or of quantum of damages.

13 (d) Claim of guaranty association.--A claim of a guaranty
14 association for reimbursement of payments made for the payments
15 of covered claims and for expenses shall be in the form and
16 contain the substantiation agreed to by the guaranty association
17 and the liquidator subject to review by the Commonwealth Court.
18 § 3963. Special claims.

19 (a) Certain contingent third-party claims.--The claim of a
20 third party which is contingent only on his first obtaining a
21 judgment against the insured shall be considered and allowed as
22 if there were no such contingency.

23 (b) Claims affected by termination of coverage.--Any claim
24 that would have become absolute if there had been no termination
25 of coverage under section 3943 (relating to continuation of
26 coverage), and which is not covered by insurance acquired to
27 replace the terminated coverage, shall be allowed as if the
28 coverage had remained in effect, unless at least ten days before
29 the insured event occurred either the claimant had actual notice
30 of the termination or notice was mailed to him under section

1 3946 (relating to notice to creditors and others) or 3947
2 (relating to duties of agents). If allowed the claim shall share
3 in distributions under section 3968(6) (relating to order of
4 distribution).

5 (c) Allowance of contingent claims.--A claim may be allowed
6 even if contingent, if it is filed in accordance with section
7 3961(b) (relating to filing of claims). It may be allowed and
8 may participate in all distributions declared after it is filed
9 to the extent that it does not prejudice the orderly
10 administration of the liquidation.

11 (d) Claims due except for passage of time.--Claims that are
12 due except for the passage of time shall be treated as absolute
13 claims are treated, except that such claims may be discounted at
14 the legal rate of interest.

15 (e) Workmen's compensation security funds.--The State
16 Treasurer in his capacity as custodian of the workmen's
17 compensation security funds may file a claim with the liquidator
18 for all sums paid or to be paid from those funds.

19 § 3964. Third-party claims.

20 (a) General rule.--Whenever any third party asserts a cause
21 of action against an insured of an insurer in liquidation the
22 third party may file a claim with the liquidator. The filing of
23 the claim shall operate as a release of the insured's liability
24 to the third party on that cause of action in the amount of the
25 applicable policy limit, but the liquidator shall also insert in
26 any form used for the filing of third party claims appropriate
27 language to constitute this release. The release shall be void
28 if the insurance coverage is avoided by the liquidator.

29 (b) Filing of claim by insured.--Whether or not the third
30 party files a claim, the insured may file a claim on his own

1 behalf in the liquidation. If the insured fails to file a claim
2 by the date for filing claims specified in the order of
3 liquidation or within 60 days after mailing of the notice
4 required by section 3946(a) (relating to notice to creditors and
5 others), whichever is later, he shall be deemed to be an
6 unexcused late filer.

7 (c) Allowance of claims of an insured.--The liquidator shall
8 make his recommendations to the court under section 3969
9 (relating to liquidator's recommendations to the court) for the
10 allowance of an insured's claim under subsection (b) after
11 consideration of the probable outcome of any pending action
12 against the insured on which the claim is based, the probable
13 damages recoverable in the action and the probable costs and
14 expenses of defense. Those recommendations which are not
15 modified by the court within a period of 60 days following
16 submission by the liquidator shall be treated by the liquidator
17 as allowed recommendations, subject to later modification or to
18 rulings made by the court under section 3965 (relating to
19 disputed claims). After allowance by the court, the liquidator
20 shall withhold any distributions payable on the claim, pending
21 the outcome of litigation and negotiation with the insured.
22 Whenever appropriate, he shall reconsider the claim on the basis
23 of additional information and amend his recommendations to the
24 court, which may amend its allowance as appropriate. As claims
25 against the insured are settled, the claimant shall be paid from
26 the amount withheld the same percentage distribution as was paid
27 on other claims of like priority, based on the lesser of either
28 the amount allowed on the claims by the court or the amount
29 actually recovered from the insured by action or paid by
30 agreement plus the reasonable costs and expenses of defense.

1 After all claims are settled, any sum remaining from the amount
2 withheld shall revert to the undistributed assets of the
3 insurer. Delay in final payment under this subsection shall not
4 be a reason for unreasonable delay of final distribution and
5 discharge of the liquidator.

6 (d) Proration of claims.--Whenever several claims founded
7 upon one policy are filed, whether by third parties or as claims
8 by the insured under this section, and the aggregate allowed
9 amount of the claims to which the same limit of liability in the
10 policy is applicable exceeds that limit, then each claim as
11 allowed shall be reduced a proportionate amount so that the
12 total equals the policy limit. Claims by the insured shall be
13 evaluated as in subsection (c). If any insured's claim is
14 subsequently reduced under subsection (c), the amount thus freed
15 shall be apportioned pro rata among the claims which have been
16 reduced under this subsection.

17 § 3965. Disputed claims.

18 (a) Determination.--When a claim is denied in whole or in
19 part by the liquidator, written notice of the determination
20 shall be given to the claimant and his attorney by first class
21 mail at the address shown in the proof of claim. Within 60 days
22 from the mailing of the notice, the claimant may file his
23 objections with the court. If no such filing is made, the
24 claimant shall not further object to the determination.

25 (b) Hearing.--Whenever objections are filed with the
26 liquidator, the liquidator shall ask the court for a hearing as
27 soon as practicable and give notice of the hearing by first
28 class mail to the claimant or his attorney and to any other
29 persons directly affected, not less than 10 nor more than 30
30 days before the date of the hearing. The matter may be heard by

1 the court or by a court-appointed referee who shall submit
2 findings of fact along with his recommendation.

3 § 3966. Claims of surety.

4 (a) Filing of claim.--Whenever a creditor whose claim
5 against an insurer is secured, in whole or in part, by the
6 undertaking of another person, fails to prove and file that
7 claim, the other person may do so in the creditor's name, and
8 shall be subrogated to the rights of the creditor, whether the
9 claim has been filed by the creditor or by the other person in
10 the creditor's name, to the extent that he discharges the
11 undertaking. In the absence of an agreement with the creditor to
12 the contrary, the other person shall not be entitled to any
13 distribution, however, until the amount paid to the creditor on
14 the undertaking plus the distributions paid on the claim from
15 the insurer's estate to the creditor equals the amount of the
16 entire claim of the creditor. Any excess received by the
17 creditor shall be held by him in trust for the other person.

18 (b) Definition.--As used in this section the term "other
19 person" does not include a guaranty association.

20 § 3967. Secured claims of creditors.

21 (a) Valuation.--The value of any security held by a secured
22 creditor shall be determined as the court directs, either by
23 converting the security into money according to the terms of the
24 agreement pursuant to which the security was delivered to the
25 creditor, or by agreement, arbitration, compromise or litigation
26 between the creditor and the liquidator. The determination shall
27 be under the supervision and control of the court with due
28 regard for the recommendation of the liquidator.

29 (b) Treatment of claim.--The amount so determined shall be
30 credited upon the secured claim, and any deficiency shall be

1 treated as an unsecured claim. If the claimant surrenders his
2 security to the liquidator, the entire claim shall be allowed as
3 if unsecured.

4 § 3968. Order of distribution.

5 The order of distribution of claims from the insurer's estate
6 shall be in accordance with the order in which each class of
7 claims is set forth in this section. Every claim in each class
8 shall be paid in full or adequate funds retained for the payment
9 before the members of the next class receive any payment.
10 Subclasses shall not be established within any class. The order
11 of classes is as follows:

12 (1) Debts due to employees for services performed to the
13 extent that they do not exceed \$1,000 and represent payment
14 for services performed within one year before the filing of
15 the petition for liquidation. Officers and directors shall
16 not be entitled to the benefit of this priority. This
17 priority shall be in lieu of any other similar priority which
18 may be authorized by law as to wages or compensation of
19 employees.

20 (2) The costs and expenses of administration, including,
21 but not limited to, the following:

22 (i) The actual and necessary costs of preserving or
23 recovering the assets of the insurer.

24 (ii) Compensation for all services rendered in the
25 liquidation.

26 (iii) Any necessary filing fees.

27 (iv) Fees and mileage payable to witnesses.

28 (v) Reasonable attorney fees.

29 (vi) The expenses of a guaranty association in
30 handling claims.

1 (3) All claims under policies for losses wherever
2 incurred, including third-party claims, and all claims
3 against the insurer for liability for bodily injury or for
4 injury to or destruction of tangible property which are not
5 under policies. All claims under life insurance and annuity
6 policies, whether for death proceeds, annuity proceeds or
7 investment values shall be treated as loss claims. That
8 portion of any loss for which indemnification is provided by
9 other benefits or advantages recovered by the claimant shall
10 not be included in this class, other than benefits or
11 advantages recovered or recoverable in discharge of familial
12 obligations of support or by way of succession at death or as
13 proceeds of life insurance, or as gratuities. A payment made
14 by an employer to his employee shall not be treated as a
15 gratuity.

16 (4) Claims under nonassessable policies for unearned
17 premium or other premium refunds and claims of general
18 creditors.

19 (5) Claims of the Federal or any state or local
20 government. Claims, including those of any governmental body,
21 for a penalty or forfeiture shall be allowed in this class
22 only to the extent of the pecuniary loss sustained from the
23 act, transaction or proceeding out of which the penalty or
24 forfeiture arose, with reasonable and actual costs occasioned
25 thereby. The remainder of the claims shall be postponed to
26 the class of claims under paragraph (7).

27 (6) The following claims:

28 (i) Claims under section 3963 (relating to special
29 claims), to the extent that the claims were disallowed
30 under that section.

1 (ii) Claims filed late.

2 (iii) Claims or portions of claims, payment of which
3 is provided by other benefits or advantages recovered by
4 the claimant.

5 (7) Surplus or contribution notes, or similar
6 obligations, and premium refunds on assessable policies.
7 Payments to members of domestic mutual insurance companies
8 shall be limited in accordance with law.

9 (8) The claims of shareholders or other owners.

10 § 3969. Liquidator's recommendations to the court.

11 (a) Report of claims.--The liquidator shall review all
12 claims duly filed in the liquidation and shall make such further
13 investigation as is necessary. He may compromise or negotiate
14 the amount for which claims will be recommended to the court.
15 Unresolved disputes shall be determined under section 3965
16 (relating to disputed claims). As soon as practicable, he shall
17 present to the court a report of the claims against the insurer
18 with his recommendations. The report shall include the name and
19 address of each claimant, the particulars of the claim and the
20 amount of the claim finally recommended, if any.

21 (b) Court approval.--The court may approve, disapprove or
22 modify the report on claims by the liquidator. However, the
23 liquidator's agreements with other parties shall be final and
24 binding on the court to the extent permitted by law. The
25 recommendations which are not modified by the court within a
26 period of 60 days following submission by the liquidator shall
27 be treated by the liquidator as allowed recommendations, subject
28 to later modification or to rulings made by the court under
29 section 3965. A claim under a policy of insurance shall not be
30 allowed for an amount in excess of the applicable policy limits.

1 § 3970. Distribution of assets.

2 Under the direction of the court, the liquidator shall pay
3 distributions in a manner that will assure the proper
4 recognition of priorities and a reasonable balance between the
5 expeditious completion of the liquidation and the protection of
6 unliquidated and undetermined claims, including third party
7 claims. Distribution of assets in kind may be made at valuations
8 set by agreement between the liquidator and the creditor and
9 approved by the court.

10 § 3971. Unclaimed and withheld funds.

11 (a) Unclaimed funds.--All unclaimed funds subject to
12 distribution remaining with the liquidator when he is ready to
13 apply to the court for discharge, including the amount
14 distributable to any creditor, shareholder, member or other
15 person who is unknown or cannot be found, shall be deposited
16 with the State Treasurer. Any amount on deposit not claimed
17 within six years from the discharge of the liquidator shall be
18 deemed to have been abandoned, shall be escheated without formal
19 escheat proceedings and shall be paid into the State Treasury
20 and deposited in the General Fund.

21 (b) Withheld funds.--All funds withheld under section 3964
22 (relating to third-party claims) and not distributed shall upon
23 discharge of the liquidator be deposited with the State
24 Treasurer and paid by him in accordance with section 3964. Any
25 sums remaining, which under section 3964 would revert to the
26 undistributed assets of the insurer, shall be transferred to the
27 State Treasurer and become the property of the Commonwealth
28 under subsection (a), unless the department petitions the court
29 to reopen the liquidation under section 3973 (relating to
30 reopening of liquidation).

1 § 3972. Termination of proceedings.

2 (a) Discharge of liquidator.--When all assets justifying the
3 expense of collection and distribution have been collected and
4 distributed under this chapter, the liquidator shall apply to
5 the court for discharge. The court may grant the discharge and
6 make any other orders including an order to transfer any
7 remaining funds that are uneconomic to distribute.

8 (b) Application for order.--Any other person may apply to
9 the court at any time for an order under subsection (a). If the
10 application is denied, the applicant shall pay the costs and
11 expenses of the liquidator in resisting the application,
12 including a reasonable attorney fee.

13 § 3973. Reopening of liquidation.

14 After the liquidation proceeding has been terminated and the
15 liquidator discharged, the department or other interested party
16 may at any time petition the Commonwealth Court to reopen the
17 proceedings for good cause, including the discovery of
18 additional assets. If the court is satisfied that there is
19 justification for reopening, it shall so order.

20 § 3974. Disposition of records.

21 Whenever it appears to the department that the records of any
22 insurer in process of liquidation or completely liquidated are
23 no longer useful, the department may recommend to the court
24 which records should be retained for future reference and which
25 should be destroyed.

26 § 3975. External audit of receiver.

27 The Commonwealth Court may cause audits to be made of the
28 books of the department relating to any receivership established
29 under this chapter. A report of each audit shall be filed with
30 the department and with the court. The books, records and other

1 documents of the receivership shall be made available to the
2 auditor at any time without notice. The expense of each audit
3 shall be considered a cost of administration of the
4 receivership.

5 § 3976. Federal receivership.

6 (a) Appointment.--Whenever liquidation of a domestic insurer
7 or an alien insurer domiciled in this Commonwealth would be
8 facilitated by a Federal receivership, and when any ground
9 exists upon which the department could petition the court for an
10 order of rehabilitation or liquidation under section 3931
11 (relating to grounds for rehabilitation) or 3941 (relating to
12 grounds for liquidation), or if an order of rehabilitation or
13 liquidation has already been entered, the department may request
14 another department of another state to petition the Federal
15 court for the appointment of a Federal receiver. The department
16 may intervene in any action to appoint a Federal receiver to
17 support or oppose the petition, and may accept appointment as
18 the receiver if it is so designated. As much of this chapter
19 shall apply to the receivership as can be made applicable and is
20 appropriate. Upon motion of the department, the Commonwealth
21 Court shall relinquish all jurisdiction over the insurer for
22 purposes of rehabilitation or liquidation.

23 (b) Department as receiver.--If the department is appointed
24 receiver under this section, it shall comply with any
25 requirements necessary to give it title to and control over the
26 assets and affairs of the insurer.

27 SUBCHAPTER H

28 INTERSTATE RELATIONS

29 Sec.

30 3981. Conservation of property of foreign or alien insurers.

1 3982. Liquidation of property of foreign or alien insurers.
2 3983. Foreign domiciliary receivers in other states.
3 3984. Ancillary formal proceedings.
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5 3986. Claims of nonresidents against domiciliary insurers.
6 3987. Claims of residents against insurers of reciprocal
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8 3988. Execution proceedings.
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10 3990. Subordination of claims for lack of cooperation.
11 § 3981. Conservation of property of foreign or alien insurers.
12 (a) Petition to Commonwealth Court.--If a domiciliary
13 liquidator has not been appointed, the department may apply to
14 the Commonwealth Court by verified petition for an order
15 directing the department to conserve the property of an alien
16 insurer not domiciled in this Commonwealth or a foreign insurer
17 on any one or more of the following grounds:
18 (1) Any of the grounds in section 3931 (relating to
19 grounds for rehabilitation).
20 (2) That any of its property has been sequestered by
21 official action in its domiciliary state or in any other
22 state.
23 (3) That enough of its property has been sequestered in
24 a foreign country to give reasonable cause to fear that the
25 insurer is or may become insolvent.
26 (4) That its certificate of authority to do business in
27 this Commonwealth has been revoked or that none was ever
28 issued and there are residents of this Commonwealth with
29 outstanding claims or outstanding policies.
30 (b) Order.--The court may issue the order in whatever terms

1 it deems appropriate. The filing or recording of the order with
2 the recorder of deeds of Dauphin County shall impart the same
3 notice as a deed, bill of sale or other evidence of title duly
4 filed or recorded with that recorder of deeds would have
5 imparted.

6 (c) Petitions by conservator.--The conservator may at any
7 time petition for and the court may grant an order under section
8 3982 (relating to liquidation of property of foreign or alien
9 insurers) to liquidate the assets of a foreign or alien insurer
10 under conservation or, if appropriate, for an order under
11 section 3984 (relating to ancillary formal proceedings), to be
12 appointed ancillary receiver.

13 (d) Petition to terminate.--The conservator may at any time
14 petition the court for an order terminating conservation of an
15 insurer. If the court finds that the conservation is no longer
16 necessary, it shall order that the insurer be restored to
17 possession of its property and the control of its business. The
18 court may also make such a finding and issue such an order at
19 any time upon motion of any interested party.

20 § 3982. Liquidation of property of foreign or alien insurers.

21 (a) Petition to Commonwealth Court.--If a domiciliary
22 receiver has not been appointed, the department may apply to the
23 Commonwealth Court by petition for an order directing the
24 department to liquidate the assets found in this Commonwealth of
25 a foreign insurer or an alien insurer not domiciled in this
26 Commonwealth, on any of the grounds in section 3931 (relating to
27 grounds for rehabilitation) or 3981 (relating to conservation of
28 property of foreign or alien insurers).

29 (b) Order to liquidate.--If it appears to the court that the
30 best interests of creditors, policyholders and the public so

1 require, the court may issue an order to liquidate in whatever
2 terms it deems appropriate. The filing or recording of the order
3 with the recorder of deeds of Dauphin County shall impart the
4 same notice as a deed, bill of sale, or other evidence of title
5 duly filed or recorded with that recorder of deeds would have
6 imparted.

7 (c) Liquidation as ancillary receiver.--If a domiciliary
8 liquidator is appointed in a reciprocal state while a
9 liquidation is proceeding under this section, the liquidator
10 under this section shall act as ancillary receiver under section
11 3984 (relating to ancillary formal proceedings). If a
12 domiciliary liquidator is appointed in a nonreciprocal state
13 while a liquidation is proceeding under this section, the
14 liquidator under this section may petition the court for
15 permission to act as ancillary receiver under section 3984.

16 (d) Petition to Federal district court.--On the same grounds
17 as are specified in subsection (a), the department may petition
18 any appropriate Federal district court to be appointed receiver
19 to liquidate that portion of the insurer's assets and business
20 over which the court will exercise jurisdiction, or any lesser
21 part thereof that the department deems desirable for the
22 protection of the policyholders and creditors in this
23 Commonwealth. The department may accept appointment as Federal
24 receiver if another person files a petition.

25 § 3983. Foreign domiciliary receivers in other states.

26 (a) Insurer domiciled in reciprocal state.--The domiciliary
27 liquidator of an insurer domiciled in a reciprocal state shall
28 be vested by operation of law with the title to all of the
29 property, contracts and rights of action, and all of the books,
30 accounts and other records of the insurer located in this

1 Commonwealth. The date of vesting shall be the date of the
2 filing of the petition, if that date is specified by the
3 domiciliary law for the vesting of property in the domiciliary
4 state. Otherwise, the date of vesting shall be the date of entry
5 of the order directing possession to be taken. The domiciliary
6 liquidator shall have the immediate right to recover balances
7 due from agents and to obtain possession of the books, accounts
8 and other records of the insurer located in this Commonwealth.
9 He also shall have the right to recover the other assets of the
10 insurer located in this Commonwealth, subject to section 3984
11 (relating to ancillary formal proceedings).

12 (b) Insurer not domiciled in a reciprocal state.--If a
13 domiciliary liquidator is appointed for an insurer not domiciled
14 in a reciprocal state, the department shall be vested by
15 operation of law with the title to all of the property,
16 contracts and rights of action, and all of the books, accounts
17 and other records of the insurer located in this Commonwealth,
18 at the same time that the domiciliary liquidator is vested with
19 title in the state of domicile. The department of this
20 Commonwealth may petition for a conservation or liquidation
21 order under section 3981 (relating to conservation of property
22 of foreign or alien insurers) or 3982 (relating to liquidation
23 of property of foreign or alien insurers), or for an ancillary
24 receivership under section 3984, or after approval by the
25 Commonwealth Court may transfer title to the domiciliary
26 liquidator, as the interests of justice and the equitable
27 distribution of the assets require.

28 (c) Claims of residents.--Claimants residing in this
29 Commonwealth may file claims with the liquidator or ancillary
30 receiver, if any, in this Commonwealth, or with the domiciliary

1 liquidator, if the law of the domiciliary state permits. The
2 claims must be filed on or before the last date fixed for the
3 filing of claims in the domiciliary liquidation proceedings.

4 (d) Powers and duties of ancillary receiver.--Subject to the
5 provisions of this section, the ancillary receiver and his
6 deputies shall have the same powers and be subject to the same
7 duties with respect to the administration of assets as a
8 liquidator of an insurer domiciled in this Commonwealth.

9 § 3984. Ancillary formal proceedings.

10 (a) Petition to Commonwealth Court.--If a domiciliary
11 liquidator has been appointed for an insurer not domiciled in
12 this Commonwealth, the department may petition the Commonwealth
13 Court requesting appointment as ancillary receiver in this
14 Commonwealth:

15 (1) if it finds that there are sufficient assets of the
16 insurer located in this Commonwealth to justify the
17 appointment of an ancillary receiver; or

18 (2) if the protection of creditors or policyholders in
19 this Commonwealth so requires.

20 (b) Order appointing receiver.--The court may order the
21 appointment of an ancillary receiver in whatever terms it deems
22 appropriate. The filing or recording of the order with the
23 recorder of deeds of Dauphin County shall impart the same notice
24 as a deed, bill of sale or other evidence of title duly filed or
25 recorded with that recorder of deeds would have imparted.

26 (c) Ancillary receivers appointed in this Commonwealth.--
27 When a domiciliary liquidator has been appointed in a reciprocal
28 state, the ancillary receiver appointed in this Commonwealth
29 under subsection (a) shall have the sole right to recover all
30 the assets of the insurer in this Commonwealth not already

1 recovered by the domiciliary liquidator. The ancillary receiver
2 shall, as soon as practicable, liquidate from his respective
3 securities those special deposit claims and secured claims which
4 are proved and allowed in the ancillary proceedings in this
5 Commonwealth and shall pay the necessary expenses of the
6 proceedings. He shall promptly transfer all remaining assets,
7 books, accounts and records to the domiciliary liquidator.
8 Subject to this section, the ancillary receiver and his deputies
9 shall have the same powers and be subject to the same duties
10 with respect to the administration of assets as a liquidator of
11 an insurer domiciled in this Commonwealth.

12 (d) Ancillary receivers appointed in reciprocal states.--
13 When a domiciliary liquidator has been appointed in this
14 Commonwealth, ancillary receivers appointed in reciprocal states
15 shall have, as to assets and books, accounts and other records
16 in their respective states, corresponding rights, duties and
17 powers to those provided in subsection (c) for ancillary
18 receivers appointed in this Commonwealth.

19 § 3985. Ancillary summary proceedings.

20 The department in its sole discretion may institute
21 proceedings under Subchapter C (relating to summary proceedings)
22 at the request of the appropriate insurance official of the
23 domiciliary state of any foreign or alien insurer having
24 property located in this Commonwealth.

25 § 3986. Claims of nonresidents against domiciliary insurers.

26 (a) Filing of claims.--In a liquidation proceeding
27 instituted in this Commonwealth against an insurer domiciled in
28 this Commonwealth, claimants residing in foreign countries or in
29 nonreciprocal states shall file claims in this Commonwealth, and
30 claimants residing in reciprocal states may file claims either

1 with the ancillary receivers, if any, in their respective
2 states, or with the domiciliary liquidator. In reciprocal
3 states, if an ancillary receiver has been appointed, a guaranty
4 association of that state shall file its claims with the
5 ancillary receiver. Claims shall be filed on or before the last
6 dates fixed for the filing of claims in the domiciliary
7 liquidation proceeding.

8 (b) Proving claims.--Claims of persons residing in
9 reciprocal states may be proved either in the liquidation
10 proceeding in this Commonwealth under this chapter, or in
11 ancillary proceedings, if any, in the reciprocal states. If
12 notice of the claim and opportunity to appear and be heard is
13 afforded the domiciliary liquidator of this Commonwealth under
14 section 3987 (relating to claims of residents against insurers
15 of reciprocal states), the final allowance of claims by the
16 courts in ancillary proceedings in reciprocal states shall be
17 conclusive as to amount and as to priority against special
18 deposits or other security located in such ancillary states, but
19 shall not be conclusive with respect to priorities against
20 general assets under section 3968 (relating to order of
21 distribution).

22 § 3987. Claims of residents against insurers of reciprocal
23 states.

24 (a) Filing of claims.--In a liquidation proceeding in a
25 reciprocal state against an insurer domiciled in that state,
26 claimants against the insurer who reside in this Commonwealth
27 may file claims either with the ancillary receiver, if any, in
28 this Commonwealth or with the domiciliary liquidator. Claims
29 must be filed on or before the last dates fixed for the filing
30 of claims in the domiciliary liquidation proceeding.

1 (b) Where claims may be proved.--Claims belonging to
2 claimants residing in this Commonwealth may be proved either in
3 the domiciliary state under the law of that state, or in
4 ancillary proceedings, if any, in this Commonwealth. If a
5 claimant elects to prove his claim in this Commonwealth, he
6 shall file his claim with the liquidator in the manner provided
7 in sections 3961 (relating to filing of claims) and 3962
8 (relating to proofs of claim). The ancillary receiver shall make
9 his recommendation to the court as under section 3969 (relating
10 to liquidator's recommendations to the court). He shall also
11 arrange a date for hearing if necessary under section 3965
12 (relating to disputed claims) and shall give notice to the
13 liquidator in the domiciliary state, either by registered mail
14 or by personal service, at least 40 days prior to the date set
15 for hearing. If the domiciliary liquidator, within 30 days after
16 the giving of notice, gives notice in writing to the ancillary
17 receiver and to the claimant, either by registered mail or by
18 personal service, of his intention to contest the claim, he may
19 appear in any proceeding in this Commonwealth involving the
20 adjudication of the claims. The final allowance of the claim by
21 the courts of this Commonwealth shall be conclusive as to amount
22 and as to priority against special deposits or other security
23 located in this Commonwealth.

24 § 3988. Execution proceedings.

25 During the pendency in this Commonwealth or any other state
26 of a liquidation proceeding, whether called by that name or not,
27 no proceeding in the nature of an attachment, garnishment or
28 levy of execution shall be commenced or maintained in this
29 Commonwealth against the delinquent insurer or its assets.

30 § 3989. Interstate priorities.

1 (a) Order of distribution.--In a liquidation proceeding in
2 this Commonwealth involving one or more reciprocal states, the
3 order of distribution of the domiciliary state shall control as
4 to all claims of residents of this Commonwealth and reciprocal
5 states. These claims shall have equal priority of payment from
6 general assets regardless of where the assets are located.

7 (b) Special deposit claims.--The owners of special deposit
8 claims against an insurer for which a liquidator is appointed in
9 this Commonwealth or any other state shall be given priority
10 against the special deposits in accordance with the statutes
11 governing the creation and maintenance of the deposits. If there
12 is a deficiency in any deposit, so that the claims secured by it
13 are not fully discharged from it, the claimants may share in the
14 general assets. However, this sharing shall be deferred until
15 general creditors, and also claimants against other special
16 deposits who have received smaller percentages from their
17 respective special deposits, are paid percentages of their
18 claims equal to the percentage paid from the special deposit.

19 (c) Secured claims.--The owner of a secured claim against an
20 insurer for which a liquidator has been appointed in this
21 Commonwealth or any other state may surrender his security and
22 file his claim as a general creditor, or the claim may be
23 discharged by resort to the security in accordance with section
24 3967 (relating to secured claims of creditors), in which case
25 any deficiency shall be treated as an unsecured claim against
26 the general assets of the insurer.

27 § 3990. Subordination of claims for lack of cooperation.

28 If an ancillary receiver in another state or foreign country,
29 whether called by that name or not, fails to transfer to the
30 domiciliary liquidator in this Commonwealth any assets within

1 his control other than special deposits, diminished only by the
2 expenses of the ancillary receivership, the claims filed in the
3 ancillary receivership, other than special deposit claims or
4 secured claims, shall be placed in the class of claims under
5 section 3968(6) (relating to order of distribution).

6 CHAPTER 41

7 BENEFICIAL SOCIETIES

8 Sec.

9 4101. Short title of chapter.

10 4102. Applicability of chapter.

11 4103. Limitation of benefits.

12 4104. Selection of directors.

13 4105. Holding, management or agency corporations.

14 4106. Reserves.

15 4107. Investment of surplus.

16 4108. Annual statements.

17 4109. Examinations.

18 4110. Filing and approval of documents.

19 4111. Qualifications of solicitors and agents.

20 4112. Inclusion of certain documents in policy.

21 4113. Criminal penalties.

22 4114. Civil penalties.

23 4115. Transfer restrictions.

24 § 4101. Short title of chapter.

25 This chapter shall be known and may be cited as the
26 Beneficial Society Act.

27 § 4102. Applicability of chapter.

28 (a) General rule.--This chapter applies to the following
29 beneficial societies:

30 (1) All beneficial societies incorporated under general

1 or special laws since October 13, 1857.

2 (2) All beneficial societies incorporated before
3 September 1, 1937, which have accepted the provisions of the
4 Constitution of Pennsylvania and the general insurance laws
5 enacted since October 13, 1857.

6 (3) All beneficial societies incorporated under any
7 general or special law prior to October 13, 1857, which by
8 the terms of their charters or the statutes under which they
9 were incorporated hold charters subject to alteration or
10 revocation.

11 (b) Exclusions.--This chapter does not apply to:

12 (1) Beneficial associations which are formed by or for
13 the exclusive benefit of those who, at the time of becoming
14 members, are engaged in educational work in any department or
15 district of the public school system of this Commonwealth or
16 in any college or university in this Commonwealth, and which
17 issued beneficiary certificates only to such members.

18 (2) Fraternal, charitable or secret societies issuing
19 beneficial certificates and paying benefits to their
20 membership through the lodge system.

21 (3) Insurance or relief associations formed by or for
22 the exclusive benefit of employees of corporations or firms,
23 or formed by or for the exclusive benefit of members of any
24 religious corporation or association.

25 (4) Associations whose benefits are limited to post-
26 mortem assessments of the members.

27 (c) Applicability of insurance law.--Except as otherwise
28 provided in this chapter and in section 4505(f) (relating to
29 applicability of chapter), the business and affairs of every
30 beneficial society shall be run and regulated under the law

1 relating to insurance companies.

2 (d) Regulation of other beneficial societies and
3 associations.--All beneficial societies or associations not
4 subject to regulation under this chapter, transacting any class
5 of insurance, shall file with the department copies of their
6 charter, constitution and laws and shall annually make a report
7 in such form as the department requires, showing their condition
8 and standing at the end of the preceding calendar year, and
9 their transactions for that year. The department may, at any
10 time, make an examination of the books and accounts of any such
11 society or association.

12 § 4103. Limitation of benefits.

13 Any beneficial society may pay or enter into contracts to pay
14 money or benefits, not exceeding \$20 per week in the event of
15 sickness, accident or disability, and not exceeding \$250 in the
16 event of death.

17 § 4104. Selection of directors.

18 (a) General rule.--The annual meeting of members for
19 election of directors of a beneficial society shall be held at
20 such time, prior to May 1 in every year, as the bylaws of the
21 society may direct. Notice of the time and place of meeting
22 shall be given to the members in accordance with the bylaws. At
23 this annual meeting, the members shall elect by ballot the
24 number of directors stated in the articles of association or the
25 bylaws, which shall be not less than 5 nor more than 13. Each
26 director shall hold office for the term for which he is elected
27 and until his successor has been elected and qualified.

28 (b) Terms of service.--Except as otherwise provided in the
29 bylaws, each director shall be elected for a term of one year.
30 If the articles or bylaws of a beneficial society so provide,

1 the directors may be classified in respect to the time for which
2 they shall hold office. In such case, each class shall be as
3 nearly equal in number as possible, the term of office of at
4 least one class shall expire in each year, and the members of a
5 class shall not be elected for a shorter period than one year or
6 for a longer period than three years. At each ensuing election
7 of directors after classification, only the number of directors
8 equal to the number of the class whose terms expire at the time
9 of the election shall be elected, and these directors shall be
10 elected for the longest term for which any class may have been
11 elected, as provided in this section.

12 (c) Vacancies.--Except as otherwise provided in the bylaws,
13 vacancies in the board of directors shall be filled by the
14 remaining members of the board. Each person so elected shall be
15 a director until his successor is elected by the shareholders or
16 members, who may make such election at the next annual meeting
17 of the shareholders or members or at any special meeting called
18 for that purpose and held prior thereto.

19 § 4105. Holding, management or agency corporations.

20 The business and affairs of each beneficial society shall be
21 conducted and managed by its elected officers. Contracts or
22 agreements shall not be entered into by any society with any
23 holding, management or agency corporation or other person by
24 which the control of the management of the society would pass to
25 such a corporation or other person or through which percentages
26 or portions of the members' dues and other payments would be
27 paid over to them.

28 § 4106. Reserves.

29 (a) Determination of amount.--A beneficial society doing
30 business in this Commonwealth shall, at all times, maintain

1 reserves as follows:

2 (1) On the life portion, contained in all policies or
3 contracts, reserves shall be based upon a standard table of
4 mortality, approved by the department, with interest at a
5 rate also approved by the department, and such reserves shall
6 be computed in accordance with the requirements of this title
7 for the computation of the reserve liability for life
8 insurance.

9 (2) On the disability portion, except in the case of
10 noncancelable health and accident insurance issued on and
11 after January 1, 1950, contained in all policies or
12 contracts, reserves shall be computed in accordance with the
13 requirements of this title for the computation of the
14 unearned premium reserve liability for casualty insurance.

15 (3) For all definite and outstanding claims, reserves
16 shall be calculated in accordance with the requirements of
17 this title for the computation of reserves against unpaid
18 losses in casualty insurance, other than losses under
19 noncancelable health and accident insurance issued on and
20 after January 1, 1950, compensation insurance or liability
21 insurance.

22 (4) On the noncancelable health and accident insurance
23 portion contained in all policies or contracts issued on and
24 after January 1, 1950, reserves shall be computed in
25 accordance with the requirements of this title for the
26 computation of policy and loss reserves for noncancelable
27 health and accident insurance.

28 (b) Investment of reserves.--A sum equal to the amount of
29 the reserves required by this section shall be invested in those
30 investments authorized by this title for the investment of the

1 reserve funds of life insurance companies.

2 (c) Approval by department.--The department shall each year
3 approve the computation of the reserve liability, as of December
4 31 of the preceding year, of every beneficial society authorized
5 to make insurance on lives in this Commonwealth.

6 (d) Suspension of authority.--Whenever any beneficial
7 society doing business in this Commonwealth does not have on
8 hand the net value of all policies in force after all other
9 debts and claims against it have been provided for, the
10 department shall prohibit the beneficial society from issuing
11 new policies until its funds become equal to its liabilities.

12 (e) Definitions--As used in this section the term
13 "noncancelable health and accident insurance" means insurance
14 against disability resulting from sickness, ailment or bodily
15 injury under a policy or contract under which the insurer does
16 not have the option to cancel or otherwise terminate the
17 contract at or after the expiration of one year from its
18 effective date.

19 § 4107. Investment of surplus.

20 The surplus of a beneficial society or a reincorporated
21 mutual beneficial society shall be invested in accordance with
22 the requirements of this title for the investment of the surplus
23 of life insurance companies.

24 § 4108. Annual statements.

25 (a) General rule.--Every beneficial society doing business
26 in this Commonwealth shall annually, on or before March 1, file
27 with the department a statement which shall exhibit its
28 financial condition as of December 31 of the previous year and
29 its business of that year. The statement shall be in the form
30 prescribed, or on forms furnished, by the department, and shall

1 contain such information as the department deems best adapted
2 for the purpose of eliciting from the beneficial society a true
3 exhibit of its financial condition. Within 30 days after being
4 requested by the department, the society shall render such
5 additional statements concerning its affairs and financial
6 condition as the department requires.

7 (b) Penalties.--Any beneficial society which neglects to
8 make and file its annual statement in the form or within the
9 time required by this section shall forfeit a sum of not more
10 than \$100 for each day during which its failure to file a
11 statement continues, and, upon notice from the department, its
12 authority to transact new business shall cease while its default
13 continues. A beneficial society and the persons who make an oath
14 or subscribe to a false annual statement in its behalf shall
15 severally be punished for willfully making a false annual
16 statement by a fine of not less than \$500 or more than \$5,000. A
17 person who makes oath to a false statement filed under
18 subsection (a) with the knowledge that it is false shall also be
19 subject to any applicable penalties under 18 Pa.C.S. Ch. 49
20 Subch. A (relating to perjury and falsification in official
21 matters).

22 § 4109. Examinations.

23 (a) Powers of department.--The department shall have the
24 power of visitation and examination into the affairs of every
25 beneficial society. The department shall have free access to all
26 the books, papers and documents that relate to the business of
27 the society and may summon and qualify as a witness under oath
28 and examine its officers and employees or other persons in
29 relation to the affairs, transactions and conditions of the
30 society. These examinations shall be made every three years or

1 more often as necessary, and the costs of the examinations, as
2 determined by the department, shall be imposed upon each society
3 examined.

4 (b) Proceedings by Attorney General.--Whenever after
5 examination the department finds that any beneficial society is
6 exceeding its powers, transacting business fraudulently,
7 operating in such a condition that its further transaction of
8 business will be hazardous to its members or to the public or
9 discontinuing business, the department may present the facts
10 relating thereto to the Attorney General who may proceed against
11 the society under the provisions relating to the liquidation of
12 insolvent or delinquent companies or associations transacting
13 any class of insurance. Proceedings shall not be commenced by
14 the Attorney General until after notice has been duly served on
15 the chief executive officers of the society, and a reasonable
16 opportunity given to it, on a date stated in the notice, to show
17 cause why such proceedings should not be commenced. An
18 application for injunction against or proceedings for the
19 dissolution of, or appointment of a receiver for, any beneficial
20 society or branch thereof, shall not be entertained by any court
21 unless made by the Attorney General.

22 § 4110. Filing and approval of documents.

23 A policy, contract or certificate of membership shall not be
24 issued or delivered by any beneficial society in this
25 Commonwealth, nor any application, rider or endorsement used in
26 connection therewith, until the forms of the same have been
27 submitted to and approved by the department under such rules and
28 regulations as it shall make concerning their terms and
29 provisions and their submission to and approval by it.

30 § 4111. Qualifications of solicitors and agents.

1 Solicitors or agents for beneficial societies shall meet the
2 requirements of Subchapter A of Chapter 11 (relating to agents).
3 § 4112. Inclusion of certain documents in policy.

4 All beneficial certificates issued by any beneficial society
5 in which the application of the member, the constitution, bylaws
6 or other rules of the society form part of the certificate or
7 contract between the parties thereto, or have any bearing
8 thereon, shall contain or have attached thereto correct copies
9 of the application as signed by the applicant or the
10 constitution, bylaws or other rules referred to. Unless so
11 attached and accompanying the certificate or contract, the
12 application, constitution, bylaws or other rules shall not be
13 received in evidence in any controversy between the parties to
14 or interested in the certificate or contract, nor shall they be
15 considered a part of the certificate or contract between the
16 parties.

17 § 4113. Criminal penalties.

18 Any person or beneficial society violating any of the
19 provisions of this chapter commits a summary offense.

20 § 4114. Civil penalties.

21 (a) General rule.--Upon satisfactory evidence of the
22 violation of this chapter by any beneficial society, the
23 department may pursue any one or more of the following courses
24 of action:

25 (1) Suspend or revoke the certificate of authority of
26 the offending beneficial society.

27 (2) Refuse for a period of not to exceed one year
28 thereafter to issue a new certificate of authority to the
29 beneficial society.

30 (3) Impose a penalty of not more than \$1,000 for each

1 violation.

2 (b) Procedure.--Before the department takes any action under
3 subsection (a) it shall give written notice to the beneficial
4 society accused of violating the law, stating specifically the
5 nature of the alleged violation, and fixing a time and place, at
6 least ten days thereafter, when a hearing on the matter shall be
7 held. After the hearing or upon failure of a duly authorized
8 representative of the accused beneficial society to appear at
9 the hearing, the department shall impose the penalty.

10 § 4115. Transfer restrictions.

11 (a) General rule.--An unincorporated association which
12 provides mutual benefit insurance to persons engaged in a common
13 calling, labor or enterprise of an agricultural or industrial
14 nature may provide, by rule or bylaw, that membership in the
15 association or interest in its funds or property shall be
16 nontransferable without the consent of the association.

17 (b) Effect of transfer restriction.--Whenever such an
18 association adopts a restriction under subsection (a), the
19 restriction shall be valid and binding. An attempted assignment,
20 pledge or other transfer of membership or interest made in
21 violation of the restriction shall not pass any legal or
22 equitable right or interest to any person to whom it is
23 attempted to be made if the rule or bylaw is brought to the
24 knowledge of such transferee. If the interest of a
25 member in the funds or property of such an association is
26 evidenced by a certificate, an endorsement thereon that the
27 certificate is nontransferable is conclusive evidence that the
28 attempted transferee of the certificate has knowledge of the
29 nontransferable character of the member's interest.

30

CHAPTER 43

1 (RESERVED)

2 CHAPTER 45

3 FRATERNAL BENEFIT SOCIETY CODE

4 Subchapter

5 A. General Provisions

6 B. Organization and Corporate Operations

7 C. Benefits and Beneficiaries

8 D. Certificates

9 E. Accident, Health and Disability Insurance Contracts

10 F. Licensure

11 G. Regulation of Operations

12 SUBCHAPTER A

13 GENERAL PROVISIONS

14 Sec.

15 4501. Short title of chapter.

16 4502. Definitions.

17 4503. Exemption from general insurance law.

18 4504. Taxation.

19 4505. Applicability of chapter.

20 § 4501. Short title of chapter.

21 This chapter shall be known and may be cited as the Fraternal
22 Benefit Society Code.

23 § 4502. Definitions.

24 The following words and phrases when used in this chapter
25 shall have the meanings given to them in this section unless the
26 context clearly indicates otherwise:

27 "Fraternal benefit society" or "society." Any incorporated
28 society, order or lodge, without capital stock, including one
29 exempted under section 4505(a)(2) (relating to applicability of
30 chapter), whether incorporated or not, conducted solely for the

1 benefit of its members and their beneficiaries and not for
2 profit, operated on a lodge system with or without ritualistic
3 form of work, having a representative form of government and
4 which makes provision for the payment of benefits in accordance
5 with this chapter.

6 "Lodge system." With respect to a society having a supreme
7 legislative or governing body and subordinate lodges or branches
8 by whatever name known, into which members are elected,
9 initiated or admitted in accordance with its constitution,
10 bylaws, rituals or rules, which subordinate lodges or branches
11 are required by the bylaws of the society to hold regular
12 meetings at least once in each quarter.

13 "Premium." Any charges, fees, dues or other required
14 contributions by whatever name known.

15 "Representative form of government." With respect to a
16 society, a form of its governance which meets the following
17 standards:

18 (1) The constitution or bylaws provide for a supreme
19 legislative or governing body, composed of representatives
20 elected either by the members or by delegates elected
21 directly or indirectly by the members, together with such
22 other members of the body as are prescribed by the society's
23 constitution and bylaws.

24 (2) The representatives elected constitute a majority in
25 number and have not less than two-thirds of the votes nor
26 less than the votes required to amend its constitution and
27 bylaws.

28 (3) The meetings of the supreme legislative or governing
29 body and the election of officers, representatives or
30 delegates are held at least once every four calendar years.

1 (4) Each benefit member is eligible for election to
2 serve as a delegate to these meetings.

3 (5) The society has a board of directors charged with
4 the responsibility for managing its affairs in the interim
5 between meetings of its supreme legislative or governing
6 body, subject to control by that body and having powers and
7 duties delegated to it in the constitution or bylaws of the
8 society.

9 (6) The board of directors is elected by the supreme
10 legislative or governing body, except in case of filling a
11 vacancy in the interim between meetings of that body.

12 (7) The officers are elected either by the supreme
13 legislative or governing body or by the board of directors.

14 (8) The members, officers, representatives or delegates
15 are not permitted to vote by proxy.

16 § 4503. Exemption from general insurance law.

17 Except as otherwise provided in this chapter, a fraternal
18 benefit society holding a certificate of authority shall not be
19 subject to the other provisions of this title. A statute
20 relating to the business of insurance does not apply to a
21 society unless the statute specifically refers and applies to a
22 society subject to this chapter. To the extent that statutes and
23 regulations are applicable to societies, the terms thereof shall
24 be deemed of no effect to the extent they are inconsistent with
25 the express terms of this chapter.

26 § 4504. Taxation.

27 Every society organized or licensed under this chapter is
28 deemed a charitable and benevolent institution, and all of its
29 funds shall be exempt from all and every state, county,
30 district, municipal and school tax other than taxes on real

1 estate and office equipment.

2 § 4505. Applicability of chapter.

3 (a) General rule.--This chapter does not apply to any of the
4 following:

5 (1) Grand or subordinate lodges of societies, orders or
6 associations now doing business in this Commonwealth which
7 provide benefits exclusively through local or subordinate
8 lodges.

9 (2) Orders, societies or associations which admit to
10 membership only persons engaged in one or more crafts or
11 hazardous occupations, in the same or similar lines of
12 business, insuring only their own members and their families,
13 and the auxiliaries to such orders, societies or
14 associations.

15 (3) Domestic societies which limit their membership to
16 employees of a particular municipal corporation, firm or
17 corporation which provide for a death benefit of not more
18 than \$400 or disability benefits of not more than \$350 to any
19 person in any one year, or both.

20 (4) Domestic religious, charitable or benevolent
21 societies or associations which provide for a death benefit
22 of not more than \$400 or for disability benefits of not more
23 than \$350 to any one person in any one year, or both.

24 (b) Coverage extended.--Any society or association described
25 in subsection (a)(3) or (4) which provides for death or
26 disability benefits for which benefit certificates are issued,
27 and any such society or association described in subsection
28 (a)(4) which has more than 1,000 members, is not exempt from
29 this chapter.

30 (c) Prohibition.--A society which is exempt under this

1 section from the requirements of this chapter, except a society
2 described in subsection (a)(2), shall not give or allow, or
3 promise to give or allow, to any person any compensation for
4 procuring new members.

5 (d) Accidental death or disability benefits.--Every society
6 which provides for benefits in case of death or disability
7 resulting solely from accident, and which does not obligate
8 itself to pay death or sick benefits arising from natural
9 causes, is subject to this chapter except that the provisions
10 relating to medical examination, valuations of benefit
11 certificates and incontestability do not apply.

12 (e) Verification of exemptions.--The department may require
13 from any society or association, by examination or otherwise,
14 such information as will enable it to determine whether the
15 society or association is exempt from this chapter.

16 (f) Provisions in other chapters.--The provisions of this
17 chapter prevail over any inconsistent provisions in Chapter 41
18 (relating to beneficial societies).

19 SUBCHAPTER B

20 ORGANIZATION AND CORPORATE OPERATIONS

21 Sec.

22 4511. Initial organization.

23 4512. Filing of initial papers with department.

24 4513. Validity of preliminary certificate.

25 4514. Solicitation of members.

26 4515. Examination by department.

27 4516. Exemption.

28 4517. Approval of documents.

29 4518. General corporate powers of societies.

30 4519. Review of orders of department.

- 1 4520. Classes of membership.
- 2 4521. Prohibition of activity.
- 3 4522. Location of offices and meetings.
- 4 4523. Consolidations and mergers.
- 5 4524. Amendments to articles of incorporation, constitution
6 and bylaws.
- 7 4525. Institutions.
- 8 4526. Personal liability.
- 9 4527. Waiver.
- 10 4528. Conversion of society into mutual life insurance
11 company.
- 12 4529. Reinsurance.
- 13 § 4511. Initial organization.

14 The organization of a society shall be as provided in this
15 subchapter. Seven or more citizens of the United States, a
16 majority of whom are citizens of this Commonwealth, who desire
17 to form a fraternal benefit society, may make, sign and
18 acknowledge before an officer competent to take acknowledgment
19 of deeds or articles of incorporation, in which the following
20 shall be stated:

21 (1) The proposed corporate name of the society, which
22 shall not so closely resemble the name of any society or
23 insurance company as to be misleading or confusing.

24 (2) The purposes for which it is being formed and the
25 mode in which its corporate powers are to be exercised. The
26 purposes shall not include more liberal powers than are
27 granted by this chapter. Any lawful, social, intellectual,
28 educational, charitable, benevolent, moral, fraternal or
29 religious advantages may be set forth among the purposes of
30 the society.

1 (3) The names and residences of the incorporators and
2 the names, residences and official titles of all the
3 officers, trustees, directors or other persons who are to
4 have and exercise the general control of the management of
5 the affairs and funds of the society for the first year or
6 until the ensuing election at which all such officers shall
7 be elected by the supreme legislative or governing body. This
8 election shall be held not later than one year from the date
9 of the issuance of the permanent certificate.

10 § 4512. Filing of initial papers with department.

11 The articles of incorporation, certified copies of the
12 constitution and rules, copies of all proposed forms of
13 certificates, applications therefor, receipts and circulars to
14 be issued by the society and a bond conditioned upon the return
15 to applicants of the advanced payments if the organization is
16 not completed within one year shall be filed with the
17 department, which may require such further information as is
18 necessary. The bond with sureties approved by the department
19 shall be in an amount, not less than \$5,000 nor more than
20 \$25,000, required by the department. All documents filed shall
21 be in the English language. If the purposes of the society
22 conform to the requirements of this chapter and all provisions
23 of this chapter have been complied with, the department shall so
24 certify, retain and file the articles of incorporation and
25 furnish the incorporators with a preliminary certificate
26 authorizing the society to solicit members.

27 § 4513. Validity of preliminary certificate.

28 A preliminary certificate granted under this chapter shall
29 not be valid after one year from its date or after such other
30 period, not exceeding one year, as is authorized by the

1 department upon cause shown, unless the 500 applicants required
2 under section 4514 (relating to solicitation of members) have
3 been secured and the organization has been completed as herein
4 provided. The articles of incorporation and all other
5 proceedings thereunder shall become void one year from the date
6 of the preliminary certificate, or at the expiration of the
7 extended period, unless the society completes its organization
8 and receives a certificate of authority to do business within
9 that period.

10 § 4514. Solicitation of members.

11 Upon receipt of a preliminary certificate from the
12 department, the society may solicit members for the purpose of
13 completing its organization, shall collect from each applicant
14 the amount of not less than one regular monthly premium in
15 accordance with its table of premiums as provided by its
16 constitution and bylaws and shall issue to each applicant a
17 receipt for the amount so collected. A society shall not incur
18 any liability other than for the return of such advance premium,
19 nor issue any certificate, nor pay or allow, or offer or promise
20 to pay or allow, any death or disability benefit to any person
21 until:

22 (1) Actual bona fide applications for death benefits
23 have been secured aggregating at least \$500,000 on not less
24 than 500 lives.

25 (2) All applicants for death benefits furnish evidence
26 of insurability satisfactory to the society.

27 (3) Certificates of examinations or acceptable
28 declarations of insurability are duly filed and approved by
29 the chief medical examiner of the society.

30 (4) Ten subordinate lodges or branches are established

1 into which the 500 applicants are admitted.

2 (5) There is submitted to the department, under oath of
3 the president, secretary or corresponding officer of the
4 society, a list of the applicants, giving their names,
5 addresses, date each was admitted, name and number of the
6 subordinate branch of which each applicant is a member,
7 amount of benefits to be granted and premiums therefor.

8 (6) A sworn statement of the treasurer or corresponding
9 officer of the society is filed with the department, stating
10 that at least 500 applicants have each paid in cash at least
11 one regular monthly premium, which premiums in the aggregate
12 shall total at least \$2,500, all of which shall be credited
13 to the fund or funds from which benefits are to be paid and
14 no part of which may be used for expenses. The advance
15 premiums shall be held in trust during the period of
16 organization, and if the society has not qualified for a
17 certificate of authority within one year, the premiums shall
18 be returned to the applicants.

19 § 4515. Examination by department.

20 The department may make such examination and require such
21 further information as is advisable. Upon presentation of
22 satisfactory evidence that the society has complied with all the
23 provisions of this chapter, it shall issue to the society a
24 certificate to that effect, stating that the society is
25 authorized to transact business under this chapter. The
26 certificate shall be prima facie evidence of the existence of
27 the society on the date of the certificate. The department shall
28 cause a record of the certificate to be made; a certified copy
29 of this record may be given in evidence with like effect as the
30 original certificate.

1 § 4516. Exemption.

2 The provisions of sections 4514 (relating to solicitation of
3 members) and 4515 (relating to examination by department) do not
4 apply to:

5 (1) Any society organized prior to April 6, 1893, under
6 any statute of this Commonwealth which was engaged in doing
7 business in this Commonwealth on that date. Any such society
8 may exercise all the rights conferred by this chapter and all
9 the rights, powers, privileges and exemptions now exercised
10 or possessed by it, under its charter or articles of
11 incorporation or articles of association, and neither its
12 existence as a corporation nor its right to exercise any
13 corporate rights vested in it by virtue of its past
14 incorporation are affected by this chapter. Any corporation
15 described in this paragraph shall be deemed a holder of a
16 certificate of authority issued under this chapter.

17 (2) Any society incorporated under the provisions of the
18 act of April 6, 1893 (P.L.10, No.6), the act of May 20, 1921
19 (P.L.916, No.324) or the act of July 17, 1935 (P.L.1092,
20 No.357), relating to fraternal benefit societies.

21 § 4517. Approval of documents.

22 A society authorized to transact business under this chapter
23 shall not issue any insurance forms, endorsements or riders
24 without first having obtained approval thereof by the
25 department.

26 § 4518. General corporate powers of societies.

27 Every society may adopt a constitution and bylaws for the
28 government of the society, the admission of its members, the
29 management of its affairs and the fixing of the premiums of its
30 members. It may change, alter, add to or amend the constitution

1 and bylaws and do such other acts as are necessary and
2 incidental to carrying into effect the objects and purposes of
3 the society.

4 § 4519. Review of orders of department.

5 Orders of the department upon an application for a
6 certificate of authority under this subchapter shall be subject
7 to judicial review as provided by law.

8 § 4520. Classes of membership.

9 (a) General rule.--Every society authorized to do business
10 in this Commonwealth may admit to membership two classes of
11 members: benefit members and social members by whatever name
12 known. Social members shall not be entitled to any of the
13 benefits prescribed by sections 4531 (relating to benefits) and
14 4532 (relating to benefits on lives of children) and shall have
15 no voice in the management of the insurance affairs of the
16 society. Benefit members may be either adult members or juvenile
17 members. Juvenile members shall have no voice in the management
18 of the insurance affairs of the society.

19 (b) Adult benefit membership.--The society may admit to
20 adult benefit membership any person not less than 15 years of
21 age at the nearest birthday. Any person so admitted prior to
22 attaining the full age of 18 years shall be deemed competent to
23 contract for insurance benefits and to enjoy every right,
24 privilege and benefit provided by any insurance certificate on
25 the minor subject to the limitations contained in section 4532
26 as to the designation of beneficiary.

27 (c) Evidence of insurability.--Every adult benefit member
28 entitled to insurance benefits shall, as to each application for
29 insurance, furnish evidence of insurability acceptable to the
30 society.

1 § 4521. Prohibition of activity.

2 An unincorporated or voluntary association may not transact
3 business in this Commonwealth as a fraternal benefit society
4 unless the association incorporates under this chapter.

5 § 4522. Location of offices and meetings.

6 The principal office of any domestic society shall be located
7 in this Commonwealth. The meetings of its supreme legislative or
8 governing body may be held in any state or country in North
9 America and all business transacted at such meetings shall be as
10 valid as if the meetings were held in this Commonwealth.

11 § 4523. Consolidations and mergers.

12 (a) Right to consolidate or merge.--A domestic society may
13 consolidate or merge with any other society by complying with
14 this section.

15 (b) Statements to be filed.--The societies shall file all of
16 the following with the department:

17 (1) A certified copy of the written contract containing,
18 in full, the terms and conditions of the consolidation or
19 merger.

20 (2) A sworn statement by the president and secretary or
21 corresponding officers of each society showing the financial
22 condition thereof on a date fixed by the department but not
23 earlier than the December 31 next preceding the date of the
24 contract.

25 (3) A certificate of such officers, verified by all of
26 them, that the consolidation or merger has been approved by a
27 two-thirds vote of the supreme legislative or governing body
28 of each society.

29 (4) Evidence that at least 60 days prior to the action
30 of the supreme legislative or governing body of each society,

1 the text of the contract was furnished to all members of each
2 society either by mail or by publication in full in the
3 official organ of each society.

4 (c) Approval by department.--If the department finds that
5 the contract is in conformity with this section, that the
6 financial statements are correct and that the consolidation or
7 merger is just and equitable to the members of each society, the
8 department shall issue a certificate stating that it approves
9 the contract. Upon approval, the contract shall be effective
10 unless any society which is a party to the contract is
11 incorporated under the law of any other state. In such event the
12 consolidation or merger shall not become effective until it is
13 approved as provided by the law of that state and a certificate
14 of such approval is filed with the department. If the law of the
15 state contains no such provision, then the consolidation or
16 merger shall not become effective until it is approved by the
17 department of insurance of the state and a certificate of
18 approval filed with the department.

19 (d) Property merged.--Upon the consolidation or merger
20 becoming effective, all the rights and interests of the
21 consolidated or merged societies in every kind of property and
22 things in action pertaining thereto shall be vested in the
23 society remaining after the consolidation or merger without any
24 other instrument. Conveyances of real property may be evidenced
25 by proper deeds, and the title to any real estate or interest
26 therein vested in any of the societies consolidated or merged
27 shall not revert or be impaired by reason of the consolidation
28 or merger, but shall vest in the society remaining after the
29 consolidation or merger.

30 (e) Affidavit as evidence.--The affidavit of any officer of

1 the society or of anyone authorized by it to mail any notice or
2 document, stating that the notice or document has been duly
3 addressed and mailed, shall be prima facie evidence that the
4 notice or document has been furnished the addressee.

5 § 4524. Amendments to articles of incorporation, constitution
6 and bylaws.

7 (a) Power to amend.--A domestic society may amend its
8 articles of incorporation, constitution or bylaws, in accordance
9 with the provisions thereof, by action of its supreme
10 legislative or governing body at any regular or special meeting
11 or, if its articles of incorporation, constitution or bylaws so
12 provide, by referendum. The referendum may be held in accordance
13 with the provisions of its articles of incorporation,
14 constitution or bylaws by the vote of the voting members of the
15 society, by the vote of delegates or representatives of voting
16 members or by the vote of local lodges or branches. An amendment
17 submitted for adoption by referendum shall not be adopted
18 unless, within six months from the date of submission thereof, a
19 majority of all of the voting members of the society have
20 signified their consent to the amendment by one of the methods
21 provided in this subsection.

22 (b) Approval of department.--An amendment shall not take
23 effect until approved by the department, which shall approve the
24 amendment if it finds that it has been adopted and is not
25 inconsistent with any requirement of law or with the character,
26 objects and purposes of the society. Unless the department
27 disapproves the amendment within 60 days after filing, the
28 amendment shall be deemed approved. The approval or disapproval
29 of the department shall be in writing and mailed to the
30 secretary or corresponding officer of the society at its

1 principal office. If the department disapproves the amendment,
2 the reasons shall be stated in the written notice.

3 (c) Copies of changes.--Within 90 days from approval by the
4 department, the amendments or a summary thereof shall be
5 furnished to all members of the society either by mail or by
6 publication in full in the official organ of the society. The
7 affidavit of any officer of the society or of anyone authorized
8 by it to mail any amendments or summary thereof, stating facts
9 which show that these have been addressed and mailed, shall be
10 prima facie evidence that the amendments or summary have been
11 furnished to the addressee.

12 (d) Power of department to review.--The department may
13 review existing articles of incorporation, constitutions and
14 bylaws of domestic fraternal benefit societies at any time in
15 order to determine whether they comply with the minimum
16 standards set forth in this chapter.

17 (e) Foreign or alien societies.--Every authorized foreign or
18 alien society authorized to do business in this Commonwealth
19 shall file with the department a duly certified copy of all
20 amendments of, or additions to, its articles of incorporation,
21 constitution or bylaws within 90 days after their enactment.

22 (f) Printed copies as evidence.--Printed copies of the
23 constitution or bylaws as amended, certified by the secretary or
24 corresponding officer of the society, shall be prima facie
25 evidence of the legal adoption thereof.

26 § 4525. Institutions.

27 (a) Power to own or establish.--A society may create,
28 maintain and operate charitable, benevolent or educational
29 institutions for the benefit of its members and their families
30 and dependents and for the benefit of children insured by the

1 society. For this purpose it may own, hold or lease personal
2 property or real property located in or outside this
3 Commonwealth, with necessary buildings thereon. This property
4 shall be reported in every annual statement but shall not be
5 allowed as an admitted asset of the society.

6 (b) Nonprofit operation.--Maintenance, treatment and proper
7 attendance in any such institution may be furnished free or a
8 reasonable charge may be made therefor, but no such institution
9 shall be operated for profit. The society shall maintain a
10 separate accounting of any income and disbursements under this
11 section and report them in its annual statement. A society shall
12 not own or operate any funeral home or undertaking
13 establishment.

14 § 4526. Personal liability.

15 The officers and members of the supreme, grand or any
16 subordinate body of a society shall not be personally liable for
17 payment of any benefits provided by a society.

18 § 4527. Waiver.

19 The constitution and bylaws of the society shall provide that
20 no subordinate body, subordinate officer or member may waive any
21 of the provisions of the constitution or bylaws of the society.
22 This provision shall be binding on the society and every member
23 and beneficiary of a member.

24 § 4528. Conversion of society into mutual life insurance
25 company.

26 Any domestic fraternal benefit society may be converted and
27 licensed as a mutual life insurance company by compliance with
28 all the applicable financial requirements of this title if the
29 plan of conversion is approved by the department. The plan shall
30 be prepared in writing setting forth all the terms and

1 conditions thereof. The board of directors shall submit the plan
2 to the supreme legislative or governing body of the society at
3 any regular or special meeting thereof, by giving a complete
4 copy of the plan with the notice of such meeting. The notice
5 shall be given as provided in the bylaws of the society for a
6 regular or special meeting of the body, as the case may be. The
7 affirmative vote of two-thirds of all members of the body shall
8 be necessary for the approval of the agreement. A conversion
9 shall not take effect until approved by the department, which
10 may give approval if it finds that the proposed change is in
11 conformity with the requirements of law and not prejudicial to
12 the certificate holders of the society.

13 § 4529. Reinsurance.

14 A domestic society may, by a reinsurance agreement, cede any
15 individual risk or risks in whole or in part to an insurer,
16 other than another society, having the power to make such
17 reinsurance and authorized to do business in this Commonwealth,
18 or if not so authorized, one which is approved by the
19 department. The society may not reinsure in excess of 50% all of
20 its insurance in force without the written permission of the
21 department. It may take credit for the reserves on the ceded
22 risks to the extent reinsured, but no credit shall be allowed as
23 an admitted asset or as a deduction from liability to a ceding
24 society for reinsurance made, ceded, renewed or otherwise
25 becoming effective unless the reinsurance is payable by the
26 assuming insurer on the basis of the liability of the ceding
27 society under the contract reinsured without diminution because
28 of the insolvency of the ceding society.

29

SUBCHAPTER C

30

BENEFITS AND BENEFICIARIES

1 Sec.

2 4531. Benefits.

3 4532. Benefits on lives of children.

4 4533. Benefit options.

5 4534. Beneficiaries.

6 4535. Attachment of benefits.

7 4536. Contract for benefits.

8 § 4531. Benefits.

9 (a) Power to grant benefits.--Any society holding a
10 certificate of authority under this chapter may enter into
11 contracts in such forms and grant such benefits as its bylaws
12 may authorize. In the case of life insurance benefits, the
13 society shall provide for the accumulation and maintenance of
14 assets required for the payment of these benefits, when valued
15 upon an interest basis, not exceeding 4% a year, and mortality
16 standards adopted by it within the limitations provided in this
17 chapter or, at the option of the society, in Chapter 53
18 (relating to life insurance). Any life certificates issued on a
19 renewable term basis shall set forth clearly the successive
20 future rates of contribution to be paid under the contract.

21 (b) Family eligibility.--Benefits may be provided on the
22 lives of members or, upon application of a member, on the lives
23 of the member's family, including the member, the member's
24 spouse and minor children, in the same or separate certificates.

25 § 4532. Benefits on lives of children.

26 (a) General rule.--A society may provide for insurance
27 benefits, annuity benefits or both on the lives of children
28 under the minimum age for adult membership but not greater than
29 18 years of age at the time of application therefor, upon the
30 application of some adult person, as its bylaws or rules may

1 provide, which benefits shall be in accordance with section
2 4531(a) (relating to benefits). A society may organize and
3 operate branches for such children. Membership and initiation in
4 local lodges shall not be required of such children, nor shall
5 they have any voice in the management of the society.

6 (b) Powers.--A society may provide for the designation and
7 changing of designation of beneficiaries in the certificates
8 providing for the benefits and provide in all other respects for
9 the regulation of the certificates and all rights, obligations
10 and liabilities incident thereto.

11 § 4533. Benefit options.

12 (a) Authorization.--A society may grant paid-up
13 nonforfeiture benefits, cash surrender values, certificate loans
14 and such other options as its bylaws permit. The society shall
15 grant by means of the certificate at least one paid-up
16 nonforfeiture benefit, except in the case of pure endowment,
17 annuity or reversionary annuity contracts, reducing term
18 insurance contracts or contracts of term insurance of a uniform
19 amount of 15 years or less expiring before 66 years of age.

20 (b) Reserves computed on certain tables.--In the case of
21 certificates for which reserves are computed on the
22 Commissioner's 1941 Standard Ordinary Mortality Table, the 1941
23 Standard Industrial Table or the Commissioner's 1958 Standard
24 Ordinary Mortality Table or any more recent table made
25 applicable to life insurance companies, every paid-up
26 nonforfeiture benefit and the amount of any cash surrender
27 value, loan or other option granted shall not be less than the
28 corresponding amount ascertained in accordance with the
29 provisions of this title applicable to life insurance companies
30 issuing policies containing similar insurance benefits based

1 upon those tables.

2 (c) Computation of certain benefits.--In the case of
3 certificates other than those for which reserves are computed on
4 the Commissioner's 1941 Standard Ordinary Mortality Table, the
5 1941 Standard Industrial Table or the Commissioner's 1958
6 Standard Ordinary Mortality Table, or any more recent table made
7 applicable to life insurance companies the value of every paid-
8 up nonforfeiture benefit and the amount of any cash surrender
9 value, loan or other option granted shall not be less than the
10 excess, if any, of paragraph (1) over paragraph (2) as follows:

11 (1) The reserve under the certificate determined on the
12 basis specified in the certificate.

13 (2) The sum of any indebtedness to the society on the
14 certificate, including interest due and accrued, and a
15 surrender charge equal to 2.5% of the face amount of the
16 certificate, which, in the case of insurance on the lives of
17 children, shall be the ultimate face amount of the
18 certificate, if death benefits provided therein are graded.

19 (d) Reserves computed on substandard basis.--In the case of
20 certificates issued on a substandard basis or in the case of
21 certificates, the reserves for which are computed upon the
22 American Men Ultimate Table of Mortality the term of any
23 extended insurance benefit granted including any accompanying
24 pure endowment may be computed upon the rates of mortality not
25 greater than 130% of those shown by the mortality table
26 specified in the certificate for the computation of the reserve.
27 § 4534. Beneficiaries.

28 (a) Power to change beneficiaries.--Unless otherwise
29 provided in the contract:

30 (1) The member shall have the right at all times to

1 change the beneficiary or beneficiaries and to assign the
2 certificate.

3 (2) A beneficiary shall not have or obtain any interest
4 in the proceeds of any certificate until a certificate
5 becomes due and payable in conformity with its provisions.

6 (b) Limitation on scope of beneficiaries.--The society by
7 its constitution, bylaws and rules may limit the scope of
8 beneficiaries.

9 (c) Payment of funeral benefits.--A society may make
10 provision for the payment of funeral benefits to the extent of
11 such portion of any payment under a certificate as might
12 reasonably appear to be due to any person equitably entitled
13 thereto by reason of having incurred expense occasioned by the
14 burial of the member, but the portion so paid shall not exceed
15 \$1,000.

16 (d) Payment to personal representative.--If at the death of
17 any member there is no lawful beneficiary to whom the insurance
18 benefits are payable, the amount of the benefits, except to the
19 extent that funeral benefits may be paid under subsection (c),
20 shall be payable to the personal representative of the deceased
21 member.

22 § 4535. Attachment of benefits.

23 Money or other benefit, charity, relief or aid to be provided
24 by any society shall not be liable to attachment, garnishment or
25 other process, or to be applied by any legal or equitable
26 process or operation of law, to pay any debt or liability of a
27 member or beneficiary or any other person who may have a right
28 thereunder, either before or after payment by the society.

29 § 4536. Contract for benefits.

30 (a) Materials forming contract.--Every society authorized to

1 do business in this Commonwealth shall issue a certificate to
2 the benefit member, or the spouse of a member, or to the
3 applicant for a minor, specifying the amount of benefits
4 provided thereby. The certificate, together with any riders or
5 endorsements attached thereto, the charter or articles of
6 incorporation, the constitution and bylaws of the society, any
7 application for benefits and declaration of insurability signed
8 by the applicant and all amendments to these shall constitute
9 the agreement, as of the date of issuance, between the society
10 and the member, and the certificate shall so state. A copy of
11 any application for benefits and of any declaration of
12 insurability shall be endorsed upon or attached to the
13 certificate.

14 (b) Statements and waiver.--All statements purporting to be
15 made by the member shall be representations and not warranties.
16 Any waiver of this provision shall be void.

17 (c) Amendments.--Any amendment to the charter or articles of
18 incorporation, constitution or bylaws, made or enacted
19 subsequent to the issuance of the certificate, shall bind the
20 member and the beneficiaries, and shall control the agreement as
21 though in force at the time of the application for membership.
22 However, no amendment shall diminish benefits which the society
23 contracted to give the member as of the date of issuance.

24 (d) Responsibility of members for deficiency.--Every society
25 shall contain a provision in its bylaws and in each certificate
26 of life insurance it issues, to which every certificate of
27 insurance issued by the society shall be subject, that if the
28 financial position of the society becomes impaired, subject to
29 the prior written approval of the department, the board of
30 directors or the supreme governing body may determine on an

1 equitable basis the proportionate share of the deficiency of
2 each member of the society. Each benefit member may then either
3 pay his share of the deficiency, accept the imposition of a lien
4 on the certificate of insurance or accept a proportionate
5 reduction in benefits under his certificate. The society may
6 specify the manner of the election and which alternative is to
7 be presumed if no election is made, subject to the prior written
8 approval of the department in the case of domestic societies.
9 Any lien on a certificate of insurance shall bear interest at
10 the rate charged on policy loans under the certificate, if
11 applicable, or otherwise at a rate approved by the department,
12 compounded annually until paid.

13 SUBCHAPTER D

14 CERTIFICATES

15 Sec.

- 16 4541. Approval of certificates.
17 4542. Criteria for review.
18 4543. Statement of title and premiums.
19 4544. Membership provisions.
20 4545. Default.
21 4546. Tables.
22 4547. Redetermination of premiums.
23 4548. Surplus.
24 4549. Loan value.

25 § 4541. Approval of certificates.

26 (a) General rule.--A fraternal benefit society doing
27 business in this Commonwealth shall not issue, sell or dispose
28 of any certificate, covering life, health, accident or any other
29 contract of insurance or any contracts pertaining to a pure
30 endowment or annuity, or use applications, riders or

1 endorsements in connection therewith, until the forms of the
2 same have been filed with and approved by the department.
3 However, riders and endorsements relating to the manner of
4 distribution of benefits and to the reservation of rights and
5 benefits under any such certificate, and used at the request of
6 the individual certificate holder, and any forms which, in the
7 opinion of the department, do not require approval need not be
8 filed under this section.

9 (b) Deemed approval.--Forms so filed shall be deemed
10 approved at the expiration of 30 days after filing, unless
11 earlier approved or disapproved by the department. The
12 department, by written notice to the society within the 30-day
13 period, may extend the period for approval or disapproval for an
14 additional 30 days.

15 (c) Voiding of approval.--Such approval shall become void
16 upon any subsequent notice of disapproval from the department,
17 or upon any subsequent withdrawal of license or refusal of the
18 department to relicense the society, or upon the subsequent
19 passage of a statute which would no longer make such contracts
20 or related forms a fit subject for approval, except that this
21 provision shall not affect contracts issued prior thereto.

22 (d) Notification of disapproval.--Upon any disapproval, the
23 department shall notify the society in writing, specifying the
24 reason for disapproval. Within 30 days from the date of mailing
25 of the notice to the society, the society may make written
26 application to the department for a hearing thereon. The hearing
27 shall be held within 30 days after receipt of the application.
28 The procedure before the department shall be in accordance with
29 the adjudication procedure set forth in 2 Pa.C.S. Ch. 5 Subch. A
30 (relating to practice and procedure of Commonwealth agencies),

1 and the society shall be entitled to judicial review under 2
2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of
3 Commonwealth agency action).

4 (e) Penalty.--Any person that, either as principal or agent,
5 issues or causes to be issued any certificate or contract of
6 insurance in this Commonwealth, contrary to this section,
7 commits a misdemeanor of the third degree.

8 (f) Civil penalties.--Upon satisfactory evidence of the
9 violation of this section by any person, the department may
10 pursue any one or more of the following courses of action:

11 (1) Suspend or revoke the license of the offending
12 person.

13 (2) Refuse, for a period of not to exceed one year
14 thereafter, to issue a new license to the person.

15 (3) Impose a fine of not more than \$1,000 for each act
16 in violation of this chapter.

17 § 4542. Criteria for review.

18 (a) Required provisions.--The certificate shall contain in
19 substance the standard provisions set forth in sections 4543
20 (relating to statement of title and premiums) through 4549
21 (relating to loan value) or, in lieu thereof, provisions which
22 are more favorable to the member. Any of the mandated provisions
23 or portions thereof not applicable by reason of the plan of
24 insurance or because the certificate is an annuity certificate
25 may, to the extent inapplicable, be omitted from the
26 certificate.

27 (b) Prohibited provisions.--A life benefit certificate shall
28 not be delivered or issued for delivery in this Commonwealth
29 containing in substance any of the following provisions:

30 (1) Any provision limiting the time within which any

1 action at law or in equity may be commenced to less than two
2 years after the cause of action shall accrue.

3 (2) Any provision by which the certificate shall purport
4 to be issued or to take effect more than six months before
5 the original application for the certificate was made, except
6 in case of transfer from one form of certificate to another
7 in connection with which the member is to receive credit for
8 any reserve accumulation under the form of certificate from
9 which the transfer is made.

10 (3) Any provision for forfeiture of the certificate for
11 failure to repay any loan thereon or to pay interest on such
12 loan while the total indebtedness, including interest, is
13 less than the loan value of the certificate.

14 § 4543. Statement of title and premiums.

15 There shall appear on the face of the filing page of the
16 certificate a statement of the title of the certificate and a
17 brief description which clearly and correctly describes its form
18 and identifies the insurer as a member of a fraternal benefit
19 society. There shall also appear a provision stating the amount
20 of premiums, dues or other required contributions, by whatever
21 name known, which are payable by the insured under the
22 certificate.

23 § 4544. Membership provisions.

24 (a) Right to maintain insurance.--There shall be a statement
25 that any benefit member expelled or suspended, except for
26 nonpayment of a premium or within the contestable period for
27 material misrepresentations in the member's application for
28 membership, may maintain his insurance in force by continuing
29 payment of the required premium.

30 (b) Grace period.--There shall be a provision that the

1 member is entitled to a grace period of not less than a full
2 month, or 30 days at the option of the society in which the
3 payment of any premium after the initial premium may be made.
4 During the grace period the certificate shall continue in full
5 force, but if the certificate becomes a claim during the grace
6 period before the overdue payment is made, the amount of the
7 overdue payment or payments may be deducted in any settlement
8 under the certificate.

9 (c) Reinstatement.--There shall be a provision that the
10 member shall be entitled to have the certificate reinstated at
11 any time within three years from the due date of the premium in
12 default, unless the certificate has been completely terminated
13 through the application of a nonforfeiture benefit, cash
14 surrender value or certificate loan, upon the production of
15 evidence of insurability satisfactory to the society and the
16 payment of all overdue premiums and any other indebtedness to
17 the society upon the certificate together with any interest on
18 the premiums and the indebtedness, at a rate not exceeding 6% a
19 year compounded annually.

20 (d) Contestability.--There shall be a provision that the
21 certificate shall be incontestable after it has been in force
22 during the lifetime of the member for a period of two years from
23 its date of issue except for nonpayment of premiums. At the
24 option of the society, supplemental provisions relating to
25 waiver of premium and provisions which grant additional
26 insurance specifically against death by accident may also be
27 excepted. The certificate may provide, as to statements made to
28 procure reinstatement, that the society may contest a reinstated
29 certificate within a period of two years from the date of
30 reinstatement based on the information in the reinstatement

1 application.

2 § 4545. Default.

3 (a) Paid-up nonforfeiture benefits.--There shall be a
4 provision that, in the event of default in payment of any
5 premium after three full years premiums have been paid or after
6 premiums for a lesser period have been paid if the contract so
7 provides, the society will grant, upon proper request not later
8 than 60 days after the due date of the premium in default, a
9 paid-up nonforfeiture benefit on the plan stipulated in the
10 certificate, effective as of the due date, of such value as
11 specified in this chapter.

12 (b) Optional payment provisions.--The certificate may
13 provide, if the society's bylaws so specify and if the member so
14 elects prior to the expiration of the grace period of any
15 overdue premium, that default does not occur so long as premiums
16 can be paid under an arrangement for automatic premium loan as
17 set forth in the certificate.

18 (c) Election of other paid-up nonforfeiture benefits.--There
19 shall be a statement that one paid-up nonforfeiture benefit as
20 specified in the certificate shall become effective
21 automatically unless the member elects another available paid-up
22 nonforfeiture benefit, not later than 60 days after the due date
23 of the premium in default.

24 (d) Applicability of section.--This section does not apply
25 in the case of pure endowment, annuity or reversionary annuity
26 contracts, reducing term insurance contracts, or contracts of
27 term insurance of uniform amount of 15 years or less expiring
28 before 66 years of age.

29 § 4546. Tables.

30 (a) Mortality table and interest rate.--There shall be a

1 statement of the mortality table and rate of interest used in
2 determining all paid-up nonforfeiture benefits and cash
3 surrender options available under the certificate and a brief
4 general description of the method used in calculating such
5 benefits.

6 (b) Table of certain values.--There shall be a table showing
7 in numbers the value of every paid-up nonforfeiture benefit and
8 cash surrender option available under the certificate for each
9 certificate anniversary either during the first 20 certificate
10 years or during the term of the certificate, whichever is
11 shorter.

12 § 4547. Redetermination of premiums.

13 There shall be a provision that in case the age or sex of the
14 member or of any other person is considered in determining the
15 premium and it is found at any time before final settlement
16 under the certificate that the age or sex has been misstated,
17 and the discrepancy and premium involved have not been adjusted,
18 the amount payable under the certificate shall be such as the
19 premium would have purchased at the correct age and sex. If the
20 correct age was not an insurable age under the society's charter
21 or laws, only the premiums paid to the society, less any
22 payments previously made to the member, shall be returned or, at
23 the option of the society, the amount payable under the
24 certificate shall be such as the premium would have purchased at
25 the correct age according to the society's promulgated rates and
26 any extension thereof based on actuarial principles.

27 § 4548. Surplus.

28 (a) Right to surplus.--There shall be a provision that the
29 certificate shall participate in the surplus of the society, and
30 that, beginning not later than the end of the third certificate

1 year, the society will annually determine the portion of the
2 divisible surplus accruing on the certificate, and that the
3 member entitled to elect the option may have the dividend
4 arising from such participation paid in cash or applied in
5 accordance with any one of the other dividend options as
6 provided by the certificate. If any such other dividend options
7 are provided, the certificate shall further state which option
8 shall be automatically effective, if the member has not elected
9 a different option.

10 (b) Optional surplus provision.--The certificate may contain
11 a provision that the certificate shall participate in the
12 surplus of the society, and that, beginning not later than the
13 end of the fifth certificate year, the society will determine
14 the portion of the divisible surplus accruing on the
15 certificate, and that the member entitled thereto may have the
16 current dividend arising from such participation paid in cash,
17 and that, at periods of not more than five years thereafter,
18 such apportionment and payment shall be done at the option of
19 the member.

20 (c) Surplus on term certificates.--Renewable term
21 certificates of ten years or less may provide that the surplus
22 accruing to such certificates shall be determined and
23 apportioned each year after the second certificate year, and
24 accumulated during each renewal period, and that at the end of
25 any renewal period, or renewal of the certificate by the member,
26 the society shall apply the accumulated surplus as an annuity
27 for the next succeeding renewal term to the reduction of
28 premiums.

29 § 4549. Loan value.

30 There shall be a provision for a loan value at any time after

1 three full years' premiums have been paid and while no premium
2 is in default beyond the grace period of payment. The loan
3 provision shall further provide that the society will advance,
4 on proper assignment or pledge of the certificate, and on the
5 sole security thereof, at a specified rate of interest, a sum
6 equal to or, at the option of the member entitled thereto, less
7 than, the cash surrender value at the end of the current
8 certificate year as required by section 4532 (relating to
9 benefits on lives of children) and that the society may deduct
10 from such loan value, in addition to any indebtedness deducted
11 in determining such value, any unpaid balance of the premium for
12 the current certificate year, and may collect interest in
13 advance on the loan to the end of the current certificate year.
14 The society shall reserve the right to defer such loan, except
15 any made to pay premiums to the society, for six months after
16 application therefor is made. This section does not apply to
17 term insurance.

18 SUBCHAPTER E

19 ACCIDENT, HEALTH AND DISABILITY INSURANCE CONTRACTS

20 Sec.

21 4551. Approval of contracts by department.

22 4552. Conditions for certificates.

23 4553. Standard contract provisions.

24 4554. Entire contract and changes.

25 4555. Time limits on certain defenses.

26 4556. Grace periods.

27 4557. Reinstatement.

28 4558. Claim procedure.

29 4559. Payment of claims.

30 4560. Legal actions.

- 1 4561. Change of beneficiary.
2 4562. Change of occupation.
3 4563. Conduct of insured.
4 4564. Other insurance.
5 4565. Relation of earnings to insurance.
6 4566. Cancellation.
7 4567. Conformity of provisions with state statutes.
8 4568. Inapplicable provisions.
9 4569. Composition and construction of certificates.
10 § 4551. Approval of contracts by department.

11 A certificate of insurance against loss from sickness or loss
12 or damage from bodily injury or death of the insured by accident
13 shall not be issued or delivered by any society, association or
14 exchange issuing the certificate to any person in this
15 Commonwealth until a copy of the form thereof, and of the
16 classification of risks and the dues, premiums or other required
17 contribution pertaining thereto, have been filed with and
18 approved by the department. If the department notifies the
19 society which has filed the form in writing that it does not
20 comply with the requirements of law, specifying the reason for
21 its conclusion, the society shall not issue any certificate in
22 that form. The action of the department in this regard shall be
23 subject to review by the Commonwealth Court.

24 § 4552. Conditions for certificates.

25 (a) General conditions.--A certificate shall not be
26 delivered or issued for delivery to any person in this
27 Commonwealth unless all of the following conditions are met:

28 (1) The entire money and other considerations therefor
29 shall be stated in the certificate.

30 (2) The time at which the insurance takes effect and

1 terminates shall be stated in the certificate.

2 (3) It shall purport to insure only one person, except
3 that upon the application of an adult head of a family, who
4 shall be deemed the certificate holder, a policy may insure,
5 originally or by amendment, any two or more eligible members
6 of that family, including husband, wife, dependent children
7 or any children under a specified age, which shall not exceed
8 19 years of age, and any other person dependent upon the
9 certificate holder.

10 (4) The style, arrangement and overall appearance of the
11 certificate shall give no undue prominence to any portion of
12 the text, and every printed portion of the text of the
13 certificate and of any endorsements or attached papers shall
14 be plainly printed in light face type of a style in general
15 use, the size of which type shall be uniform and not less
16 than ten point with a lower case unspaced alphabet length not
17 less than 120 point. As used in this paragraph the term
18 "text" includes all printed matter except the name and
19 address of the society, name or title of the certificate, the
20 brief description, if any, and captions and subcaptions.

21 (5) The exceptions and reductions of indemnity shall be
22 set forth in the certificate. Except for those set forth in
23 this chapter, these exceptions and reductions shall, at the
24 society's option, either be included with the benefit
25 provision to which they apply or under an appropriate caption
26 such as "exceptions" or "exceptions and reductions." If an
27 exception or reduction specifically applies only to a
28 particular benefit of the certificate, a statement of the
29 exception or reduction shall be included with the benefit
30 provision to which it applies.

1 (6) Each such form, including riders and endorsements,
2 shall be identified by a form number in the lower left-hand
3 corner of the first page thereof.

4 (7) It contains no provision purporting to make any
5 portion of the charter, rules, constitution or bylaws of the
6 society a part of the policy unless such portion is set forth
7 in full in the policy, except in the case of the
8 incorporation of, or reference to, a statement of rates or
9 classification of risks or short-rate table filed with the
10 department.

11 (8) If the certificate is entitled or referred to as
12 "noncancelable," the noncancelable certificate is
13 automatically renewable until 60 years of age upon payment of
14 the required premiums by the insured.

15 (9) With respect to an unmarried child covered by the
16 certificate prior to the attainment of 19 years of age who is
17 incapable of self-sustaining employment by reason of mental
18 retardation or physical handicap, who became so incapable
19 prior to attainment of 19 years of age and who is chiefly
20 dependent upon the certificate holder for support and
21 maintenance, a certificate under which coverage of a
22 dependent of a certificate holder terminates at a specified
23 age shall not terminate while the certificate remains in
24 force and the dependent remains in such condition, if the
25 certificate holder has within 31 days of the dependent's
26 attainment of the limiting age submitted proof of his
27 incapacity. This paragraph does not require a society to
28 insure a mentally retarded or physically handicapped
29 dependent child where the certificate is underwritten on
30 evidence of insurability based on health factors set forth in

1 the application or where the dependent does not satisfy the
2 conditions of the certificate as to evidence of insurability
3 or other provisions of the certificate, satisfaction of which
4 is required for the coverage to take effect; in any such
5 case, the terms of the certificate shall apply with regard to
6 the coverage or exclusion from coverage of the dependent.

7 (b) Nonresident members.--If any certificate is issued by a
8 society domiciled in this Commonwealth for delivery to a person
9 residing in another state, and if the official having
10 responsibility for the administration of the insurance laws of
11 the other state has advised the department that such a
12 certificate is not subject to approval or disapproval by the
13 official, the department may by ruling require that the
14 certificate meet the standards set forth in section 4541
15 (relating to approval of certificates) and this chapter.
16 § 4553. Standard contract provisions.

17 Except as provided in this chapter, each certificate
18 delivered or issued for delivery to any person in this
19 Commonwealth with respect to accident and health coverage and
20 coverage for permanent and total disability shall contain the
21 contract provisions specified in sections 4554 (relating to
22 entire contract and changes) through 4567 (relating to
23 conformity of provisions with state statutes) in the words in
24 which the same appear in this chapter. However, the society may,
25 at its option, substitute for one or more of such provisions
26 corresponding provisions of different wording approved by the
27 department which are in each instance not less favorable in any
28 respect to the benefit member or the beneficiary. Such
29 provisions shall be preceded individually by the caption
30 appearing in this section or, at the option of the society, by

1 such appropriate individual or group captions or subcaptions as
2 the department may approve.

3 § 4554. Entire contract and changes.

4 There shall be a provision as follows:

5 Entire Contract; Changes: This certificate, including the
6 society's bylaws, the endorsements and the attached
7 papers, if any, constitutes the entire contract of
8 insurance. No change in this certificate shall be valid
9 until approved by an executive officer of the society and
10 unless such approval be endorsed hereon or attached
11 hereto. No agent has authority to change this certificate
12 or to waive any of its provisions.

13 § 4555. Time limits on certain defenses.

14 (a) Mandatory provision.--There shall be a provision as
15 follows:

16 Time Limit on Certain Defenses: After three years from
17 the date of issue of this certificate no misstatements,
18 except fraudulent misstatements, made by the applicant in
19 the application for such certificate shall be used to
20 void the certificate or to deny a claim for loss incurred
21 or disability (as defined in the certificate) commencing
22 after the expiration of such three-year period.

23 (b) Nonapplicability.--The certificate provision does not
24 affect any legal requirement for avoidance of a certificate or
25 denial of a claim during such initial three-year period, nor
26 limit the application of sections 4554 (relating to entire
27 contract and changes) through 4557 (relating to reinstatement)
28 and section 4558(a), (b) and (c) (relating to claim procedure)
29 in the event of misstatement with respect to age or occupation
30 or other insurance.

1 (c) Optional language for weekly payment situations.--

2 (1) In a certificate where the dues, premiums or other
3 required contributions are payable weekly, the words "if such
4 application is made a part of the certificate" may be
5 inserted in the certificate provision between the word
6 "certificate" and the word "shall" immediately following.

7 (2) In certificates whereon the dues, premiums or the
8 required contributions are payable weekly, the words "or from
9 the date of any reinstatement thereof" may be inserted in the
10 certificate provision between the word "certificate" and the
11 word "shall" immediately following.

12 (d) Optional language where certificate member has power to
13 continue certificate.--A certificate which the benefit member
14 has the right to continue in force subject to its terms by the
15 timely payment of the dues, premium or other required
16 contribution until at least 50 years of age, or in the case of a
17 certificate issued after 44 years of age, for at least five
18 years from its date of issue, may contain in lieu of the
19 language in section 4558(a) (relating to claim procedure), the
20 following provision:

21 Incontestability Period: After this certificate has been
22 in force for a period of three years during the lifetime
23 of the benefit member (excluding any period during which
24 the benefit member is disabled), it shall become
25 incontestable as to the statements contained in the
26 application.

27 (e) Nondenial or reduction of certain claims.--There shall
28 be a provision as follows:

29 Nondenial or Reduction of Certain Claims: No claim for
30 loss incurred or disability (as defined in the

1 certificate) commencing after three years from the date
2 of issue of this certificate shall be reduced or denied
3 on the ground that a disease or physical condition not
4 excluded from coverage by name or specific description
5 effective on the date of loss had existed prior to the
6 effective date of coverage of this certificate.

7 § 4556. Grace periods.

8 (a) Period established.--There shall be a provision as
9 follows:

10 Grace Period: There shall be a grace period of (insert a
11 number not less than "7" for weekly dues, premium or
12 other required contribution certificates, "10" for
13 monthly dues, premium or other required contribution
14 certificates and "31" for all other certificates) days
15 will be granted for the payment of each dues, premium or
16 other required contribution falling due after the first
17 dues, premium or other required contribution during which
18 grace period the certificate shall continue in force.

19 (b) Cancellation.--A certificate which contains a
20 cancellation provision may add, at the end of the provision,
21 "subject to the right of the benefit member to cancel in
22 accordance with the cancellation provision hereof."

23 (c) Reservation of right to refuse renewal.--A certificate
24 in which the society reserves the right to refuse any renewal
25 shall have, at the beginning of the contract provision set forth
26 in subsection (a), "unless not less than 30 days prior to the
27 dues, premium or other required contribution due date the
28 society has delivered to the benefit member or has mailed to his
29 last address as shown by the records of the society written
30 notice of its intention not to renew this certificate beyond the

1 period for which the dues, premium or other required
2 contribution has been accepted."

3 § 4557. Reinstatement.

4 (a) Mandatory provision.--There shall be a provision as
5 follows:

6 Reinstatement: If any renewal dues, premium or other
7 required contribution is not paid within the time granted
8 the society for payment, a subsequent acceptance of dues,
9 premium or other required contribution by the society or
10 by any agent duly authorized by the society to accept
11 such dues, premium or other required contribution without
12 requiring in connection therewith an application for
13 reinstatement, shall reinstate the certificate: Provided,
14 however, That if the society or such agent requires an
15 application for reinstatement and issues a conditional
16 receipt for the dues, premium or other required
17 contribution tendered, the certificate will be reinstated
18 upon approval of such application by the society or,
19 lacking such approval, upon the 45th day following the
20 date of such conditional receipt unless the society has
21 previously notified the benefit member in writing of its
22 disapproval of such application. The reinstated
23 certificate shall cover only loss resulting from such
24 accidental injury as may be sustained after the date of
25 reinstatement and loss due to such sickness as may begin
26 more than ten days after such date. In all other respects
27 the benefit member and society shall have the same rights
28 thereunder as they had under the certificate immediately
29 before the due date of the defaulted dues, premium or
30 other required contribution subject to any provisions

1 endorsed hereon or attached hereto in connection with the
2 reinstatement. Any dues, premium or other required
3 contribution accepted in connection with a reinstatement
4 shall be applied to a period for which the dues, premium
5 or other required contribution has not been previously
6 paid, but not to any period more than 60 days prior to
7 the date of reinstatement.

8 (b) Payments accepted.--The last sentence of the contract
9 provision set forth in subsection (a) may be omitted:

10 (1) from any certificate which the benefit member has
11 the right to continue in force subject to its terms by the
12 timely payment of the dues, premiums or other required
13 contributions until at least 50 years of age or, in the case
14 of a certificate issued after 44 years of age, for at least
15 five years from the date of its issue; or

16 (2) from any certificate on which the dues, premiums or
17 other required contributions are payable weekly.

18 § 4558. Claim procedure.

19 (a) Notice of claim.--There shall be a provision as follows:

20 Notice of Claim: Written notice of claim must be given to
21 the society within 20 days after the occurrence or
22 commencement of any loss covered by the certificate, or
23 as soon thereafter as is reasonably possible. Notice
24 given by or on behalf of the benefit member or the
25 beneficiary to the society at (insert the location of
26 such office as the society may designate for the purpose)
27 or to any authorized agent of the society, with
28 information sufficient to identify the benefit member,
29 shall be deemed notice to the society.

30 (b) Optional language for weekly payment insurance.--In a

1 certificate whereon the dues, premiums or other required
2 contributions are payable weekly, the first sentence of the
3 contract provisions set forth in subsection (a) may read:

4 Written notice of claim must be given to the society
5 within 10 days of the commencement of any nonhospital
6 confining sickness covered by the certificate and within
7 20 days after the occurrence or commencement of any other
8 loss covered by the certificate, or as soon thereafter as
9 is reasonably possible.

10 (c) Language in loss of time benefit insurance.--In a
11 certificate providing a loss of time benefit which may be
12 payable for at least two years, a society may insert the
13 following between the first and second sentences of the
14 provision set forth in subsection (a):

15 Subject to the qualifications set forth below, if the
16 benefit member suffers loss of time on account of
17 disability for which indemnity may be payable for at
18 least two years, he shall, at least once in every six
19 months after having given notice of claim, give to the
20 society notice of continuance of said disability, except
21 in the event of legal incapacity. The period of six
22 months following any filing of proof by the benefit
23 member or any payment by the society on account of such
24 claim or any denial of liability in whole or in part by
25 the society shall be excluded in applying this provision.
26 Delay in the giving of such notice shall not impair the
27 benefit member's right to any indemnity which would
28 otherwise have accrued during the period of six months
29 preceding the date on which such notice is actually
30 given.

1 (d) Forms for claims.--There shall be a provision as
2 follows:

3 Claim Forms: The society, upon receipt of a notice claim,
4 will furnish to the claimant such forms as are usually
5 furnished by it for filing proofs of loss. If such forms
6 are not furnished within 15 days after the giving of such
7 notice, the claimant shall be deemed to have complied
8 with the requirements of this certificate as to proof of
9 loss upon submitting, within the time fixed in the
10 certificate for filing proofs of loss, written proof
11 covering the occurrence, the character and the extent of
12 the loss for which claim is made.

13 (e) Proofs of loss.--There shall be a provision as follows:

14 Proofs of Loss: Written proof of loss must be furnished
15 to the society at its office in case of claim for loss
16 for which this certificate provides any periodic payment
17 contingent upon continuing loss within 90 days after the
18 termination of the period for which the society is liable
19 and in case of claim for any other loss within 90 days
20 after the date of such loss. Failure to furnish such
21 proof within the time required shall not invalidate or
22 reduce any claim if it was not reasonably possible to
23 give proof within such time, provided such proof is
24 furnished as soon as reasonably possible and in no event,
25 except in the absence of legal capacity, later than one
26 year from the time proof is otherwise required.

27 (f) Physical examinations and autopsy.--There shall be a
28 provision as follows:

29 Physical Examinations and Autopsy: The society at its own
30 expense shall have the right and opportunity to examine

1 the person of the benefit member when and as often as it
2 may reasonably require during the pendency of a claim
3 hereunder and to make an autopsy in case of death where
4 it is not forbidden by law.

5 § 4559. Payment of claims.

6 (a) Mandatory provision.--There shall be a provision as
7 follows:

8 Payment of Claims: Indemnity for loss of life will be
9 payable in accordance with the beneficiary designation
10 and the provisions respecting such payment which may be
11 prescribed herein and effective at the time of payment.
12 If no such designation or provision is then effective,
13 such indemnity shall be payable to the estate of the
14 insured. Any other accrued indemnities unpaid at the
15 benefit member's death may, at the option of the society,
16 be paid either to such beneficiary or to such estate. All
17 other indemnities will be payable to the benefit member.

18 (b) Optional language.--The following provisions, or either
19 of them, may be included with the contract provision set forth
20 in subsection (a):

21 (1) If any indemnity of this certificate shall be
22 payable to the estate of the benefit member or to a benefit
23 member or beneficiary who is a minor or otherwise not
24 competent to give a valid release, the society may pay such
25 indemnity, up to an amount not exceeding \$ (insert an amount
26 which shall not exceed \$1,000), to any relative by blood or
27 connection by marriage of the benefit member or beneficiary
28 who is deemed by the society to be equitably entitled
29 thereto. Any payment made by the society in good faith
30 pursuant to this provision shall fully discharge the society

1 to the extent of such payment.

2 (2) Subject to any written direction of the benefit
3 member in the application or otherwise, all or a portion of
4 any indemnities provided by this certificate on account of
5 hospital, nursing, medical or surgical services may, at the
6 society's option and, unless the benefit member requests
7 otherwise in writing, not later than the time of filing
8 proofs of such loss, be paid directly to the hospital or
9 person rendering such services; but it is not required that
10 the service be rendered by a particular hospital or person.

11 (c) Time of payment of claims.--There shall be a provision
12 as follows:

13 Time of Payment of Claims: Indemnities payable under this
14 certificate for any loss other than loss for which this
15 certificate provides any periodic payment will be paid
16 immediately upon receipt of due written proof of such
17 loss. Subject to due written proof of loss, all accrued
18 indemnities for loss for which this certificate provides
19 periodic payment will be paid (insert period for payment
20 which must not be less frequently than monthly) and any
21 balance remaining unpaid upon the termination of
22 liability will be paid immediately upon receipt of due
23 written proof.

24 § 4560. Legal actions.

25 There shall be a provision as follows:

26 Legal Actions: No action at law or in equity shall be
27 brought to recover on this certificate prior to the
28 expiration of 60 days after written proof of loss has
29 been furnished in accordance with the requirements of
30 this certificate. No such action shall be brought after

1 the expiration of three years after the time written
2 proof of loss is required to be furnished.

3 § 4561. Change of beneficiary.

4 There shall be a provision as follows:

5 Change of Beneficiary: Unless the benefit member makes an
6 irrevocable designation of beneficiary, the right to
7 change of beneficiary is reserved to the benefit member
8 and the consent of the beneficiary or beneficiaries shall
9 not be requisite to surrender or assignment of this
10 certificate or to any change of beneficiary or
11 beneficiaries, or to any other changes in this
12 certificate. The first clause of this provision, relating
13 to the irrevocable designation of beneficiary, may be
14 omitted at the society's option.

15 § 4562. Change of occupation.

16 There shall be a provision as follows:

17 Change of Occupation: If the benefit member is injured or
18 contracts sickness after having changed his occupation to
19 one classified by the society as more hazardous than that
20 stated in this certificate or while doing for
21 compensation anything pertaining to an occupation so
22 classified, the society will pay only such portion of the
23 indemnities provided in this certificate as the dues,
24 premiums or other required contributions paid would have
25 purchased at the rates and within the limits fixed by the
26 society for such more hazardous occupation. If the
27 benefit member changes his occupation to one classified
28 by the society as less hazardous than that stated in this
29 certificate, the society, upon receipt of proof of such
30 change of occupation, will reduce the dues, premiums or

1 other required contributions accordingly, and will return
2 the excess pro rata unearned dues, premiums or other
3 required contributions from the date of change of
4 occupation or from the certificate anniversary date
5 immediately preceding receipt of such proof, whichever is
6 the more recent. In applying this provision, the
7 classification of occupational risk and the dues,
8 premiums or other required contributions shall be such as
9 have been last filed by the society prior to the
10 occurrence of the loss for which the society is liable or
11 prior to date of proof of change in occupation with the
12 state official having supervision of insurance in the
13 state where the benefit member resided at the time this
14 certificate was issued; but if such filing was not
15 required, then the classification of occupational risk
16 and the dues, premiums or other required contributions
17 shall be those last made effective by the society in such
18 state prior to the occurrence of the loss or prior to the
19 date of proof of change in occupation.

20 § 4563. Conduct of insured.

21 (a) Misstatement of age.--There shall be a provision as
22 follows:

23 Misstatement of Age: If the age of the benefit member has
24 been misstated, all amounts payable under this
25 certificate shall be such as the dues, premiums or other
26 required contributions paid would have purchased at the
27 correct age.

28 (b) Nonpayment of premiums.--There shall be a provision as
29 follows:

30 Unpaid Dues, Premiums or Other Required Contributions:

1 Upon the payment of a claim under this certificate, any
2 dues, premiums or other required contributions then due
3 and unpaid or covered by any note or written order may be
4 deducted therefrom.

5 (c) Illegal occupation.--There shall be a provision as
6 follows:

7 Illegal Occupation: The society shall not be liable for
8 any loss to which a contributing cause was the benefit
9 member's commission of or attempt to commit a felony, or
10 to which a contributing cause was the benefit member's
11 being engaged in an illegal occupation.

12 (d) Intoxicants and narcotics.--There shall be a provision
13 as follows:

14 Intoxicants and Narcotics: The society shall not be
15 liable for any loss sustained or contracted in
16 consequence of the benefit member's being intoxicated, or
17 under the influence of any narcotic unless administered
18 on the advice of a physician.

19 § 4564. Other insurance.

20 (a) Other insurance in same society.--There shall be a
21 provision as follows:

22 Other Insurance in This Society: If an accident or
23 sickness or accident and sickness certificate or
24 certificates previously issued by the society to the
25 benefit member be in force concurrently herewith, making
26 the aggregate indemnity for (insert type of coverage or
27 coverages) in excess of \$ (insert maximum limit of
28 indemnity or indemnities), the excess insurance shall be
29 void and all dues, premiums or other required
30 contributions paid for such excess shall be returned to

1 the benefit member or to his estate or, in lieu thereof,
2 insurance effective at any one time on the benefit member
3 under a like certificate or certificates in this society
4 is limited to the one such certificate elected by the
5 benefit member, his beneficiary or his estate, as the
6 case may be, and the society will return all dues,
7 premiums or other required contributions paid for all
8 other such certificates.

9 (b) Insurance with other benefit members.--There shall be a
10 provision as follows:

11 Insurance with Other Benefit Members: If there is other
12 valid coverage, not with this society, providing benefits
13 for the same loss on a provision of service basis or on
14 an expense incurred basis and of which this society has
15 not been given written notice prior to the occurrence or
16 commencement of loss, the only liability under any
17 expense incurred coverage of this certificate shall be
18 for such proportion of the loss of the amount which would
19 otherwise have been payable hereunder plus the total of
20 the like amounts under all such other valid coverages for
21 the same loss of which this society had notice bears to
22 the total like amounts under all valid coverages for such
23 loss, and for the return of such portion of the dues,
24 premiums or other required contributions paid as shall
25 exceed the pro rata portion for the amount so determined.
26 For the purpose of applying this provision when other
27 coverage is on a provision of service basis, the "like
28 amount" of such other coverage shall be taken as the
29 amount which the services rendered would have cost in the
30 absence of such coverage.

1 (c) Caption change for insurance with other benefit
2 members.--If the contract provision set forth in subsection (a)
3 is included in a certificate which also contains the contract
4 provision set forth in subsection (e), there shall be added to
5 the caption of the contract provision set forth in subsection
6 (b) the phrase "... Expense Incurred Benefits."

7 (d) Definition of "other valid coverage" for insurance with
8 other benefit members.--The society may include in the contract
9 provision set forth in subsection (b) a definition of "other
10 valid coverage," approved as to form by the department, which
11 shall be limited in subject matter to coverage provided by
12 organizations subject to regulation by insurance law or by
13 insurance authorities of this Commonwealth or any other state or
14 any province of Canada, and by hospital or medical service
15 organizations, and to any other coverage the inclusion of which
16 is approved by the department. In the absence of such
17 definition, the term does not include group insurance or
18 coverage provided by hospital or medical service organizations
19 or by union welfare plans or employer or employee benefit
20 organizations. For the purpose of applying the provision set
21 forth in subsection (b) with respect to any benefit member, any
22 amount of benefit provided for the member pursuant to any
23 compulsory benefit statute, including any workmen's compensation
24 or employers' liability statute, whether provided by a
25 governmental agency or otherwise, shall be deemed "other valid
26 coverage" of which the society has had notice; in applying this
27 contract provision, in no event shall third party liability
28 coverage be included as "other valid coverage."

29 (e) Insurance with other societies.--There shall be a
30 provision as follows:

1 Insurance with Other Societies: If there is other valid
2 coverage, not with this society, providing benefits for
3 the same loss on other than an expense incurred basis and
4 of which this society has not been given written notice
5 prior to the occurrence or commencement of loss, the only
6 liability for such benefits under this certificate shall
7 be for such proportion of the indemnities otherwise
8 provided hereunder for such loss as the like indemnities
9 of which the society had notice (including the
10 indemnities under this certificate) bear to the total
11 amount of all like indemnities for such loss, and for the
12 return of such portion of the dues, premiums or other
13 required contributions paid as shall exceed the pro rata
14 portion for the indemnities thus determined.

15 (f) Caption changes for insurance with other societies.--If
16 the contract provision set forth in subsection (e) is included
17 in a certificate which also contains the provision set forth in
18 subsection (b) there shall be added to the caption of the
19 foregoing provision the phrase "... other benefits."

20 (g) Definition of "other valid coverage" for insurance with
21 other societies.--The society may include in the contract
22 provision set forth in subsection (e) a definition of "other
23 valid coverage," approved as to form by the department, which
24 shall be limited in subject matter to coverage provided by
25 organizations subject to regulation by insurance law or by
26 insurance authorities of this Commonwealth or any other state or
27 any province of Canada, and to any other coverage the inclusion
28 of which may be approved by the department. In the absence of
29 such definition, the term does not include group insurance or
30 benefits provided by union welfare plans or by employer or

1 employee benefit organizations. For the purpose of applying the
2 contract provision set forth in subsection (e) with respect to
3 any benefit member, any amount of benefit provided for the
4 insured pursuant to any compulsory benefit statute including any
5 workmen's compensation or employers' liability statute, whether
6 provided by a governmental agency or otherwise, shall be deemed
7 "other valid coverage" of which the society has had notice; in
8 applying this contract provision, in no event shall third party
9 liability coverage be included as "other valid coverage."

10 § 4565. Relation of earnings to insurance.

11 (a) Reduction of payments to rates with earnings.--If
12 permitted by subsection (b), there shall be a provision as
13 follows:

14 Relation of Earnings to Insurance: If the total monthly
15 amount of loss of time benefits promised for the same
16 loss under all valid loss of time coverage upon the
17 benefit member, whether payable on a weekly or monthly
18 basis, shall exceed the monthly earnings for the period
19 of two years immediately preceding a disability for which
20 claim is made, whichever is the greater, the society will
21 be liable only for such proportionate amount of such
22 benefits under this certificate as the amount of such
23 monthly earnings or such average monthly earnings of the
24 benefit member bears to the total amount of monthly
25 benefits for the same loss under all such coverage upon
26 the benefit member at the time such disability commences
27 and for the return of such part of the dues, premiums or
28 other required contributions paid during such two years
29 as shall exceed the pro rata amount of the dues, premiums
30 or other required contributions for the benefits actually

1 paid hereunder; but this shall not operate to reduce the
2 total monthly amount of benefits payable under all such
3 coverage upon the benefit member below the sum of \$200 or
4 the sum of the monthly benefits specified in such
5 coverages, whichever is the lesser, nor shall it operate
6 to reduce benefits other than those payable for loss of
7 time.

8 (b) Limited use of provision.--The contract provision set
9 forth in subsection (a) shall be inserted only in a certificate
10 which the benefit member has the right to continue in force
11 subject to its terms by the timely payment of dues, premiums or
12 other required contributions until at least 50 years of age or,
13 in the case of a certificate issued after 44 years of age, for
14 at least five years from its date of issue.

15 (c) Definition of "valid loss of time coverage".--The
16 society may include in the contract provision set forth in
17 subsection (a), a definition of "valid loss of time coverage,"
18 approved as to form by the department, which shall be limited in
19 subject matter to coverage provided by governmental agencies or
20 by organizations subject to regulation by insurance law or by
21 insurance authorities of this Commonwealth or any other state or
22 any province of Canada, or to any other coverage, the inclusion
23 of which may be approved by the department, or any combination
24 of such coverages. In the absence of such definition, the term
25 does not include any coverage provided for the member pursuant
26 to any compulsory benefit statute, including any workmen's
27 compensation or employers' liability statute, or benefits
28 provided by union welfare plans or by employer or employee
29 benefit organizations.

30 § 4566. Cancellation.

1 There shall be a provision as follows:

2 Cancellation: The society may cancel this certificate at
3 any time by written notice delivered to the benefit
4 member or mailed to his last address as shown by the
5 records of the society, stating when, not less than 30
6 days thereafter, such cancellation shall be effective;
7 and after the certificate has been continued beyond its
8 original term, the benefit member may cancel this
9 certificate at any time by written notice delivered or
10 mailed to the society, effective upon receipt or on such
11 later date as may be specified in such notice. In the
12 event of cancellation, the society will return promptly
13 the unearned portion of any dues, premiums or other
14 required contributions paid. If the benefit member
15 cancels, the unearned dues, premiums or other required
16 contributions shall be computed by the use of the short
17 rate table last filed with the state official having
18 supervision of insurance in the state where the benefit
19 member resided when the certificate was issued. If the
20 society cancels, the earned dues, premiums or other
21 required contributions shall be computed pro rata.
22 Cancellation shall be without prejudice to any claim
23 originating prior to the effective date of cancellation.

24 § 4567. Conformity of provisions with state statutes.

25 There shall be a provision as follows:

26 Conformity with State Statutes: Any provision of this
27 certificate which, on its effective date, is in conflict
28 with the statutes of the state in which the benefit
29 member resides on such date, is hereby amended to conform
30 to the minimum requirements of such statutes.

1 § 4568. Inapplicable provisions.

2 (a) Modification for type of coverage.--If any contract
3 provision of this chapter is in whole or in part inapplicable to
4 or inconsistent with the coverage provided by a particular form
5 of certificate, the society, with the approval of the
6 department, shall omit from the certificate any inapplicable
7 provision and shall modify any inconsistent provision in such
8 manner as to make the provision as contained in the certificate
9 consistent with the coverage provided by the certificate.

10 (b) Power of department.--Where the department deems
11 inapplicable, either in part or in their entirety, the contract
12 provisions of this chapter, it may prescribe the portions or
13 summary thereof of the contract to be printed on the certificate
14 issued to the member.

15 § 4569. Composition and construction of certificates.

16 (a) Order of provisions.--The contract provisions prescribed
17 by this chapter or any corresponding provisions which are used
18 in lieu thereof in accordance therewith shall be printed in the
19 consecutive order of the provisions therein or, at the option of
20 the society, any such provision may appear as a unit in any part
21 of the certificate, with other provisions to which it may be
22 logically related, provided the resulting certificate shall not
23 be in whole or in part unintelligible, ambiguous or misleading.

24 (b) Third-party ownership.--The term "benefit member," as
25 used in this chapter, shall not be construed as preventing a
26 person other than the benefit member with a proper insurable
27 interest from making application for and owning a certificate
28 covering the benefit member or from being entitled under such a
29 certificate to any indemnities, benefits and rights provided
30 therein.

1 SUBCHAPTER F

2 LICENSURE

3 Sec.

4 4571. Annual license for societies.

5 4572. Fees.

6 4573. Foreign or alien societies.

7 4574. Injunction, liquidation or receivership of domestic
8 societies.

9 4575. Suspension, revocation or refusal of license to foreign
10 or alien societies.

11 4576. Application for injunction.

12 4577. Licensure of fraternal insurance agents.

13 § 4571. Annual license for societies.

14 The authority of the societies shall be renewed annually, on
15 or before April 1.

16 § 4572. Fees.

17 The department shall charge and collect fees under section
18 613-A(3) of the act of April 9, 1929 (P.L.177, No.175), known as
19 The Administrative Code of 1929. All agent's license fees for
20 each domestic or foreign society, for life or accident and
21 health lines, shall be paid in full at the time of issuance of
22 the license and shall not be apportioned pro rata over the
23 initial license period. All fees collected shall be paid daily
24 into the State Treasury.

25 § 4573. Foreign or alien societies.

26 (a) License required.--A foreign or alien society shall not
27 transact business in this Commonwealth without a license issued
28 by the department. Any such society may be licensed to transact
29 business in this Commonwealth upon filing with the department:

30 (1) A certified copy of its charter or articles of

1 incorporation.

2 (2) A copy of its constitution and bylaws, certified by
3 its secretary or corresponding officer.

4 (3) A statement of its business under oath of its
5 president and secretary or corresponding officers in a form
6 prescribed by the department, duly verified by an examination
7 satisfactory to the department, made by the supervising
8 insurance official of its home state or other state, province
9 or country.

10 (4) A certificate from the proper official of its home
11 state, province or country that the society is legally
12 incorporated and licensed to transact business therein.

13 (5) Copies of its certificate forms.

14 (6) Such other information as the department believes
15 necessary.

16 (7) Proof that its assets are invested in accordance
17 with this chapter.

18 (b) Qualifications.--Any foreign or alien society desiring
19 authority to transact business in this Commonwealth shall have
20 the qualifications required of domestic societies organized
21 under this chapter.

22 § 4574. Injunction, liquidation or receivership of domestic
23 societies.

24 (a) Findings and notification.--When the department upon
25 investigation finds that a domestic society:

26 (1) has exceeded its powers;

27 (2) has failed to comply with any provision of this
28 chapter;

29 (3) is not fulfilling its contracts in good faith;

30 (4) has a membership of less than 400 after an existence

1 of one year or more; or

2 (5) is conducting business fraudulently or in a manner
3 hazardous to its members, creditors, the public or the
4 business;

5 it shall notify the society of the deficiencies. The department
6 shall immediately issue a written notice to the society
7 requiring that any such deficiencies be corrected. After this
8 notice the society shall have a 30-day period in which to comply
9 with the department's request. If the society fails to comply,
10 the department shall notify the society of its findings of
11 noncompliance and require the society to show cause, at a
12 hearing on a date named, why it should not be enjoined from
13 carrying on any business until the violation complained of has
14 been corrected, or why an action in quo warranto should not be
15 commenced against the society.

16 (b) Presentation to Attorney General.--If on the hearing
17 date the society does not present sufficient reasons why it
18 should not be so enjoined or why such action should not be
19 commenced, the department may present the facts relating thereto
20 to the Attorney General who shall, if he deems the circumstances
21 warrant, commence an action to enjoin the society from
22 transacting business or in quo warranto. An action under this
23 section shall not be recognized in any court unless commenced by
24 the Attorney General upon request of the department.

25 (c) Hearing.--If after a full hearing, after adequate notice
26 to the society, it appears that the society should be so
27 enjoined or liquidated or a receiver appointed, the court shall
28 enter the necessary order.

29 (d) Prerequisites for lifting injunction.--A society so
30 enjoined shall not have the authority to do business until all

1 of the following have occurred:

2 (1) The department finds that the violation complained
3 of has been corrected.

4 (2) The costs of such action are paid by the society, if
5 the court finds that the society was in default as charged.

6 (3) The court dissolves its injunction.

7 (4) The department reinstates the certificate of
8 authority.

9 (e) Court order for liquidation.--If the court orders the
10 society liquidated, it shall be enjoined from carrying on any
11 further business. The receiver of the society shall proceed
12 immediately to take possession of the books, papers, money and
13 other assets of the society and, under the direction of the
14 court, proceed immediately to close the affairs of the society
15 and to distribute its funds to those entitled thereto. Whenever
16 a receiver is to be appointed for a domestic society, the court
17 shall appoint the department as receiver.

18 (f) Applicability to voluntary discontinuance.--The
19 provisions of this section relating to hearing by the
20 department, action by the Attorney General at the request of the
21 department, hearing by the court, injunction and receivership
22 shall apply to a society which voluntarily determines to
23 discontinue business.

24 § 4575. Suspension, revocation or refusal of license to foreign
25 or alien societies.

26 (a) Findings and notification.--When the department upon
27 investigation finds that a foreign or alien society transacting
28 or applying to transact business in this Commonwealth:

29 (1) has exceeded its powers;

30 (2) has failed to comply with any of the provisions of

1 this chapter;

2 (3) is not fulfilling its contracts in good faith; or

3 (4) is conducting its business fraudulently or in a

4 manner hazardous to its members or creditors or the public;

5 it shall notify the society of the deficiencies. The department

6 shall immediately issue a written notice to the society

7 requiring that any such deficiencies be corrected. After the

8 notice the society shall have a 30-day period in which to comply

9 with the department's request. If the society fails to comply,

10 the department shall notify the society of its findings of

11 noncompliance and require the society to show cause, at a

12 hearing on a date named, why its license should not be

13 suspended, revoked or refused. If on the hearing date the

14 society does not present good and sufficient reason why the

15 action proposed by the department should not be taken, the

16 department may suspend or refuse the license of the society to

17 do business in this Commonwealth until satisfactory evidence is

18 furnished to the department that the suspension or refusal

19 should be withdrawn or the department may revoke the authority

20 of the society to do business in this Commonwealth.

21 (b) Continuation of contracts.--This section does not

22 prevent any such society from continuing in good faith all

23 contracts made in this Commonwealth during the time the society

24 was legally authorized to transact business.

25 § 4576. Application for injunction.

26 An application or petition for injunction with respect to any

27 regulatory law administered by the department against any

28 domestic, foreign or alien society, or branch thereof, shall not

29 be recognized in any court unless made by the Attorney General

30 upon request of the department.

1 § 4577. Licensure of fraternal insurance agents.

2 (a) Licensure requirement.--Agents of societies shall be
3 licensed in accordance with this section.

4 (b) Payment of commissions.--A society doing business in
5 this Commonwealth shall not pay any commission or other
6 compensation to any person for any services in obtaining in this
7 Commonwealth any new contract of life, accident or health
8 insurance, or any new annuity contract, except to a licensed
9 fraternal insurance agent of the society.

10 (c) Issuance of license.--The department may issue a license
11 to any person who has paid the annual license fee and who has
12 complied with the requirements of this section, authorizing the
13 licensee to act as a fraternal insurance agent on behalf of any
14 society named in the license which is authorized to do business
15 in this Commonwealth.

16 (d) Supporting documents.--A fraternal insurance agent's
17 license shall not be issued until there is on file in the office
18 of the department the following documents:

19 (1) A written application by the prospective licensee,
20 in such form or forms and containing such information as the
21 department may prescribe.

22 (2) A certificate by the society to be named in the
23 license, stating that the society has satisfied itself that
24 the named applicant is trustworthy and competent to act as
25 its fraternal insurance agent and that the society will
26 appoint the applicant to act as its agent if the license is
27 issued by the department. This certificate shall be executed
28 and acknowledged by an officer or managing agent of the
29 society.

30 (e) Types of licenses.--Except as otherwise provided in this

1 section, fraternal insurance agents shall be licensed as life or
2 accident and health agents, or both, except that the examination
3 requirements of such provisions shall not apply to:

4 (1) Any fraternal insurance agent who was in the service
5 of a society on January 29, 1978.

6 (2) A fraternal insurance agent who, in the preceding
7 calendar year, has solicited and procured life insurance
8 contracts on behalf of any society in an amount of insurance
9 not in excess of \$100,000 or, in the case of any other kinds
10 of insurance which the society might write, on the persons of
11 not more than 25 individuals and who has received or will
12 receive a commission or compensation therefor.

13 (f) Denial of license.--The department may refuse to issue
14 or renew any fraternal insurance agent's license if in its
15 judgment the proposed licensee is not trustworthy and competent
16 to act as such an agent, or has given cause for revocation or
17 suspension of the license, or has failed to comply with any
18 prerequisite for the issuance or renewal of the license.

19 (g) License terms.--The term, expiration, renewal
20 procedures, termination notice requirements and the causes for
21 revocation or suspension of the license shall be as contained in
22 Chapter 11 (relating to agents and brokers) with respect to
23 licenses of life, accident and health insurance agents, except
24 as inconsistent with this section.

25 (h) Definition.--As used in this section, the term
26 "fraternal insurance agent" means any authorized or acknowledged
27 agent or representative of a society who acts as such in the
28 solicitation, negotiation or procurement or making of a life
29 insurance, accident and health insurance or annuity contract.
30 The term does not include:

1 rights therein or become entitled to any apportionment or the
2 surrender of any part thereof, except as provided in the
3 contract.

4 (b) Use of funds.--A society may create, maintain, invest,
5 disburse and apply any special funds necessary to carry out any
6 purpose permitted by the bylaws of the society.

7 (c) Statement of purposes and proportions of payments.--
8 Every society, the admitted assets of which are less than the
9 sum of its accrued liabilities and reserves under all of its
10 certificates when valued according to standards required for
11 life insurance companies for certificates issued after January
12 29, 1979, shall, in every provision of the bylaws of the society
13 for payments by members of the society, distinctly state the
14 purpose of the same and the proportion thereof which may be used
15 for expenses. The money collected for mortuary or disability
16 purposes or the net accretions thereto shall not be used for
17 expenses.

18 § 4582. Investments.

19 (a) General rule.--A society shall invest its funds only in
20 the investments authorized by this title for the investment of
21 assets of life insurance companies. Any foreign or alien society
22 permitted or seeking to do business in this Commonwealth which
23 invests its funds in accordance with the law of the state,
24 province or country in which it is incorporated is deemed to
25 meet the requirements of this section for the investment of
26 funds.

27 (b) Certain real estate.--In addition to the investment of
28 assets as prescribed under subsection (a), a fraternal benefit
29 society may purchase, receive, hold and convey real estate or
30 any interest therein for the purpose of maintenance or

1 construction of camps or recreational areas with necessary
2 facilities for all its members. Such assets shall be shown on
3 the annual statement at cost in the year acquired and may not
4 exceed 5% of other admitted assets of the society.

5 § 4583. Report of financial condition.

6 (a) Requirement.--Every society transacting business in this
7 Commonwealth shall annually, on or before March 1, unless for
8 cause shown the time is extended by the department, file with
9 the department a true statement of its financial condition,
10 transactions and affairs for the preceding calendar year and pay
11 the applicable fee. The statement shall be in general form and
12 content as approved by the National Association of Insurance
13 Commissioners for fraternal benefit societies and as
14 supplemented by additional information as required by the
15 department.

16 (b) Synopsis of report to members.--A synopsis of its annual
17 statement providing an explanation of the facts concerning the
18 condition of the society disclosed in the statement shall be
19 printed and mailed to each benefit member of the society not
20 later than June 1 of each year, or the synopsis may instead be
21 published in the society's official publication.

22 (c) Report of valuation of certificates.--As a part of the
23 annual statement each society shall, on or before March 1, file
24 with the department a valuation of its certificates in force at
25 the end of the preceding calendar year. The department may for
26 cause shown extend the time for filing the valuation to not
27 later than May 1. The report of valuation shall show as reserve
28 liabilities the difference between the present midyear value of
29 the promised benefits provided in the certificates of the
30 society in force and the present midyear value of the future net

1 premiums as are actually collected, not including therein any
2 value for the right to make extra assessments or any amount by
3 which the present midyear value of future net premiums exceeds
4 the present midyear value of promised benefits on individual
5 certificates. At the option of the society the valuation may
6 instead show the net tabular value. The net tabular value as to
7 certificates issued prior to January 29, 1979, shall be
8 determined in accordance with the law applicable prior to
9 January 29, 1978, and as to certificates issued on or after
10 January 29, 1979, shall not be less than the reserves determined
11 according to the departments' reserve valuation method under
12 section 4584 (relating to determination of reserves). If the
13 premium charged is less than the tabular net premium according
14 to the basis of valuation used, an additional reserve equal to
15 the present value of the deficiency in such premiums shall be
16 maintained as a liability. The reserve liabilities shall be
17 properly adjusted if the midyear or tabular values are not
18 appropriate.

19 (d) Penalty.--A society which neglects to file the annual
20 statement in the form and within the time provided by this
21 section shall forfeit \$100 for each day during which such
22 neglect continues and, upon notice by the department to that
23 effect, its authority to do business in this Commonwealth shall
24 cease while such default continues.

25 § 4584. Determination of reserves.

26 (a) Uniform life insurance and endowment benefits.--Reserves
27 according to the department's reserve valuation method for the
28 life insurance and endowment benefits of certificates providing
29 for a uniform amount of insurance and requiring the payment of
30 uniform premiums, shall be the excess, if any, of the present

1 value, at the date of valuation, of the future guaranteed
2 benefits provided for by such certificates, over the then
3 present value of any future modified net premiums therefor. The
4 modified net premiums for any such certificate shall be such a
5 uniform percentage of the respective contract premiums for such
6 benefits that the present value, at the date of issue of the
7 certificate, of all such modified net premiums shall be equal to
8 the sum of the then present value of such benefits provided for
9 by the certificate and the excess of paragraph (1) over
10 paragraph (2) as follows:

11 (1) A net level premium equal to the present value, at
12 the date of issue, of such benefits provided for after the
13 first certificate year, divided by the present value, at the
14 date of issue, of an annuity of one a year payable on the
15 first and each subsequent anniversary of such certificate on
16 which a premium falls due; provided however, that this net
17 level annual premium shall not exceed the net level annual
18 premium on the 19-year premium whole life plan for insurance
19 of the same amount at an age one year higher than the age at
20 issue of the certificate.

21 (2) A net one year term premium for such benefits
22 provided for in the first certificate year.

23 (b) Other benefits.--Reserves according to the
24 commissioners' reserve valuation method for:

25 (1) life insurance benefits for varying amounts of
26 benefits or requiring the payment of varying premiums;

27 (2) annuity and pure endowment benefits;

28 (3) disability and accidental death benefits in all
29 certificates and contracts; and

30 (4) all other benefits except life insurance and

1 endowment benefits;
2 shall be calculated by a method consistent with the principles
3 of this section.

4 § 4585. Deferred payments as liability.

5 The present value of deferred payments due under incurred
6 claims or matured certificates shall be deemed a liability of
7 the society and shall be computed upon mortality and interest
8 standards prescribed in sections 4586 (relating to certification
9 of valuation) and 4587 (relating to valuation standards).

10 § 4586. Certification of valuation.

11 The valuation and underlying data shall be certified by a
12 competent actuary or, at the expense of the society, verified by
13 the actuary of the department of insurance of the state of
14 domicile of the society.

15 § 4587. Valuation standards.

16 (a) Valuation for earlier certificates.--The minimum
17 standards of valuation for certificates issued prior to January
18 29, 1979, shall be those provided by the law applicable
19 immediately prior to January 29, 1978, but not lower than the
20 standards used in the calculating of rates for such
21 certificates.

22 (b) Valuation for certificates after January 29, 1979.--The
23 minimum standard of valuation for certificates issued after
24 January 29, 1979, shall be 3.5% interest and the following
25 tables:

26 (1) For certificates of life insurance, the American Men
27 Ultimate Table of Mortality, with Bowerman's or Davis'
28 Extension thereof, or with the consent of the department, the
29 Commissioners 1941 Standard Ordinary Mortality Table, the
30 Commissioners 1941 Standard Industrial Mortality Table or the

1 Commissioners 1958 Standard Ordinary Mortality Table, using
2 actual age of the insured for male risks and an age not more
3 than three years younger than the actual age of the insured
4 for female risks.

5 (2) For annuity and pure endowment certificates,
6 excluding any disability and accidental death benefits in
7 such certificates, the 1937 Standard Annuity Mortality Table
8 or the Annuity Mortality Table for 1949, Ultimate, or any
9 modification of either of these tables approved by the
10 department.

11 (3) For total and permanent disability benefits in or
12 supplementary to life insurance certificates, Hunter's
13 Disability Table, or the Class III Disability Table (1926)
14 modified to conform to the contractual waiting period, or the
15 tables of Period 2 disablement rates and the 1930 to 1950
16 termination rates of the 1952 Disability Study of the Society
17 of Actuaries with due regard to the type of benefit. Any such
18 table shall, for active lives, be combined with a mortality
19 table permitted for calculating the reserves for life
20 insurance certificates.

21 (4) For accidental death benefits in or supplementary to
22 life insurance certificates, the Inter-Company Double
23 Indemnity Mortality Table or the 1959 Accidental Death
24 Benefits Table. Either table shall be combined with a
25 mortality table permitted for calculating the reserves for
26 life insurance certificates.

27 (5) For noncancelable accident and health benefits, the
28 Class III Disability Table (1926) with conference
29 modifications or, with the consent of the department, tables
30 based upon the society's own experience.

1 (c) Applicability of life insurance standards.--Any society
2 may value its certificates in accordance with valuation
3 standards authorized under this table for the valuation of
4 policies issued by life insurance companies.

5 (d) Standards prescribed by department.--The department may
6 accept other standards for valuation if it finds that the
7 reserves produced thereby will not be less in the aggregate than
8 reserves computed in accordance with the minimum valuation
9 standard prescribed under subsection (a), (b) or (c). The
10 department may vary the standards of mortality applicable to all
11 certificates of insurance on substandard lives or other
12 especially hazardous lives by any society authorized to do
13 business in this Commonwealth. Whenever the mortality experience
14 under all certificates valued on the same mortality table is in
15 excess of the expected mortality according to such table for a
16 period of three consecutive years, the department may require
17 additional reserves when deemed necessary on account of such
18 certificates.

19 § 4588. Excess reserves.

20 Any society, with the consent of the department of insurance
21 of the state of domicile of the society and under any conditions
22 it imposes, may establish and maintain reserves on its
23 certificates in excess of the reserves required thereunder, but
24 the contractual rights of any insured member shall not be
25 affected thereby.

26 § 4589. Examination of societies.

27 (a) Domestic societies.--The department may visit and
28 examine into the affairs of any domestic society, and it shall
29 make such examination at least once in every four years. It
30 shall have free access to all books, papers and documents that

1 relate to the business of the society. The minutes of the
2 proceedings of the supreme legislative or governing body and of
3 the board of directors or corresponding body of a society shall
4 be in the English language. In making the examination, the
5 department may examine the officers, agents and employees or
6 other persons under oath in relation to the affairs,
7 transactions and condition of the society. A summary of the
8 report of the department, and such recommendations or statements
9 of the department as may accompany the report, shall be read at
10 the first meeting of the board of directors or corresponding
11 body of the society following the receipt thereof and, if
12 directed so to do by the department, shall also be read at the
13 first meeting of the supreme legislative or governing body of
14 the society following receipt. A copy of the report,
15 recommendations and statements of the department shall be
16 furnished by the society to each member of the board of
17 directors or other governing body. The expense of each
18 examination and of each valuation, including compensation and
19 actual expense of examiners, shall be paid by the society
20 examined or whose certificates are valued, upon statements
21 furnished by the department.

22 (b) Foreign and alien societies.--The department may examine
23 any foreign or alien society transacting or applying for
24 admission to transact business in this Commonwealth. It shall
25 have free access to all books, papers and documents that relate
26 to the business of the society. The department may accept, in
27 lieu of such examination, the examination of the insurance
28 department of the state, province or country where the society
29 is organized. The compensation and actual expenses of the
30 examiners making any examination or general or special valuation

1 shall be paid by the society examined or by the society whose
2 certificate obligations have been valued, upon statements
3 furnished by the department.

4 (c) Restrictions on publications.--The department shall not
5 make public or permit to become public any financial statement,
6 report or finding affecting the status, standing or rights of
7 any society, until a copy thereof is served upon the society at
8 its principal office and the society is afforded a reasonable
9 opportunity to comment on the material and to make such showing
10 in connection therewith as it may desire.

11 (d) Objections.--Societies which have been examined by the
12 department have the privilege of objecting to the report of
13 examination within 30 days after reception of the report. If any
14 objection is made, the department will grant a hearing to the
15 society before making the report available for public
16 inspection.

17 § 4590. Misrepresentations.

18 (a) Offense.--A person shall not cause or permit to be made,
19 issued or circulated in any form:

20 (1) Any misrepresentation or false or misleading
21 statement concerning the terms, benefits or advantages of any
22 fraternal insurance contract now issued or to be issued in
23 this Commonwealth, or the financial condition of any society.

24 (2) Any false or misleading estimate or statement
25 concerning the dividends or shares of surplus paid or to be
26 paid by any society on any insurance contract.

27 (3) Any incomplete comparison of an insurance contract
28 of one society with an insurance contract of another society
29 or insurer for the purpose of inducing the lapse, forfeiture
30 or surrender of any insurance contract. A comparison of

1 insurance contracts is incomplete if:

2 (i) it does not compare in detail:

3 (A) the gross rates, and the gross rates less
4 any dividend or other reduction allowed at the date
5 of the comparison; or

6 (B) any increase in cash values, and all the
7 benefits provided by each contract for the possible
8 duration thereof as determined by the life expectancy
9 of the insured; or

10 (ii) it omits from consideration:

11 (A) any benefit or value provided in the
12 contract;

13 (B) any differences as to amount or period of
14 rates; or

15 (C) any differences in limitations or conditions
16 or provisions which directly or indirectly affect the
17 benefits.

18 In any determination of the incompleteness or misleading
19 character of any comparison or statement, it shall be
20 presumed that the insured had no knowledge of any of the
21 contents of the contract involved.

22 (b) Penalty.--Any person who violates any provision of this
23 section or knowingly receives any compensation or commission by
24 or in consequence of such violation, commits a misdemeanor of
25 the third degree. The violator shall in addition be liable for a
26 civil penalty in the amount of three times the sum received by
27 the violator as compensation or commission, which penalty may be
28 sued for and recovered by any person or society aggrieved for
29 his or its own use and benefit.

30 § 4591. Discrimination and rebates.

1 (a) Discrimination.--A society doing business in this
2 Commonwealth shall not make or permit any unfair discrimination
3 between benefit members, spouses or dependents of the same class
4 and equal expectation of life in the premiums charged for
5 certificates of insurance, in the dividends or other benefits
6 payable thereon or in any other of the terms and conditions of
7 the contracts it makes.

8 (b) Rebates.--A society, agent or solicitor shall not
9 directly or indirectly offer, promise, allow, give, set off or
10 pay any valuable consideration or inducement to or for insurance
11 on any risk authorized to be taken by the society, which is not
12 specified in the certificate. A member shall not receive or
13 accept, directly or indirectly, any rebate, favor or advantage,
14 share in the dividends or other benefits or any valuable
15 consideration or inducement not specified in the contract of
16 insurance.

17 § 4592. Penalties.

18 (a) False statements.--A person shall not willfully make a
19 false or fraudulent statement in or relating to an application
20 for membership or for the purpose of obtaining money from or a
21 benefit in any society.

22 (b) Solicitation by unlicensed society.--Any person who
23 solicits membership for or in any manner assists in procuring
24 membership in any society not licensed to do business in this
25 Commonwealth commits a misdemeanor of the third degree.

26 (c) Other criminal penalties.--Any person guilty of a
27 willful violation of, or neglect or refusal to comply with, this
28 chapter for which a penalty is not otherwise prescribed commits
29 a summary offense.

30 (d) Civil penalties.--Upon satisfactory evidence of a

1 violation of this chapter, the department may, in lieu of
2 seeking criminal prosecution, suspend, revoke or refuse to renew
3 the license of the offending party or impose a civil penalty of
4 not more than \$1,000 for each violation.

5 CHAPTER 47

6 MUTUAL COMPANIES

7 Sec.

8 4701. Definition.

9 4702. Licensing of foreign or alien companies.

10 4703. Investment of assets.

11 4704. Investments in real estate.

12 4705. Policy provisions.

13 4706. Countersigning and delivery of policies.

14 4707. Premiums.

15 4708. Reserves.

16 4709. Assessments.

17 4710. Loans to companies.

18 4711. Surplus.

19 § 4701. Definition.

20 As used in this chapter, the term "mutual company" means a
21 mutual insurance company, other than a mutual life insurance
22 company.

23 § 4702. Licensing of foreign or alien companies.

24 Any foreign mutual company authorized to transact the
25 business of insurance on the mutual plan may, on application,
26 obtain authority to transact the kinds of insurance authorized
27 by its charter or articles of association, subject to its
28 compliance with the provisions and requirements of this title
29 applicable to mutual companies transacting such insurance. Any
30 alien mutual insurance company desiring such authority shall

1 make and maintain the deposit required of alien stock insurance
2 companies transacting the same kind of insurance. Such authority
3 shall be subject to all the provisions of law relating to
4 information to and examinations by the department, annual
5 reports, taxes and the renewal of certificates of authority
6 applicable to stock insurance companies transacting the same
7 kinds of insurance, except as otherwise provided in this
8 chapter.

9 § 4703. Investment of assets.

10 A domestic mutual company shall not invest any of its assets
11 except in accordance with this title as it relates to the
12 investment of the capital and surplus of domestic stock
13 insurance companies authorized to transact the same class or
14 classes of insurance, and in accordance with the following
15 provisions:

16 (1) A mutual company that writes assessable policies
17 shall invest its assets only in accordance with the
18 provisions of this title relating to the investment of the
19 capital of domestic stock insurance companies authorized to
20 transact the same class or classes of insurance.

21 (2) A mutual company that writes nonassessable policies
22 shall invest its assets in accordance with the provisions of
23 this title relating to the investment of the capital of
24 domestic stock insurance companies authorized to transact the
25 same class or classes of insurance, and may invest any of its
26 excess over and above an amount equal to the minimum capital
27 requirements of such stock companies in accordance with the
28 provisions of this title relating to the investment of the
29 surplus of domestic stock insurance companies authorized to
30 transact such class or classes of insurance.

1 § 4704. Investments in real estate.

2 A domestic mutual company may purchase, receive, hold and
3 convey only the following kinds of real estate:

4 (1) Real estate necessary for its accommodation in the
5 transaction of its business.

6 (2) Real estate conveyed to it in satisfaction of debts
7 previously contracted in the course of its dealings.

8 (3) Real estate purchased at sales upon judgments,
9 decrees or mortgages obtained or made for debts due the
10 company or for debts due other persons if the company has
11 liens or encumbrances on the same, and the purchase is
12 believed necessary to save the company from loss.

13 All real estate other than that purchased and held under
14 paragraph (1) shall be sold and disposed of within five years
15 after the company has acquired title thereto.

16 § 4705. Policy provisions.

17 Mutual companies may insert in any form of policy prescribed
18 by this title any provision or condition required by its plan of
19 insurance which is not inconsistent or in conflict with this
20 title. The policy, in lieu of conforming to the language and
21 form prescribed by this title, may conform thereto in substance,
22 if the policy includes a provision or endorsement reciting that
23 the policy shall be construed as if in the language and form
24 prescribed by this title, and a copy of the policy and
25 endorsements is first filed with and is not disapproved by the
26 department.

27 § 4706. Countersigning and delivery of policies.

28 A mutual company shall comply with the provisions of this
29 title applicable to stock insurance companies transacting the
30 same kind of insurance, requiring that policies be countersigned

1 and delivered through a resident agent, unless no commission is
2 paid to any local agent on the policy.

3 § 4707. Premiums.

4 (a) Maximum premium.--The maximum premium payable by any
5 member of a mutual company shall be expressed in the policy or
6 in the application for the insurance if attached to the policy.
7 The maximum premium shall be a cash premium and an additional
8 contingent premium not less than the cash premium or may be
9 solely a cash premium.

10 (b) Surplus.--A policy shall not be issued for a cash
11 premium without an additional contingent premium, unless the
12 company has and maintains a surplus which is not less in amount
13 than the minimum capital required of domestic stock insurance
14 companies authorized to transact the same class or classes of
15 insurance.

16 (c) Nonassessable policies.--Before a mutual company may
17 issue a nonassessable policy, the president and secretary shall
18 furnish the department a certified copy of the resolution of the
19 board of directors providing for the issuance of a nonassessable
20 policy, and shall certify that the company possesses a surplus
21 as required under subsection (b) and that the company is
22 otherwise qualified under its charter and bylaws. When the
23 department is satisfied that the company meets the requirements
24 as certified, it shall issue to the company a certificate of
25 authority for the issuance of nonassessable policies. Any
26 nonassessable policy issued while the certificate is in force
27 shall remain nonassessable under all conditions, including any
28 surplus deficiency and including liquidation of the company.
29 This certificate shall continue in effect until revoked under
30 this section. The president and secretary of the company shall

1 file with the department, on or before April 1 of each year, a
2 certification that the resolution of the board of directors
3 providing for the issuance of nonassessable policies has not
4 been modified or revoked and that the company has the surplus as
5 required under subsection (b). The department may, after
6 hearing, revoke the certificate of authority to issue a
7 nonassessable policy if it finds that the company does not have
8 the surplus as required under subsection (b), and shall revoke
9 the certificate upon receipt of certification by the president
10 and secretary that the company no longer qualifies to issue
11 nonassessable policies.

12 (d) Violations and penalties.--Any officer or director who
13 willfully makes a false certification that the company possesses
14 the surplus as required under subsection (b) commits a
15 misdemeanor of the third degree.

16 § 4708. Reserves.

17 A mutual company shall maintain unearned premium and other
18 reserves separately, for each kind of insurance, upon the same
19 basis as that required of domestic stock insurance companies
20 transacting the same kind of insurance, except that the
21 department may, by written order, fix a different basis of
22 reserve for losses and claim in workmen's compensation
23 insurance. Any reserve for losses or claims based upon the
24 premium income shall be computed upon the net premium income,
25 after deducting any so-called dividend or premium returned or
26 credited to the member. The provisions relating to unearned
27 premium reserve do not apply to a policy issued by a domestic
28 mutual fire insurance company under the authority of section
29 3302(b)(1) (relating to authorized classes of insurance) if the
30 policy includes or if a promissory note attached thereto

1 includes a limited or unlimited liability to assessment.

2 § 4709. Assessments.

3 (a) General rule.--A mutual company lacking assets at least
4 equal to the unearned premium reserve and other liabilities
5 shall make an assessment upon its members liable to assessment
6 to provide for the deficiency. The assessment shall be against
7 each member in proportion to the liability as expressed in his
8 policy.

9 (b) Limitations.--An assessment shall not be made without
10 the prior written approval of the department. A member shall not
11 be assessed for any loss that occurred when his policy was not
12 in effect, and an assessment shall not be made after two years
13 from the expiration or cancellation date of a policy. For each
14 year the policy is in force, the assessment shall be an amount
15 not greater than the annual or the average yearly cost or
16 premium of the policy for the period it has been in effect. The
17 assessment shall not exceed two times the average yearly cost or
18 premium of the policy for the period it has been in effect.

19 (c) Powers of department.--The department may, by written
20 order, relieve the company from an assessment or other
21 proceedings to restore its assets during the time fixed in such
22 order. Any domestic company which is deficient in providing the
23 unearned premium reserve may, notwithstanding the deficiency, be
24 authorized under this chapter on the condition that it shall
25 each year thereafter reduce the deficiency by at least 15% of
26 the original amount thereof, and in such case it may increase
27 its assessments accordingly.

28 (d) Applicability.--This section is not applicable to
29 assessments made upon the members of a company by the department
30 pursuant to its authority under Chapter 59 (relating to fire and

1 marine insurance).

2 § 4710. Loans to companies.

3 Any director, officer or member of any mutual company, or any
4 other person, may loan the company any sum of money necessary
5 for the purpose of its business or to enable it to comply with
6 any of the requirements of law. These loans and the interest
7 thereon as agreed upon, not exceeding 10% a year, shall not be a
8 liability or claim against the company or any of its assets, and
9 shall be repaid only out of the surplus earnings of the company.
10 Commission or promotion expenses shall not be paid in connection
11 with the loan and the amount thereof shall be reported in each
12 annual statement. The company shall prior to obtaining such a
13 loan provide the department with such evidence as it may by
14 regulation prescribe concerning the making of any loan or the
15 making of any payments, whether of principal or interest, on
16 account thereof.

17 § 4711. Surplus.

18 A mutual company shall not transact the class of insurance
19 mentioned in section 3302(c)(1) (relating to authorized classes
20 of insurance) until it has and maintains at all times a surplus
21 over all liabilities including unearned premiums, computed in
22 accordance with this title, of not less than \$250,000. This
23 section does not reduce the surplus required under section
24 4707(b) (relating to premiums).

25 PART IV

26 SPECIAL PROVISIONS RELATING TO

27 PARTICULAR CLASSES OF RISK

28 Chapter

29 51. General Provisions (Reserved)

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- 1 55. Property and Casualty Insurance
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- 12 75. Hospital Plan Corporations
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- 15 81. Property and Casualty Insurance Guaranty Association
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18 CHAPTER 51

19 GENERAL PROVISIONS

20 (Reserved)

21 CHAPTER 53

22 LIFE INSURANCE

23 Subchapter

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- 25 B. Conduct of Business
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- 27 D. Mutual Life Insurance Companies
- 28 E. Group Insurance
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1 SUBCHAPTER A

2 INVESTMENTS AND CORPORATE OPERATIONS

3 Sec.

4 5301. General investment provisions.

5 5302. Permitted investments.

6 5303. Valuation.

7 5304. Additional investment authority for subsidiaries.

8 5305. Authorized holdings of real estate.

9 5306. Capital of foreign and alien stock companies.

10 5307. Separate accounts.

11 5308. Impairment of reserve liability.

12 5309. Penalty.

13 5310. Corporations operating under prior statutes.

14 5311. Dividends.

15 5312. (Reserved).

16 5313. Vouchers for payment.

17 § 5301. General investment provisions.

18 Investment pursuant to section 5302 (relating to permitted
19 investments) and holdings of real estate pursuant to section
20 5305 (relating to authorized holdings of real estate) by any
21 domestic life insurance company shall be subject to the
22 following provisions:

23 (1) The department may permit the company to invest
24 sufficient assets exclusive of the amounts permitted under
25 section 5302(3) in the securities of a foreign government in
26 order to comply with the law of the foreign government and
27 transact business in the foreign country.

28 (2) An investment under section 5302 or 5305 shall not
29 be made in the equity interest, as defined in section
30 5302(10), of any unincorporated business or enterprise other

1 than a business trust, joint-stock company or limited
2 partnership in which a life insurance company acts as a
3 limited partner. A subsidiary of a life insurance company may
4 act as a general partner.

5 (3) An investment shall not be made in any loan solely
6 upon personal security of an individual or individuals, but
7 this paragraph does not forbid the taking of a bona fide
8 obligation with legal interest in payment of any premium or a
9 loan for defraying expenses of the transfer of an employee to
10 a new place of employment with the company.

11 (4) An investment shall not be made by any life
12 insurance company in any loan upon the stock, shares or
13 obligations of the company or any other insurance company
14 transacting like classes of business, but any stock life
15 insurance company may, with the approval of its board of
16 directors, acquire, retain, cancel or dispose of shares of
17 its own capital stock. The company shall not acquire such
18 stock without the prior approval of the department, or
19 directly or indirectly vote shares of its own stock held by
20 it.

21 (5) With the approval of the department, the company may
22 enter into agreements with one or more authorized insurance
23 companies whereby the companies shall participate in
24 ownership, management and control of real estate held or to
25 be acquired by the company or companies under section 5305(6)
26 or held by a corporation whose stock is held or to be
27 acquired by such company or companies.

28 (6) Sections 5302 and 5305 and this section do not
29 prevent the company from investing any of its assets or from
30 holding any of such funds in cash or deposits in banks or

1 trust companies or from acquiring or holding property taken
2 in reorganization or foreclosure proceedings or which may be
3 obtained on account of any debt previously contracted.

4 (7) Any such company may continue its investment of any
5 of its assets in any corporate bonds, notes or obligations
6 held by it on May 9, 1947, under authority of section 404 of
7 the former act of May 17, 1921 (P.L.682, No.284), known as
8 The Insurance Company Law of 1921, as amended by the act of
9 May 12, 1939 (P.L.131, No.63), in corporations which have
10 earned, in each of its three fiscal years next preceding the
11 investment, an amount equal to one and one-half times the
12 total interest on its debt.

13 (8) If any investment is made in a manner not authorized
14 by this chapter, the officers, directors and trustees making
15 or authorizing the investment shall be personally liable for
16 any loss resulting therefrom.

17 (9) Notwithstanding the provisions of this chapter, the
18 department may, after notice and hearing, order a company to
19 limit or withdraw from certain investments, or discontinue
20 certain investment practices, to the extent that the
21 department finds that such investments or investment
22 practices endanger the solvency of the company.

23 (10) No investment or loan, except loans on life
24 policies, or investment practice shall be made or engaged in
25 by any domestic life insurance company unless it has been
26 authorized or ratified by the board of directors or by a
27 committee thereof charged with the duty of supervising
28 investments and loans. No such company shall subscribe to or
29 participate in any underwriting of the purchase or sale of
30 securities or property or enter into any agreement to

1 withhold from sale any of its property, but the disposition
2 of its property shall be at all times within the control of
3 the board of directors. Any agreement or contract providing
4 for the lawful disposition of property in which the
5 disposition may be determined at the option of a third person
6 at some specified future price or condition or specified time
7 or upon demand shall be construed to be within the control of
8 the board of directors. This section does not prevent the
9 board of directors of any such company from depositing any of
10 its securities with a committee appointed for the purpose of
11 protecting the interest of security holders or with
12 authorities of any state or country where it is necessary to
13 do so in order to secure permission to transact its
14 appropriate business therein; nor does this section prevent
15 the board of directors of the company from depositing
16 securities as collateral for the securing of any bond
17 required for the business of the company.

18 (11) As used in this section, the term "date of
19 investment" means the date of commitment in the case of a
20 commitment to invest.

21 § 5302. Permitted investments.

22 Subject to sections 5301 (relating to general investment
23 provisions) and 5304 (relating to additional investment
24 authority for subsidiaries), the assets of any domestic life
25 insurance company shall be invested in the following classes of
26 investment, provided the value of which, as determined for
27 annual statement purposes, but in no event in excess of cost,
28 shall not exceed the specified percentage of the company's
29 assets as of December 31 next preceding the date of investment:

30 (1) Bonds, notes or obligations issued, assumed or

1 guaranteed by the United States or by any state, or by any
2 county, city, town, village, municipality or district therein
3 or by any political subdivision thereof or by a public
4 instrumentality of one or more of the foregoing, if, by
5 statutory or other legal requirements applicable thereto, the
6 obligations are payable, as to both principal and interest,
7 from taxes levied or required to be levied upon all taxable
8 property or all taxable income within the jurisdiction of the
9 governmental unit, or from adequate special revenues pledged
10 or otherwise appropriated or by law required to be provided
11 for the purpose of such payment, but not including any
12 obligation payable solely out of special assessments on
13 properties benefited by local improvements, unless adequate
14 security is evidenced by the ratio of assessment to the value
15 of the property or the obligation additionally secured by an
16 adequate guaranty fund required by law.

17 (2) Bonds, notes, obligations and stock where stated,
18 issued, assumed or guaranteed by the following Federal
19 agencies, or in which the Federal Government is a
20 participant, whether or not the obligations are guaranteed by
21 the Federal Government:

22 (i) Farm Loan Bank.

23 (ii) Commodity Credit Corporation.

24 (iii) Federal intermediate credit banks.

25 (iv) Federal land banks.

26 (v) Central Bank for Cooperatives.

27 (vi) Federal home loan banks and stock thereof.

28 (vii) Federal National Mortgage Association and
29 stock thereof.

30 (viii) International Bank for Reconstruction and

1 Development.

2 (ix) Inter-American Development Bank.

3 (x) Asian Development Bank.

4 (xi) African Development Bank.

5 (xii) Any other similar agency of, or participated
6 in by, the Federal Government and of similar financial
7 quality, if the department has determined that investment
8 therein is of similar financial quality.

9 (3) Bonds, notes, obligations or other investments of or
10 in any business or governmental unit in or of any foreign
11 country which are of the same kinds, classes and investment
12 grades as those eligible for investment under this section.
13 Investments under this paragraph in the Dominion of Canada
14 shall not exceed 10% of the company's admitted assets.
15 Investments under this paragraph in all other foreign
16 countries shall not exceed 10% of the admitted assets of the
17 company except as provided in section 5301(1).

18 (4) Business obligations:

19 (i) Bonds, notes or obligations issued, assumed,
20 guaranteed or accepted by any corporation, joint-stock
21 association, business trusts, business partnerships and
22 business joint ventures, incorporated or existing under
23 the law of the United States or of any state.

24 (ii) Preferred stock of any person described in
25 subparagraph (i). Investments permitted under this
26 subparagraph shall be limited to an aggregate of 5% of
27 the admitted assets of the company.

28 (iii) Interest-bearing deposits or certificates of
29 deposit in banks, bank and trust companies, savings
30 banks, savings associations, savings and loan

1 associations or national banking associations,
2 incorporated or existing under the law of the United
3 States or any state and branches of foreign banking
4 institutions located in the United States or any state.

5 (iv) Obligations which are not issued, assumed,
6 guaranteed or accepted by any person described in
7 subparagraph (i) but are secured by an assignment of a
8 right to receive rent, purchase or other payment or
9 revenues for the use or purchase of real or personal
10 property sufficient to repay the investment and payable
11 or guaranteed by any one or more persons or entities
12 whose bonds, notes or obligations would qualify for
13 investment under this section or a mortgage, interest in
14 mortgage pool or mortgage participation, or lien or
15 security interest in real or personal property or any
16 interest therein.

17 (5) Trustees', receivers' or equipment trust
18 obligations:

19 (i) Certificates, notes or obligations issued by
20 trustees or receivers of any corporation or business
21 trust created or existing under the law of the United
22 States or of any state, which, or the assets of which,
23 are being administered under the direction of any court
24 having jurisdiction, if the obligation is adequately
25 secured as to principal and interest.

26 (ii) Equipment trust obligations or certificates,
27 which are adequately secured, or other adequately secured
28 instruments, evidencing an interest in transportation
29 equipment, wholly or in part within the United States,
30 and a right to receive determined portions of rental,

1 purchase or other fixed obligatory payments for the use
2 or purchase of such transportation equipment.

3 (6) Obligations secured by real property or any
4 interests therein, obligations or participations therein,
5 secured by liens on real property, or interests therein,
6 located within the United States or any state. The value of
7 such real property or interest, together with such other
8 security as shall secure the obligation, shall be adequate to
9 secure the investment as well as any lien senior to the lien
10 created by the investment in the real property made pursuant
11 to this paragraph. No investment in a single transaction
12 shall exceed 5% of the admitted assets of the company.

13 (7) Loans upon the security of its own policies not
14 exceeding the net value of the policy at the time of making
15 the loan.

16 (8) Such real estate or interests therein located within
17 the United States or any state as such company is authorized
18 to hold under this part.

19 (9) Subsidiaries as permitted under this part.

20 (10) Equity interests:

21 (i) Investments, other than investments under
22 paragraphs (11) and (13) and sections 5304(b) (relating
23 to additional investment authority for subsidiaries) and
24 5305 (relating to authorized holdings of real estate), in
25 common stocks, limited partnership interests, trust
26 certificates, except equipment trust certificates
27 described in paragraph (5), or other equity interests,
28 other than preferred stock, of corporations, joint-stock
29 associations, business trusts, business partnerships and
30 business joint ventures incorporated, organized or

1 existing under the law of the United States or of any
2 state.

3 (ii) Stocks or shares of any regulated investment
4 company which is registered as an investment company
5 under the Investment Company Act of 1940 (54 Stat. 789,
6 15 U.S.C. §§ 80a-1 through 80a-52) and which has no
7 preferred stock, bonds, loans or any other outstanding
8 securities having preference or priority as to the assets
9 or earnings over its common stock at the date of
10 purchase.

11 (iii) Investments under this paragraph shall not
12 exceed 25% of the admitted assets of the company, and no
13 investment in any single corporation or entity under this
14 paragraph shall exceed 5% of such admitted assets.

15 (11) Investments in or investments in interests in
16 machinery, equipment, facilities, furnishings, fixtures or
17 other tangible personal property used for, in or as part of
18 or connected with any commercial, industrial, manufacturing,
19 processing or financial, business activity or operation and
20 which may be subject to contractual or other similar
21 arrangements for the purchase, sale or use thereof.

22 Investments under this paragraph shall not exceed 15% of the
23 admitted assets of the company.

24 (12) The investment practice of put options and call
25 options issued under terms and conditions regulated by, or
26 substantially similar to those terms and conditions required
27 by, a national securities exchange registered under the
28 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §
29 78a et seq.), or any board of trade designated as a contract
30 market by the Commodity Futures Trading Commission (CFTC)

1 under the Commodity Exchange Act (49 Stat. 1491, 7 U.S.C. § 1
2 et seq.), is authorized on the following conditions:

3 (i) A company shall not sell a call option on
4 securities it does not own, or in an amount greater than
5 securities which it presently owns. However, in the case
6 of financial futures contracts and stock or bond index
7 contracts where it is not feasible to own the underlying
8 security, a company may sell a call option only in
9 connection with a hedging transaction.

10 (ii) A company shall not sell a put option unless
11 its obligations under the put option are fully secured by
12 a deposit by the company with a bank or other custodian
13 of cash or cash equivalents.

14 (iii) A company shall not purchase as opening
15 transactions under this paragraph more than 10% of the
16 excess of its capital and surplus over the minimum
17 requirements of a new stock or mutual company to qualify
18 for a certificate of authority to write the kind of
19 insurance which the company is authorized to write.

20 The department may promulgate reasonable regulations for
21 transactions under this paragraph, including, but not limited
22 to, regulations which impose financial solvency standards,
23 valuation standards and reporting requirements.

24 (13) The investment practice of financial futures
25 contracts issued under terms and conditions regulated by a
26 Federal regulatory agency is authorized on the following
27 conditions:

28 (i) The company shall not enter into financial
29 future contracts except as a hedging transaction as that
30 term is defined by regulation of the department.

1 (ii) The company shall not have initial or
2 maintenance margin outstanding under this section of more
3 than 10% of the excess of its capital and surplus over
4 the minimum requirements of a new stock or mutual company
5 to qualify for a certificate of authority to write the
6 kind of insurance which the company is authorized to
7 write.

8 The department may promulgate reasonable regulations for
9 transactions under this paragraph, including, but not limited
10 to, regulations imposing financial solvency standards,
11 valuation standards and reporting requirements.

12 (14) Investment in properties and facilities for the
13 exploration, development, production and distribution of
14 energy-producing substances. These investments may include
15 ownership and control of such properties and facilities or
16 interest therein, including royalty interests and production
17 payments from such activities or investments in limited
18 partnerships engaged in such activities. Investments under
19 this paragraph shall not exceed 5% of the admitted assets of
20 the company. The investments in activities producing royalty
21 interests and production payments shall not exceed an
22 additional 10% of those admitted assets. An additional 1% of
23 those admitted assets may be invested in properties,
24 facilities, royalty interests or production payments under
25 this paragraph if the properties and facilities are located
26 in or operated principally in this Commonwealth.

27 (15) Lending of securities, repurchase agreements and
28 reverse repurchase agreements:

29 (i) Lending of securities, repurchase agreements and
30 reverse repurchase agreements transactions are authorized

1 on the following conditions:

2 (A) The agreement for each transaction or the
3 master agreement for a series of transactions shall
4 be reduced to writing.

5 (B) Securities acquired by a company and owned
6 subject to reacquisition pursuant to an outstanding
7 repurchase agreement shall not be sold pursuant to a
8 reverse repurchase agreement nor lent pursuant to a
9 lending of securities agreement. Consideration or
10 collateral received from a reverse repurchase
11 agreement or lending of securities agreement may be
12 used to acquire securities which are equivalent or
13 similar to the securities transferred pursuant to the
14 repurchase agreement or lending of securities
15 agreement. However, such acquired securities shall
16 not be sold pursuant to a reverse repurchase
17 agreement or lent pursuant to a lending of securities
18 agreement.

19 (C) No more than 2% of the admitted assets of a
20 company shall be subject to lending of securities,
21 repurchase or reverse repurchase agreements
22 transactions outstanding with any one business entity
23 under this paragraph.

24 (D) A company may engage in lending its
25 securities or repurchase or reverse repurchase
26 agreements up to 40% of its admitted assets if the
27 transactions are fully collateralized.

28 (ii) The department may promulgate reasonable
29 regulations for investments and transactions under this
30 paragraph, including, but not limited to, regulations

1 which impose financial solvency standards, valuation
2 standards and reporting requirements.

3 (iii) As used in this paragraph, the following words
4 and phrases shall have the meanings given to them in this
5 subparagraph:

6 "Lending of securities." An investment other than a
7 repurchase agreement, whereby an agreement is entered
8 into which transfers ownership rights and possession of
9 securities to the borrower of the securities with the
10 agreement providing for a return of ownership rights and
11 possession of the securities to the lender at a specified
12 date or upon demand.

13 "Repurchase agreement." A bilateral agreement
14 whereby a company purchases securities with a related
15 agreement that the seller will purchase or repurchase at
16 a specified price the equivalent or similar securities
17 within a specified period of time or on demand.

18 "Reverse repurchase agreement." A bilateral
19 agreement whereby a company:

20 (A) sells securities with a related agreement to
21 purchase or repurchase at a specified price the
22 equivalent or similar securities within a specified
23 period of time or upon demand; or

24 (B) borrows funds and transfers securities to
25 the lender with a related agreement that equivalent
26 or similar securities will be returned to the company
27 upon repayment of the loan within a specified period
28 of time or on demand.

29 (16) Other loans and investments:

30 (i) Loans or investments not otherwise authorized

1 under this section, to an amount not exceeding the
2 aggregate of 20% of the admitted assets of the company.
3 However, this limitation shall be increased in the same
4 amount that investments approved by the department are
5 made in the following categories of investments in
6 persons described as follows whose operations or places
7 of business are located in this Commonwealth, up to a
8 maximum of 25% of the admitted assets:

9 (A) Investments in venture capital limited
10 partnerships or in new and young small businesses
11 which are making an initial public offering of
12 securities or utilizing a limited private placement.

13 (B) Investments in minority-owned and operated
14 businesses domiciled in Pennsylvania as provided in
15 the act of July 22, 1974 (P.L.598, No.206), known as
16 the Pennsylvania Minority Business Development
17 Authority Act.

18 (C) Investments in businesses located in
19 enterprise zones designated by the Department of
20 Community Affairs.

21 (D) Investments in housing for families and
22 persons of low income or in housing in enterprise
23 zones designated by the Department of Community
24 Affairs.

25 (E) Investments in seed capital funds
26 established under the act of July 2, 1984 (P.L.555,
27 No.111), known as the Small Business Incubators Act.

28 (F) Investments in business development credit
29 corporations established under the act of December 1,
30 1959 (P.L.1647, No.606), known as the Business

1 Development Credit Corporation Law.

2 (G) Investments in small business investment
3 corporations and minority enterprise small business
4 investment companies certified pursuant to applicable
5 Federal law.

6 (H) Investments in and direct management of or
7 participation in private placement accounts,
8 including investments by private and public employee
9 pension funds, and investments in and direct
10 management of or participation in long and
11 intermediate loans to corporations for purposes such
12 as plant construction, equipment purchases and
13 working capital.

14 (I) Investments in and financial assistance to
15 employee-owned enterprises, as defined and described
16 by the Internal Revenue Code of 1954 (68A Stat. 3, 26
17 U.S.C. § 1 et seq.), including worker cooperatives,
18 employee stock ownership plans and businesses in
19 which a majority of the voting rights are held or
20 controlled by employees or held in trust for and
21 passed through to employees.

22 (J) Investments in, and financial assistance to,
23 employee-ownership groups, including corporations,
24 labor unions or other entities formed by or on behalf
25 of the current or former employees of an industrial
26 or commercial firm or facility for the purpose of
27 assuming ownership or control of the firm or facility
28 and operating it as an employee-owned enterprise.

29 (K) Investments in construction loans to
30 builders and developers of low-income to moderate-

1 income housing in Pennsylvania involved in the new
2 construction or rehabilitation of single-family or
3 multifamily housing in census tracts or
4 neighborhoods, in urban and rural communities,
5 designated by State or Federal law as economically
6 deprived or financially underserved, and mortgage
7 loans and other credit to individuals seeking to
8 purchase such housing.

9 (ii) For each 0.5% of the admitted assets of the
10 company invested pursuant to subparagraph (i)(A) through
11 (G), investments under other paragraphs of this section
12 may exceed the limitations set forth in the other
13 paragraphs by an aggregate of 2.5% of the admitted assets
14 of the company, but such excess investments shall not
15 exceed 5% of the admitted assets. However, such excess
16 investments shall be charged against the limitation under
17 subparagraph (i).

18 § 5303. Valuation.

19 (a) General rule.--Investments under section 5302 (relating
20 to permitted investments) shall be valued in accordance with the
21 published valuation standards of the National Association of
22 Insurance Commissioners. Securities investments as to which the
23 National Association of Insurance Commissioners has not
24 published valuation standards in its valuation of securities
25 manual or its successor publication shall be valued as follows:

26 (1) Any investment by any insurer that is not valued by
27 standards published by the National Association of Insurance
28 Commissioners shall, at the time of acquisition, be submitted
29 to the National Association of Insurance Commissioners for
30 valuation.

1 (2) Other securities investments shall be valued in
2 accordance with regulations promulgated by the department
3 under subsection (d).

4 (b) Other investments.--Other investments, including real
5 property, shall be valued in accordance with regulations
6 promulgated by the department under subsection (d), but such
7 other investments shall not be valued at more than their
8 purchase price. For the purposes of this section, the purchase
9 price for real property includes capitalized permanent
10 improvements, less depreciation spread evenly over the life of
11 the property or, at the option of the company, less depreciation
12 computed on any basis permitted under the Internal Revenue Code
13 of 1954 (68A Stat. 3, 26 U.S.C. § 1 et seq.). Such investments
14 that have been affected by permanent declines in value shall be
15 valued at not more than their market value.

16 (c) Property not acquired by purchase.--Any investment,
17 including real property, not purchased by a company but acquired
18 in satisfaction of a debt or otherwise shall be valued in
19 accordance with the applicable procedures for that type of
20 investment contained in this section. For the purposes of
21 applying the valuation procedures, the purchase price shall be
22 deemed to be the market value at the time the investment is
23 acquired or, in the case of any investment acquired in
24 satisfaction of debt, the amount of the debt, including
25 interest, taxes and expenses, whichever amount is less.

26 (d) Regulations.--The department may promulgate regulations
27 for determining and calculating values to be used in financial
28 statements submitted to the department for investments not
29 subject to published valuation standards of the National
30 Association of Insurance Commissioners.

1 § 5304. Additional investment authority for subsidiaries.

2 (a) General rule.--Any domestic life insurance company,
3 either by itself or in cooperation with one or more persons,
4 may, in addition to any authority to acquire or hold securities
5 in corporations provided for elsewhere in this title, organize
6 or acquire one or more subsidiaries. Such subsidiaries may
7 conduct any kind of business or businesses and their authority
8 to do so shall not be limited by reason of the fact that they
9 are subsidiaries of a domestic life insurance company. No
10 domestic life insurance company may participate in or form a
11 general partnership with any other person.

12 (b) Limitations and exemptions.--

13 (1) A domestic life insurance company shall not make an
14 investment in any subsidiary which will bring the aggregate
15 value of its investments, as determined for annual statement
16 purposes but not in excess of cost, in all subsidiaries under
17 this subsection to an amount in excess of 10% of the total
18 admitted assets of the company as of the immediately
19 preceding December 31. In determining the amount of
20 investments of any domestic life insurance company in
21 subsidiaries for the purposes of this subsection, there shall
22 be included investments made directly by the insurance
23 company and if such investment is made by another subsidiary,
24 then to the extent that funds for such investments are
25 provided by the insurance company for that purpose.

26 (2) The limitations set forth in paragraph (1) do not
27 apply to investments in any subsidiary which is:

28 (i) An insurance company.

29 (ii) A holding company to the extent its business
30 consists of the holding of the stock of, or otherwise

1 controlling, its own subsidiaries.

2 (iii) A corporation whose business primarily
3 consists of direct or indirect ownership, operation or
4 management of assets authorized as investments pursuant
5 to sections 5302 (relating to permitted investments) and
6 5305 (relating to authorized holdings of real estate).

7 (iv) A company engaged in any combination of the
8 activities described in subparagraphs (i) through (iii).

9 (3) Investments made pursuant to paragraph (2)(i) shall
10 not be restricted in amount if, after such investment, as
11 calculated for NAIC annual statement purposes, the surplus of
12 the insurer will be reasonable in relation to the insurer's
13 outstanding liabilities and adequate to its financial needs.
14 Investments made pursuant to paragraph (2)(ii) or, to the
15 extent applicable, (2)(iv) shall, in addition, not be subject
16 to any limitations otherwise applicable under this title on
17 the amount of a domestic life insurance company's assets.
18 However, the life insurance company's investments, to the
19 extent that the life insurance company provided the funds
20 therefor, in each of the subsidiaries of such holding company
21 shall be subject to any limitations applicable to the
22 investment as if the holding company's interest in each such
23 subsidiary were instead owned directly by the life insurance
24 company. Investments made pursuant to paragraph (2)(iii) or,
25 to the extent applicable, (2)(iv) shall be counted in
26 determining the limitations contained in applicable
27 subsections of sections 5302 and 5305. However, the value as
28 calculated for annual statement purposes but not in excess of
29 the cost thereof, of such investment, shall include only
30 funds provided by the insurance company therefor. Investments

1 made in other subsidiaries of such life insurance company by
2 any subsidiary described in paragraph (2) or by a person
3 whose business primarily consists of direct or indirect
4 ownership, operation or management of real property and
5 interest therein under section 5305, shall be deemed
6 investments made by the insurance company only to the extent
7 the funds for the investment were provided by the insurance
8 company.

9 (4) No restrictions, prohibitions or limitations
10 contained in this title otherwise applicable to investments
11 of domestic life insurers shall be applicable to investments
12 in common stock, preferred stock, debt obligations or other
13 securities of subsidiaries made pursuant to this subsection,
14 nor shall the additional investment authority granted by this
15 subsection have the effect of restricting, prohibiting or
16 limiting the rights of a domestic life insurer to make
17 investments permitted under any other section of this title.

18 (c) Determination of compliance.--Whether any investment
19 made pursuant to subsection (b) meets at any time thereafter the
20 applicable requirements thereof is to be determined when the
21 investment is made, taking into account the then outstanding
22 principal balance on all previous investments in debt
23 obligations, and the value, but not in excess of the cost
24 thereof, of all previous investments in equity securities as
25 calculated for annual statement purposes. In calculating the
26 amount of such investments, there shall be included the
27 following, as determined for NAIC annual statement purposes:

28 (1) Total net moneys or other consideration expended and
29 obligations assumed in the acquisition or formation of a
30 subsidiary, including all organizational expenses and

1 contributions to capital and surplus of the subsidiary
2 whether or not represented by the purchase of capital stock
3 or issuance of other securities.

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

9 (d) Disposal of certain investments.--If a domestic life
10 insurer ceases to own, directly or indirectly through one or
11 more intermediaries, a majority of the voting securities of a
12 subsidiary held pursuant to subsection (b), it shall dispose of
13 any investment therein made pursuant to such subsection within
14 five years from the time of the cessation of control or within
15 such further time as the department may prescribe, unless, at
16 any time after the investment has been made, the investment
17 meets the requirements for investment under any other section of
18 this title.

19 (e) Definitions.--As used in this section, the following
20 words and phrases shall have the meanings given to them in this
21 subsection:

22 "NAIC." The National Association of Insurance Commissioners.

23 "Owner" or "holder." With respect to securities of a
24 specified person, one who owns any security of the person,
25 including common stock, preferred stock, debt obligations and
26 any other security convertible into or evidencing the right to
27 acquire any of the foregoing.

28 "Person." Includes any joint-stock company, business trust,
29 unincorporated organization, any similar entity or any
30 combination of persons acting in concert.

1 "Subsidiary." A corporation in which another person owns or
2 holds with the power to vote directly, or through one or more
3 intermediaries, a majority of the outstanding voting securities.
4 A person whose business consists primarily of real property and
5 interests therein or a corporation which is held in a separate
6 account pursuant to section 5307 (relating to separate accounts)
7 shall not be deemed a subsidiary for the purposes of determining
8 the volume limitations set forth in subsection (b)(1). A person
9 which is controlled by another person solely as a result of the
10 temporary assumption of control by the owner of securities upon
11 the happening of a prescribed event of default shall not be
12 deemed a subsidiary or affiliate for the purposes of this
13 section, if such securities are disposed of within five years
14 from the date of acquisition, unless such period is extended by
15 the department to enable the owner to dispose of such securities
16 in a reasonable and orderly manner.

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

21 § 5305. Authorized holdings of real estate.

22 Subject to section 5301 (relating to general investment
23 provisions), any domestic life insurance company may, directly
24 or indirectly, alone or together with one or more persons or
25 entities of any nature, purchase, receive, hold and convey real
26 estate or any interest therein if the real estate is:

27 (1) required for its convenient accommodation in the
28 transaction of its business with reasonable regard to future
29 needs;

30 (2) residential real estate purchased from employees

1 transferred or about to be transferred to new places of
2 employment with the company;

3 (3) acquired in satisfaction or on account of loans,
4 mortgages, liens, judgments or decrees previously owing to it
5 in the course of its business;

6 (4) acquired in part payment of the consideration of the
7 sale of real property owned by it if the transaction will
8 result in a net reduction in the company's investment in real
9 estate;

10 (5) reasonably necessary for the purpose of maintaining
11 or enhancing the sale value or real property previously
12 acquired or held by it under paragraph (1), (2), (3) or (4);

13 (6) purchased, leased or owned for residential,
14 business, commercial or industrial use, or for development,
15 improvement, maintenance or construction and maintenance.
16 Investments under this paragraph, including investments in
17 limited partnership interests or other entities of any nature
18 where the entities are engaged primarily in holding real
19 estate or interests therein under this paragraph and
20 corporations which are engaged primarily in holding real
21 estate or interests therein as described in this paragraph
22 and the majority of whose voting securities are owned
23 directly or indirectly through one or more intermediaries,
24 shall not exceed 25% of the admitted assets of the company.

25 § 5306. Capital of foreign and alien stock companies.

26 Foreign and alien stock life insurance companies, in order to
27 be licensed to do business in this Commonwealth, shall have a
28 paid-up and safely invested capital, if a foreign company, or a
29 deposit in the United States, if an alien company, of not less
30 than the capital required under section 3306 (relating to

1 minimum capital stock and financial requirements) for domestic
2 stock life insurance companies.

3 § 5307. Separate accounts.

4 (a) General requirements.--Any domestic life insurance
5 company may establish one or more separate accounts and may
6 allocate thereto any amounts, including proceeds applied under
7 optional modes of settlement or under dividend options, to
8 provide for life insurance or annuities and benefits incidental
9 thereto, payable in fixed or variable amounts or both, and for
10 any other investment purpose consistent with the investment
11 powers of the company under sections 5301 (relating to general
12 investment provisions) and 5302 (relating to permitted
13 investments) or this section in connection with any product
14 permissible to the company under this title and subject to the
15 following:

16 (1) The income, gains and losses, realized or
17 unrealized, from assets allocated to a separate account
18 shall, in accordance with applicable contracts, be credited
19 to or charged against the account, without regard to other
20 income, gains or losses of the company. Companies may
21 maintain one or more separate accounts subject to reasonable
22 regulations promulgated by the department with respect to:

23 (i) Separate accounts with all or any portion of the
24 benefits guaranteed as to dollar amounts and duration.

25 (ii) Separate accounts with all or any portion of
26 the funds guaranteed as to the principal amount or stated
27 rate of interest.

28 (2) Except as provided in this section, the amounts
29 allocated to each separate account established by the insurer
30 pursuant to this section, together with any accumulations

1 thereon, may be invested and reinvested in any class of
2 investments which may be authorized in the written contract
3 or agreement without regard to any investment limitations
4 otherwise applicable to the investment of life insurance
5 companies. The investments in such separate account or
6 accounts shall not be taken into account in the investment
7 limitations applicable to the insurance company under this
8 chapter.

9 (3) Assets allocated to a separate account shall be
10 valued at their market value on the date of valuation, or at
11 amortized cost if it approximates market value. If there is
12 no readily available market, then as provided under the terms
13 of the contract or the rules or other written agreement
14 applicable to the separate account or by regulation
15 promulgated by the department.

16 (4) Amounts allocated to a separate account shall be
17 owned by the company, and the company shall not be, nor hold
18 itself out to be, a trustee with respect to these amounts. To
19 the extent so provided under the applicable contracts, that
20 portion of the assets of any such separate account equal to
21 the reserves and other contract liabilities with respect to
22 the account shall not be chargeable with liabilities arising
23 out of any other business conducted by the company. Sales,
24 exchanges or other transfers of assets may be made by a
25 company at any time between any of its separate accounts or
26 between any other investment account and one or more of its
27 separate accounts if the transfer into or from a separate
28 account is made by:

29 (i) a transfer of cash;

30 (ii) a transfer of assets having a valuation which

1 could be readily determined in the marketplace; or

2 (iii) such other method of transfer as the
3 department may approve.

4 (5) If pursuant to the terms of the applicable contracts
5 amounts allocated to a separate account are to be invested in
6 shares of a specified investment company registered under the
7 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. §
8 80a-1 et seq.), which shares are to be held for the exclusive
9 benefit of the applicable contracts, such shares shall, to
10 the extent provided in the applicable contracts, be deemed to
11 be a separate account under this section.

12 (6) To the extent the company deems it necessary to
13 comply with Federal or State law, the company, with respect
14 to any separate account, including any separate account which
15 is a management investment company or a unit investment
16 trust, may provide for persons having an interest therein
17 appropriate voting and other rights and special procedures
18 for the conduct of the business of the account, including
19 special rights and procedures relating to investment policy,
20 investment advisory services, selection of independent public
21 accountants and the selection of a committee, whose members
22 need not be otherwise affiliated with the company, to manage
23 the business of the account.

24 (b) Disclosure.--Any contract providing benefits for life
25 insurance or annuities payable in variable amounts delivered or
26 issued for delivery in this Commonwealth shall contain a
27 statement of the essential features of the procedures to be
28 followed by the insurance company in determining the amount of
29 such variable benefits. Any such contract under which the
30 benefits vary to reflect investment experience, including a

1 group contract and any certificate in evidence of variable
2 benefits issued under the contract, shall state that the amount
3 will so vary and shall contain on its first page a statement to
4 the effect that the benefits are on a variable basis.

5 (c) Authorization.--A company shall not deliver or issue for
6 delivery in this Commonwealth variable contracts unless it is
7 licensed or organized to do a life insurance business in this
8 Commonwealth, and the department is satisfied that the company's
9 condition or method of operation, including investment policy,
10 in connection with the issuance of such contracts will not
11 render its operation hazardous to the public or its
12 policyholders in this Commonwealth. In this connection, the
13 department shall consider all relevant circumstances, including
14 the following:

15 (1) The history and financial condition of the company.

16 (2) The character, responsibility and general fitness of
17 the officers and directors or trustees of the company, and
18 whether these individuals command the public confidence and
19 warrant the belief that the business of the company will be
20 lawfully, honestly and efficiently conducted.

21 (3) The law and regulation under which the company is
22 authorized in the state of domicile to issue variable
23 contracts. The state of entry of an alien company shall be
24 deemed its place of domicile for this purpose.

25 If the company is a subsidiary of an admitted life insurance
26 company, or affiliated with such a company through common
27 management or ownership, it may be deemed by the department to
28 have met the requirements of this subsection if either it, the
29 parent or the affiliated company meets such requirements.

30 (d) Regulation by department.--The department shall have

1 sole authority to regulate the issuance and sale of variable
2 contracts, including the approval or disapproval of provisions
3 of the contracts under section 3515 (relating to approval of
4 contracts by department) and the annual statements furnished to
5 contract holders. The department shall promulgate such
6 reasonable regulations as are appropriate to implement this
7 section including regulations to insure that the premiums
8 charged are not excessive, inadequate or unfairly discriminatory
9 and to prevent excessive management, administrative and sales
10 charges. The reserve liability for variable contracts shall be
11 established in accordance with actuarial procedures acceptable
12 to the department that recognize the variable nature of the
13 benefits provided and any mortality guarantees.

14 (e) Applicability of other provisions.--Except for sections
15 5321(a)(2), (3), (8), (9), (10) and (11) (relating to uniform
16 policy provisions), 5322 (relating to standard nonforfeiture law
17 for life insurance), 5325 (relating to notice of right to
18 examine policies) and 5367(c)(1) (relating to standard policy
19 provisions), in the case of a variable life insurance contract,
20 and sections 5323(a)(1), (6) and (7) and (b)(3) (relating to
21 annuity and endowment contracts) and 5325, in the case of a
22 variable annuity contract, and except as otherwise provided in
23 this section, this title shall apply to separate accounts and
24 contracts relating thereto. Any individual variable life
25 insurance or variable annuity contract delivered or issued for
26 delivery in this Commonwealth shall contain grace,
27 reinstatement, incontestability, nonforfeiture and right-to-
28 review provisions as shall be provided in regulations
29 promulgated by the department appropriate to such contract. Any
30 group variable life insurance contract delivered or issued for

1 delivery in this Commonwealth shall contain a grace provision as
2 shall be provided in regulations promulgated by the department
3 appropriate for such contract. Variable contracts, and agents or
4 other persons who sell variable contracts, shall not be subject
5 to the act of December 5, 1972 (P.L.1280, No.284), known as the
6 Pennsylvania Securities Act of 1972, or to regulation by the
7 Pennsylvania Securities Commission.

8 § 5308. Impairment of reserve liability.

9 A stock or mutual life insurance company, after receiving
10 notice from the department that its reserve liability has been
11 impaired and after all other debts and claims against the
12 reserve liability, including 50% of its capital, have been
13 deducted, shall not issue new policies under its authority to do
14 business in this Commonwealth until the department finds that
15 its funds have become equal to its liabilities and it obtains
16 from the department a certificate of authority to resume
17 business. When a domestic life insurance company has been
18 notified to cease doing new business, the department may, if no
19 fraud, gross incompetence or recklessness is shown to exist in
20 the management, permit the officers of the company to continue
21 in charge of its business for one year. The department may renew
22 this permission, if the company is likely to retrieve its
23 affairs, or it may institute proceedings to determine what
24 further shall be done.

25 § 5309. Penalty.

26 Subject to sections 5301(3) (relating to general investment
27 provisions) and 5305(1) and (2) (relating to authorized holdings
28 of real estate), a director, trustee or officer of any domestic
29 stock or mutual life insurance company shall not receive any
30 money or valuable thing for negotiating, procuring, recommending

1 or aiding in any purchase by or sale to the company of any
2 property or any loan from the company, nor be directly or
3 indirectly pecuniarily interested, either as principal, agent or
4 beneficiary, in any such purchase, sale or transaction. Any
5 person violating this section commits a summary offense.

6 § 5310. Corporations operating under prior statutes.

7 (a) Applicability.--For the purposes of this section the
8 term "the prior statutes" means the following:

9 (1) The act of April 28, 1903 (P.L.329, No.259),
10 relating to incorporation and regulation of corporations for
11 the purpose of transacting certain types of insurance.

12 (2) The act of April 20, 1927 (P.L.317, No.190),
13 relating to reincorporation of beneficial or protective
14 societies for the purpose of transacting certain types of
15 insurance.

16 (3) The act of June 24, 1939 (P.L.686, No.320), relating
17 to reincorporation of beneficial or protective societies as
18 limited life insurance companies for the purpose of
19 transacting certain types of insurance.

20 (4) The act of July 15, 1957 (P.L.929, No.400), relating
21 to incorporation of limited life insurance companies for the
22 purpose of transacting certain types of insurance.

23 (b) Authorization.--In the case of any company incorporated
24 or reincorporated under the prior statutes:

25 (1) if it is a stock company having capital of not less
26 than \$300,000 and a surplus at least equal to 50% of the
27 capital; or

28 (2) if it is a mutual company having insurance in force
29 in an aggregate amount of not less than \$1,000,000, or not
30 less than 400 persons and a surplus of not less than

1 \$200,000;

2 the company may, notwithstanding any limitation to the contrary
3 under any statute or under its charter, transact any insurance
4 described in section 3302(a)(1) (relating to authorized classes
5 of insurance).

6 (c) Issuance of stock.--The capital stock of every stock
7 company incorporated or reincorporated under the prior statutes
8 or of every company incorporated or reincorporated under any
9 statute enacted after July 15, 1957, authorizing existing
10 incorporated beneficial or protective societies to reincorporate
11 or new companies to incorporate under the provisions thereof as
12 limited life insurance companies having in the case of a stock
13 company capital stock divided into shares with a par value not
14 less than the amounts stated in those statutes, respectively,
15 shall be divided into shares with a par value of not less than
16 \$1 per share, any provision in any of those statutes to the
17 contrary notwithstanding. The charter or articles of agreement
18 of the corporation shall be amended to authorize stock having
19 such par value in the manner provided by section 3552 (relating
20 to amendment of charter).

21 § 5311. Dividends.

22 A stock life insurance company shall not make any dividend on
23 its capital except from the profits arising from its business.
24 In estimating such profits, there shall be first charged as a
25 liability all of the following:

26 (1) The capital stock of the company.

27 (2) The amount of paid-in surplus required under the
28 provisions of section 3306(a) (relating to minimum capital
29 stock and financial requirements).

30 (3) All unpaid losses or other claims.

1 (4) All liabilities for reserves as required by law.

2 (5) All sums due the company on bonds and mortgages,
3 stocks and book accounts, of which none of the principal or
4 interest thereon has been paid during the last calendar year,
5 and for which the foreclosure or other collection proceedings
6 have not been commenced, or which, after judgment obtained
7 thereon, have remained more than two years unsatisfied, and
8 on which interest has not been paid.

9 (6) All interest due or accrued and remaining unpaid.

10 (7) All other debts or obligations of the company.

11 § 5312. (Reserved).

12 § 5313. Vouchers for payment.

13 A domestic stock or mutual life insurance company shall not
14 make any disbursement of \$500 or more unless evidenced by a
15 voucher signed by or on behalf of the person receiving the money
16 and describing the consideration for the payment. If the
17 expenditure is for both services and disbursements, the voucher
18 shall set forth the services rendered and an itemized statement
19 of the disbursements made. If the expenditure is in connection
20 with any matter pending before any government unit of this
21 Commonwealth or any state, the voucher shall also describe the
22 nature of the matter and of the interest of the company therein.
23 When a voucher cannot be obtained, the expenditure shall be
24 evidenced by an affidavit describing the character and object of
25 the expenditure and stating the reason for not obtaining the
26 voucher.

27 SUBCHAPTER B

28 CONDUCT OF BUSINESS

29 Sec.

30 5321. Uniform policy provisions.

- 1 5322. Standard nonforfeiture law for life insurance.
- 2 5323. Annuity and endowment contracts.
- 3 5324. Standard nonforfeiture law for individual deferred
4 annuities.
- 5 5325. Notice of right to examine policies.
- 6 5326. Policy loan interest rates.
- 7 5327. Prohibited policy provisions.
- 8 5328. Medical examinations.
- 9 5329. Insurance on the life of another person.
- 10 5330. Statements by prospective insured.
- 11 5331. Insurance proceeds.
- 12 5332. (Reserved).
- 13 5333. Certain life, health and accident companies.
- 14 5334. Exchange, alteration and conversion of policies.
- 15 5335. Penalty for misrepresentation.
- 16 § 5321. Uniform policy provisions.
- 17 (a) Specific provisions.--A policy of life or endowment
18 insurance, except policies of industrial insurance where the
19 premiums are payable monthly or more often, shall not be
20 delivered in this Commonwealth unless it contains, in substance,
21 the following provisions or provisions which, in the opinion of
22 the department, are more favorable to the policyholder:
- 23 (1) A provision that all premiums shall be payable in
24 advance.
- 25 (2) A provision that the insured is entitled to a grace
26 period, either of 30 days or one month, within which the
27 payment of any premium after the first year may be made,
28 subject, at the option of the company, to an interest charge
29 not in excess of 8% per year for the grace period elapsing
30 before the payment of the premium. During this grace period

1 the policy shall continue in full force; but if the policy
2 becomes a claim during the grace period, before the overdue
3 premium or the deferred premiums of the current policy year
4 are paid, the amount of the premiums, with interest on any
5 overdue premiums, may be deducted in any settlement under the
6 policy.

7 (3) A provision that the policy shall be incontestable
8 after it has been in force, during the lifetime of the
9 insured, two years from its date of issue, except for
10 nonpayment of premiums, and that, at the option of the
11 company, provisions relating to disability benefits and those
12 granting additional insurance specifically against death by
13 accident or accidental means, may also be excepted. A clause
14 in any policy of life insurance providing that the policy
15 shall be incontestable after a specified period shall
16 preclude only a contest of the validity of the policy and
17 shall not preclude the assertion, at any time, of defenses
18 based upon provisions in the policy which exclude or restrict
19 coverage, whether or not such restrictions or exclusions are
20 excepted in that clause.

21 (4) A provision that the policy constitutes the entire
22 contract between the parties. If the company desires to make
23 the application a part of the contract, it may do so, if a
24 copy of the application is endorsed upon or attached to the
25 policy when issued; in this case the policy shall contain a
26 provision that the policy and the application constitute the
27 entire contract between the parties.

28 (5) A provision that, if the age of the insured or of
29 any other person whose age is considered in determining the
30 premium has been misstated, the amount payable or benefit

1 accruing under the policy shall be that which the premium
2 would have purchased at the correct age.

3 (6) (i) A provision that the policy shall participate
4 in the surplus of the company; that, beginning not later
5 than the end of the third policy year, the company shall
6 annually determine the portion of the divisible surplus
7 accruing on the policy; and that the party entitled to
8 elect this option may have the dividend arising from such
9 participation paid in cash or applied in accordance with
10 any one of such other dividend options as may be provided
11 by the policy. If any such other dividend options are
12 provided, the policy shall further state which option
13 shall be automatically effective, if the party has not
14 elected some other option.

15 (ii) In lieu of the provision set forth in
16 subparagraph (i), the policy may contain a provision that
17 the policy shall participate in the surplus of the
18 company; that, beginning not later than the end of the
19 fifth policy year, the company shall determine the
20 portion of the divisible surplus accruing on the policy;
21 that the party entitled thereto may have the current
22 dividend arising from such participation paid in cash;
23 and that, at periods of not more than five years
24 thereafter, such apportionment and payment, at the option
25 of that party, shall be made.

26 (iii) A renewable term policy of ten years or less
27 may provide that the surplus accruing to the policy shall
28 be determined and apportioned each year after the second
29 policy year, and accumulated during each renewal period;
30 and that at the end of any renewal period, or upon

1 renewal of the policy by the insured, the company shall
2 apply the accumulated surplus as an annuity for the next
3 succeeding renewal term in the reduction of premiums.

4 (7) A provision specifying the options, if any, to which
5 the policyholder is entitled in the event of default in a
6 premium payment.

7 (8) Except for term insurance, a provision for a loan
8 value at any time after the premiums have been paid for three
9 full years and while no premium is in default beyond the
10 grace period of payment.

11 (i) In the case of any policy issued prior to the
12 operative date of section 5322 (relating to the standard
13 nonforfeiture law for life insurance), it shall be
14 provided that the company will advance, on proper
15 assignment or pledge of the policy, and on the sole
16 security thereof, at a specified rate of interest, a sum
17 equal to, or at the option of the owner of the policy,
18 less than, the reserve at the end of the current policy
19 year on the policy, and on any dividend additions
20 thereto. A deduction shall be made from the loan value of
21 an amount in accordance with one of the following
22 alternative policy provisions:

23 (A) Not more than 2.5% of the amount insured by
24 the policy and any dividend additions thereto.

25 (B) One-fifth of the entire reserve on the
26 policy.

27 (C) 2.5% of the amount insured by the policy and
28 any dividend additions thereto, or one-fifth of the
29 entire reserve of the policy, at the option of the
30 company.

1 It shall further be provided that the company will deduct
2 from the loan value any existing indebtedness on the
3 policy, and any unpaid balance of the premium for the
4 current policy year, and may collect interest in advance
5 on the loan to the end of the current policy year. The
6 policy may further provide that the loan may be deferred
7 for not more than six months after the application
8 therefor is made.

9 (ii) In the case of any policy issued on or after
10 the operative date of section 5322, the loan provision
11 shall provide that the company will advance, on proper
12 assignment or pledge of the policy, and on the sole
13 security thereof, at a specified rate of interest not
14 exceeding 8% per year for policies issued prior to April
15 8, 1982, a sum equal to, or, at the option of the party
16 entitled thereto, less than, the cash surrender value at
17 the end of the current policy year as required by section
18 5322, and that the company may deduct from such loan
19 value, in addition to any indebtedness deducted in
20 determining such value, any unpaid balance of the premium
21 for the current policy year, and may collect interest in
22 advance on the loan to the end of the current policy
23 year. The company shall reserve the right to defer the
24 loan, except any made to pay premiums to the company, for
25 six months after application for the loan is made.

26 (9) A provision for a nonforfeiture and cash surrender
27 value.

28 (i) In the case of any policy issued prior to the
29 operative date of section 5322, a nonforfeiture benefit
30 shall be provided in event of default in premium payments

1 after premiums have been paid for three years, which
2 shall secure to the owner of the policy a stipulated form
3 of insurance. The net value of this benefit shall be at
4 least equal to the reserve at the date of default on the
5 policy and on any dividend additions thereto, specifying
6 the mortality table and rate of interest adopted for
7 computing the reserves, less a sum not more than 2.5% of
8 the amount insured by the policy and of any existing
9 dividend additions thereto, and less any existing
10 indebtedness to the company on the policy. This provision
11 shall stipulate that the policy may be surrendered to the
12 company at its home office within one month from date of
13 default for a specified cash value at least equal to the
14 sum which would otherwise be available for the purchase
15 of insurance. The provision may stipulate that the
16 company may defer payment for not more than six months
17 after the application therefor is made. This provision
18 shall not be required in term insurance of 20 years or
19 less.

20 (ii) In the case of any policy issued on or after
21 the operative date of section 5322, a nonforfeiture
22 benefit and cash surrender value shall be provided in
23 accordance with section 5322.

24 (10) A table showing in figures the loan value and the
25 options, if any, available under the policy each year, upon
26 default in premium payments, during at least the first 20
27 years of the policy. If the proceeds of the policy are
28 payable in installments which are determinable prior to
29 maturity of the policy, the policy shall include a table
30 showing the amount of the guaranteed installments.

1 (11) A provision that the holder of a policy may have
2 the policy reinstated, upon written application, at any time
3 within three years from the date of default in premium
4 payments, unless the policy has been duly surrendered or the
5 extension period expired, upon the production of evidence of
6 insurability satisfactory to the company, and the payment of
7 all overdue premiums with interest at a rate to be specified
8 in the policy but not exceeding 8% per year, and the payment
9 of any other indebtedness to the company upon the policy with
10 interest determined under section 5326 (relating to policy
11 loan interest rates), compounded annually.

12 (12) A provision that when a policy becomes a claim by
13 the death of the insured settlement shall be made upon
14 receipt of due proof of death.

15 (b) Exceptions.--Any of the provisions set forth in
16 subsection (a), or parts thereof, which are inapplicable to
17 single premium or nonparticipating policies, shall to that
18 extent not be incorporated therein. The policies of an alien or
19 foreign insurance company may contain, when delivered in this
20 Commonwealth, any provision prescribed by the law of the state
21 or government under which the company is organized. The policies
22 of a domestic life insurance company may, when delivered in any
23 other state or a foreign country, contain any provision required
24 by the laws of that state or foreign country to be contained in
25 policies delivered therein.

26 § 5322. Standard nonforfeiture law for life insurance.

27 (a) Short title of section.--This section shall be known and
28 may be cited as the Standard Nonforfeiture Law for Life
29 Insurance.

30 (b) General rule.--In the case of policies issued on or

1 after the operative date of this section, as defined in
2 subsection (m), and except as stated in subsection (l) or where
3 this section is not applicable because of the plan of insurance,
4 a life insurance policy shall not be delivered or issued for
5 delivery in this Commonwealth unless it contains in substance
6 the following provisions, or corresponding provisions which the
7 department determines are at least as favorable to the
8 defaulting or surrendering policyholder as the requirements
9 specified in this subsection and are essentially in compliance
10 with subsection (i):

11 (1) That, in the event of default in any premium
12 payment, the company will grant, upon proper request not
13 later than 60 days after the due date of the premium in
14 default, a paid-up nonforfeiture benefit on a plan stipulated
15 in the policy, effective as of the due date, of an amount as
16 provided in this section. In lieu of such a benefit, the
17 company may substitute, upon proper request not later than 60
18 days after the due date of the premium in default, an
19 actuarially equivalent alternative paid-up nonforfeiture
20 benefit which provides a greater amount or longer period of
21 death benefits or, if applicable, a greater amount or earlier
22 payment of endowment benefits.

23 (2) That, upon surrender of the policy within 60 days
24 after the due date of any premium payment in default after
25 premiums have been paid for at least three full years in the
26 case of ordinary insurance or five full years in the case of
27 industrial insurance, the company will pay, in lieu of any
28 paid-up nonforfeiture benefit, a cash surrender value of an
29 amount as provided in this section.

30 (3) That a specified paid-up nonforfeiture benefit shall

1 become effective as specified in the policy unless the person
2 entitled to make such election elects another available
3 option not later than 60 days after the due date of the
4 premium in default.

5 (4) That, if the policy becomes paid-up by completion of
6 all premium payments or if it is continued under any paid-up
7 nonforfeiture benefit which became effective on or after the
8 third policy anniversary in the case of ordinary insurance or
9 the fifth policy anniversary in the case of industrial
10 insurance, the company will pay, upon surrender of the policy
11 within 30 days after any policy anniversary, a cash surrender
12 value of such amount as provided in this section.

13 (5) In the case of policies which cause on a basis
14 guaranteed in the policy unscheduled changes in benefits or
15 premiums, or which provide an option for changes in benefits
16 or premiums other than a change to a new policy, a statement
17 of the mortality table, interest rate and method used in
18 calculating cash surrender values and the paid-up
19 nonforfeiture benefits available under the policy. In the
20 case of all other policies, a statement of the mortality
21 table and interest rate used in calculating the cash
22 surrender values and the paid-up nonforfeiture benefits
23 available under the policy, together with a table showing any
24 cash surrender value and paid-up nonforfeiture benefit
25 available under the policy on each policy anniversary either
26 during the first 20 policy years or during the term of the
27 policy, whichever is shorter. These values and benefits shall
28 be calculated upon the assumption that there are no dividends
29 or paid-up additions credited to the policy and that there is
30 no indebtedness to the company on the policy.

1 (6) That the cash surrender values and the paid-up
2 nonforfeiture benefits available under the policy are not
3 less than the minimum values and benefits required under any
4 statute of the state in which the policy is delivered; an
5 explanation of the manner in which the cash surrender values
6 and the paid-up nonforfeiture benefits are altered by the
7 existence of any paid-up additions credited to the policy or
8 any indebtedness to the company on the policy; if a detailed
9 statement of the method of computation of the values and
10 benefits shown in the policy is not stated therein, a
11 statement that the method of computation has been filed with
12 the insurance supervisory official of the state in which the
13 policy is delivered; and a statement of the method to be used
14 in calculating the cash surrender value and paid-up
15 nonforfeiture benefit available under the policy on any
16 policy anniversary beyond the last anniversary for which such
17 values and benefits are consecutively shown in the policy.

18 (7) That the company shall reserve the right to defer
19 the payment of any cash surrender value for a period of six
20 months after demand therefor with surrender of the policy.

21 (c) Calculation of cash surrender values.--

22 (1) Any cash surrender value available under the policy
23 in the event of default in a premium payment due on any
24 policy anniversary, whether or not required by subsection
25 (b), shall be an amount not less than the excess of the
26 present value, on that anniversary, of the future guaranteed
27 benefits which would have been provided for by the policy,
28 including any existing paid-up additions, if there had been
29 no default, over the sum of:

30 (i) the then present value of the adjusted premiums,

1 as defined in subsections (e) and (f), corresponding to
2 premiums which would have fallen due on and after the
3 anniversary; and

4 (ii) the amount of any indebtedness to the company
5 on the policy.

6 (2) For any policy issued on or after the operative date
7 of subsection (f) which provides supplemental life insurance
8 or annuity benefits at the option of the insured and for an
9 identifiable additional premium by rider or supplemental
10 policy provision, the cash surrender value shall be an amount
11 not less than the sum of:

12 (i) the cash surrender value under paragraph (1) for
13 an otherwise similar policy issued at the same age
14 without the rider or supplemental policy provision; and

15 (ii) the cash surrender value under paragraph (1)
16 for a policy which provides only the benefits otherwise
17 provided by the rider or supplemental policy provision.

18 (3) For any family policy issued on or after the
19 operative date of subsection (f) which defines a primary
20 insured and provides term insurance on the life of the spouse
21 of the primary insured expiring before the spouse reaches 71
22 years of age, the cash surrender value shall be an amount not
23 less than the sum of:

24 (i) the cash surrender value under paragraph (1) for
25 an otherwise similar policy issued at the same age
26 without term insurance on the life of the spouse; and

27 (ii) the cash surrender value under paragraph (1)
28 for a policy which provides only the benefits otherwise
29 provided by the term insurance on the life of the spouse.

30 (4) Any cash surrender value available within 30 days

1 after any policy anniversary under any policy paid-up by
2 completion of all premium payments or any policy continued
3 under any paid-up nonforfeiture benefit, whether or not
4 required by subsection (b), shall be an amount not less than
5 the present value on the anniversary of the future guaranteed
6 benefits provided for by the policy, including any existing
7 paid-up additions, decreased by any indebtedness to the
8 company on the policy.

9 (d) Paid-up nonforfeiture benefits.--Any paid-up
10 nonforfeiture benefit available under the policy in the event of
11 default in a premium payment due on any policy anniversary shall
12 be such that its present value as of the anniversary shall be at
13 least equal to the cash surrender value then provided for by the
14 policy or, if none is provided for, the cash surrender value
15 which would have been required by this section in the absence of
16 the condition that premiums shall have been paid for at least a
17 specified period.

18 (e) Adjusted premiums for prior policies.--

19 (1) (i) This paragraph does not apply to policies
20 issued on or after the operative date of subsection (f).
21 Except as provided in subparagraph (iii), the adjusted
22 premiums for any policy shall be calculated on an annual
23 basis and shall be such uniform percentage of the
24 respective premiums specified in the policy for each
25 policy year, excluding any extra premiums charged because
26 of impairments or special hazards, that the present
27 value, at the date of issue of the policy, of all
28 adjusted premiums shall be equal to the sum of:

29 (A) the then present value of the future
30 guaranteed benefits provided for by the policy;

1 (B) two percent of the amount of insurance, if
2 the insurance is uniform in amount, or of the
3 equivalent uniform amount, as defined in subparagraph
4 (ii), if the amount of insurance varies with duration
5 of the policy;

6 (C) forty percent of the adjusted premium for
7 the first policy year; and

8 (D) twenty-five percent of either the adjusted
9 premium for the first policy year or the adjusted
10 premium for a whole life policy of the same uniform
11 or equivalent uniform amount with uniform premiums
12 for the whole of life issued at the same age for the
13 same amount of insurance, whichever is less.

14 In applying the percentages specified in clauses (C) and
15 (D), no adjusted premium shall be deemed to exceed 4% of
16 the amount of insurance or uniform amount equivalent
17 thereto. The date of issue of a policy for the purpose of
18 this subsection shall be the date as of which the rated
19 age of the insured is determined.

20 (ii) In the case of a policy providing an amount of
21 insurance varying with the duration of the policy, the
22 equivalent uniform amount for the purpose of this
23 subsection shall be the uniform amount of insurance
24 provided by an otherwise similar policy, containing the
25 same endowment benefits issued at the same age and for
26 the same term, the amount of which does not vary with
27 duration and the benefits under which have the same
28 present value at the date of issue as the benefits under
29 the policy. In the case of a policy providing a varying
30 amount of insurance issued on the life of a child under

1 ten years of age, the equivalent uniform amount may be
2 computed as if the amount of insurance provided by the
3 policy prior to the attainment of ten years of age was
4 the amount provided by the policy at ten years of age.

5 (iii) The adjusted premiums for any policy providing
6 term insurance benefits by rider or supplemental policy
7 provision shall be equal to:

8 (A) the adjusted premiums for an otherwise
9 similar policy issued at the same age without such
10 term insurance benefits, increased, during the period
11 for which premiums for such term insurance benefits
12 are payable, by;

13 (B) the adjusted premiums for such term
14 insurance.

15 The amounts stated in clauses (A) and (B) shall be
16 calculated separately and as specified in subparagraphs
17 (i) and (ii), except that for the purposes of
18 subparagraph (i)(B), (C) and (D), the amount of insurance
19 or equivalent uniform amount of insurance used in the
20 calculation of the adjusted premiums referred to in
21 clause (B) of this subparagraph shall be equal to the
22 excess of the corresponding amount determined for the
23 entire policy over the amount used in the calculation of
24 the adjusted premiums in clause (A) of this subparagraph.

25 (iv) Except as otherwise provided in paragraphs (2)
26 and (3), all adjusted premiums and present values
27 referred to in this section shall, for all policies of
28 ordinary insurance, be calculated on the basis of the
29 Commissioners 1941 Standard Ordinary Mortality Table. For
30 any category of ordinary insurance issued on female

1 risks, adjusted premiums and present values may be
2 calculated according to an age not more than three years
3 younger than the actual age of the insured. Such
4 calculations for all policies of industrial insurance
5 shall be made on the basis of the 1941 Standard
6 Industrial Mortality Table. All calculations shall be
7 made using the rate of interest not exceeding 3.5% a
8 year, specified in the policy for calculating cash
9 surrender values and paid-up nonforfeiture benefits. In
10 calculating the present value of any paid-up term
11 insurance with any accompanying pure endowment offered as
12 a nonforfeiture benefit, the rates of mortality assumed
13 may be not more than 130% of the rates of mortality
14 according to the applicable table. For insurance issued
15 on a substandard basis, the calculation of any adjusted
16 premiums and present values may be based on such other
17 table of mortality as may be specified by the company and
18 approved by the department.

19 (2) This paragraph does not apply to ordinary policies
20 issued on or after the operative date of subsection (f). In
21 the case of ordinary policies issued on or after the
22 operative date of this paragraph, all adjusted premiums and
23 present values referred to in this section shall be
24 calculated on the basis of the Commissioners 1958 Standard
25 Ordinary Mortality Table and the rate of interest specified
26 in the policy for calculating cash surrender values and paid-
27 up nonforfeiture benefits. This rate of interest shall not
28 exceed 3.5% a year except that a rate of interest not
29 exceeding 4% a year may be used for policies issued on or
30 after June 23, 1976, and prior to July 3, 1980. A rate of

1 interest not exceeding 5.5% a year or such higher rate of
2 interest as may be approved by the department may be used for
3 policies issued on or after July 3, 1980. For any category of
4 ordinary insurance issued on female risks, adjusted premiums
5 and present values may be calculated according to an age not
6 more than six years younger than the actual age of the
7 insured. In calculating the present value of any paid-up term
8 insurance with any accompanying pure endowment offered as a
9 nonforfeiture benefit, the rates of mortality assumed may be
10 not more than those shown in the Commissioners 1958 Extended
11 Term Insurance Table. For insurance issued on a substandard
12 basis, the calculation of any such adjusted premiums and
13 present values may be based on such other table of mortality
14 as specified by the company and approved by the department.
15 The operative date of this paragraph is the operative date of
16 former section 410A(d)(2) of the act of May 17, 1921
17 (P.L.682, No.284), known as The Insurance Company Law of
18 1921, and is not later than January 1, 1966.

19 (3) This paragraph does not apply to industrial policies
20 issued on or after the operative date of subsection (f). In
21 the case of industrial policies issued on or after the
22 operative date of this paragraph, all adjusted premiums and
23 present values referred to in this section shall be
24 calculated on the basis of the Commissioners 1961 Standard
25 Industrial Mortality Table and the rate of interest specified
26 in the policy for calculating cash surrender values and paid-
27 up nonforfeiture benefits. This rate of interest shall not
28 exceed 3.5% a year except that a rate of interest not
29 exceeding 4% a year may be used for policies issued on or
30 after June 23, 1976, and prior to July 3, 1980. A rate of

1 interest not exceeding 5.5% a year or such higher rate of
2 interest as may be approved by the department may be used for
3 policies issued on or after July 3, 1980. In calculating the
4 present value of any paid-up term insurance with accompanying
5 pure endowment, if any, offered as a nonforfeiture benefit,
6 the rates of mortality assumed may be not more than those
7 shown in the Commissioners 1961 Industrial Extended Term
8 Insurance Table. For insurance issued on a substandard basis,
9 the calculation of any such adjusted premiums and present
10 values may be based on such other table of mortality as
11 specified by the company and approved by the department. The
12 operative date of this paragraph is the operative date of
13 former section 410A(d)(3) of The Insurance Company Law of
14 1921 and is not later than January 1, 1970.

15 (f) Adjusted premiums for recent policies.--

16 (1) This subsection applies to all policies issued on or
17 after the operative date of this subsection as defined in
18 paragraph (11). Except as provided in subsection (c)(2) and
19 in paragraph (7) of this subsection, the adjusted premiums
20 for any policy shall be calculated on an annual basis and
21 shall be a uniform percentage of the respective premiums
22 specified in the policy for each policy year, excluding any
23 extra premiums charged because of impairments or special
24 hazards and also excluding any uniform annual contract charge
25 or policy fee specified in the policy in a statement of the
26 method to be used in calculating the cash surrender values
27 and paid-up nonforfeiture benefits. The present value, at the
28 date of issue of the policy, of all adjusted premiums shall
29 be equal to the sum of:

30 (i) the then present value of the future guaranteed

1 benefits provided for by the policy;

2 (ii) one percent of either the amount of insurance,
3 if the insurance be uniform in amount, or the average
4 amount of insurance at the beginning of each of the first
5 ten policy years; and

6 (iii) one hundred twenty-five percent of the
7 nonforfeiture net level premium as defined in paragraph
8 (2).

9 However, in applying the percentage specified in subparagraph
10 (iii) no nonforfeiture net level premium shall be deemed to
11 exceed 4% of either the amount of insurance, if the insurance
12 is uniform in amount, or the average amount of insurance at
13 the beginning of each of the first ten policy years. The date
14 of issue of a policy for the purpose of this subsection shall
15 be the date as of which the rated age of the insured is
16 determined.

17 (2) The nonforfeiture net level premium shall be equal
18 to the present value, at the date of issue of the policy, of
19 the guaranteed benefits provided for by the policy divided by
20 the present value, at the date of issue of the policy, of an
21 annuity of one per year payable on the date of issue of the
22 policy and on each anniversary of the policy on which a
23 premium falls due.

24 (3) In the case of policies which cause on a basis
25 guaranteed in the policy unscheduled changes in benefits or
26 premiums, or which provide an option for changes in benefits
27 or premiums other than a change to a new policy, the adjusted
28 premiums and present values shall initially be calculated on
29 the assumption that future benefits and premiums do not
30 change from those stipulated at the date of issue of the

1 policy. At the time of any such change in the benefits or
2 premiums the future adjusted premiums, nonforfeiture net
3 level premiums and present values shall be recalculated on
4 the assumption that future benefits and premiums do not
5 change from those stipulated by the policy immediately after
6 the change.

7 (4) Except as otherwise provided in paragraph (7), the
8 recalculated future adjusted premiums for the policy shall be
9 such uniform percentage of the respective future premiums
10 specified in the policy for each policy year, excluding
11 amounts payable as extra premiums to cover impairments and
12 special hazards and also excluding any uniform annual
13 contract charge or policy fee specified in the policy in a
14 statement of the method to be used in calculating the cash
15 surrender values and paid-up nonforfeiture benefits, that the
16 present value, at the time of change to the newly defined
17 benefits or premiums, of all such future adjusted premiums
18 shall be equal to the excess of:

19 (i) the sum of the then present value of the then
20 future guaranteed benefits provided for by the policy and
21 any additional expense allowance; over

22 (ii) the then cash surrender value, if any, or
23 present value of any paid-up nonforfeiture benefit under
24 the policy.

25 (5) The additional expense allowance, at the time of the
26 change to the newly defined benefits or premiums, shall be
27 the sum of:

28 (i) one percent of the excess, if positive, of the
29 average amount of insurance at the beginning of each of
30 the first ten policy years subsequent to the change over

1 the average amount of insurance prior to the change at
2 the beginning of each of the first ten policy years
3 subsequent to the time of the most recent previous change
4 or, if there has been no previous change, the date of
5 issue of the policy; and

6 (ii) one hundred twenty-five percent of the
7 increase, if positive, in the nonforfeiture net level
8 premium.

9 (6) The recalculated nonforfeiture net level premium
10 shall be equal to the sum of:

11 (i) the nonforfeiture net level premium applicable
12 prior to the change times the present value of an annuity
13 of one per year payable on each anniversary of the policy
14 on or subsequent to the date of the change on which a
15 premium would have fallen due had the change not
16 occurred; and

17 (ii) the present value of the increase in future
18 guaranteed benefits provided for by the policy;
19 divided by the present value of an annuity of one a year
20 payable on each anniversary of the policy on or subsequent to
21 the date of change on which a premium falls due.

22 (7) Notwithstanding any other provisions of this
23 subsection, in the case of a policy issued on a substandard
24 basis which provides reduced graded amounts of insurance so
25 that, in each policy year, the policy has the same tabular
26 mortality cost as an otherwise similar policy issued on the
27 standard basis which provides higher uniform amounts of
28 insurance, adjusted premiums and present values for the
29 policy may be calculated as if it were issued to provide such
30 higher uniform amounts of insurance on the standard basis.

1 (8) The adjusted premiums and present values referred to
2 in this subsection for policies of ordinary insurance shall
3 be calculated on the basis of the Commissioners 1980 Standard
4 Ordinary Mortality Table or, at the election of the company
5 for any one or more specified plans of life insurance, the
6 Commissioners 1980 Standard Ordinary Mortality Table with
7 Ten-Year Select Mortality Factors. The adjusted premiums and
8 present values for policies of industrial insurance shall be
9 calculated on the basis of the Commissioners 1961 Standard
10 Industrial Mortality Table, and for policies issued in a
11 particular calendar year shall be calculated on the basis of
12 a rate of interest not exceeding the nonforfeiture interest
13 rate under paragraph (9) for policies issued in that calendar
14 year. These provisions are subject to the following:

15 (i) At the option of the company, calculations for
16 all policies issued in a particular calendar year may be
17 made on the basis of a rate of interest not exceeding the
18 nonforfeiture interest rate under paragraph (9) for
19 policies issued in the immediately preceding calendar
20 year.

21 (ii) Under any paid-up nonforfeiture benefit,
22 including any paid-up dividend additions, any cash
23 surrender value available, whether or not required by
24 subsection (b), shall be calculated on the basis of the
25 mortality table and rate of interest used in determining
26 the amount of the paid-up nonforfeiture benefit and any
27 paid-up dividend additions.

28 (iii) A company may calculate the amount of any
29 guaranteed paid-up nonforfeiture benefit including any
30 paid-up additions under the policy on the basis of an

1 interest rate no lower than that specified in the policy
2 for calculating cash surrender values.

3 (iv) In calculating the present value of any paid-up
4 term insurance with any accompanying pure endowment
5 offered as a nonforfeiture benefit, the rates of
6 mortality assumed may be not more than those in the
7 Commissioners 1980 Extended Term Insurance Table for
8 policies of ordinary insurance or in the Commissioners
9 1961 Industrial Extended Term Insurance Table for
10 policies of industrial insurance.

11 (v) For insurance issued on a substandard basis, the
12 calculation of adjusted premiums and present values may
13 be based on appropriate modifications of the tables
14 mentioned in this paragraph.

15 (vi) Any ordinary mortality tables adopted after
16 1980 by the National Association of Insurance
17 Commissioners and approved by regulation promulgated by
18 the department for use in determining the minimum
19 nonforfeiture standard, may be substituted for the
20 Commissioners 1980 Standard Ordinary Mortality Table with
21 or without Ten-Year Select Mortality Factors or for the
22 Commissioners 1980 Extended Term Insurance Table.

23 (vii) Any industrial mortality tables adopted after
24 1980 by the National Association of Insurance
25 Commissioners and approved by regulation promulgated by
26 the department for use in determining the minimum
27 nonforfeiture standard, may be substituted for the
28 Commissioners 1961 Standard Industrial Mortality Table or
29 the Commissioners 1961 Industrial Extended Term Insurance
30 Table.

1 (9) The nonforfeiture interest rate per year for any
2 policy issued in a particular calendar year shall be equal to
3 125% of the calendar year statutory valuation interest rate
4 for the policy under section 703(c) (relating to computation
5 of reserves on recent policies), rounded to the nearest
6 0.25%.

7 (10) Notwithstanding any other provision in this title
8 to the contrary, any refiling of nonforfeiture values or
9 their methods of computation for any previously approved
10 policy form which involves only a change in the interest rate
11 or mortality table used to compute nonforfeiture values shall
12 not require refiling of any other provisions of that policy
13 form.

14 (11) Any company may file with the department a written
15 notice of its election to comply with the provisions of this
16 subsection after a specified date before January 1, 1989,
17 which shall be the operative date of this subsection for the
18 company. If a company makes no such election, the operative
19 date of this subsection for the company shall be January 1,
20 1989.

21 (g) Special approved methods of determination.--In the case
22 of any plan of life insurance which provides for future premium
23 determination, the amounts of which are to be determined by the
24 insurance company based on then estimates of future experience,
25 or in the case of any plan of life insurance which is of such a
26 nature that minimum values cannot be determined by the methods
27 described in subsections (b), (c), (d), (e) and (f), then:

28 (1) The company shall satisfy the department that the
29 benefits provided under the plan are substantially as
30 favorable to policyholders and insureds as the minimum

1 benefits otherwise required by subsections (b), (c), (d), (e)
2 and (f).

3 (2) The company shall satisfy the department that the
4 benefits and the pattern of premiums of that plan are not
5 such as to mislead prospective policyholders or insureds.

6 (3) The cash surrender values and paid-up nonforfeiture
7 benefits provided by the plan shall not be less than the
8 minimum values and benefits required for the plan computed by
9 a method consistent with the principles of this section, as
10 determined by regulations promulgated by the department.

11 (h) Default on premiums not due on anniversary date.--Any
12 cash surrender value and any paid-up nonforfeiture benefit,
13 available under the policy in the event of default in a premium
14 payment due at any time other than on the policy anniversary,
15 shall be calculated with allowance for the lapse of time and the
16 payment of fractional premiums beyond the beginning of the
17 policy year in which the default occurs. All values referred to
18 in subsections (c), (d), (e) and (f) may be calculated upon the
19 assumption that any death benefit is payable at the end of the
20 policy year of death.

21 (i) Progression of cash surrender values.--

22 (1) This subsection applies to all policies issued on or
23 after January 1, 1985. Any cash surrender value available
24 under the policy in the event of default in a premium payment
25 due on any policy anniversary shall be in an amount which
26 does not differ by more than 0.2% of either the amount of
27 insurance, if the insurance be uniform in amount, or the
28 average amount of insurance at the beginning of each of the
29 first ten policy years, from the sum of:

30 (i) the greater of zero and the basic cash value

1 under paragraph (2); and

2 (ii) the present value of any existing paid-up
3 additions less the amount of any indebtedness to the
4 company under the policy.

5 (2) The basic cash value shall be equal to the present
6 value, on the policy anniversary, of the future guaranteed
7 benefits which would have been provided for by the policy,
8 excluding any existing paid-up additions and before deduction
9 of any indebtedness to the company, if there had been no
10 default, less the then present value of the nonforfeiture
11 factors corresponding to premiums which would have fallen due
12 on and after the anniversary. The effect on the basic cash
13 value of supplemental life insurance or annuity benefits or
14 of family coverage, as described in subsection (c) or (e),
15 whichever is applicable, shall be the same as the effect
16 under subsection (c) or (e), whichever is applicable, on the
17 cash surrender value under that subsection.

18 (3) The nonforfeiture factor for each policy year shall
19 be an amount equal to a percentage of the adjusted premium
20 for the policy year, under subsection (e) or (f), whichever
21 is applicable. Except as is required by paragraph (4), this
22 percentage:

23 (i) shall be the same percentage for each policy
24 year between the second policy anniversary and the later
25 of:

26 (A) the fifth policy anniversary; or

27 (B) the first policy anniversary at which there
28 is available under the policy a cash surrender value
29 in an amount, before including any paid-up additions
30 and before deducting any indebtedness, of at least

1 0.2% of either the amount of insurance, if the
2 insurance is uniform in amount, or the average amount
3 of insurance at the beginning of each of the first
4 ten policy years; and

5 (ii) shall be such that no percentage after the
6 later of the policy anniversaries specified in
7 subparagraph (i) may apply to fewer than five consecutive
8 policy years.

9 (4) The basic cash value shall not be less than the
10 value which would be obtained if the adjusted premiums for
11 the policy under subsection (e) or (f), whichever is
12 applicable, were substituted for the nonforfeiture factors in
13 the calculation of the basic cash value.

14 (5) All adjusted premiums and present values referred to
15 in this subsection shall for a particular policy be
16 calculated on the same mortality and interest bases as are
17 used in demonstrating the policy's compliance with this
18 section. The cash surrender values referred to in this
19 subsection shall include any endowment benefits provided for
20 by the policy.

21 (6) Any cash surrender value available other than in the
22 event of default in a premium payment due on a policy
23 anniversary, and the amount of any paid-up nonforfeiture
24 benefit available under the policy in the event of default in
25 a premium payment, shall be determined consistently with the
26 provisions for determining the analogous minimum amounts in
27 subsections (b), (c), (d), (e), (f), (g), (h) and (j). The
28 amounts of any cash surrender values and of any paid-up
29 nonforfeiture benefits granted in connection with additional
30 benefits such as those listed in subsection (k) shall conform

1 with the principles of this subsection.

2 (j) Paid-up additions.--The net value of any paid-up
3 additions, other than paid-up term additions, shall not be less
4 than the amounts used to provide such additions.

5 (k) Additional benefits.--Notwithstanding subsection (c),
6 additional benefits payable:

7 (1) in the event of death or dismemberment by accident
8 or accidental means;

9 (2) in the event of total and permanent disability;

10 (3) as reversionary annuity or deferred reversionary
11 annuity benefits;

12 (4) as term insurance benefits provided by a rider or
13 supplemental policy provision to which, if issued as a
14 separate policy, this section would not apply;

15 (5) as term insurance on the life of a child or on the
16 lives of children, provided in a policy on the life of a
17 parent of the child, if such term insurance expires before
18 the child reaches 26 years of age, is uniform in amount after
19 the child reaches one year of age and has not become paid-up
20 by reason of the death of a parent of the child; and

21 (6) as other policy benefits additional to life
22 insurance and endowment benefits;

23 and premiums for all such additional benefits, shall be
24 disregarded in ascertaining cash surrender values and
25 nonforfeiture benefits required by this section. These
26 additional benefits shall not be required to be included in any
27 paid-up nonforfeiture benefits.

28 (l) Exclusions.--This section does not apply to any of the
29 following:

30 (1) Reinsurance.

1 (2) Group insurance.

2 (3) Pure endowment.

3 (4) Annuity or reversionary annuity contracts.

4 (5) Term policies of uniform amount, which provide no
5 guaranteed nonforfeiture or endowment benefits, or renewal
6 thereof, of 20 years or less expiring before the insured
7 reaches 71 years of age, for which uniform premiums are
8 payable during the entire term of the policy.

9 (6) Term policies of decreasing amount, which provide no
10 guaranteed nonforfeiture or endowment benefits, on which each
11 adjusted premium, calculated as specified in subsections (e)
12 and (f), is less than the adjusted premium so calculated on a
13 term policy of uniform amount, or renewal thereof, which
14 provides no guaranteed nonforfeiture or endowment benefits,
15 issued at the same age and for the same initial amount of
16 insurance and for a term of 20 years or less expiring before
17 the insured reaches 71 years of age, for which uniform
18 premiums are payable during the entire term of the policy.

19 (7) Policies providing no guaranteed nonforfeiture or
20 endowment benefits, for which no cash surrender value or
21 present value of any paid-up nonforfeiture benefit, at the
22 beginning of any policy year, calculated as specified in
23 subsections (c), (d), (e) and (f), exceeds 2.5% of the amount
24 of insurance at the beginning of the same policy year.

25 (8) Policies delivered outside this Commonwealth through
26 an agent or other representative of the company issuing the
27 policy.

28 For the purposes of this subsection, the age at expiry for a
29 joint term life insurance policy shall be the age at expiry of
30 the oldest life.

1 (m) Operative date.--The operative date of this section is
2 the operative date of former section 410A of The Insurance
3 Company Law of 1921, and is not later than January 1, 1948, for
4 any life insurance company, except a limited life insurance
5 company.

6 § 5323. Annuity and endowment contracts.

7 (a) Uniform provisions for annuities and pure endowments.--
8 An annuity or pure endowment contract shall not be delivered in
9 this Commonwealth, except policies of industrial insurance where
10 the premiums are payable monthly or more often, and except in
11 the case of a reversionary annuity, otherwise called a
12 survivorship annuity, or an annuity contracted by an employer on
13 behalf of his employees, unless it contains in substance the
14 following provisions:

15 (1) A provision that there shall be a grace period,
16 either of 30 days or of one month, within which any
17 stipulated payment to the company falling due after the first
18 year may be made, subject, at the option of the company, to
19 an interest charge thereon at a rate to be specified in the
20 contract, but not exceeding 8% a year, for the grace period
21 elapsing before payment, during which grace period the
22 contract shall continue in full force; that if a claim arises
23 under the contract on account of death during the grace
24 period before any overdue payment or deferred payments of the
25 current year are made, the amount of the payments, with
26 interest on any overdue payments, may be deducted from any
27 amount payable under the contract in settlement. If the
28 contract contains a loan provision, the rate of interest for
29 contracts issued prior to April 8, 1982, may not exceed 8% a
30 year.

1 (2) If statements, other than those relating to age and
2 identity, are required as a condition of issuing the
3 contract, a provision that the contract shall be
4 incontestable after it has been in force during the lifetime
5 of the person or each of the persons as to whom such
6 statements are required for a period of two years from its
7 date of issue, except where stipulated payments to the
8 company have not been made, and except for violation of the
9 conditions of the contract relating to military or naval
10 service in time of war. At the option of the company,
11 provisions relative to benefits in the event of total and
12 permanent disability and relative to insurance specifically
13 against death by accident may also be excepted.

14 (3) A provision that the contract constitutes the entire
15 contract between the parties. If the company desires to make
16 the application a part of the contract, it may do so, if a
17 copy of the application is endorsed upon or attached to the
18 contract when issued; in this case, the contract shall
19 contain a provision that the insurance contract and the
20 application constitute the entire contract between the
21 parties.

22 (4) A provision that, if the age of any of the persons
23 upon whose lives the contract is based has been misstated,
24 the amount payable under the contract shall be that which the
25 stipulated payments to the company would have purchased at
26 the correct age. Any overpayment by the company on account of
27 misstatement of age shall, with interest thereon at a rate to
28 be specified in the contract but not exceeding 6% a year, be
29 charged against the current or next succeeding payment to be
30 made by the company under the contract.

1 (5) If the contract is participating, a provision that
2 the divisible surplus shall be apportioned annually, and
3 dividends shall be payable in cash or shall be applicable to
4 any stipulated payment to the company under the contract.

5 (6) A provision specifying the options available upon
6 cessation of payment of consideration under the contract.

7 (i) In the case of contracts issued prior to July 3,
8 1980, the provision shall specify that, if the contract,
9 after having been in force for three full years, shall by
10 its terms lapse or become forfeited because any
11 stipulated payment to the company has not been made, the
12 reserve on the contract, computed according to the
13 standard adopted by the company under Chapter 7 (relating
14 to reserve liability) shall, after deducting 20% of the
15 entire reserve and any indebtedness to the company under
16 the contract, be applied as a net single payment
17 according to that standard for the purchase of a paid-up
18 annuity or pure endowment contract, which may be
19 nonparticipating and which shall be payable by the
20 company under the same terms and conditions, except as to
21 the amount of the original contract. A company may
22 provide, in lieu of the paid-up values, for a paid-up
23 annuity or pure endowment contract in an amount bearing
24 the same proportion to the original annuity or pure
25 endowment contract as the number of stipulated payments
26 made to the company bears to the total number of
27 stipulated payments required to be made to the company
28 under the contract. If there is any indebtedness to the
29 company under the contract, the amount of the paid-up
30 annuity or pure endowment shall be reduced by an amount

1 bearing the same proportion to the paid-up annuity or
2 pure endowment as the indebtedness bears to the reserve
3 on the paid-up annuity or pure endowment, computed
4 according to the standard adopted by the company under
5 Subchapter A of Chapter 7.

6 (ii) In the case of contracts issued on or after
7 July 3, 1980, the provisions shall be in accordance with
8 section 5324 (relating to standard nonforfeiture law for
9 individual deferred annuities).

10 (7) A provision that the contract may be reinstated at
11 any time within one year from the date of default in making
12 stipulated payments to the company, if all overdue stipulated
13 payments are made with interest thereon at a rate to be
14 specified in the contract, but not exceeding 8% a year, and
15 any indebtedness to the company on the contract is paid with
16 interest determined in accordance with section 5326 (relating
17 to policy loan interest rates), compounded annually. If
18 necessary, a company may also include a requirement of
19 evidence of insurability satisfactory to the company.

20 (b) Standard provisions for reversionary annuities.--A
21 contract for a reversionary annuity shall not be so issued or
22 delivered in this Commonwealth unless it contains in substance
23 the following provisions:

24 (1) Provisions described in subsection (a)(1), (2), (3)
25 and (5), except that under the provision described in
26 subsection (a)(1) the company may provide for an equitable
27 reduction of the amount of the annuity payments in
28 settlement, or an overdue or deferred payments in lieu of
29 providing for a deduction of the payments from any amount
30 payable upon a settlement under the contract.

1 (2) A provision that, if the age of any of the persons
2 upon whose lives the contract is based has been misstated,
3 the amount payable under the contract shall be that which the
4 stipulated payments to the company would have purchased at
5 the correct ages.

6 (3) A provision that the contract may be reinstated at
7 any time within three years from the date of default in
8 making stipulated payments to the company upon production of
9 evidence of insurability satisfactory to the company, if all
10 overdue payments are made with interest thereon at a rate to
11 be specified in the contract, but not exceeding 8% a year,
12 and any indebtedness to the company is paid with interest
13 thereon at a rate or rates determined in accordance with
14 section 5326, compounded annually.

15 (c) Alternative provisions.--Provisions of this section
16 which do not apply to nonparticipating contracts or to contracts
17 for which a single stipulated payment to the company is made
18 shall to that extent not be incorporated in the contract. Any
19 such contract may be delivered in this Commonwealth if, in the
20 opinion of the department, it contains provisions, on any one or
21 more of the requirements of this section, more favorable to the
22 holder of the contract than required by this section.

23 (d) Permitted policies.--This section does not prohibit a
24 life insurance corporation, which issues life insurance on a
25 participating basis, from issuing annuities, reversionary
26 annuities or pure endowments on a nonparticipating basis.

27 (e) Construction of contracts.--Any contract, or any
28 application, endorsement or rider form used in connection
29 therewith, issued in violation of this section shall
30 nevertheless be held valid, but shall be construed as provided

1 in this section. When any provision in the contract,
2 application, endorsement or rider is in conflict with this
3 section or with any other provision of this title or the rights,
4 duties and obligations of the company, the holder of the
5 contract and the beneficiary or annuitant thereunder shall be
6 governed by the provisions thereof. This section does not apply
7 to contracts of reinsurance or to contracts for deferred
8 annuities or reversionary annuities included in life insurance
9 policies.

10 § 5324. Standard nonforfeiture law for individual deferred
11 annuities.

12 (a) Short title of section.--This section shall be known and
13 may be cited as the Standard Nonforfeiture Law for Individual
14 Deferred Annuities.

15 (b) Applicability.--This section does not apply to any of
16 the following:

17 (1) Reinsurance.

18 (2) Group annuity purchased under a retirement plan or
19 plan of deferred compensation established or maintained by an
20 employer or an employee organization, or by both, other than
21 a plan providing individual retirement accounts or individual
22 retirement annuities under section 408 of the Internal
23 Revenue Code (Public Law 93-406, 26 U.S.C. § 408).

24 (3) Premium deposit fund.

25 (4) Variable annuity.

26 (5) Investment annuity.

27 (6) Immediate annuity.

28 (7) Deferred annuity contract after annuity payments
29 have commenced.

30 (8) Reversionary annuity.

1 (9) Contracts delivered outside this Commonwealth
2 through an agent or other representative of the company
3 issuing the contract.

4 (c) Required contract provisions.--Except as stated in
5 subsection (b), no annuity contract shall be delivered or issued
6 for delivery in this Commonwealth unless it contains in
7 substance the following provisions, or corresponding provisions
8 which in the opinion of the department are at least as favorable
9 to the contract holder, upon cessation of payment of
10 consideration under the contract:

11 (1) That upon cessation of payment of consideration
12 under a contract, the company will grant a paid-up annuity
13 benefit on a plan stipulated in the contract of the value
14 determined under subsections (e), (f), (g), (h), (i) and (k).

15 (2) If a contract provides for a lump-sum settlement at
16 maturity or at any other time, that upon surrender of the
17 contract at or prior to the commencement of any annuity
18 payments, the company will pay, in lieu of any paid-up
19 annuity benefit, a cash surrender benefit of the amount
20 determined under subsections (e), (f), (i) and (k). The
21 company shall reserve the right to defer the payment of the
22 cash surrender benefit for a period of six months after
23 demand therefor with surrender of the contract.

24 (3) A statement of the mortality table, if any, and
25 interest rates used in calculating any minimum paid-up
26 annuity, cash surrender or death benefits guaranteed under
27 the contract, together with sufficient information to
28 determine the amounts of those benefits.

29 (4) A statement that any paid-up annuity, cash surrender
30 or death benefits available under the contract are not less

1 than the minimum benefits required by any statute of the
2 state in which the contract is delivered and an explanation
3 of the manner in which the benefits are altered by the
4 existence of any additional amounts credited by the company
5 to the contract, any indebtedness to the company on the
6 contract or any prior withdrawals from or partial surrenders
7 of the contract. Notwithstanding this subsection, any
8 deferred annuity contract may provide that if no
9 consideration has been received under a contract for a period
10 of two full years and the portion of the paid-up annuity
11 benefit at maturity on the plan stipulated in the contract
12 arising from consideration paid prior to the period would be
13 less than \$20 per month, the company may at its option
14 terminate the contract by payment in cash of the then present
15 value of that portion of the paid-up annuity benefit,
16 calculated on the basis of the mortality table, if any, and
17 interest rate specified in the contract for determining the
18 paid-up annuity benefit; by this payment the company shall be
19 relieved of any further obligation under the contract.

20 (d) Minimum nonforfeiture amount.--The minimum values as
21 specified in subsections (e), (f), (g), (h), (i) and (k) of any
22 paid-up annuity, cash surrender or death benefits available
23 under an annuity contract shall be based upon minimum
24 nonforfeiture amounts determined under this subsection.

25 (1) With respect to contracts providing for flexible
26 consideration, the minimum nonforfeiture amount at any time
27 at or prior to the commencement of any annuity payments shall
28 be equal to an accumulation up to that time at a rate of
29 interest of 3% a year of percentages of the net consideration
30 (as set forth in paragraph (2)), paid prior to that time,

1 plus any existing additional amounts credited to the
2 contract, decreased by the sum of:

3 (i) any prior withdrawals from or partial surrenders
4 of the contract accumulated at a rate of interest of 3% a
5 year; and

6 (ii) any indebtedness to the company on the
7 contract, including interest due and accrued.

8 (2) The net consideration for a given contract year used
9 to define the minimum nonforfeiture amount shall be an amount
10 not less than zero and shall be equal to the corresponding
11 gross consideration credited to the contract during that
12 contract year less an annual contract charge of \$30 and less
13 a collection charge of \$1.25 a payment credited to the
14 contract during that contract year. The percentages of net
15 considerations shall be 65% of the net consideration for the
16 first contract year and 87.5% of the net consideration for
17 the second and later contract years; however, the percentage
18 shall be 65% of the portion of the total net consideration
19 for any renewal contract year which exceeds by not more than
20 two times the sum of those portions of the net consideration
21 in all prior contract years for which the percentage was 65%.

22 (3) With respect to contracts providing for fixed
23 scheduled payments of consideration, minimum nonforfeiture
24 amounts shall be calculated on the assumption that the
25 payments are made annually in advance and shall be defined as
26 for contracts with flexible consideration which is paid
27 annually with the following exceptions:

28 (i) The portion of the net consideration for the
29 first contract year to be accumulated shall be the sum of
30 65% of the net consideration for the first contract year

1 plus 22.5% of the excess of the net consideration for the
2 first contract year over the lesser of the net
3 consideration for the second or third contract years.

4 (ii) The annual contract charge shall be \$30 or 10%
5 of the gross annual consideration, whichever is less.

6 (4) With respect to contracts providing for a single
7 payment of consideration, minimum amount shall be defined as
8 for contracts with flexible consideration except that the
9 percentage of net consideration used to determine the minimum
10 nonforfeiture amount shall be equal to 90% and the net
11 consideration shall be the gross consideration less a
12 contract charge of \$75.

13 (e) Paid-up annuity benefits.--Any paid-up annuity benefit
14 available under a contract shall be such that its present value
15 on the date the annuity payments are to commence is at least
16 equal to the minimum nonforfeiture amount on that date. The
17 present value shall be computed using the mortality table, if
18 any, and the interest rate specified in the contract for
19 determining the minimum paid-up benefits guaranteed in the
20 contract.

21 (f) Cash surrender benefits.--For contracts which provide
22 cash surrender benefits, cash surrender benefits available prior
23 to maturity shall not be less than the present value as of the
24 date of surrender of that portion of the maturity value of the
25 paid-up annuity benefit which would be provided under the
26 contract at maturity arising from consideration paid prior to
27 the time of cash surrender reduced by the amount appropriate to
28 reflect any prior withdrawals from or partial surrenders of the
29 contract. The present value shall be calculated on the basis of
30 an interest rate not more than 1% higher than the interest rate

1 specified in the contract for accumulating the net consideration
2 to determine maturity value, decreased by the amount of any
3 indebtedness to the company on the contract, including interest
4 due and accrued, and increased by any existing additional
5 amounts credited by the company to the contract. The cash
6 surrender benefit shall not be less than the minimum
7 nonforfeiture amount at that time. The death benefit under such
8 contracts shall be at least equal to the cash surrender benefit.

9 (g) Contracts without cash surrender benefits.--For
10 contracts which do not provide cash surrender benefits, the
11 present value of any paid-up annuity benefit available as a
12 nonforfeiture option at any time prior to maturity shall not be
13 less than the present value of that portion of the maturity
14 value of the paid-up annuity benefit provided under the contract
15 arising from consideration paid prior to the time the contract
16 is surrendered in exchange for, or changed to, a deferred paid-
17 up annuity. Subject to subsection (e), the present value shall
18 be calculated for the period prior to that maturity date on the
19 basis of the interest rate specified in the contract for
20 accumulating the net consideration to determine the maturity
21 value, and increased by any existing additional amount credited
22 by the company to the contract.

23 (h) Contracts limiting death benefits.--For contracts which
24 do not provide any death benefits prior to the commencement of
25 any annuity payments, the present values shall be calculated
26 subject to subsection (e), on the basis of the interest rate and
27 the mortality table specified in the contract for determining
28 the maturity value of the paid-up annuity benefit.

29 (i) Maturity date.--For the purpose of determining the
30 benefits calculated under subsections (f), (g) and (h), in the

1 case of annuity contracts under which an election may be made to
2 have annuity payments commence at optional maturity dates, the
3 maturity date shall be deemed to be the latest date for which
4 election shall be permitted by the contract, but shall not be
5 deemed to be later than the anniversary of the contract next
6 following the 70th birthday of the annuitant or the 10th
7 anniversary of the contract, whichever is later.

8 (j) Disclosure of omitted benefits.--Any contract which does
9 not provide cash surrender benefits or does not provide death
10 benefits at least equal to the minimum nonforfeiture amount
11 prior to the commencement of any annuity payments shall include
12 a statement in a prominent place in the contract that such
13 benefits are not provided.

14 (k) Calculation factors.--Any paid-up annuity, cash
15 surrender or death benefit available at any time, other than on
16 the contract anniversary under any contract with fixed scheduled
17 payments of consideration, shall be calculated with allowance
18 for the lapse of time and the payment of any scheduled
19 consideration beyond the beginning of the contract year in which
20 cessation of payment of consideration under the contract occurs.

21 (l) Contract including life insurance benefits.--For any
22 contract which provides, within the same contract by rider or
23 supplemental contract provision, both annuity benefits and life
24 insurance benefits that are in excess of the greater of cash
25 surrender benefits or a return of the gross considerations with
26 interest, the minimum nonforfeiture benefits shall be equal to
27 the sum of the minimum nonforfeiture benefits for the annuity
28 portion and the minimum nonforfeiture benefits for the life
29 insurance portion computed as if each portion were a separate
30 contract.

1 (m) Additional benefits.--Notwithstanding subsections (e),
2 (f), (g), (h), (i) and (k), additional benefits payable in the
3 event of total and permanent disability, as reversionary annuity
4 or deferred reversionary annuity benefits or as other policy
5 benefits additional to life insurance, endowment and annuity
6 benefits, and consideration for all such additional benefits,
7 shall be disregarded in ascertaining the minimum nonforfeiture
8 amounts, paid-up annuity, cash surrender and death benefits that
9 may be required by this section. The inclusion of these
10 additional benefits shall not be required in any paid-up
11 benefits, unless such additional benefits separately would
12 require minimum nonforfeiture amounts, paid-up annuity, cash
13 surrender and death benefits.

14 § 5325. Notice of right to examine policies.

15 (a) Life and endowment policies.--A policy of individual
16 life insurance or endowment insurance shall not be delivered in
17 this Commonwealth unless it has prominently printed on the first
18 page or attached a notice stating in substance that the
19 policyholder shall be permitted to return the policy within at
20 least ten days of its delivery and to have the premium paid
21 refunded, if after examination of the policy, the policyholder
22 is not satisfied with it for any reason.

23 (b) Annuity or pure endowment contracts.--An individual
24 fixed dollar annuity or pure endowment contract shall not be
25 delivered in this Commonwealth unless it has prominently printed
26 on the first page or attached a notice stating in substance that
27 the policyholder shall be permitted to return the policy within
28 at least ten days of its delivery and to have the stipulated
29 payment or premium paid refunded if, after examination of the
30 contract, the contractholder is not satisfied with it for any

1 reason.

2 (c) Individual variable annuities.--An individual variable
3 annuity contract shall not be entered into in this Commonwealth
4 unless it has prominently printed on the first page or attached
5 a notice stating in substance that the contractholder shall be
6 permitted to return the contract within at least ten days of its
7 delivery if, after examination of the contract, the
8 contractholder is not satisfied with it for any reason and that,
9 if the contract is returned, the insurer will pay to the
10 contractholder an amount equal to the sum of:

11 (1) the difference between the premiums paid including
12 any contract fees or other charges and the amounts, if any,
13 allocated to any separate accounts under the contract; and

14 (2) the cash value of the contract or, if the contract
15 does not have a cash value, the reserve for the contract, on
16 the date of surrender attributable to the amounts so
17 allocated.

18 (d) Returned policies or contracts.--If a policyholder or
19 contractholder returns the contract, pursuant to the notice
20 required under this section, to the insurer at its home or
21 branch office or to the agent through whom it was purchased, it
22 shall be void from the beginning, and the parties shall be in
23 the same position as if no policy or contract had been entered
24 into.

25 § 5326. Policy loan interest rates.

26 (a) Statement of purpose.--The purpose of this section is to
27 permit and set guidelines for companies to include in life
28 insurance policies and annuity contracts containing a loan
29 provision, a provision for periodic adjustment of policy loan
30 interest rates.

1 (b) Definitions.--For the purposes of this section:

2 (1) The rate of interest on policy loans includes the
3 interest rate charged on reinstatement of policy loans for
4 the period during and after any lapse of a policy.

5 (2) The term "policy loan" includes any premium loan
6 made under a policy to pay one or more premiums that were not
7 paid to the company as they fell due.

8 (3) The term "policyholder" includes the owner of the
9 policy or the person designated to pay premiums as shown on
10 the records of the company.

11 (4) The term "policy" includes certificates issued by a
12 fraternal benefit society and annuity contracts which provide
13 for policy loans.

14 (5) The term "published monthly average" means Moody's
15 Corporate Bond Yield Average - Monthly Average Corporates as
16 published by Moody's Investors Service, Inc. or any successor
17 thereto, or if Moody's Corporate Bond Yield Average - Monthly
18 Average Corporates is no longer published, a substantially
19 similar average established by regulation promulgated by the
20 department.

21 (c) Provisions and disclosures.--

22 (1) Policies providing for policy loan interest rates
23 shall have:

24 (i) a provision permitting a maximum interest rate
25 of not more than 8% a year; or

26 (ii) a provision permitting an adjustable maximum
27 interest rate established from time to time by the
28 company as permitted by law.

29 (2) The rate of interest charged on a policy loan made
30 under paragraph (1)(ii) shall not exceed the higher of the

1 following:

2 (i) the published monthly average for the calendar
3 month ending two months before the date on which the rate
4 is determined; or

5 (ii) the rate used to compute the cash surrender
6 values under the policy during the applicable period plus
7 1% a year.

8 (3) If the maximum rate of interest is determined under
9 paragraph (1)(ii), the policy shall contain a provision
10 setting forth the frequency at which the rate is to be
11 determined for that policy.

12 (4) The maximum rate for each policy shall be determined
13 at regular intervals at least once every 12 months, but not
14 more frequently than once in any three-month period. At the
15 intervals specified in the policy:

16 (i) The rate being charged may be increased whenever
17 such increase as determined under paragraph (2) would
18 increase that rate by 0.5% a year or more.

19 (ii) The rate being charged shall be reduced
20 whenever such reduction as determined under paragraph (2)
21 would decrease that rate by 0.5% a year or more.

22 (5) The company shall:

23 (i) Notify the policyholder at the time a cash loan
24 is made of the initial rate of interest on the loan.

25 (ii) Notify the policyholder with respect to premium
26 loans of the initial rate of interest on the loan as soon
27 as it is reasonably practical to do so after making the
28 initial loan. Notice need not be given to the
29 policyholder when a further premium loan is added, except
30 as provided in subparagraph (iii).

1 (iii) Send to policyholders with loans reasonable
2 advance notice of any increase in the rate.

3 (iv) Include in the notices required above the
4 substance of the pertinent provisions of paragraphs (1)
5 and (3).

6 (6) The loan value of the policy shall be determined as
7 provided in section 5321(8) (relating to uniform policy
8 provisions).

9 (7) A policy shall not terminate in a policy year as the
10 sole result of change in the interest rate during that policy
11 year, and the company shall maintain coverage during that
12 policy year until the time at which it would otherwise have
13 terminated if there had been no change during that policy
14 year.

15 (8) The substance of the pertinent provisions of
16 paragraphs (1) and (3) shall be set forth in the policies to
17 which they apply.

18 (9) No other statute applies to policy loan interest
19 rates unless made specifically applicable to such rates.

20 (d) Applicability.--This section does not apply to any
21 insurance contract issued before April 8, 1982, unless the
22 policyholder agrees in writing to its applicability.

23 § 5327. Prohibited policy provisions.

24 A policy of life insurance shall not be delivered in this
25 Commonwealth, except policies of industrial insurance where the
26 premiums are payable monthly or more often, if it contains any
27 of the following provisions:

28 (1) Any provision for forfeiture of the policy for
29 failure to repay any loan on the policy or to pay interest on
30 the loan, while the total indebtedness on the policy is less

1 than the cash value thereof. In ascertaining the indebtedness
2 due upon the policy loan, the interest, if not paid when due,
3 shall be added to the principal of the loan, and shall bear
4 interest at the rate specified in the note or loan agreement.

5 (2) Any provision limiting the time within which any
6 action at law or equity may be commenced to less than two
7 years after the cause of action accrues.

8 (3) Any provision by which the policy purports to be
9 issued or to take effect more than six months before the
10 original application for the insurance was made.

11 (4) Any provision for a mode of settlement at maturity
12 of less value than the amount insured on the face of the
13 policy, plus any dividend additions, less the indebtedness to
14 the company on the policy, and less any premiums that may be
15 deducted by the terms of the policy.

16 § 5328. Medical examinations.

17 In any case where the medical examiner or physician acting as
18 such, or the agent of the insurer recording the answers of the
19 applicant where a medical examination is waived, of any
20 insurance company doing business in this Commonwealth issues a
21 certificate of health, declares the applicant a fit subject for
22 insurance or so reports to the company under its rules and
23 regulations, the company shall thereby be estopped from setting
24 up in defense of an action on the policy or certificate issued
25 to the insured, that the insured was not in the condition of
26 health required by the policy or certificate or by the company
27 issuing the same at the time of the medical examination, or the
28 recording of the answers of the applicant where a medical
29 examination is waived, unless the policy or certificate is
30 procured by means of fraud, deceit or misrepresentation of or on

1 behalf of the insured.

2 § 5329. Insurance on the life of another person.

3 (a) General rule.--Except as provided in this section, a
4 policy of life insurance shall not be delivered in this
5 Commonwealth except upon the application of the person insured.
6 A person liable for the support of a child may take out a policy
7 of insurance on the child. Individuals, partnerships,
8 associations and corporations may insure the lives and health of
9 officers, directors, principals, partners and employees without
10 signing a personal application.

11 (b) Insurable interest.--Any individual may insure his own
12 life for the benefit of any person, but no person shall cause to
13 be insured the life of another, unless the beneficiary named in
14 the life insurance policy or contract, whether himself or a
15 third person, has an insurable interest in the life of the
16 insured. If a policy of life insurance has been issued in
17 conformity with this section, a transfer of the policy or any
18 interest thereunder shall not be invalid by reason of a lack of
19 insurable interest of the transferee in the life of the insured
20 or the payment of premiums thereafter by the transferee. As used
21 in this section the term "insurable interest" means:

22 (1) In the case of persons related by blood or law, an
23 interest engendered by love and affection.

24 (2) In the case of other persons, a lawful economic
25 interest in having the life of the insured continue, as
26 distinguished from an interest which would arise only by the
27 death of the insured.

28 § 5330. Statements by prospective insured.

29 All statements made by the applicant for an annuity or pure
30 endowment contract, or statements made by the insured or on his

1 behalf in the negotiation for a policy or certificate of life,
2 endowment, accident or health insurance, or any reinstatement
3 thereof issued by any insurance entity, fraternal benefit
4 society, beneficial society doing business in this Commonwealth,
5 shall be deemed, in the absence of fraud, to be representations
6 and not warranties.

7 § 5331. Insurance proceeds.

8 (a) Retention by insurer.--Whenever, under the terms of any
9 annuity or policy of life insurance issued by any domestic or
10 foreign stock or mutual life insurance company doing business in
11 this Commonwealth, the proceeds are retained by the company at
12 maturity or otherwise, the company shall not be required to
13 segregate these funds, but may hold the funds as part of its
14 general corporate funds.

15 (b) Limitations on use by insureds.--A person entitled to
16 any part of the proceeds, or any installment of interest due or
17 to become due thereon, shall not be permitted to commute,
18 anticipate, encumber, alienate or assign them in whole or in
19 part, if permission is expressly withheld by the terms of the
20 policy.

21 § 5332. (Reserved).

22 § 5333. Certain life, health and accident companies.

23 Companies incorporated under the provisions of the former act
24 of April 29, 1874 (P.L.73, No.32), relating to life, health and
25 accident insurance, may write life, health and accident
26 insurance of every kind permitted under this title, in or
27 outside this Commonwealth.

28 § 5334. Exchange, alteration and conversion of policies.

29 (a) General rule.--Any life insurance company may, at the
30 request of a policyholder, exchange, alter or convert any policy

1 of life or endowment insurance, annuity policy contract, or any
2 other policy benefits issued by it, for or into any policy which
3 conforms with the law in force on the date of the original
4 policy, if the rewritten policy is by its terms made effective
5 as of that date, or which conforms with the law in force on a
6 subsequent date, if the rewritten policy is by its terms made
7 effective on the subsequent date.

8 (b) Retroactive change.--If the rewritten policy is made
9 effective as of a date earlier than the date on which the
10 exchange, alteration or conversion occurs:

11 (1) the rewritten policy, if evidence of insurability is
12 required in conjunction with an exchange, alteration or
13 conversion to a policy on a plan requiring a lower premium
14 rate or to a policy to which benefits or features are added
15 differing from those in the original policy, may provide that
16 the date on which the transaction pursuant to this section
17 occurs shall be used in determining the applicability of an
18 incontestability clause in the rewritten policy to the right
19 of the company to contest the transaction, or in determining
20 the applicability of a clause in the rewritten policy
21 limiting liability in the event of suicide of the insured;
22 and

23 (2) the amount of insurance under the rewritten policy
24 shall not exceed the amount of insurance under the original
25 policy, or the amount of insurance which the premium paid for
26 the original policy would have purchased if the rewritten
27 policy had been originally applied for, whichever amount is
28 the greater.

29 (c) Applicability of other sections.--Sections 3582
30 (relating to rebates and inducements) and 5327(3) (relating to

1 prohibited policy provisions) do not prohibit transactions
2 pursuant to this section.

3 § 5335. Penalty for misrepresentation.

4 (a) Criminal penalty.--Any agent of a stock or mutual life
5 insurance company, physician or other person who knowingly
6 makes, directly or indirectly, any misrepresentation or false
7 statement for the purpose of securing, from any stock or mutual
8 life insurance company, a policy of insurance upon his own life
9 or the life of any other person, commits a misdemeanor of the
10 third degree.

11 (b) Civil penalties.--Upon satisfactory evidence of
12 violation of subsection (a) by any agent of any insurance entity
13 or any insurance broker, the department may do any or all of the
14 following:

15 (1) Suspend or revoke the license of the offending agent
16 or broker.

17 (2) Refuse, for a period of not to exceed one year, to
18 issue a new license to the offending agent or broker.

19 (3) Impose a penalty of not more than \$1,000 for each
20 violation.

21 SUBCHAPTER C

22 CONVERSION OF STOCK COMPANIES INTO MUTUAL COMPANIES

23 Sec.

24 5341. Power to effect conversion.

25 5342. Approval of plan of conversion.

26 5343. Filing of plan.

27 5344. Rights of dissenters.

28 5345. Completion of conversion.

29 § 5341. Power to effect conversion.

30 Any domestic corporation with capital stock transacting the

1 business of life insurance on the mutual plan of any domestic
2 life insurance corporation having capital stock may acquire its
3 own shares of the capital stock for the benefit of its
4 policyholders and convert the corporation into a mutual life
5 insurance corporation as provided in this subchapter.

6 § 5342. Approval of plan of conversion.

7 (a) General rule.--The corporation may carry out a plan for
8 the acquisition of the shares of its capital stock for the
9 purposes of conversion into a mutual life insurance corporation.
10 The plan shall become effective if it is adopted under the
11 procedure set forth in this section.

12 (b) Approval by directors.--The plan shall be adopted by a
13 majority of the entire number of the directors of the
14 corporation.

15 (c) Approval by department.--The plan shall be submitted for
16 approval to the department.

17 (d) Approval by shareholders.--The plan shall be approved by
18 vote of the stockholders of the corporation, representing a
19 majority in amount of the entire capital stock of the
20 corporation, at a special meeting of stockholders called for the
21 purpose. Notice of the time, place and object of the meeting
22 shall be given to the stockholders by publication, once a week
23 for three successive weeks before the meeting, in at least two
24 daily or weekly newspapers and in the legal periodical
25 designated by the rules of the court for the publication of
26 legal notices, published in the municipality where the
27 corporation has its principal office. At the meeting a vote of
28 the stockholders shall be taken on the plan. The vote shall be
29 conducted by three judges, who shall be stockholders of the
30 corporation, appointed by the board of directors to hold the

1 vote. If any judge is absent, the judges present shall appoint a
2 replacement. The judges shall swear that they will conduct the
3 vote according to law and to the best of their ability. The
4 corporation shall furnish the judges at the meeting with a
5 statement of the amount of its capital stock with the names of
6 the persons holding the stock and the number of shares held by
7 each, which shall be signed and sworn to by one of the chief
8 officers of the corporation. The stockholders may vote in person
9 or by proxy, and all votes shall be cast by ballot. Each share
10 of stock shall entitle its holder to one vote. The judges shall
11 decide upon the qualifications of voters, count the number of
12 shares voted for and against the plan and declare whether the
13 persons holding a majority in amount of capital stock of the
14 corporation have approved or disapproved the plan. The judges
15 shall prepare triplicate returns of the vote, stating the number
16 of shares of stock that voted for and against the plan, and
17 subscribe and deliver the returns to one of the chief officers
18 of the corporation. Each ballot shall have endorsed on it the
19 number of shares represented thereby, but no share or shares
20 transferred within 21 days shall entitle its holder to vote at
21 the meeting.

22 (e) Approval by policyholders.--The plan shall be approved
23 by a majority vote of the policyholders of the corporation whose
24 insurance is in force, voting at a meeting called for the
25 purpose. Notice of the time, place and object of the meeting
26 shall be given to the policyholders by publication, once a week
27 for three successive weeks before the meeting, in at least two
28 daily or weekly newspapers and in the legal periodical
29 designated by the rules of the court for the publication of
30 legal notices, published in the municipality where the

1 corporation has its principal office, and in at least one daily
2 or weekly newspaper published in the capital city of each state
3 in which the corporation does business. At this meeting, a vote
4 of the policyholders shall be taken on the plan. The vote shall
5 be conducted by three judges, who shall be the policyholders of
6 the corporation, appointed by the department to hold the
7 election. If any judge is absent, the judges present shall
8 appoint a replacement. The judges shall swear that they will
9 conduct the vote according to law and to the best of their
10 ability. The corporation shall supply the judges with such
11 books, records and papers of the corporation as they may request
12 in order to assist them in the proper conduct of the meeting.
13 All votes cast shall be cast by ballot. Each policyholder may
14 cast one vote in person or by proxy, but no proxy shall be
15 received or entitle the holder to vote unless it bears the date
16 or has been executed within two months next preceding the vote.
17 The judges shall decide upon the qualifications of voters, count
18 the number of votes cast for and against the plan, and declare
19 whether a majority of policyholders voting at the meeting have
20 approved or disapproved the plan. The judges shall prepare
21 triplicate returns of the vote, stating the number of
22 policyholders who voted for and against the plan, and subscribe
23 and deliver the returns to one of the chief officers of the
24 corporation.

25 § 5343. Filing of plan.

26 The corporation shall, within 30 days after the plan is
27 adopted and approved under section 5342 (relating to approval of
28 plan of conversion), file with the Secretary of the Commonwealth
29 and with the department:

30 (1) A copy of the plan.

1 (2) A copy of the resolution of the directors adopting
2 the plan.

3 (3) One of the copies of the return of the meeting of
4 the stockholders.

5 (4) One of the copies of the return of the meeting of
6 the policyholders.

7 This filing shall constitute notice to all interested parties of
8 the adoption and approval of the plan.

9 § 5344. Rights of dissenters.

10 (a) Petition for appraisal.--Any stockholder of the
11 corporation who does not consent to the plan may, within 30 days
12 from the filing of the papers under section 5343 (relating to
13 filing of plan), petition the court in the county where the
14 principal office of the corporation is located to appoint an
15 assessor to appraise the shares of stock of the stockholder in
16 the corporation. If the stockholder fails to petition for the
17 appointment of an assessor within the 30-day period, the
18 corporation may do so. Upon the filing of the petition, the
19 court shall direct such notice to be given as the court deems
20 proper to the corporation or the stockholder as respondent. Upon
21 proof of proper notice, and upon hearing all parties in interest
22 appearing in response to the petition, the court shall appoint
23 the assessor.

24 (b) Method of appraisal.--The assessor shall appraise the
25 shares of the stockholder without regard to any appreciation or
26 depreciation in consequence of the plan.

27 (c) Effect of confirmed appraisal.--The appraisal, when
28 confirmed by the court, shall be final and conclusive. The
29 corporation shall at its election either:

30 (1) pay to the stockholder the value of the shares so

1 ascertained, at which time the stockholder shall transfer the
2 shares to the corporation; or

3 (2) deposit the value so ascertained of the shares of
4 the stockholder with the court, at which time the stockholder
5 shall cease to have any interest in the corporation and the
6 shares shall become the property of the corporation.

7 (d) Default.--If the value of the shares is not paid or
8 deposited within 30 days after the appraisal is made and
9 confirmed by the court, the appraisal shall be filed as a
10 judgment against the corporation and may be collected as a
11 judgment.

12 (e) Costs.--The cost of the court proceedings, including a
13 reasonable allowance to the assessor, shall be paid by the
14 corporation pursuant to order of court.

15 § 5345. Completion of conversion.

16 When the corporation has acquired all its shares of the
17 capital stock, the stock shall be canceled by the corporation,
18 and the cancellation shall be certified in duplicate by the
19 secretary of the corporation under the corporate seal. One of
20 the certificates shall be filed with the Secretary of the
21 Commonwealth, and the other shall be filed with the department.
22 When these certificates are filed, all rights of the
23 stockholders of the corporation to vote at any meeting of the
24 corporation or to retain any interest in the corporation or in
25 its property or assets shall cease. The corporation shall then
26 become a mutual life insurance corporation under the new
27 corporate name adopted under the plan. The Secretary of the
28 Commonwealth shall issue the corporation a signed and sealed
29 certificate, granting the corporation the use of the new
30 corporate name. The corporation shall be subject to any

1 provisions of this title applicable to the incorporation and
2 operation of mutual life insurance companies.

3 SUBCHAPTER D

4 MUTUAL LIFE INSURANCE COMPANIES

5 Sec.

6 5351. Foreign and alien companies.

7 5352. Guarantee capital subscriptions.

8 5353. Surplus or safety fund.

9 § 5351. Foreign and alien companies.

10 Foreign mutual life insurance companies may be admitted to do
11 business in this Commonwealth if they have the requisite funds
12 of a mutual life insurance company and, in the opinion of the
13 department, are in sound financial condition and have policies
14 in force upon not less than 500 lives for an aggregate amount of
15 not less than \$1,000,000. Any foreign or alien stock or mutual
16 life insurance company licensed to transact business in this
17 Commonwealth on May 17, 1921, having less capital or assets than
18 that required under this title for domestic life insurance
19 companies, may be relicensed so long as, in the opinion of the
20 department, it is in a sound financial condition and otherwise
21 complies with all requirements of law.

22 § 5352. Guarantee capital subscriptions.

23 (a) Assessments.--Every person subscribing to the guarantee
24 capital of any mutual life insurance company organized under
25 this title shall give to the company his note or obligation, in
26 such form as the bylaws of the company may prescribe, for the
27 unpaid portion of the guarantee capital so subscribed. This note
28 or obligation shall be liable to assessment as necessary by the
29 directors or trustees of the company for the successful conduct
30 of its business. These assessments may be made to meet the

1 losses, expenses, insurance reserve and other obligations of the
2 company until the whole amount of the note or obligation is
3 paid. All assessments shall be made pro rata upon the entire
4 amount of unpaid subscriptions, and, if the assessments are not
5 paid, they shall be collected by legal proceedings.

6 (b) Interest.--The subscribers to the guarantee capital of
7 any mutual life insurance company shall receive interest from
8 the company, payable semiannually at the rate, not exceeding 6%,
9 agreed upon at the time of subscribing, if the net surplus over
10 a requisite reservation for liabilities and contingencies is
11 sufficient to pay the interest. If the interest paid is less
12 than the sum originally agreed on, the interest paid shall be
13 made equal to the sum agreed on when the profits of the company
14 are sufficient.

15 (c) Retirement.--Whenever the lawful invested assets of any
16 mutual life insurance company exceed the reserve and other
17 liabilities to an amount equal to the amount of the guarantee
18 capital subscribed, the directors or trustees may retire or
19 return all or any portion of the guarantee capital to the
20 subscribers. The amount returned shall not exceed that actually
21 paid in, with the interest due and unpaid.

22 § 5353. Surplus or safety fund.

23 Any domestic mutual life insurance company transacting
24 business in this Commonwealth may establish or maintain a
25 surplus or safety fund to an amount not in excess of 10% of its
26 reserve, or \$100,000, whichever is greater, and the excess of
27 the market value of its securities over their book value. For
28 cause shown, the department may permit any corporation to
29 accumulate and maintain a surplus or safety fund in excess of
30 this limit for a prescribed period by making a ruling stating

1 its reasons and publishing the ruling in its next annual report.
2 The ruling shall be effective for one year only, but may be
3 renewed for additional periods of one year by the department.

4 SUBCHAPTER E

5 GROUP INSURANCE

6 Sec.

- 7 5361. Authorized types of group insurance.
- 8 5362. Coverage of spouse and children.
- 9 5363. Policies issued to employers or trustees.
- 10 5364. Policies issued to trustees of joint funds.
- 11 5365. Policies issued to creditors.
- 12 5366. Policies issued to employee organizations.
- 13 5367. Standard policy provisions.
- 14 5368. Notice of conversion privileges.
- 15 5369. Assignment of incidents of ownership.
- 16 5370. Existing policies.
- 17 5371. Basis of premiums.
- 18 5372. Voting power of employers.
- 19 5373. Insurance for public employees.
- 20 5374. Payment of public employee group premiums.

21 § 5361. Authorized types of group insurance.

22 (a) General rule.--A policy of group life insurance shall
23 not be delivered in this Commonwealth unless it conforms to one
24 of the following descriptions and to the requirements as to each
25 set forth in sections 5363 (relating to policies issued to
26 employers or trustees) through 5366 (relating to policies issued
27 to employee organizations):

28 (1) A policy issued to an employer or to the trustees of
29 a fund established by an employer, which employer or trustees
30 shall be deemed the policyholder, to insure the employees of

1 the employer for the benefit of persons other than the
2 employer.

3 (2) A policy issued to the trustees of a fund
4 established by two or more employers in the same industry or
5 by one or more labor unions, or by one or more employers and
6 one or more labor unions, which trustees shall be deemed the
7 policyholder, to insure employees of the employers or members
8 of the unions for the benefit of persons other than the
9 employers or the unions.

10 (3) A policy issued to a creditor, who shall be deemed
11 the policyholder, to insure debtors of the creditor.

12 (4) A policy issued to a labor union, credit union,
13 police fraternity, firemen's fraternity or teachers'
14 association or federation, which shall be deemed the
15 policyholder, to insure members thereof for the benefit of
16 persons other than the union, fraternity, association or
17 federation or any of their officials, representatives or
18 agents.

19 (5) Life insurance covering the members of any units of
20 the National Guard or Naval Militia of any state, written
21 under a policy issued to the commanding general of the
22 National Guard or commanding officer of the Naval Militia,
23 who shall be deemed to be the employer for the purposes of
24 this subchapter, the premium on which is to be paid by the
25 members of the units for the benefit of persons other than
26 the employer. When the benefits of the policy are offered to
27 all eligible members of the unit, not less than 75% of the
28 members of the unit shall be so insured.

29 (b) Exclusions.--This subchapter shall not be construed to
30 define as a group the lives covered by:

1 (1) A policy insuring only individuals related by
2 marriage, blood or legal adoption.

3 (2) A joint life policy insuring only individuals having
4 an insurable interest in the lives of each other.

5 § 5362. Coverage of spouse and children.

6 A policy issued pursuant to section 5361(a)(1), (2), (4) or
7 (5) (relating to authorized types of group insurance) may
8 include provisions for the payment by the insurer of life
9 insurance benefits upon the death of the spouse of the insured
10 employee or member, and upon the death of one or more of the
11 children of the insured dependent upon the insured for support
12 and maintenance. The insurance upon the life of the spouse shall
13 not exceed \$10,000 or one-half of the amount of insurance on the
14 life of the insured employee or member under the policy,
15 whichever is less. The insurance upon the life of each dependent
16 child shall not exceed \$5,000 or one-third of the amount of
17 insurance on the life of the insured employee or member under
18 the policy, whichever is less.

19 § 5363. Policies issued to employers or trustees.

20 A policy issued pursuant to section 5361(a)(1) (relating to
21 authorized types of group insurance) is subject to the following
22 requirements:

23 (1) The employees eligible for insurance under the
24 policy shall be all of the employees of the employer, or all
25 of any class or classes thereof determined by conditions
26 pertaining to their employment. The policy may provide that
27 the term "employees" shall include any or all of the
28 following:

29 (i) The employees of one or more subsidiary
30 corporations, and the employees, individual proprietors

1 and partners of any affiliated corporations, proprietors
2 or partnerships if the business of the employer and of
3 the affiliated corporations, proprietors or partnerships
4 is under common control through stock ownership or
5 contract.

6 (ii) The individual proprietor or partners, if the
7 employer is an individual proprietor or a partnership.

8 (iii) Retired employees.

9 (iv) In the case of a policy issued to insure
10 employees of a public body, elected or appointed
11 officials.

12 (2) The premium for the policy shall be paid by the
13 policyholder, either wholly from funds contributed by the
14 employer or partly from such funds and partly from funds
15 contributed by the insured employees. A policy may not be
16 issued on which the entire premium is to be derived from
17 funds contributed by the insured employees. A policy on which
18 part of the premium is to be derived from funds contributed
19 by the insured employees may be placed in force only if at
20 least 75% of the then eligible employees, excluding any as to
21 whom evidence of individual insurability is not satisfactory
22 to the insurer, elect to make the required contributions. A
23 policy on which none of the premium is to be derived from
24 funds contributed by the insured employees shall insure all
25 eligible employees, or all except any as to whom evidence of
26 individual insurability is not satisfactory to the insurer.

27 (3) The policy shall cover at least ten employees at the
28 date of issue.

29 (4) The amounts of insurance under the policy shall be
30 based upon a plan precluding individual selection either by

1 the employees or by the employer or trustees.

2 § 5364. Policies issued to trustees of joint funds.

3 A policy issued pursuant to section 5361(a)(2) (relating to
4 authorized types of group insurance) is subject to the following
5 requirements:

6 (1) The persons eligible for insurance shall be all of
7 the employees of the employers or all of the members of the
8 unions, or all of any class or classes thereof determined by
9 conditions pertaining to their employment to membership in
10 the unions, or to both. The policy may provide that the term
11 "employees" shall include any or all of the following:

12 (i) Retired employees.

13 (ii) The individual proprietor or partners if an
14 employer is an individual proprietor or a partnership.

15 (iii) The trustees or their employees, or both, if
16 their duties are principally connected with the
17 trusteeship.

18 (2) The premium for the policy shall be paid by the
19 trustees wholly from funds contributed by the employer or
20 employers of the insured persons, by the union or unions, or
21 by both, or partly from such funds and partly from funds
22 contributed by the insured persons. A policy on which part of
23 the premium is to be derived from funds contributed by the
24 insured persons specifically for their insurance may be
25 placed in force only if at least 75% of the then eligible
26 persons, excluding any as to whom evidence of insurability is
27 not satisfactory to the insurer, elect to make the required
28 contributions. A policy on which none of the premium is to be
29 derived from funds contributed by the insured persons
30 specifically for their insurance shall insure all eligible

1 persons, or all except any as to whom evidence of individual
2 insurability is not satisfactory to the insurer.

3 (3) The policy shall cover at date of issue at least 100
4 persons and not less than an average of five persons per
5 employer unit. If the fund is established by the members of
6 an association of employers:

7 (i) either the participating employers shall
8 constitute at date of issue at least 60% of those
9 employer members whose employees are not already covered
10 for group life insurance, or the total number of persons
11 covered at date of issue shall exceed 600; and

12 (ii) the policy shall not require that, if a
13 participating employer discontinues membership in the
14 association, the insurance of his employees shall cease
15 solely by reason of the discontinuance.

16 (4) The amounts of insurance under the policy shall be
17 based upon a plan precluding individual selection either by
18 the insured persons or by the policyholder, employers or
19 unions.

20 § 5365. Policies issued to creditors.

21 A policy issued pursuant to section 5361(a)(3) (relating to
22 authorized types of group insurance) is subject to the following
23 requirements:

24 (1) The debtors eligible for insurance under the policy
25 shall be all of the debtors of the creditor whose
26 indebtedness is repayable in installments, or all of any
27 class or classes thereof determined by conditions pertaining
28 to the indebtedness or to the purchase giving rise to the
29 indebtedness. The policy may provide that the term "debtors"
30 shall include the debtors of any subsidiary corporations, and

1 the debtors of one or more affiliated corporations,
2 proprietors or partnerships if the business of the
3 policyholder and of the affiliated corporations, proprietors
4 or partnerships is under common control through stock
5 ownership, contract or otherwise.

6 (2) The premium for the policy shall be paid by the
7 policyholder, either from the funds of the creditor, or from
8 charges collected from the insured debtors, or from both. A
9 policy on which part or all of the premium is to be derived
10 from the collection from the insured debtors of identifiable
11 charges not required of uninsured debtors shall not include
12 in any class of debtors eligible for insurance debtors under
13 obligations outstanding at its date of issue without evidence
14 of individual insurability unless at least 75% of the then
15 eligible debtors elect to pay the required charges. A policy
16 on which none of the premium is to be derived from the
17 collection of identifiable charges shall insure all eligible
18 debtors, or all except any as to whom evidence of individual
19 insurability is not satisfactory to the insurer.

20 (3) The policy may be issued only if the group of
21 eligible debtors is then receiving new entrants at the rate
22 of at least 100 persons yearly, or may reasonably be expected
23 to receive at least 100 new entrants during the first policy
24 year, and only if the policy reserves to the insurer the
25 right to require evidence of individual insurability if less
26 than 75% of the new entrants become insured.

27 (4) The amount of insurance on the life of any debtor
28 shall not exceed the amount owed by him which is repayable in
29 installments to the creditor, or \$60,000, whichever is less.

30 (5) The insurance shall be payable to the policyholder.

1 The payment shall reduce or extinguish the unpaid
2 indebtedness of the debtor to the extent of the payment.

3 § 5366. Policies issued to employee organizations.

4 A policy issued pursuant to section 5361(a)(4) (relating to
5 authorized types of group insurance) is subject to the following
6 requirements:

7 (1) The members eligible for insurance under the policy
8 shall be all of the members of the union, fraternity,
9 association or federation, or all of any class or classes
10 thereof determined by conditions pertaining to their
11 employment, or to membership in the union, fraternity,
12 association or federation, or both.

13 (2) The premium for the policy shall be paid by the
14 policyholder, either wholly from the funds of the union,
15 fraternity, association or federation, or partly from such
16 funds and partly from funds contributed by the insured
17 members specifically for their insurance. A policy may not be
18 issued on which the entire premium is to be derived from
19 funds contributed by the insured members specifically for
20 their insurance. A policy on which part of the premium is to
21 be derived from funds contributed by the insured members
22 specifically for their insurance may be placed in force only
23 if at least 75% of the then eligible members, excluding any
24 as to whom evidence of individual insurability is not
25 satisfactory to the insurer, elect to make the required
26 contributions. A policy on which none of the premium is to be
27 derived from funds contributed by the insured members
28 specifically for their insurance shall insure all eligible
29 members, or all except any as to whom evidence of individual
30 insurability is not satisfactory to the insurer.

1 (3) The policy shall cover at least 25 members at the
2 date of issue.

3 (4) The amounts of insurance under the policy shall be
4 based upon a plan precluding individual selection either by
5 the members or by the union, fraternity, association or
6 federation.

7 § 5367. Standard policy provisions.

8 (a) General rule.--A policy of group life insurance shall
9 not be delivered in this Commonwealth unless it contains in
10 substance the provisions described in subsection (c), or
11 provisions which in the opinion of the department are more
12 favorable to the persons insured, or at least as favorable to
13 the persons insured and more favorable to the policyholder.

14 (b) Exceptions.--The provisions described in subsection
15 (c)(6), (7), (8), (9) and (10) do not apply to policies issued
16 pursuant to section 5361(a)(3) (relating to authorized types of
17 group insurance). The standard provisions required for
18 individual life insurance policies do not apply to group life
19 insurance policies. If the group life insurance policy is on a
20 plan other than the term plan, it shall contain nonforfeiture
21 provisions which in the opinion of the department are equitable
22 to the insured persons and to the policyholder. This section
23 does not require that group life insurance policies contain the
24 same nonforfeiture provisions as are required for individual
25 life insurance policies.

26 (c) Mandatory provisions.--The provisions required under
27 this section are as follows:

28 (1) A provision that the policyholder is entitled to a
29 grace period of 31 days for the payment of any premium due
30 except the first; and that during the grace period the death

1 benefit coverage shall continue in force, unless the
2 policyholder has given the insurer written notice of
3 discontinuance in advance of the date of discontinuance and
4 in accordance with the terms of the policy. The policy may
5 provide that the policyholder is liable to the insurer for
6 the payment of a pro rata premium for the time the policy was
7 in force during the grace period.

8 (2) A provision that the validity of the policy shall
9 not be contested, except for nonpayment of premiums, after it
10 has been in force for two years from its date of issue; and
11 that no statement made by any person insured under the policy
12 relating to his insurability shall be used in contesting the
13 validity of the insurance with respect to which the statement
14 was made after the insurance has been in force prior to the
15 contest for a period of two years during the lifetime of the
16 person or it is not contained in a written instrument signed
17 by him.

18 (3) A provision that a copy of any application of the
19 policyholder shall be attached to the policy when issued;
20 that all statements made by the policyholder or by the
21 persons insured shall be deemed representations and not
22 warranties; and that no statement made by any person insured
23 shall be used in any contest unless a copy of the instrument
24 containing the statement was furnished to the person or his
25 beneficiary.

26 (4) A provision setting forth all conditions under which
27 the insurer reserves the right to require a person eligible
28 for insurance to furnish evidence of individual insurability
29 satisfactory to the insurer as a condition to part or all of
30 his coverage.

1 (5) A provision specifying an equitable adjustment of
2 premiums or benefits, or both, to be made if the age of a
3 person insured has been misstated, including a clear
4 statement of the method of adjustment to be used.

5 (6) A provision that any sum becoming due by reason of
6 the death of the person insured shall be payable to the
7 beneficiary designated by the person insured, subject to:

8 (i) the provisions of the policy if there is no
9 designated beneficiary, as to all or any part of that
10 sum, living at the death of the person insured; and

11 (ii) any right reserved by the insurer in the policy
12 and set forth in the certificate to pay at its option a
13 part of that sum not exceeding \$250 to any person
14 appearing to the insurer to be equitably entitled thereto
15 by reason of having incurred funeral or other expenses
16 incident to the last illness or death of the insured.

17 (7) A provision that the insurer will issue to the
18 policyholder for delivery to each person insured an
19 individual certificate setting forth a statement as to the
20 insurance protection to which he is entitled, to whom the
21 insurance benefits are payable and the rights and conditions
22 under paragraphs (8), (9) and (10).

23 (8) A provision that if the insurance, or any portion of
24 it, on a person covered under the policy ceases because of
25 termination of employment or of membership in any class
26 eligible for coverage under the policy, the person may have
27 issued to him by the insurer, without evidence of
28 insurability, an individual policy of life insurance without
29 disability or other supplementary benefits, if an application
30 for the individual policy is made, and the first premium paid

1 to the insurer within 31 days after termination. The
2 individual policy shall, at the option of the person, be on
3 any one of the forms, except term insurance, customarily
4 issued by the insurer at the age and for the amount applied
5 for. The individual policy shall be in an amount not in
6 excess of the amount of life insurance which ceases because
7 of the termination, less, in the case of a person whose
8 membership in the class or classes eligible for coverage
9 terminates but who continues in employment in another class,
10 the amount of any life insurance for which the person is or
11 becomes eligible under any other group policy within 31 days
12 after termination; however, any amount of insurance which has
13 matured on or before the date of termination as an endowment
14 payable to the person insured, whether in one sum or in
15 installments or in the form of an annuity, shall not, for the
16 purposes of this sentence, be deemed included in the amount
17 which ceases because of the termination. The premium on the
18 individual policy shall be at the insurer's customary rate
19 applicable to the form and amount of the individual policy,
20 to the class of risk to which the person then belongs, and to
21 the person's age attained on the effective date of the
22 individual policy.

23 (9) A provision that if the group policy terminates or
24 is amended so as to terminate the insurance of any class of
25 insured persons, every person insured at the date of the
26 termination whose insurance terminates and who has been so
27 insured for at least five years prior to the termination date
28 may have issued to him by the insurer an individual policy of
29 life insurance, subject to the conditions and limitations
30 provided under paragraph (8). However, the group policy may

1 provide that the amount of the individual policy shall not
2 exceed the lesser of:

3 (i) the amount of the person's life insurance
4 protection ceasing because of such termination or
5 amendment, less the amount of any life insurance for
6 which he is eligible under any group policy issued or
7 reinstated by the same or another insurer within 31 days
8 after such termination; or

9 (ii) \$2,000.

10 (10) A provision that if a person insured under the
11 group policy dies during the period within which he would
12 have been entitled to have an individual policy issued to him
13 in accordance with paragraph (8) or (9) and before the
14 individual policy becomes effective, the amount of life
15 insurance which he would have been entitled to have issued to
16 him under the individual policy shall be payable as a claim
17 under the group policy, whether or not application for the
18 individual policy or the payment of the first premium has
19 been made.

20 § 5368. Notice of conversion privileges.

21 If any individual insured under a group life insurance policy
22 delivered in this Commonwealth becomes entitled under the terms
23 of the policy to have an individual policy of life insurance
24 issued to him without evidence of insurability, subject to
25 making of application and payment of the first premium within
26 the period specified in the policy, and if the individual is not
27 given notice of the existence of this right at least 15 days
28 prior to the expiration date of the period, then the individual
29 shall have an additional period within which to exercise the
30 right. This section does not continue any insurance beyond the

1 period provided in the policy. This additional period shall
2 expire 15 days after the individual is given the notice but in
3 no event shall the additional period extend beyond 60 days after
4 the expiration date of the period provided in the policy.

5 Written notice presented to the individual or mailed by the
6 policyholder to the last known address of the individual or
7 mailed by the insurer to the last known address of the
8 individual as furnished by the policyholder shall constitute
9 notice for the purpose of this section.

10 § 5369. Assignment of incidents of ownership.

11 Notwithstanding any provision of law, a person whose life is
12 insured under any policy of group life insurance, whether or not
13 the policy is otherwise subject to this subchapter, may make an
14 assignment of all or any part of his incidents of ownership in
15 the insurance, including any right to designate a beneficiary
16 thereunder and any right to have an individual policy issued
17 upon termination either of employment or of the policy of group
18 life insurance. However, the insurer and the group policyholder
19 may prohibit or restrict such assignment by appropriate policy
20 provisions.

21 § 5370. Existing policies.

22 The provisions of this subchapter do not invalidate or
23 otherwise affect any policy or contract of group life insurance
24 in effect on September 1, 1949.

25 § 5371. Basis of premiums.

26 (a) Regulations.--The department shall promulgate
27 regulations, except with respect to group life insurance set
28 forth in sections 5361(a)(3) (relating to authorized types of
29 group insurance) and 5365 (relating to policies issued to
30 creditors) prescribing the minimum group life insurance premiums

1 to be charged for the first year of insurance, based on an
2 examination of the experience of the insurers and on reasonable
3 assumptions as to interest, mortality and expense. No such
4 regulation shall be promulgated except after hearing, of which
5 notice shall be given to all affected insurers.

6 (b) Policy provisions.--A domestic, foreign or alien life
7 insurance company shall not deliver in this Commonwealth any
8 policy of group life insurance the premium for which shall be
9 less than the premium prescribed in the regulations promulgated
10 by the department. However, any such policy may provide for a
11 readjustment of the rate based on experience at the end of the
12 first or any subsequent year of insurance, which readjustment
13 may be made retroactive for that policy year only.

14 § 5372. Voting power of employers.

15 In every group policy issued by a domestic life insurance
16 company where the employer is the policyholder under section
17 5361 (relating to authorized types of group insurance), the
18 employer, if entitled to vote at a meeting of the company, shall
19 be entitled to one vote.

20 § 5373. Insurance for public employees.

21 Any Commonwealth agency or political subdivision may make
22 contracts of insurance with any insurance company, nonprofit
23 hospitalization corporation or nonprofit medical service
24 corporation authorized to transact business in this Commonwealth
25 insuring its elected or appointed officers and employees or any
26 class thereof, or their dependents, under a policy or policies
27 of group insurance covering life, health, hospitalization,
28 medical service or accident insurance, and may contract with any
29 such company granting annuities or pensions for the pensioning
30 of the employees. For these purposes, the Commonwealth agency or

1 political subdivision may agree to pay part or all of the
2 premiums or charges for carrying those contracts and may
3 appropriate out of its treasury any money necessary to pay those
4 premiums or charges. The proper officer, agency, board or
5 commission of any political subdivision may deduct from the
6 compensation of the officer or employee such part of the premium
7 as is payable by the officer or employee and as authorized by
8 the officer or employee in writing. All contracts procured under
9 this section shall conform and be subject to all the provisions
10 of law concerning group insurance and group annuity contracts.
11 This section does not apply to cities of the third class,
12 boroughs, townships or school districts.

13 § 5374. Payment of public employee group premiums.

14 (a) Withholding.--Any officer or officers of any
15 Commonwealth agency or political subdivision, whose duty it is
16 to pay compensation to any elected or appointed officer or
17 employee, shall, upon receipt of written authorization from the
18 officer or employee so to do, withhold from the compensation any
19 premium or other charge due from the officer or employee for
20 group insurance covering life, health, hospitalization, medical,
21 osteopathic or dental service or accident insurance, pursuant to
22 any contract with any corporation or association authorized to
23 transact such business with the Commonwealth. The duty imposed
24 of making such salary deductions shall extend to any premiums or
25 other charges due under such contracts, whether made by the
26 officers or employees directly as members of a group, or made on
27 behalf of such officers or employees by the Commonwealth agency
28 or any political subdivision.

29 (b) Payment to insurer.--The deductions required to be made
30 shall be paid directly by the officer making the deductions to

1 the corporation or association entitled thereto under the
2 contract.

3 (c) Status of deductions.--A corporation or association
4 shall not have any right to any deductions under this section
5 until they are actually paid over to it by the officer making
6 the deductions. The Commonwealth agency or political subdivision
7 shall not be subject to any liability with respect to the
8 deductions, except as to the amount actually deducted.

9 (d) Revocation of authority to withhold.--Any officer or
10 employee who has authorized the making of deductions from
11 compensation under this section may revoke the authority to make
12 the deductions by delivering a written revocation to the officer
13 making the deduction at least 15 days before the revocation is
14 to take effect. Upon receipt of the revocation the officer shall
15 cease to make the deduction.

16 SUBCHAPTER F

17 INDUSTRIAL INSURANCE

18 Sec.

19 5381. Definition.

20 5382. Uniform policy provisions.

21 5383. Prohibited policy provisions.

22 5384. Notice of right to examine policies.

23 § 5381. Definition.

24 As used in this subchapter, the term "industrial insurance"
25 means life or endowment insurance:

26 (1) under which premiums are payable weekly; or

27 (2) under which premiums are payable monthly or more
28 often, other than weekly, if the face amount of insurance
29 provided in the policy is less than \$1,000.

30 § 5382. Uniform policy provisions.

1 (a) Required provisions.--A policy of industrial insurance
2 shall not be delivered in this Commonwealth unless the words
3 "industrial insurance" are printed upon the policy as part of
4 the descriptive matter and unless it contains in substance the
5 following provisions:

6 (1) A provision that the insured is entitled to a grace
7 period of four weeks within which the payment of any premium
8 after the first may be made, except that if premiums are
9 payable monthly the insured shall be entitled to a grace
10 period of one month or 30 days. During the grace period the
11 policy shall continue in full force, but if the policy
12 becomes a claim during the grace period before the overdue
13 premiums are paid, the amount of overdue premiums may be
14 deducted in any settlement under the policy.

15 (2) A provision that the policy constitutes the entire
16 contract between the parties. If the company desires to make
17 the application a part of the contract, it may do so if a
18 copy of the application is endorsed upon or attached to the
19 policy when issued; in this case the policy shall contain a
20 provision that the policy and the application constitute the
21 entire contract between the parties.

22 (3) A provision that the policy shall be incontestable
23 after it has been in force, during the lifetime of the
24 insured, two years from its date of issue, except for
25 nonpayment of premium; and that, at the option of the
26 company, provisions relating to disability benefits and those
27 granting additional insurance specifically against death by
28 accident or accidental means may also be excepted. A clause
29 in any policy of industrial life insurance providing that the
30 policy shall be incontestable after a specified period shall

1 preclude only a contest of the validity of the policy and
2 shall not preclude the assertion, at any time, of defenses
3 based upon provisions in the policy which exclude or restrict
4 coverage, whether or not such restrictions or exclusions are
5 excepted in that clause.

6 (4) A provision that, if the age of the insured or of
7 any other person whose age is considered in determining the
8 premium has been misstated, the amount payable or benefit
9 accruing under the policy shall be that which the premium
10 would have purchased at the correct age.

11 (5) A provision that the policy shall participate in the
12 surplus of the company; that the company shall annually
13 determine the portion of any divisible surplus accruing on
14 the policy; and stating the conditions under which the
15 company shall apportion the surplus to the policyholder or
16 the party entitled thereto.

17 (6) A provision for a nonforfeiture benefit and cash
18 surrender value.

19 (i) In the case of any policy issued prior to the
20 operative date of section 5322 (relating to standard
21 nonforfeiture law for life insurance), a nonforfeiture
22 benefit shall be provided in event of default in premium
23 payments after premiums have been paid for three years.
24 The nonforfeiture benefit shall be a stipulated form of
25 insurance, effective from the due date of the defaulted
26 premium, the net value of which shall not be less than
27 the reserve on the policy, exclusive of any reserves for
28 provisions:

29 (A) relating to benefits in the event of
30 specific types of disability;

1 (B) granting additional insurance specifically
2 against death by accident; and

3 (C) granting other benefits in addition to life
4 insurance;

5 at the end of the last completed quarter of the policy
6 year for which premiums have been paid, and on any
7 dividend additions to such reserve. The policy shall
8 specify the mortality table, the rate of interest and the
9 method of valuation, if other than net level premium,
10 adopted for computing the reserve, less a specified
11 maximum percentage, not greater than 2.5% of the maximum
12 face amount insured by the policy and of any dividend
13 additions thereto and less any existing indebtedness to
14 the company on or secured by the policy. The percentage
15 or other rule of calculation, stated as to permit
16 determination of the value, shall be specified for each
17 year for which required values are not included in the
18 policy. A company may, in lieu of the provision permitted
19 under this section for the deduction from the reserve of
20 the specified maximum percentage, provide that a
21 deduction of 20% of the reserve may be made, or a
22 deduction of the 2.5% of the maximum face amount insured
23 or 20% of the reserve at the option of the company. After
24 premiums have been paid for five years, the policy may be
25 surrendered to the company at its home office within four
26 weeks of the due date of the defaulted premium for a
27 specific cash value at least equal to the sum which would
28 otherwise be available for the purchase of insurance. The
29 company may defer payment of the cash value for not more
30 than six months after the application is made. If the

1 cash or other nonforfeiture value is not requested within
2 the required period, it shall be provided that a
3 stipulated form of insurance shall automatically become
4 effective.

5 (ii) In the case of any policy issued on or after
6 the operative date of section 5322, a nonforfeiture
7 benefit and cash surrender value shall be provided in
8 accordance with section 5322.

9 (7) A table showing in figures the nonforfeiture options
10 available under the policy at the end of each year upon
11 default in premium payments during the premium payment
12 period, but not to exceed the first 20 years of the policy;
13 and a provision that the company will furnish upon request an
14 extension of the table beyond the years shown in the policy.

15 (8) A provision that, if the policy is not surrendered
16 for its cash value or if the period of extended insurance has
17 not expired, the policy may be reinstated, upon written
18 application, within one year from the date of default in
19 payment of premiums, upon:

20 (i) the payment of all overdue premiums and, at the
21 option of the company, interest at a rate not to exceed
22 8% a year;

23 (ii) the payment or reinstatement of any other
24 indebtedness to the company upon the policy, and, at the
25 option of the company, interest thereon at a rate
26 determined under section 5326 (relating to policy loan
27 interest rates) compounded annually; and

28 (iii) the presentation of evidence satisfactory to
29 the company of the insurability of the insured.

30 (9) A provision that when a policy becomes a claim by

1 the death of the insured, settlement shall be made upon
2 receipt of proof of death.

3 (10) A form number and title on the face of the policy
4 clearly describing its form.

5 (b) Optional provisions.--Any industrial insurance policy
6 may be delivered in this Commonwealth which, in the opinion of
7 the department, contains provisions more favorable to the
8 policyholder than required under subsection (a). The policies of
9 a foreign or alien insurance company may contain, when delivered
10 in this Commonwealth, any provision prescribed by the law of the
11 state or foreign country under which the company is organized
12 not contrary to the provisions of subsection (a). The policies
13 of a domestic life insurance company, when delivered in any
14 other state or any foreign country, may contain any provision
15 required by the law of the state or foreign country to be
16 contained in the policies delivered therein.

17 (c) Applicability.--Any of the provisions set forth in
18 subsection (a), or parts thereof, not applicable to
19 nonparticipating policies shall to that extent not be
20 incorporated therein. The provisions of this section do not
21 apply to policies issued or granted pursuant to the
22 nonforfeiture provisions prescribed in subsection (a)(6).

23 § 5383. Prohibited policy provisions.

24 A policy of industrial insurance shall not be delivered in
25 this Commonwealth if it contains any of the following
26 provisions:

27 (1) A provision limiting the time within which any
28 action at law or in equity may be commenced to less than two
29 years after the cause of action accrues.

30 (2) A provision by which the settlement on the maturity

1 of any policy shall be of less value than the amount promised
2 on the face of the policy plus any dividend additions less
3 any indebtedness to the company on or secured by the policy,
4 and less any premium that may be deducted by the terms of the
5 policy.

6 (3) A provision deeming the agent soliciting the
7 insurance to be the agent of the person insured under the
8 policy, or making the acts or representations of that agent
9 binding upon the person so insured.

10 (4) A provision by which the company may pay the
11 proceeds of the policy at the death of the insured to any
12 person other than the beneficiary designated in the policy.
13 However, the policy may provide that, if the beneficiary does
14 not within the period stated in the policy, which shall not
15 be less than 30 days after the death of the insured, submit
16 proof of claim in the manner and form required by the policy,
17 or if there is no beneficiary designated in the policy other
18 than the estate of the insured, or if the beneficiary is a
19 minor or is not legally qualified to give a valid release or
20 dies before the insured, then the company may pay the
21 proceeds of the policy to the executor or administrator of
22 the insured, or to any relative by blood or marriage of the
23 insured appearing to the company to be equitably entitled to
24 those proceeds.

25 (5) A provision by which the company may deny liability
26 under the policy for the reason that the insured has
27 previously obtained other insurance from the same company.

28 § 5384. Notice of right to examine policies.

29 A policy of industrial insurance shall not be delivered in
30 this Commonwealth unless it has prominently printed on the first

1 page or attached a notice stating in substance that the
2 policyholder may return the policy within at least ten days of
3 its delivery and to have the premium paid refunded if, after
4 examination of the policy, the policyholder is not satisfied
5 with it for any reason. If a policyholder pursuant to this
6 notice returns the policy to the insurer at its home or branch
7 office or to the agent through whom it was purchased, it shall
8 be void from the beginning and the parties shall be in the same
9 position as if no policy had been issued.

10 SUBCHAPTER G

11 LIMITED LIFE INSURANCE COMPANIES

12 Sec.

13 5391. Definition.

14 5392. Powers of limited life insurance companies.

15 5393. Reincorporation as limited life insurance company.

16 5394. Procedure for reincorporation.

17 5395. Authorization to do business.

18 5396. Reserves and capital stock requirements.

19 5397. Election of directors.

20 § 5391. Definition.

21 As used in this subchapter, the term "limited life insurance
22 company" means any corporation which writes life, personal
23 injury, disability or health insurance and which is incorporated
24 or reincorporated under this subchapter or under:

25 (1) the act of April 28, 1903 (P.L.329, No.259),
26 relating to incorporation and regulation of corporations for
27 the purpose of transacting certain types of insurance; or

28 (2) the act of April 20, 1927 (P.L.317, No.190),
29 relating to reincorporation of beneficial or protective
30 societies for the purpose of transacting certain types of

1 insurance.

2 § 5392. Powers of limited life insurance companies.

3 (a) General powers.--A limited life insurance company may
4 issue policies agreeing to pay not more than:

5 (1) \$50 per week in case of disability from sickness or
6 accident;

7 (2) \$1,000 in case of death from natural causes; or

8 (3) \$2,000 in case of death from accidental causes;

9 and issue policies of endowment insurance subject to the
10 provisions of this subchapter notwithstanding any limitation to
11 the contrary in any statute or in its charter.

12 (b) Additional life insurance.--The company may issue
13 policies agreeing to pay not more than \$1,500 in the event of
14 death from natural causes, nor more than double that amount in
15 the event of death from accidental causes, if it has:

16 (1) In the case of stock companies, capital of \$100,000,
17 and a surplus of at least \$25,000.

18 (2) In the case of mutual companies, a surplus of at
19 least \$100,000.

20 (c) Additional disability insurance.--The company may issue
21 policies agreeing to pay in excess of the weekly limitations
22 prescribed in subsection (a), but not exceeding \$105 per week,
23 and agreeing to pay an additional benefit for hospital and
24 medical expenses for any one sickness or accident not exceeding
25 \$300 in the event of disability from sickness or accident, if
26 the policies limit payment of benefits to periods during which
27 insured is admitted as a full-time patient in a licensed and
28 incorporated hospital if it has:

29 (1) In the case of stock companies, additional capital
30 of \$25,000 and a surplus of at least \$25,000.

1 (2) In the case of mutual companies, an additional
2 surplus in the sum of at least \$25,000.

3 The additional capital and additional surplus required by
4 paragraphs (1) and (2) are in addition to that required under
5 this section or otherwise under this title.

6 (d) Alternative limitations.--The company may issue policies
7 agreeing to pay a total of not more than \$5,000 in case of death
8 from natural causes or \$10,000 in case of death from accidental
9 causes. The company may issue policies of endowment insurance
10 agreeing to pay not more than \$5,000 upon maturity if the total
11 amount of insurance issued by the company on any one life does
12 not exceed the limits prescribed in this subsection. The company
13 may issue policies pursuant to this subsection if it has:

14 (1) In the case of stock companies, capital of \$150,000
15 and a surplus paid in at least equal to half the amount of
16 its capital stock. Any limited life insurance company may
17 revise its capital stock structure so that it shall have a
18 capital stock of \$150,000 divided into shares of not less
19 than \$10 par value, payment for which shall be made in cash
20 at the time of subscribing.

21 (2) In the case of mutual companies, a surplus of not
22 less than \$150,000.

23 § 5393. Reincorporation as limited life insurance company.

24 Any corporation or any two corporations now formed or
25 organized under the first paragraph IX of section 2 of the act
26 of April 29, 1874 (P.L.73, No.32), relating to the incorporation
27 and regulation of certain corporations, except fraternal,
28 benevolent, charitable or secret societies issuing beneficial
29 certificates and paying benefits to their membership through the
30 lodge system, and insurance or relief associations formed by or

1 for the exclusive benefit of employees of corporations or firms
2 or formed by or for the exclusive benefit of members of any
3 religious corporation or association, may be reincorporated, or
4 merged and reincorporated, as a limited life insurance company.
5 However, no corporation may proceed under this section unless
6 operating in compliance with Chapter 41 (relating to beneficial
7 societies).

8 § 5394. Procedure for reincorporation.

9 Any corporation desiring to proceed under section 5393
10 (relating to reincorporation as limited life insurance company)
11 shall proceed as prescribed in this section. A meeting of the
12 members of the corporation shall be held. If a majority of the
13 members of each corporation vote or authorize a vote in favor of
14 the reincorporation or merger and reincorporation, a resolution
15 to that effect shall be adopted, and each such resolution shall
16 be recorded in the office of the recorder of deeds in the county
17 where each corporation has its principal office. The directors
18 of the corporation or the respective directors of the two
19 corporations acting jointly, as the case may be, shall proceed
20 under Chapter 33 (relating to incorporation of insurance
21 companies). Upon the approval of the articles of agreement, the
22 corporation or corporations shall be deemed organized under
23 section 5393, and all the property rights, liabilities and
24 obligations of the former corporation or corporations shall be
25 deemed transferred to the successor corporation without further
26 act or deed.

27 § 5395. Authorization to do business.

28 (a) Stock companies.--When the entire amount of the
29 authorized capital of a stock insurance company incorporated
30 under section 5393 (relating to reincorporation as limited life

1 insurance company) has been paid in, certificates shall be
2 issued therefor to the persons entitled to receive them, which
3 shall be transferable upon the books of the company. The
4 president or secretary of the company shall then notify the
5 department that the entire capital of the company has been paid
6 in and that it is ready to commence business. Upon receipt of
7 the notice, the department shall examine the company and, if it
8 finds that the company has complied with the provisions of
9 section 5394 (relating to procedure for reincorporation) and has
10 funds equal to the amount of its capital, it shall issue to the
11 company a certificate showing that it is lawfully organized and
12 is authorized to transact the business of insurance in this
13 Commonwealth as a limited life insurance company under this
14 title.

15 (b) Mutual companies.--In the case of a mutual life
16 insurance company incorporated under section 5393, upon the
17 receipt of a notice from the president or secretary of the
18 company, the department shall make an examination and, if it
19 finds that the company has the necessary amount of insurance in
20 force and that the guaranteed capital has been paid in, it shall
21 issue a certificate authorizing the company to commence business
22 as a limited life insurance company under this title.

23 (c) Examination of companies.--The department may also
24 conduct such examination of any proposed company as is
25 necessary, to determine whether the responsibility, character
26 and general fitness for the business of the incorporators and
27 directors named in the articles are such as to command the
28 confidence of the public and to warrant the belief that the
29 business of the proposed company will be lawfully, honestly and
30 efficiently conducted. Until the department issues a certificate

1 authorizing companies to commence business under this section,
2 the companies shall have the same powers to transact the
3 business of insurance as were possessed by the companies prior
4 to the reincorporation.

5 § 5396. Reserves and capital stock requirements.

6 (a) Reserves.--Any corporation formed under the section 5393
7 (relating to reincorporation as limited life insurance company)
8 shall place reserves on the life portion contained in all
9 policies issued based upon a standard table of mortality, with
10 interest at a rate of not more than 3.5%, as approved by the
11 department. Reserves shall be carried on the disability feature
12 of 50% of the actual weekly, monthly or annual premiums in force
13 and shall be charged on all definite and outstanding incurred
14 claims.

15 (b) Capital stock.--Capital stock of a stock company formed
16 under section 5393 shall not be less than \$25,000 and shall be
17 divided into shares of not less than \$10 each. Payment for the
18 shares shall be made in cash, and 10% on each share shall be
19 paid at the time of subscribing, with the balance paid at such
20 times as the company may direct, not more than one year from the
21 time of subscription. The company may provide such rules with
22 regard to forfeiture of partial payments on subscriptions as
23 advisable; these rules shall be binding upon the subscribers, if
24 disclosed at the time of subscription. The company shall have a
25 surplus paid in at least equal to the amount of the capital
26 stock.

27 (c) Mutual companies.--Any mutual company formed under
28 section 5393 shall be authorized to do the business of insurance
29 when it has life insurance in force in an amount of not less
30 than \$250,000 upon at least 2,000 persons. The company shall not

1 be authorized to do the business of insurance until it has a
2 guaranteed capital of at least \$25,000 and a surplus of at least
3 \$25,000 and until it has deposited with the department \$25,000
4 in cash or approved securities. The department shall hold the
5 amount deposited for the benefit of the members of the
6 corporation and its creditors, preference being given in the
7 following order:

8 (1) Claims under policies.

9 (2) Salaries of employees.

10 (3) General creditors.

11 § 5397. Election of directors.

12 The annual meeting for election of directors of any company
13 formed under section 5393 (relating to reincorporation as
14 limited life insurance company) shall be held at such time, on
15 or before the May 1, as the bylaws of the company may direct.
16 The notice of the time and place of the meeting shall be given
17 to the stockholders or members as is provided in the bylaws. At
18 the annual meeting, the stockholders or members shall elect by
19 ballot not less than 5 nor more than 13 directors, to serve for
20 one year and until their successors are duly chosen. At any
21 annual meeting of the stockholders or members, the directors who
22 are to be chosen may be divided into not more than four classes
23 to be elected for staggered terms. If a vacancy occurs the
24 remaining directors shall elect a replacement to fill the
25 vacancy during the remainder of the term of the director
26 replaced.

27 CHAPTER 55

28 PROPERTY AND CASUALTY INSURANCE

29 Subchapter

30 A. General Regulation

- 1 B. Workmen's Compensation Insurance
- 2 C. Employers' Mutual Liability Insurance Associations
- 3 D. Arson Reporting Immunity
- 4 E. Anti-Arson Applications
- 5 F. Notice of Premium Increases, Cancellations and
- 6 Nonrenewals
- 7 G. Miscellaneous Provisions

8 SUBCHAPTER A

9 GENERAL REGULATION

10 Sec.

- 11 5501. Applicability of chapter.
- 12 5502. Financial requirements of foreign or alien companies.
- 13 5503. Investment of capital.
- 14 5504. Investments in financial institutions.
- 15 5505. Investment of surplus.
- 16 5506. Authorized holdings of real estate.
- 17 5507. Dividends.
- 18 5508. Reduction and withdrawal of capital stock.
- 19 5509. Procedure when capital impaired.
- 20 5510. Resident agents for foreign or alien insurance entities.
- 21 5511. Insurability of downhill ski operators against punitive
- 22 damages.

23 § 5501. Applicability of chapter.

24 (a) General rule.--All stock casualty insurance companies
25 incorporated or formed by authority of any general or special
26 law shall be subject to the provisions of this chapter, except
27 where the provision clearly indicates otherwise.

28 (b) Specific authorizations.--Stock companies organized
29 under the act of April 28, 1903 (P.L.329, No.259), relating to
30 the incorporation and regulation of insurance corporations,

1 having a paid-up capital of not less than \$100,000, may issue
2 policies providing personal accident and sickness indemnity as
3 specified in section 3302(c)(2) (relating to authorized classes
4 of insurance) and also an indemnity for death arising from
5 natural causes for an amount not exceeding \$100,000. Stock
6 companies organized under the act of April 29, 1874 (P.L.73,
7 No.32), relating to the incorporation and regulation of certain
8 corporations for the purpose of guaranteeing the fidelity of
9 persons in positions of trust and to act as surety on official
10 bonds, may transact business under this title by filing with the
11 Secretary of the Commonwealth and with the department a
12 resolution of the board of directors, approved by the
13 stockholders at a meeting specially called for that purpose,
14 accepting the provisions of this title and agreeing to be
15 governed thereby. This acceptance, when filed, shall exempt the
16 company from any otherwise applicable provisions of the act of
17 April 29, 1874 (P.L.73, No.32).

18 § 5502. Financial requirements of foreign or alien companies.

19 (a) Stock companies.--Foreign and alien stock casualty
20 insurance companies, organized to transact any of the classes of
21 insurance mentioned in section 3302(c) (relating to authorized
22 classes of insurance), in order to be licensed to do business in
23 this Commonwealth, shall be required to have a paid up and
24 safely invested capital, if a company of another state, or a
25 deposit in the United States, if an alien company, of at least
26 the amount required in this title for domestic companies. This
27 title does not prevent any foreign stock life insurance company
28 now engaged in the business of accident and sickness or
29 liability insurance, or both, from continuing in these
30 businesses, if the amount of its paid-up capital is at least the

1 amount required of a domestic company to transact the business
2 of life insurance and at least \$50,000 for each of the other
3 classes of insurance undertaken.

4 (b) Mutual companies.--A foreign or alien mutual casualty
5 insurance company, having by its charter the power to transact
6 the insurance business specified in section 3302(c), in order to
7 be authorized to transact the classes of business mentioned in
8 section 3302(c) shall have a surplus over all liabilities,
9 including unearned premium and loss reserves, of not less than
10 the capital required of a domestic stock company to transact the
11 same classes of insurance.

12 § 5503. Investment of capital.

13 Every domestic stock casualty insurance company shall invest
14 and keep invested all its capital in sound investments as
15 enumerated in this section, except such cash as may be required
16 in the transaction of its business. The investments shall
17 include the following:

18 (1) Such real estate as is authorized by section 5506
19 (relating to authorized holdings of real estate).

20 (2) Bonds of the United States, of any state or of any
21 province or territory of the Dominion of Canada, and bonds or
22 debentures issued by Federal land banks, Federal intermediate
23 credit banks or banks for cooperatives under the Farm Credit
24 Act of 1971 (Public Law 92-181, 12 U.S.C. § 2001 et seq.) or
25 by Federal home loan banks under the Home Loan Bank Act (47
26 Stat. 725, 12 U.S.C. § 1421 et seq.).

27 (3) The legally authorized bonds or notes of any
28 municipality, school or water district of this Commonwealth
29 or of any other state of the United States or province of the
30 Dominion of Canada.

1 (4) The bonds or notes of any solvent railroad or street
2 railway corporation upon which no default in interest has
3 been made.

4 (5) Ground rents and loans upon improved and
5 unencumbered real estate. Except for bonds secured by
6 mortgages which are insured by, or for which a commitment to
7 insure has been made by, the Federal Housing Administrator,
8 under the provisions for mutual mortgage insurance in Title
9 II of the National Housing Act (48 Stat. 1247, 12 U.S.C. §
10 1707 et seq.) for the purpose of financing the construction
11 or purchase of dwellings and similar residential property and
12 the refinancing of mortgages, no such loan shall exceed 66
13 2/3% of the fair market value of the real estate.

14 (6) Debentures issued by the Federal Housing
15 Administrators in settlement of claims for insurance under
16 Title II of the National Housing Act.

17 (7) Securities of national mortgage associations or
18 similar national mortgage credit institutions organized under
19 Title III of the National Housing Act (48 Stat. 1252, 12
20 U.S.C. § 1716 et seq.).

21 (8) Bonds, notes or obligations issued, assumed or
22 guaranteed by the International Bank for Reconstruction and
23 Development.

24 (9) If the company which has \$1,000,000 of capital and
25 \$1,000,000 of surplus, the capital of any domestic or foreign
26 stock casualty insurance company, solely to transact the same
27 class of business in countries other than the United States.
28 These investments shall be limited to 30% of the par value of
29 the capital stock of the investing company.

30 (10) The securities of a foreign government in a

1 sufficient amount from its reserves in order to enable it to
2 comply with the laws of the foreign government and transact
3 business therein, if the department permits the company to
4 make such an investment.

5 (11) Shares of state and regional business development
6 credit corporations formed under the law of this
7 Commonwealth.

8 (12) Bonds and notes of the Pennsylvania Housing Finance
9 Agency.

10 (13) Bonds, notes and obligations issued, assumed or
11 guaranteed by the Inter-American Development Bank.

12 (14) Bonds, notes and obligations issued by the
13 Pennsylvania Civil Disorder Authority.

14 (15) Bonds, notes and obligations issued, assumed or
15 guaranteed by the Asian Development Bank.

16 (16) Subject to the provisions of section 5504 (relating
17 to investments in financial institutions), the investments
18 described in section 5504(a).

19 § 5504. Investments in financial institutions.

20 (a) Applicability.--This section shall apply to:

21 (1) Any interest-bearing deposit, savings account or
22 certificate of deposit in any bank, bank and trust company,
23 savings bank or national banking association located in this
24 Commonwealth.

25 (2) A savings account or certificate of deposit of any
26 savings association incorporated under the law of this
27 Commonwealth or of any savings and loan association
28 incorporated under Federal law.

29 (b) Limitation on use.--Any investment described in
30 subsection (a) shall be an authorized investment if the

1 interest-bearing deposit, savings account or certificate of
2 deposit is not made, opened or deposited in any financial
3 institution wherever located which is directly or indirectly,
4 through a holding company or in any other manner, affiliated
5 with any insurance entity making or depositing the interest-
6 bearing deposits or certificates of deposit, in the case of
7 investments described in subsection (a)(1), or making,
8 depositing or opening the savings accounts, in the case of
9 investments described in subsection (a)(2). Funds invested in
10 certificates of deposit shall not be encumbered directly or
11 indirectly as security, collateral or as counterbalance funds
12 for any subsidiary, affiliate, associated concern or other
13 person except as specifically approved by written order of the
14 department.

15 (c) Limitation on amount.--Neither the total investments
16 described in subsection (a)(1), nor the total investments
17 described in subsection (a)(2), in any single depository or
18 branches thereof shall at any time exceed 10% of the larger of:

19 (1) the company's total admitted invested assets at the
20 time of such investment or at any subsequent annual statement
21 reporting date; or

22 (2) the maximum amount insured by Federal insurance
23 coverage on such investments.

24 Neither the investments described in subsection (a)(1), nor the
25 investments described in subsection (a)(2), considered
26 separately, made in all depositories or branches thereof shall
27 at any time exceed 25% of the company's total admitted invested
28 assets at the time of the investment or at any subsequent annual
29 statement reporting date, unless the investments made in any
30 single depository or branches thereof is not greater than the

1 Federal insurance limitations.

2 (d) Time allowed for compliance.--Whenever the investments
3 authorized by this section exceed the maximum amounts provided
4 in subsection (c), the investments shall be reduced to comply
5 therewith within 90 days of the occurrence of the excess or at
6 the earliest maturity date or the next optional renewal date,
7 exercisable by either holder or issuer, of any investment
8 mentioned in this section.

9 (e) Penalty.--Any company which fails to cure a violation of
10 subsection (c) within the time allowed under subsection (d)
11 shall pay a penalty not to exceed \$100 for each day during which
12 the failure continues. The penalty shall be imposed by the
13 department after appropriate hearing. No value as an admitted
14 asset shall be allowed the excess of the investment over the
15 maximum amounts provided in subsection (c).

16 § 5505. Investment of surplus.

17 (a) Authorized investments.--Any money over and above the
18 capital of any such stock casualty insurance company may be
19 loaned upon the security of investments authorized by section
20 5503 (relating to investment of capital) or invested in such
21 securities or invested in:

22 (1) Bonds or notes of any public instrumentality of any
23 state or of any foreign country or political subdivision
24 thereof.

25 (2) Stock or other evidence of indebtedness of any
26 solvent corporation created under Federal law or the law of
27 any jurisdiction mentioned in paragraph (1) or loaned upon
28 the pledge of the same, except its own stock.

29 (3) Stock or shares of any regulated investment company
30 formed under Federal law or the law of any state or of the

1 Dominion of Canada or any province thereof.

2 (b) Restrictions.--The total investments made by such
3 company in stocks of other insurance companies which have
4 invested in or loaned its funds on the stock of the first
5 investing company shall not exceed 5% of the gross assets of the
6 first investing company. The total investments made or held by
7 the company in the stocks or other evidence of indebtedness of
8 solvent alien corporations shall not exceed 10% of the funds of
9 the company over and above its capital and the reserves which it
10 is required to maintain under this title. The current market
11 value of those securities at the time of any loan thereon shall
12 be at least 15% more than the sum loaned. A stock casualty
13 insurance company shall not invest or hold any of its funds in
14 any unincorporated business or enterprise, or in the stock or
15 evidence of indebtedness of any corporation, if the owners or
16 holders of its securities are or may become liable on account
17 thereof to any assessment, except for taxes. Funds of a stock
18 casualty insurance company shall not be loaned on personal
19 security except for defraying the expenses of an employee
20 transferred or about to be transferred to a new place of
21 employment with the company. Not more than 20% of its capital
22 shall be invested or held in a single mortgage. The company
23 shall not enter into any agreement to withhold from sale any of
24 its property, but the disposition of its property shall be at
25 all times within the control of its board of directors or
26 trustees. If any investment or loan is made or held in a manner
27 not authorized by this section, the officers and directors
28 making or authorizing the investment or loan shall be personally
29 liable for any loss occasioned thereby, and no value as an asset
30 shall be allowed for such an investment or loan.

1 (c) Investments regarding company's building.--Any stock
2 casualty insurance company may invest in the capital stock and
3 obligations of a corporation formed for the purpose of taking
4 and holding title to real estate and erecting or maintaining
5 thereon any building to be used in whole or in part for the
6 accommodation and transaction of the business of the company
7 without being subject to the limitation prescribed in this
8 section as to investment in the stock of a solvent corporation.
9 The insurance company shall not at any time have invested more
10 than 50% of its capital and surplus in investments described in
11 this subsection without the written approval of the department.
12 § 5506. Authorized holdings of real estate.

13 A domestic stock casualty insurance company shall not
14 purchase, hold or convey real estate, except as follows:

15 (1) Real estate which is for the transaction of its
16 business including residential real estate purchased from an
17 employee transferred or about to be transferred to a new
18 place of employment with the company.

19 (2) Real estate which has been conveyed to it in
20 satisfaction of debts previously contracted in the course of
21 its dealings.

22 (3) Real estate which has been purchased at sales upon
23 judgments, decrees or mortgages, obtained or made for debts
24 due the company or for debts due other persons, if the
25 company may have liens or encumbrances on the real estate and
26 the purchase is deemed necessary to save the company from
27 loss.

28 Any real estate acquired under paragraph (2) or (3), which has
29 been held for a period of more than five years from the date of
30 its acquisition, shall be disposed of within a period of six

1 months after notice to the company from the department to do so.
2 The department may extend the time for disposition if the
3 interest of the company will suffer materially by a forced sale.
4 § 5507. Dividends.

5 A stock casualty insurance company shall not make any
6 dividend on its capital except from the profits arising from its
7 business. In estimating the profits, all of the following shall
8 first be charged as a liability:

9 (1) The capital of the company.

10 (2) All unpaid losses or other loss claims.

11 (3) All liabilities for reserve or unearned premiums on
12 undetermined risks as required by law.

13 (4) All sums due the company on bonds, book accounts and
14 judgments on which the interest has not been paid during the
15 last calendar year, or on the principal of which no payment
16 has been made during that period.

17 (5) All other debts or obligations of the company.

18 (6) All shares of stock on which no dividend has been
19 paid during the last calendar year.

20 § 5508. Reduction and withdrawal of capital stock.

21 Any existing stock casualty insurance company and any stock
22 casualty insurance company formed under this title, having a
23 paid-up capital in excess of the minimum required, may reduce
24 the excess, in whole or in part, in the manner provided in
25 section 3558 (relating to reduction of capital stock). Any such
26 company which has undertaken two or more kinds of insurance and
27 wishes to discontinue a particular kind may withdraw the entire
28 additional capital paid in on account thereof.

29 § 5509. Procedure when capital impaired.

30 Any stock casualty insurance company receiving notice from

1 the department that its capital is impaired shall immediately
2 call upon its stockholders for such amounts as will restore its
3 capital to the amount fixed by its charter. If any stockholder
4 fails to pay the amount called for, after notice personally
5 given or by advertisement at the time and in the manner the
6 department approves, the company shall require the return of the
7 original certificates of stock held by the stockholder, or issue
8 new certificates in the proportion as determined by the
9 department, that the ascertained value of the assets of the
10 company bears to the original capital, the company paying for
11 any fractional parts of shares. The directors may create new
12 stock, issue certificates therefor and dispose of this stock at
13 not less than par for an amount sufficient to make up the
14 original capital, or the department may permit the company to
15 reduce its capital and the par value of its shares in proportion
16 to the extent of the impairment, but the capital shall at no
17 time be reduced to an amount less than that required by this
18 title for the organization of the company. In fixing the reduced
19 capital, not more than 50% of the original capital shall be
20 deducted from the assets on hand to be retained as surplus funds
21 nor shall any part of the assets be distributed to stockholders.

22 § 5510. Resident agents for foreign or alien insurance
23 entities.

24 Other than companies subject to section 5901 (relating to
25 resident agents for foreign or alien insurance entities), an
26 authorized foreign or alien insurance entity shall not make,
27 write, place or cause to be made, written or placed, any policy
28 or contract of insurance in this Commonwealth except through an
29 agent. The agent shall be an individual, partnership or
30 corporation who or which is a resident of this Commonwealth or

1 maintains his or its principal place of business in this
2 Commonwealth. The agent shall receive a commission thereon when
3 the premium is paid so that the Commonwealth may receive the
4 taxes required to be paid on the premiums collected for
5 insurance written or placed in this Commonwealth. The department
6 may, under such regulations and restrictions as necessary, issue
7 licenses to nonresident agents who are licensed in the state in
8 which they reside, but these agents shall not countersign any
9 policy or contract of insurance. The policies and contracts
10 shall be signed only by resident agents, who shall receive a
11 commission thereon when the premium is paid. Countersignature
12 shall not be required in the case of policies and contracts set
13 forth in section 3302(a)(1) (relating to authorized classes of
14 insurance) issued by life insurance companies or in the case of
15 bid bonds issued in connection with public or private contracts.
16 § 5511. Insurability of downhill ski operators against punitive
17 damages.

18 (a) Legislative findings.--The General Assembly finds that
19 the sport of downhill skiing is practiced by a large number of
20 citizens of this Commonwealth and also attracts to this
21 Commonwealth large numbers of nonresidents, significantly
22 contributing to the economy of this Commonwealth. It is
23 recognized that, as in some other sports, there are inherent
24 risks in the sport of downhill skiing. Because the law of this
25 Commonwealth is unclear with regard to insurability against
26 punitive damages, the operators of downhill skiing areas face
27 uncertainty in securing insurance to indemnify against downhill
28 skiing accidents.

29 (b) Insurability.--It is not against the public policy of
30 this Commonwealth for an insurance entity authorized under

1 section 3302(a)(2) or (c) (relating to authorized classes of
2 insurance) to insure the operator of a downhill skiing area
3 against punitive damages, other than punitive damages arising
4 from an intentional tort committed by the operator.

5 (c) Applicability.--This section does not change or amend
6 the public policy of this Commonwealth with respect to
7 insurability against punitive damages in cases which do not
8 arise from downhill skiing. This section applies to all
9 contracts of insurance entered into, reissued or reaffirmed
10 after December 19, 1985.

11 SUBCHAPTER B

12 WORKMEN'S COMPENSATION INSURANCE

13 Sec.

14 5521. Policy provisions.

15 5522. Actions for premiums.

16 5523. Rating plans.

17 5524. Annual report of premiums and loss experience.

18 5525. Powers of department.

19 § 5521. Policy provisions.

20 (a) Mandatory policy provisions.--Every policy of insurance
21 against liability under the act of June 2, 1915 (P.L.736,
22 No.338), known as The Pennsylvania Workmen's Compensation Act,
23 or under the act of June 21, 1939 (P.L.566, No.284), known as
24 The Pennsylvania Occupational Disease Act, shall contain the
25 agreement of the insurer:

26 (1) that the insurer shall pay all compensation and
27 provide all medical, surgical and hospital attendance for
28 which the insured employer may become liable under those acts
29 during the term of the insurance; and

30 (2) that, as between the insurer and any claimant under

1 those statutes, notice to the employer or the employer's
2 knowledge of an accident or injury or disability caused by
3 occupational disease constituting the basis of a claim under
4 those acts shall be deemed notice to the insurer.

5 These agreements shall be deemed a direct promise to the injured
6 employee or to the dependents of a deceased employee having a
7 claim under those statutes, and shall be enforceable by action
8 brought in the name of the injured employee or in the name of
9 such dependents. The obligation under this section shall not be
10 affected by any default of the insured, after an accident or
11 after disability caused by occupational disease, in the payment
12 of premiums or in the giving of any notices required by the
13 policy or otherwise.

14 (b) Prohibited policy provisions.--The policy of insurance
15 shall not contain any limitation of the liability of the insurer
16 to an amount less than that for which the insured employer may
17 become liable under the statutes mentioned in subsection (a)
18 during the term of the insurance. A policy or contract of
19 insurance, or an agreement to deliver such insurance, shall not
20 be issued except upon a form approved by the department as
21 complying with this title. However, a policy may be issued to a
22 self-insurer, qualified under section 305 (relating to insurance
23 of payment of compensation by employer) of The Pennsylvania
24 Workmen's Compensation Act or under section 305 (relating to
25 self-insurance) of The Pennsylvania Occupational Disease Act,
26 providing for the payment of any stated loss in excess of
27 \$10,000 falling upon the self-insurer, under the terms of those
28 statutes, by reason of any single accident or by reason of any
29 single occurrence resulting in disability from occupational
30 disease. Except for nonpayment of premiums, a policy of

1 insurance issued or renewed against liability under the statutes
2 mentioned in subsection (a) or the Federal Coal Mine Health and
3 Safety Act of 1969 (Public Law 91-173, 30 U.S.C. § 801 et seq.),
4 or insuring an employer against liability of an employer to his
5 employee because of bodily injury by accident or disease,
6 including death resulting therefrom, sustained by the employee
7 arising out of and in the course of his employment, may not be
8 canceled or terminated by an insurer during the term of the
9 policy.

10 § 5522. Actions for premiums.

11 An action shall not be maintained for the collection of
12 premiums upon any policy of insurance under the act of June 2,
13 1915 (P.L.736, No.338), known as The Pennsylvania Workmen's
14 Compensation Act, or under the act of June 21, 1939 (P.L.566,
15 No.284), known as The Pennsylvania Occupational Disease Act,
16 which violates this title. All premiums and interest charges on
17 account of policies insuring employees against liability under
18 this chapter, which are due to the State Workmen's Insurance
19 Fund, or any stock corporation or mutual association authorized
20 to transact the business of insurance in this Commonwealth, and
21 all judgments recovered by the State Workmen's Insurance Fund,
22 or any such insurance corporation or association, against any
23 employer on actions brought under any such policy, shall be
24 deemed preferred claims in all insolvency or bankruptcy
25 proceedings, trustee proceedings for administration of estates,
26 or receiverships, involving the employers liable therefor, or
27 the property of such employer, but claims for wages shall
28 receive prior preference in all such proceedings.

29 § 5523. Rating plans.

30 (a) Preparation of rating plan.--A rating plan shall be

1 proposed annually by one or more rating bureaus, which shall be
2 located in this Commonwealth, subject to supervision and
3 examination by the department and approved by it as adequately
4 equipped to compile rates on an equitable and impartial basis. A
5 schedule or merit rating plan shall be applied only by the
6 approved rating bureau. In the preparation of schedules, an
7 employer shall not be discriminated against or penalized because
8 of physical impairment of any employee or because of the number
9 of dependents of any employee.

10 (b) Approval by department.--The rating plan shall be filed
11 with and shall be subject to review by the department, which
12 shall by order modify, amend or approve it. A rating plan shall
13 not take effect without the consent of the department, and it
14 may withdraw its approval whenever the plan is inadequate or
15 discriminates unfairly between risks of essentially the same
16 hazard. Any person aggrieved by the order may obtain a review
17 thereof before the department.

18 (c) Review of assignment of risk.--The assignment by an
19 approved rating bureau of any individual risk to a particular
20 classification in accordance with a system of classification of
21 risks and underwriting rules approved by the department under
22 this section may be appealed by any person aggrieved by such
23 assignment before the rating bureau in accordance with
24 procedures of the bureau approved by the department. If still
25 aggrieved by the assignment, the person may obtain a further
26 review thereof by filing an appeal with the department within 30
27 days of the mailing date of the final decision of the bureau.
28 The department shall hold a hearing upon not less than ten days'
29 written notice to the applicant and to the rating bureau which
30 made the classification and shall issue an order modifying,

1 amending or approving the placement of the individual risk
2 within the particular classification as the result of that
3 hearing. Any order made by the department under this subsection
4 may be appealed to the Commonwealth Court in accordance with
5 Title 42 (relating to judiciary and judicial procedure).

6 (d) Mandatory use of rating plans.--Neither the State
7 Workmen's Insurance Fund, nor any insurance corporation, mutual
8 association or company, shall issue, renew or carry any policy
9 or contract of insurance against liability under the statutes
10 mentioned in subsection (g), except in accordance with the
11 rating plans proposed by a rating bureau for the risk insured
12 and as modified, amended or approved by the department for such
13 insurer.

14 (e) Special approval.--Notwithstanding any other provisions
15 of this section, upon the written consent of the insured stating
16 his reasons therefor, filed with and approved by the department,
17 a rate in excess of that determined in accordance with the other
18 provisions of this section may be used on any specific risk.

19 (f) Filing of plan.--A complete copy of every policy or a
20 true copy of the substantive provisions of any policy or
21 contract of insurance against liability under the statutes
22 mentioned in subsection (g), and a true copy of every
23 endorsement upon any such policy and of every agreement
24 pertaining thereto, shall be filed with each rating bureau whose
25 rating plan the insurer uses within a reasonable time after the
26 effective date of the policy, endorsement, contract or
27 agreement.

28 (g) Definition.--As used in this section the term "rating
29 plan" means a classification of risks, set of premium rates or
30 underwriting rules of schedule or merit rating plan for

1 insurance of employers and employees under the act of June 2,
2 1915 (P.L.736, No.338), known as The Pennsylvania Workmen's
3 Compensation Act, or under the act of June 21, 1939 (P.L.566,
4 No.284), known as The Pennsylvania Occupational Disease Act, and
5 for insurance with respect to this Commonwealth as to liability
6 under the Longshoremen's and Harbor Workers' Compensation Act
7 (44 Stat. 1424, 33 U.S.C. § 901 et seq.), written as a part of a
8 workmen's compensation and employers' liability policy.
9 § 5524. Annual report of premiums and loss experience.

10 The State Workmen's Insurance Fund, and every insurance
11 company and every employer's mutual liability association which
12 insures employers and employees under the act of June 2, 1915
13 (P.L.736, No.338), known as The Pennsylvania Workmen's
14 Compensation Act, or under the act of June 21, 1939 (P.L.566,
15 No.284), known as The Pennsylvania Occupational Disease Act, or
16 with respect to this Commonwealth under the Longshoremen's and
17 Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901
18 et seq.), when such liability is insured as a part of a
19 workmen's compensation and employers' liability policy, shall
20 annually, on or before June 30, file with the department a sworn
21 report of its premium and loss experience, in such detail and
22 form as may be prescribed by the department. Any insurance
23 carrier which neglects to timely file the required statement
24 shall pay \$100 for each day during which such neglect continues
25 and, upon notice by the department, its authority to do business
26 shall cease while the default continues.

27 § 5525. Powers of department.

28 The department may suspend or revoke the license of any
29 insurance company which violates this subchapter.

30

SUBCHAPTER C

1 EMPLOYERS' MUTUAL LIABILITY

2 INSURANCE ASSOCIATIONS

3 Sec.

4 5531. Definitions.

5 5532. Examination of premises and books.

6 5533. Rules and regulations.

7 5534. Premiums.

8 5535. Division of subscribers into groups.

9 5536. Powers of department.

10 5537. Dividends.

11 5538. Surplus.

12 5539. Contingent mutual liability of subscribers.

13 5540. Assessments.

14 5541. Withdrawal of subscribers.

15 § 5531. Definitions.

16 The following words and phrases when used in this subchapter
17 shall have the meanings given to them in this section unless the
18 context clearly indicates otherwise:

19 "Association." An incorporated association or company formed
20 by employers for the purpose of insuring themselves, and such
21 other employers as may become subscribers to the association,
22 against liability under Articles II and III of the act of June
23 2, 1915 (P.L.736, No.338), known as The Pennsylvania Workmen's
24 Compensation Act.

25 "Board of directors." The board of directors of an
26 association.

27 "Subscriber." A subscriber to an association.

28 § 5532. Examination of premises and books.

29 The board of directors may inspect the premises of any
30 subscriber, and may appoint inspectors for that purpose, who

1 shall have free access to the premises during the regular
2 working hours. The board of directors may, from time to time,
3 examine, by their auditor or other agent, the books and records
4 of any subscriber for the purpose of determining the amount of
5 premium chargeable to the subscriber.

6 § 5533. Rules and regulations.

7 The board of directors shall make reasonable rules and
8 regulations for the prevention of injuries upon the premises of
9 subscribers and may refuse to insure or may terminate the
10 insurance of any subscriber who refuses to permit examination or
11 violates the rules and regulations and may forfeit one-half of
12 the unearned premiums previously paid by him. The termination of
13 the insurance of any subscriber shall not release him from
14 liability for the payment of assessments made by the board of
15 directors to make up deficiencies existing at the termination of
16 his insurance.

17 § 5534. Premiums.

18 (a) Criteria for determining amount.--The board of directors
19 shall determine the amount of the premiums which the subscribers
20 shall pay for their insurance, in accordance with the nature of
21 the business in which the subscribers are engaged and the
22 probably risk of injury to their employees under existing
23 conditions. In fixing the premium payable by any subscriber, the
24 board of directors may take into account the condition of the
25 property of the subscriber, in respect to the safety of those
26 employed therein as shown by the report of any inspector
27 appointed by the board. Subject to the approval of the
28 department, they shall fix each premium at an amount sufficient
29 to enable the association to create and maintain the surplus
30 required under section 5538 (relating to surplus), to pay to its

1 subscribers all sums which may become due and payable to their
2 employees under Article III of the act of June 2, 1915 (P.L.736,
3 No.338), known as The Pennsylvania Workmen's Compensation Act,
4 and to defray the expenses of conducting the business of the
5 association.

6 (b) Change in premium.--The board of directors may change
7 the amount of premiums payable by any of the subscribers as
8 circumstances may permit or require. The board may increase the
9 premiums of any subscriber who neglects to provide safety
10 devices required by law or violates the rules or regulations
11 made by the board of directors in accordance with section 5533
12 (relating to rules and regulations).

13 (c) Effectiveness of policy.--A policy of insurance issued
14 to any subscriber shall not be effective until he has paid the
15 initial premium.

16 § 5535. Division of subscribers into groups.

17 The board of directors may divide the subscribers into
18 groups, in accordance with the nature of their business and the
19 probably risks of injury therein. The board shall fix all
20 premiums for each business in the group and for the various
21 classes of employment therein, in accordance with the probable
22 risks of injury to the employees in such business and in each
23 class of employment therein. The board shall make all
24 assessments and determine and pay all dividends by and for each
25 group in accordance with its experience. All funds of the
26 association and the contingent liability of the subscribers
27 shall be available for the payment of any claim against the
28 association, but as between the association and its subscribers
29 until the whole of the contingent liability of the members of
30 any group is exhausted, the general funds of the association and

1 the contingent liability of the members of other groups shall
2 not be available for the payment of losses and expenses incurred
3 by that group in excess of the earned premiums paid by its
4 members.

5 § 5536. Powers of department.

6 Every association shall file a statement with the department
7 of any proposed premium, assessment, dividend or distribution of
8 subscribers into groups. A proposed change shall not take effect
9 until approved by the department.

10 § 5537. Dividends.

11 The board of directors may, from time to time, fix and
12 determine the amount to be paid as dividends upon policies
13 expiring each year, after retaining the unearned premiums upon
14 undetermined risks, sufficient sums to pay all the compensation
15 then payable or which may become payable on account of injuries
16 received by employees of the subscribers and to pay the expenses
17 incurred in the operation of the business of the association,
18 and such percentage of the premiums as has been paid or is
19 payable to create and maintain the surplus provided in section
20 5538 (relating to surplus).

21 § 5538. Surplus.

22 The board of directors may set aside such part of all
23 premiums collected as it deems necessary for the creation of an
24 adequate surplus to cover catastrophic losses to the subscribers
25 to the fund and to guarantee the solvency of the fund.

26 § 5539. Contingent mutual liability of subscribers.

27 Every subscriber shall be under a contingent mutual liability
28 for the payment of losses and expenses in excess of the cash
29 funds of the association to an amount at least equal to the
30 premium paid by him during the current year.

1 § 5540. Assessments.

2 If any association does not possess cash funds over and above
3 its unearned premiums on undetermined risks, sufficient for the
4 payment of incurred losses and expenses, it shall make an
5 assessment for the amount needed to pay such losses and expenses
6 upon the subscribers liable to assessment therefor, in
7 proportion to their several liabilities.

8 § 5541. Withdrawal of subscribers.

9 Any subscriber who has complied with all of its rules and
10 regulations may withdraw therefrom by written notice to that
11 effect, sent by the subscriber by registered mail to the
12 association. The withdrawal shall become effective on the first
13 day of the month immediately following the tenth day after the
14 receipt of the notice. Such withdrawal shall not release the
15 subscriber from liability for the payment of assessments
16 thereafter made by the board of directors to make up
17 deficiencies existing at the date of his withdrawal, if the
18 assessment is made within one calendar year from the date of
19 withdrawal. The subscriber may receive his share of any dividend
20 earned at the date of his withdrawal.

21 SUBCHAPTER D

22 ARSON REPORTING IMMUNITY

23 Sec.

24 5551. Short title of subchapter.

25 5552. Definitions.

26 5553. Disclosure of information.

27 5554. Immunity.

28 5555. Evidence.

29 5556. Penalty.

30 5557. Construction of subchapter.

1 5558. Regulations.

2 § 5551. Short title of subchapter.

3 This subchapter shall be known and may be cited as the Arson
4 Reporting Immunity Act.

5 § 5552. Definitions.

6 The following words and phrases when used in this subchapter
7 shall have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Action." Includes nonaction or the failure to take action.

10 "Authorized agencies."

11 (1) Includes:

12 (i) The Pennsylvania State Police Commissioner and
13 other police officers charged with the investigation of
14 fires at the place where the fire actually took place.

15 (ii) The fire commissioner or fire chief of all
16 cities.

17 (iii) The Attorney General.

18 (iv) The prosecuting attorney responsible for
19 prosecutions in the county where the fire occurred.

20 (v) The Federal Bureau of Investigation.

21 (vi) The Federal Bureau of Alcohol, Tobacco and
22 Firearms.

23 (vii) The United States Attorney when authorized or
24 charged with investigation or prosecution of the fire in
25 question.

26 (viii) The Bureau of Forestry of the Department of
27 Environmental Resources.

28 (2) Solely for the purposes of section 5553(b) (relating
29 to disclosure of information), an appropriate authorized
30 agency is:

1 (i) the Pennsylvania State Police Commissioner or
2 his authorized representative; or

3 (ii) the fire commissioner or fire chief of all
4 cities and the fire chief of any other municipality with
5 a paid fire department when that municipality is not
6 serviced by the Pennsylvania State Police Commissioner or
7 his authorized representative for the purpose of
8 investigating fires.

9 "Fire loss." Includes loss by explosion.

10 "Insurance company." Any insurance company authorized to
11 transact the business of insurance in this Commonwealth and
12 empowered to issue policies of insurance against loss by the
13 perils of fire or explosion, including the fair plan created
14 under Chapter 57 (relating to Pennsylvania Fair Plan).

15 "Relevant." Any information having a tendency to make the
16 existence of any fact that is of consequence to the
17 investigation or determination of the issue more or less
18 probable than it would be without the information.

19 § 5553. Disclosure of information.

20 (a) Fire loss information.--Any authorized agency may, in
21 writing, require any insurance company at interest to release to
22 the agency any or all relevant information or evidence deemed
23 important to the agency which the insurance company may have in
24 its possession relating to a fire loss under investigation by
25 the agency. Relevant information may include, but shall not be
26 limited to, any of the following:

27 (1) Pertinent policy information relevant to a fire loss
28 under investigation, including any application for such a
29 policy.

30 (2) Underwriting information or risk inspection reports.

1 (3) Policy premium payment records.

2 (4) History of previous claims made by the insured.

3 (5) Material relating to the investigation of the loss,
4 including statements of any person, and proof of loss.

5 (b) Notification for investigation.--Whenever the
6 investigation of a fire loss by an insurance company insuring
7 the loss indicates that the probable cause of the fire loss was
8 arson, the company shall notify, in writing, the appropriate
9 authorized agency. Upon the request of any authorized agency,
10 the insurance company shall provide the agency with such fire
11 loss information developed from the company's inquiry into the
12 fire loss as may be requested by the agency. The insurance
13 company may provide to any authorized agency any information it
14 has relating to a fire loss. This subsection does not abrogate
15 or impair any rights or duties created under subsection (a).

16 (c) Notification to policyholder.--When information is given
17 by any insurance company to an authorized agency under
18 subsection (a) or (b):

19 (1) The insurance company shall send written notice to
20 the policyholders about whom the information pertains, unless
21 the insurance company receives notice that the authorized
22 agency finds, based on specific facts, that there is reason
23 to believe that such information will result in any of the
24 following:

25 (i) Endangerment of the life or physical safety of
26 any person.

27 (ii) Flight from prosecution.

28 (iii) Destruction of or tampering with evidence.

29 (iv) Intimidation of any potential witness.

30 (v) Obstruction of or seriously jeopardizing an

1 investigation.

2 (2) The insurance company shall send written notice not
3 less than 45 nor more than 60 days from the time the
4 information is furnished to an authorized agency, except when
5 the agency specifies that a notice should not be sent in
6 accordance with the exceptions under paragraph (1), in which
7 event the insurance company shall send written notice to the
8 policyholder not less than 180 days nor more than 190 days
9 after the information is furnished to an authorized agency.

10 (3) Every insurance company or authorized agency and any
11 person acting on behalf of either, complying with or
12 attempting in good faith to comply with paragraphs (1) and
13 (2), shall be absolutely immune from any civil liability
14 arising out of any acts or omissions in so doing. This
15 subsection does not create any additional rights to privacy
16 or causes of action on behalf of policyholders.

17 (d) Release of information.--An authorized agency that is
18 provided with information under subsection (a) or (b) may in
19 good faith release or provide orally or in writing such
20 information as it possesses in whole or in part to any other
21 authorized agency or insurance company in furtherance of the
22 agency's own investigative purposes.

23 § 5554. Immunity.

24 Any insurance company or person designated to act in its
25 behalf, or any authorized agency or person authorized to act on
26 its behalf, who without actual malice releases oral or written
27 information under section 5553(a), (b) or (d) (relating to
28 disclosure of information) shall be immune from liability
29 arising out of a civil action and from criminal prosecution with
30 respect to the release of the information.

1 § 5555. Evidence.

2 Except as provided in section 5553(d) (relating to disclosure
3 of information), any authorized agency or insurance company who
4 receives any information furnished pursuant to this subchapter
5 shall hold the information in strict confidence until such time
6 as its release is required pursuant to a criminal or civil
7 proceeding.

8 § 5556. Penalty.

9 (a) Disclosure of information.--Any person who fails or
10 refuses to release any information required to be released under
11 this subchapter or who discloses information required to be held
12 in confidence, or who otherwise violates any provision of this
13 subchapter, except section 5553(c)(1) and (2) (relating to
14 disclosure of information), commits a misdemeanor or the third
15 degree.

16 (b) Immunity from liability.--Any person who releases or
17 discloses information required to be held in confidence pursuant
18 to section 5555 (relating to evidence), other than as provided
19 under section 5553(a), (b) or (d), shall not be afforded
20 immunity under section 5554 (relating to immunity).

21 § 5557. Construction of subchapter.

22 (a) Municipal ordinances.--This subchapter does not affect
23 or repeal any ordinances of any municipality relating to fire
24 prevention or the control of arson.

25 (b) Impairment of rights not intended.--With the exception
26 of section 5554 (relating to immunity), this subchapter does not
27 impair any existing statutory or common law rights, powers or
28 duties.

29 § 5558. Regulations.

30 The Pennsylvania State Police Commissioner may promulgate

1 such regulations concerning the implementation of section
2 5553(d) (relating to disclosure of information) as he deems
3 necessary. The department may promulgate regulations concerning
4 the implementation of this subchapter except for section
5 5553(d).

6 SUBCHAPTER E

7 ANTI-ARSON APPLICATIONS

8 Sec.

9 5561. Short title of subchapter.

10 5562. Purpose of subchapter.

11 5563. Definitions.

12 5564. Applicability of subchapter.

13 5565. Form of anti-arson applications.

14 5566. Insurability.

15 5567. Requirement and effect of anti-arson applications.

16 5568. Alternative anti-arson applications.

17 5569. Termination of insurance policies or contracts.

18 5570. Penalties.

19 5571. Advisory board.

20 § 5561. Short title of subchapter.

21 This subchapter shall be known and may be cited as the Anti-
22 Arson Application Law.

23 § 5562. Purpose of subchapter.

24 The purpose of this subchapter is to promote the public
25 welfare by reducing the loss of life and fire damage to property
26 caused by the crime of arson by requiring insurance companies to
27 secure anti-arson applications from applicants for new policies
28 of property insurance containing information to control the
29 incidence of arson fraud.

30 § 5563. Definitions.

1 The following words and phrases when used in this subchapter
2 shall have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Anti-arson application." Any application for insurance
5 covering the peril of fire that includes certain questions to be
6 answered by the applicant in addition to the basic information
7 normally supplied to an insurer by an applicant.

8 "Commercial monoline fire policy." An insurance policy on a
9 commercial or industrial premise in which coverage is limited to
10 the perils of:

11 (1) fire, lightning or removal as contained in the
12 standard fire policy in section 5906 (relating to provisions
13 of fire insurance policies); or

14 (2) the coverage described in paragraph (1) and extended
15 coverage, including windstorm or hail, smoke, explosion, riot
16 or civil commotion, aircraft and vehicle, vandalism or
17 malicious mischief.

18 The term does not include any package policy or multiperil
19 policy which provides coverage of other perils such as, but not
20 limited to, coverage of bodily injury or property damage
21 liability.

22 "Insurance policy" or "contract of insurance." Any written
23 evidence of new insurance providing coverage from the peril of
24 fire written or entered into on or after March 7, 1983, or any
25 assignment of an existing insurance policy or contract which
26 occurs because of the transfer of a major financial interest in
27 the insured real property. Except for those assignments, the
28 term does not include any property insurance policy in force
29 before March 7, 1983, or the renewal of a contract of insurance
30 in force before March 7, 1983.

1 "Renewal." The issuance and delivery by an insurer of a
2 policy superseding at the end of the policy period a policy
3 previously issued and delivered by the same insurer, providing
4 types and limits of coverage at least equal to those contained
5 in the policy being superseded, or the issuance and delivery of
6 a certificate or notice extending the term of a policy beyond
7 its policy period or term with types and limits of coverage at
8 least equal to those contained in the policy being extended. Any
9 policy with a policy period or term of less than 12 months or
10 any period with no fixed expiration date shall be considered as
11 if written for successive policy periods or terms of 12 months.

12 § 5564. Applicability of subchapter.

13 Anti-arson applications shall be used for commercial monoline
14 fire policies, designated occupancies and designated areas of
15 this Commonwealth, upon a finding by the department, after a
16 public hearing in a location or municipality to be included in a
17 designated area, that commercial monoline fire policies, the
18 designated occupancies and the areas of this Commonwealth have
19 an abnormally high incidence of arson. Hearings pursuant to this
20 section shall be held under the act of July 3, 1986 (P.L.388,
21 No.84), known as the Sunshine Act.

22 § 5565. Form of anti-arson applications.

23 (a) Two-tier applications.--The department, in promulgating
24 the anti-arson application form, shall consider generally
25 recognized two-tier application forms. If the initial first-tier
26 application elicits certain predesignated answers, then the
27 second-tier supplementary application shall be administered.

28 (b) Contents.--The two-tiered application shall secure the
29 disclosure of all of the following information:

30 (1) The name and address of the applicant, any

1 mortgagees and any other parties who have an ownership
2 interest in the property.

3 (2) The amount of insurance requested and the method of
4 valuation used to establish the amount of insurance.

5 (3) The dates and selling prices of the property in all
6 real estate transactions involving the property during the
7 last three years.

8 (4) The applicant's loss history over the last five
9 years with regard to any property in which he held an equity
10 interest or a mortgage and where any such loss exceeded
11 \$1,000 in damages.

12 (5) All taxes unpaid or overdue for one or more years
13 and any mortgage payments overdue by three months or more.

14 (6) All known current violations of fire, safety,
15 health, building or construction codes on the property to be
16 insured.

17 (7) The present occupancy of the structure.

18 (8) Such other information as the department deems
19 necessary.

20 (c) Form of validation.--An anti-arson application shall
21 contain the following language:

22 I (We) certify that all information contained herein is
23 true and correct to the best of my (our) knowledge and
24 belief. Signed under penalty of perjury.

25 (d) Excluded property.--If a commercial, designated
26 occupancy or designated area property subject to this subchapter
27 is insured in a contract of insurance which includes other
28 properties which are not subject to section 5564 (relating to
29 applicability of subchapter), the information required in this
30 section shall only be the information applicable to the property

1 subject to this subchapter.

2 § 5566. Insurability.

3 Designation of any area of this Commonwealth under section
4 5564 (relating to applicability of subchapter) shall not be
5 deemed a valid reason for refusal to write, termination or
6 nonrenewal of any policy or contract of insurance.

7 § 5567. Requirement and effect of anti-arson applications.

8 (a) Use of anti-arson application.--An insurer may not enter
9 into a permanent contract to insure any building, except one to
10 four family owner-occupied dwellings, against the peril of fire
11 to be issued after March 7, 1983, unless the insurer first
12 receives an anti-arson application signed and affirmed by the
13 insured, if required by the department under this subchapter.
14 This subsection does not prohibit the issuance of a binder or
15 other temporary contract of insurance for a period of 90 days or
16 less, provided that the anti-arson application is provided to
17 the insured for completion in accordance with this section.

18 (b) Effect.--Any anti-arson application required by this
19 subchapter shall be deemed a material part of the insurance
20 policy to which the application pertains. A material
21 misrepresentation shall be deemed grounds to void the insurance
22 policy.

23 (c) Notice of changes.--Policyholders shall notify their
24 insurer in writing of any change in the information contained in
25 the anti-arson application, within a period of time to be
26 specified by the department. A material failure to notify or a
27 material misrepresentation in such notification shall be deemed
28 grounds to void the insurance policy.

29 § 5568. Alternative anti-arson applications.

30 (a) Power of department.--The department may mandate

1 alternative anti-arson applications pursuant to findings, after
2 a public hearing, that:

3 (1) there exist certain types of policies, certain
4 classes of property and certain geographic areas of this
5 Commonwealth which have an abnormally high incidence of
6 arson;

7 (2) the anti-arson application was implemented as
8 respects those types of insurance policies, classes of
9 property and areas of this Commonwealth under this
10 subchapter; and

11 (3) the use of the anti-arson application under this
12 subchapter failed to substantially decrease the arson problem
13 for those types of insurance policies, classes of property
14 and geographic areas.

15 (b) Limitations.--The department shall not mandate the use
16 of any applications other than the anti-arson application.
17 Alternative anti-arson applications may only be mandated for the
18 types of insurance policies, types of occupancies and the areas
19 of this Commonwealth which would be permissible subjects for the
20 anti-arson application under this subchapter.

21 § 5569. Termination of insurance policies or contracts.

22 Notwithstanding any other provision of law which limits the
23 time for termination of insurance policies, an insurer may
24 terminate for any lawful reason any policy or contract of
25 insurance where the anti-arson application or any alternative
26 anti-arson application is required within 90 days from the
27 insurer's acceptance of the application. The notice of
28 cancellation to the insured shall contain the specific reasons
29 for the termination of the policy.

30 § 5570. Penalties.

1 (a) Civil penalty.--Any insurer willfully violating this
2 subchapter shall be subject to a civil penalty imposed by the
3 department of not more than \$10,000.

4 (b) Criminal penalty.--Any insurer violating section 5567
5 (relating to requirement and effect of anti-arson applications)
6 commits a misdemeanor of the first degree.

7 § 5571. Advisory board.

8 (a) Establishment.--The department may establish an advisory
9 board of public and private representatives, which shall consist
10 of the commissioner as chairman and two lay people, two members
11 of the insurance industry, two municipal officials and two
12 members of the General Assembly, one of which shall be appointed
13 by the Speaker of the House of Representatives and one of which
14 shall be appointed by the President pro tempore of the Senate,
15 to assist the department in administering this subchapter and in
16 studying and implementing any other measures to prevent arson.

17 (b) Expenses.--Each member of the advisory board shall
18 receive \$40 per diem for each day actually engaged in attendance
19 at meetings of the board. The members shall also receive the
20 amount of actual traveling, hotel and other necessary expenses
21 incurred in the performance of their duties.

22 (c) Expiration.--The advisory board established by
23 subsection (a) shall expire and its authority shall cease on
24 March 7, 1987, unless extended by statute.

25 SUBCHAPTER F

26 NOTICE OF PREMIUM INCREASES, CANCELLATIONS

27 AND NONRENEWALS

28 Sec.

29 5575.1. Notice of premium increases.

30 5575.2. Grounds for cancellation.

1 5575.3. Notice of midterm cancellations and nonrenewals.

2 5575.4. Return of unearned premium amounts.

3 5575.5. Extended reporting endorsement.

4 5575.6. Policy form filings.

5 5575.7. Applicability.

6 5575.8. Penalties.

7 5575.9. Rulemaking.

8 § 5575.1. Notice of premium increases.

9 Notwithstanding any other provision of law, a policy of
10 insurance covering commercial property or casualty risks in this
11 Commonwealth shall provide for not less than 60 days' notice of
12 intent to increase the insured's renewal premium with 30 days'
13 notice of an estimate of the renewal premium. This section does
14 not apply to policies written on a retrospective rating plan.

15 § 5575.2. Grounds for cancellation.

16 No insurer may cancel in midterm a policy of insurance
17 covering commercial property and casualty risks for any reason
18 other than the following:

19 (1) A condition, factor or loss experience material to
20 insurability has changed substantially or a substantial
21 condition, factor or loss experience material to insurability
22 has become known during the policy term.

23 (2) Loss of reinsurance or a substantial decrease in
24 reinsurance has occurred, which loss or decrease shall, at
25 the time of cancellation, be certified to the department as
26 directly affecting in-force policies.

27 (3) The insured has made a material misrepresentation
28 which affects the insurability of the risk.

29 (4) The policy was obtained through fraudulent
30 statements, omissions or concealment of fact material to the

1 acceptance of the risk or to the hazard assumed by the
2 company.

3 (5) The insured has failed to pay a premium when due,
4 whether the premium is payable directly to the company or its
5 agents or indirectly under a premium finance plan or
6 extension of credit.

7 (6) The insured has requested cancellation.

8 (7) Material failure to comply with policy terms,
9 conditions or contractual duties.

10 (8) Other reasons that the department may approve.

11 § 5575.3. Notice of midterm cancellations and nonrenewals.

12 (a) General rule.--Notices of midterm cancellation and
13 nonrenewal shall meet the following requirements:

14 (1) The midterm cancellation or nonrenewal notice shall
15 be forwarded by registered or first class mail or delivered
16 by the insurance company directly to the named insured.

17 (2) Written notice of nonrenewal in the manner
18 prescribed in this section shall be forwarded directly to the
19 named insured at least 60 days in advance of the effective
20 date of termination.

21 (3) Written notice of cancellation in the manner
22 prescribed in this section shall be forwarded directly to the
23 named insured at least 60 days in advance of the effective
24 date of termination unless one or more of the following
25 circumstances obtain:

26 (i) The insured has made a material
27 misrepresentation which affects the insurability of the
28 risk, in which case the prescribed written notice of
29 cancellation shall be forwarded directly to the named
30 insured at least 15 days in advance of the effective date

1 of termination.

2 (ii) The insured has failed to pay a premium when
3 due, whether the premium is payable directly to the
4 company or its agents or indirectly under a premium
5 finance plan or extension of credit, in which case the
6 prescribed written notice of cancellation shall be
7 forwarded directly to the named insured at least 15 days
8 in advance of the effective date of termination.

9 (iii) The policy was canceled by the named insured,
10 in which case written notice of cancellation shall not be
11 required and coverage shall be terminated on the date
12 requested.

13 This paragraph does not restrict the insurer's right to
14 rescind an insurance policy ab initio upon discovery that the
15 policy has been obtained through fraudulent statements,
16 omissions or concealment of fact material to the acceptance
17 of the risk or to the hazard assumed by the company.

18 (4) The notice shall be clearly labeled "notice of
19 cancellation" or "notice of nonrenewal."

20 (5) The midterm cancellation or nonrenewal notice shall
21 state the specific reasons for the cancellation or
22 nonrenewal. The reasons shall identify the condition, factor
23 or loss experience which caused the midterm cancellation or
24 nonrenewal. The notice shall provide sufficient information
25 or data for the insured to correct the deficiency.

26 (6) The midterm cancellation or nonrenewal notice shall
27 state that, at the insured's request, the insurer shall
28 provide loss information to the insured for at least three
29 years or the period of time during which the insurer has
30 provided coverage, whichever is less. Loss information on the

1 insured shall consist of the following:

2 (i) Information on closed claims, including date and
3 description of occurrence, and amount of payments, if
4 any.

5 (ii) Information on open claims, including date and
6 description of occurrence, amount of payment, if any, and
7 amount of reserves, if any.

8 (iii) Information on notices of occurrence,
9 including date and description of occurrence and amount
10 of reserves, if any.

11 (7) The insured's written request for loss information
12 shall be made within ten days of the insured's receipt of the
13 midterm cancellation or nonrenewal notice. The insurer shall
14 provide the requested information within 30 days from the
15 date of receipt of the written request.

16 (b) Effective notice.--Until an insurer issues a nonrenewal
17 or cancellation notice that complies with this subchapter,
18 insurance coverage will remain in effect. However, if the
19 insured obtains replacement coverage, the noncomplying insurer's
20 obligation to continue coverage ceases.

21 § 5575.4. Return of unearned premium amounts.

22 (a) Cancellation initiated by insurer.--Unearned premium
23 amounts must be returned to the insured not later than ten
24 business days after the effective date of termination if
25 commercial property or casualty risks are canceled in midterm by
26 the insurer.

27 (b) Cancellation initiated by insured.--Unearned premium
28 amounts must be returned to the insured not later than 30 days
29 after the effective date of termination if commercial property
30 or casualty risks are canceled in midterm by the insured.

1 (c) Estimated basis.--If the amount of premium to be
2 returned cannot be calculated precisely within the time period
3 required under subsection (a) or (b) because the policy was
4 written on the basis of an estimated premium, or was issued
5 subject to a premium audit, unearned premium amounts shall be
6 returned to the insured on an estimated basis. Upon the
7 insurer's completion of computation of the exact premium amount
8 to be returned, an additional return of premium or a charge
9 shall be made to the named insured within 15 days of the final
10 computation.

11 (d) Applicability.--This section does not apply to policies
12 written on a retrospective rating plan.

13 § 5575.5. Extended reporting endorsement.

14 Insurers shall provide a 60-day period, after cancellation or
15 nonrenewal of a claims made policy is effective, during which
16 the insured may purchase an extended reporting coverage
17 endorsement, also referred to as tail coverage. If the insured
18 purchases the extended reporting coverage endorsement at any
19 time within this 60-day period, the extended reporting coverage
20 shall become effective as of the date the claims made policy
21 terminated.

22 § 5575.6. Policy form filings.

23 Policy form filings received by the department on or after
24 July 3, 1986, shall conform to the requirements of this chapter.

25 § 5575.7. Applicability.

26 (a) General rule.--This subchapter applies to insurance
27 policies, exclusive of reinsurance policies, covering commercial
28 property and casualty risks located in this Commonwealth.

29 (b) Partial exemption.--Workmen's compensation policies, and
30 medical malpractice policies subject to Chapter 71 (relating to

1 health care services malpractice), are not subject to the
2 cancellation provisions of this subchapter.

3 (c) Short term policies.--This chapter does not apply to
4 commercial property and casualty insurance policies that are in
5 effect less than 60 days, unless they are renewals. An insurer
6 may cancel the policy provided it gives at least 30 days' notice
7 of the termination and provided it gives notice not later than
8 the 60th day unless the policy provides for a longer period of
9 notification.

10 § 5575.8. Penalties.

11 Upon satisfactory evidence of a violation of this subchapter,
12 the department may pursue one or both of the following courses
13 of action:

14 (1) Order that the insurer cease and desist from the
15 violation.

16 (2) Impose a fine of not more than \$5,000 for each
17 violation.

18 § 5575.9. Rulemaking.

19 The department shall promulgate regulations necessary for the
20 administration of this subchapter.

21 SUBCHAPTER G

22 MISCELLANEOUS PROVISIONS

23 Sec.

24 5581. Companies providing boiler insurance.

25 5582. Boiler insurance in cities of the first class.

26 5583. Insurance consultation services exemption.

27 § 5581. Companies providing boiler insurance.

28 Domestic companies or companies doing business in this
29 Commonwealth with power to insure against loss by the explosion
30 of steam boilers may insure all loss or damage which the owner

1 or owners of the boiler, or their employees or other persons,
2 may suffer or be liable for in case of an explosion of the
3 boilers mentioned in any policy of insurance issued by the
4 company for the amount specified therein.

5 § 5582. Boiler insurance in cities of the first class.

6 (a) General rule.--Any steam boiler insurance company which
7 has complied with the law of this Commonwealth relative to
8 insurance companies shall be authorized to inspect and insure
9 boilers in all cities of the first class under this section.

10 (b) Interest in manufacture of steam boilers.--Neither the
11 insurance company nor its executive officers shall, directly or
12 indirectly, be interested in the manufacture or sale of steam
13 boilers or of any of the appliances connected with steam engines
14 and boilers.

15 (c) Oath of boiler inspectors.--The insurance company shall
16 employ skillful and competent persons for the inspection of
17 steam boilers who, before entering upon their duties, shall
18 swear that they will not accept for the performance of their
19 duties any money, gift, gratuity or consideration from any
20 person or persons, other than the insurance company which
21 employs them, and that they will not, directly or indirectly, be
22 interested in the manufacture or sale of steam boilers or of any
23 of the appliances connected with steam engines and boilers.

24 (d) Requirement of inspection.--A policy of insurance
25 described in subsection (a) shall not be for a longer period
26 than three years and shall not be effected until the boiler has
27 been inspected and tested, and its inspection, test, condition,
28 attachments and indicators have been found to conform to the
29 provisions of the city ordinances regarding the inspection of
30 steam engines and boilers. The details of this inspection, test,

1 attachments and indicators shall be furnished the city inspector
2 in the required form.

3 (e) Minimum premium.--A policy of insurance described in
4 subsection (a) shall not be valid unless the premium upon the
5 policy, including a fee paid to the city inspector under this
6 section, shall be at least one and one-half times the charges
7 prescribed by the city ordinance for the inspection of steam
8 boilers. The policy shall not be canceled or modified so that
9 the premium is less than the amount provided under this
10 subsection without notifying the city inspector immediately in
11 writing with the reasons therefor.

12 (f) Issuance of certificate of inspection.--Whenever the
13 insurance company inspects a boiler and issues a policy of
14 insurance covering it, the company shall issue a certificate of
15 inspection, which shall set forth that the inspection, tests,
16 attachments and indicators have been found to be in accordance
17 with the requirements of the city ordinances. The certificate
18 shall also state the pressure, in pounds, to which each boiler
19 has been subjected in testing, together with the amount of
20 pressure the user is authorized to carry within the boiler, in
21 accordance with the city ordinances. It shall further state that
22 the boiler inspected has been insured by the company, and that
23 the holder of the certificate is required to maintain it in a
24 conspicuous place near the boiler to which it refers.

25 (g) Cancellation of modification of policy.--If the
26 insurance company cancels a policy of insurance issued in
27 accordance with this section, or modifies the policy so that the
28 premium is less than the amount provided under subsection (e),
29 the cancellation or modification shall render the certificate of
30 inspection upon each boiler affected invalid, and notice of the

1 cancellation shall be communicated to the city inspector
2 immediately.

3 (h) Form and effect of certificate.--The inspector of steam
4 engines and boilers in cities of the first class shall furnish
5 all steam boiler insurance companies or their agents with
6 printed forms for recording the details of inspection, similar
7 to those furnished to his own assistants. The inspector shall
8 also furnish the companies with a form of certificate setting
9 forth that the premium upon the policy of insurance to be issued
10 in connection with the certificate of inspection equals or
11 exceeds the amount provided under subsection (e). He shall
12 record the forms and certificates as provided for in the city
13 ordinance and shall affix his signature and official seal to the
14 certificate of inspection of the insurance companies if the
15 inspection shows that the requirements of the city ordinances
16 relative to boiler inspections have been complied with, and that
17 the company has complied with this section. The inspector of
18 steam engines and boilers in any city of the first class shall
19 receive for such approval \$1 for each boiler, which shall be
20 paid into the city treasury, but the approval shall not be
21 effective for a longer period than one year from the date
22 thereof.

23 (i) Notice of withdrawal of certificate.--When the inspector
24 withholds or withdraws a certificate of inspection, by reason of
25 the incompetence or unreliability of the engineer, under this
26 section and the city ordinance for the inspection of steam
27 boilers, or whenever he considers the boiler unsafe, he shall
28 give the user of the boiler and the insurance company issuing
29 the policy thereon written notice thereof. The notice shall
30 contain a statement of the reasons for the action. The notice

1 shall be equivalent to the removal of the certificate. The
2 withdrawal of the certificate shall render void the policy of
3 insurance upon the boilers to which the certificate had
4 reference.

5 (j) Penalty.--Any inspector of an insurance company who aids
6 in procuring insurance of any stationary steam engine or boiler
7 which does not comply with the conditions, or stand the test
8 provided for in the ordinance of a city of the first class
9 relative to boiler inspection, or which is not provided with the
10 attachments and indicators required by the ordinance, or
11 knowingly permits insurance to continue upon any stationary
12 steam engine or boiler in a city of the first class not provided
13 with such attachments and indicators, commits a misdemeanor of
14 the second degree.

15 § 5583. Insurance consultation services exemption.

16 (a) Short title.--This section shall be known and may be
17 cited as the Insurance Consultation Services Exemption Act.

18 (b) Exemption from civil liability.--The furnishing, or
19 failure to furnish, insurance consultation services shall not
20 subject the insurer, its agents, employees or service
21 contractors to liability for damages from injury, death or loss
22 occurring as a result of any act or omission by any person in
23 the course of such services.

24 (c) Applicability.--This section does not apply:

25 (1) If the injury, loss or death occurred during the
26 actual performance of consultation services and was caused by
27 the negligence of the insurer, its agent, employees or
28 service contractors which was a proximate cause of the
29 injury, death or loss.

30 (2) To any consultation services required to be

1 performed under the provisions of a written service contract
2 not incidental to a policy of insurance.

3 (3) In any action against any insurer, its agents,
4 employees or service contractors for damages caused by the
5 act or omission of such persons in which it is judicially
6 determined that the act or omission constituted a crime or
7 was accompanied by actual malice or gross negligence.

8 (4) If the insurer fails to furnish the insured with
9 written notice of the provisions of this section. The notice
10 shall be provided the insured by the insurer at the time the
11 policy is issued or written and at each renewal thereof. The
12 manner in which the notice shall be given and its specific
13 contents shall be approved by the department.

14 (5) To the immunities and protections provided by
15 section 305 (relating to insurance of payment of compensation
16 by employer) of the act of June 2, 1915 (P.L.736, No.338),
17 known as The Pennsylvania Workmen's Compensation Act.

18 (d) Definitions.--As used in this section the following
19 words and phrases shall have the meanings given to them in this
20 subsection:

21 "Insurance consultation service." Any survey, consultation,
22 inspection, advisory or related services performed by an
23 insurer, its agents, employees or service contractors incident
24 to an application for property or casualty insurance or a policy
25 of such insurance for the purpose of reducing the likelihood of
26 injury, death or loss.

27 "Insurer." Any authorized property or casualty insurance
28 company.

29 CHAPTER 57

30 PENNSYLVANIA FAIR PLAN

- 1 Subchapter
- 2 A. General Provisions
- 3 B. Structure of Fair Plan
- 4 C. Pennsylvania Civil Disorder Authority
- 5 D. Basic Property Insurance Assessment

6 SUBCHAPTER A

7 GENERAL PROVISIONS

8 Sec.

9 5701. Short title of chapter.

10 5702. Purposes of chapter.

11 5703. Definitions.

12 § 5701. Short title of chapter.

13 This chapter shall be known and may be cited as the
14 Pennsylvania Fair Plan Act.

15 § 5702. Purposes of chapter.

16 The purposes of this chapter are to:

17 (1) Encourage stability in the property insurance market
18 for property located in urban areas of this Commonwealth.

19 (2) Encourage maximum use in obtaining basic property
20 insurance of the normal insurance market provided by the
21 private property insurance industry.

22 (3) Encourage the improvement of the condition of
23 properties located in urban areas of this Commonwealth and to
24 further orderly community development generally.

25 (4) Provide for the formulation and administration by an
26 industry placement facility of a fair plan in order that no
27 property shall be denied basic property insurance through the
28 normal insurance market provided by the private property
29 insurance industry except after a physical inspection of the
30 property and a fair evaluation of its individual underwriting

1 characteristics.

2 (5) Publicize the purposes and procedures of the fair
3 plan so that no one may fail to seek its assistance through
4 ignorance thereof.

5 (6) Provide for the formulation and administration by
6 the industry placement facility of a reinsurance arrangement
7 whereby property insurers shall share equitably the
8 responsibility for insuring insurable property for which
9 basic property insurance cannot be obtained through the
10 normal insurance market.

11 (7) Provide a framework for participation by the
12 Commonwealth in a sharing of insured losses resulting from
13 riots and other civil disorders occurring in this
14 Commonwealth through the formation of a Pennsylvania Civil
15 Disorder Authority, in order that insurance companies doing
16 business in this Commonwealth may qualify for Federal
17 reinsurance of such losses if Federal legislation providing
18 for reinsurance is enacted.

19 § 5703. Definitions.

20 The following words and phrases when used in this chapter
21 shall have the meanings given to them in this section unless the
22 context clearly indicates otherwise:

23 "Basic property insurance." Insurance against direct loss to
24 real or tangible personal property at a fixed location caused by
25 perils defined and limited in the standard fire policy
26 prescribed in section 5906 (relating to provisions of fire
27 insurance policies) and in the extended coverage endorsement
28 approved by the department under section 3515 (relating to
29 approval of contracts by department) and vandalism, malicious
30 mischief, burglary, theft or other classes of insurance as are

1 determined by the industry placement facility with the approval
2 of the department. The term does not include insurance on a
3 motor vehicle or farm or such manufacturing risks as are
4 excluded by the department.

5 "Fair plan." A plan formulated by the industry placement
6 facility under the authority of this chapter for the purposes
7 set forth in 5711(b) (relating to industry placement facility).

8 "Federal reinsurance facility." Any agency, or
9 instrumentality thereof, or any body corporate created by the
10 Federal Government for the purpose of providing reinsurance for
11 losses resulting from riots and other civil disorders.

12 "Government." The Federal Government and the government of
13 the Commonwealth, or any agency or instrumentality, corporate or
14 otherwise, of either of them.

15 "Inspection bureau." The organization or organizations
16 designated by the industry placement facility with the approval
17 of the department to inspect and to determine the condition of
18 the properties for which basic property insurance is sought.

19 "Insurer." Any insurance company or group of companies under
20 common ownership which is authorized to engage in the insurance
21 business under the law of any state, including any pool or
22 association of insurance companies formed, associated or
23 otherwise created for the purpose of sharing risks written in
24 accordance with this chapter.

25 "Premiums written." Gross direct premiums charged on all
26 policies of basic property insurance and the basic property
27 insurance components of all multiple peril policies covering
28 property in this Commonwealth, less all premiums and dividends
29 returned to policyholders and the unused or unabsorbed portions
30 of premium deposits.

1 "Urban area." Any municipal corporation having a blighted,
2 deteriorated or deteriorating area which the Secretary of the
3 Federal Department of Housing and Urban Development has approved
4 as eligible for an urban renewal project or which has been
5 designated as an urban area by the industry placement facility
6 with the approval of the department.

7 SUBCHAPTER B

8 STRUCTURE OF FAIR PLAN

9 Sec.

10 5711. Industry placement facility.

11 5712. Fair plan.

12 5713. Distribution of risks.

13 5714. Uninsurable risks.

14 5715. Regulation by department.

15 5716. Annual and other statements.

16 5717. Privileged communications.

17 5718. Review.

18 § 5711. Industry placement facility.

19 (a) Membership.--Each insurer which is authorized to write
20 and is engaged in writing in this Commonwealth, on a direct
21 basis, basic property insurance or any component thereof
22 contained in a multiple peril policy, including homeowners and
23 commercial multiple peril policies, shall participate in the
24 industry placement facility as a condition of its authority to
25 write those kinds of insurance in this Commonwealth. Other
26 insurers may become members if they are eligible surplus lines
27 insurers under section 1307 (relating to eligible surplus lines
28 insurers).

29 (b) Purposes.--The purposes of the facility shall be to:

30 (1) Formulate and administer, subject to the approval of

1 the department, a plan to be known as the fair plan assuring
2 fair access to insurance requirements in order that no
3 property in urban areas shall be denied basic property
4 insurance through the normal insurance market provided by the
5 private property insurance industry, except after a physical
6 inspection of the property and a fair evaluation of its
7 individual underwriting characteristics.

8 (2) Formulate and administer, subject to the approval of
9 the department, a reinsurance arrangement whereby the members
10 of the facility shall share equitably the responsibility for
11 insuring property in urban areas which is insurable, but for
12 which basic property insurance cannot be obtained through the
13 normal insurance market.

14 (c) Plan of operation.--The industry placement facility
15 shall operate under a plan of operation of the facility,
16 consistent with the provisions of this chapter and the purposes
17 of the facility, which shall provide for the fair plan, the
18 reinsurance arrangement and the economical and efficient
19 administration of the facility, including, but not limited to,
20 management of the facility, preliminary assessment of all
21 members for initial expenses necessary to commence operations,
22 establishment of necessary facilities in this Commonwealth,
23 assessment of members to defray losses and expenses, commission
24 arrangements, reasonable underwriting standards and limits of
25 liability, acceptance and cession of reinsurance and procedures
26 for determining amounts of insurance to be provided. The plan of
27 operation shall be the plan approved by the department under the
28 former section 201(c) (relating to industry placement facility)
29 of the act of July 31, 1968 (P.L.738, No. 233), known as the
30 Pennsylvania Fair Plan Act or under subsection (d).

1 (d) Amendment of plan of operation.--At the direction of the
2 department, the facility shall amend the plan of operation, and
3 the facility may amend the plan of operation on its own
4 initiative subject to the prior approval of the department.

5 (e) Organization of facility.--The facility shall be
6 governed by a board of seven directors elected annually by the
7 members of the facility. Each member of the facility shall be
8 allotted votes bearing the same ratio to the total number of
9 votes to be cast as its degree of participation in the facility
10 bears to the total participation. Pending the determination of
11 the degree of participation of the members in the facility, each
12 member of the facility shall be allotted votes bearing the same
13 ratio to the total number of votes to be cast as each member's
14 written premium on basic property insurance during calendar year
15 1967 bears to the statewide total written premium for basic
16 property insurance during that year. The first board shall be
17 elected at a meeting of the members or their authorized
18 representatives. Any vacancy on the board shall be filled by a
19 vote of the other directors. If at any time the members fail to
20 elect the required number of directors or a vacancy remains
21 unfilled for more than 15 days, the commissioner may appoint the
22 directors necessary to constitute a full board.

23 (f) Participation.--All members of the facility shall
24 participate in its expenses and in its profits and losses, or in
25 such categories thereof as may be separately established by the
26 facility, in the proportion that the premiums written by each
27 such member during the second preceding calendar year bear to
28 the aggregate premiums written in this Commonwealth by all
29 members of the facility. For the purposes of computing the
30 proportion of participation, the "premiums written" shall not

1 include the premiums attributable to the reinsurance arrangement
2 maintained by the facility. Participation by each member in the
3 facility shall be determined annually by the facility on the
4 basis of the premiums written during the second preceding
5 calendar year as disclosed in the annual statements and other
6 reports filed by the member with the department.

7 (g) Termination of Federal reinsurance facility.--Policies
8 issued pursuant to the direction of and other obligations
9 incurred by the industry placement facility shall not be
10 impaired by the termination of the Federal reinsurance facility,
11 and the industry placement facility shall continue for the
12 purpose of servicing these policies and performing these
13 obligations.

14 § 5712. Fair plan.

15 The fair plan shall provide as follows:

16 (1) Any person having an insurable interest in real or
17 tangible personal property at a fixed location in an urban
18 area, his representative, an insurance agent or broker or an
19 insurer may request the facility for an inspection of the
20 property by representatives of the inspection bureau, such
21 inspection to be without cost to the applicant for insurance.
22 The request for such inspection need not be made in writing.
23 The risk shall not be written at surcharged rates or be
24 denied insurance coverage for basic property insurance by an
25 insurer unless such an inspection has first been made.

26 (2) The plan of operation of the inspection bureau, the
27 manner and scope of the inspection and the form of the
28 inspection report, which shall include, but need not be
29 limited to, pertinent structural and occupancy features as
30 well as the general condition of the building and surrounding

1 structures, shall be prescribed by the industry placement
2 facility subject to the approval of the department.

3 (3) Promptly after the request for inspection is
4 received by the facility, if no policy has been issued, the
5 inspection shall be made and a written inspection report
6 prepared and filed with any insurer designated by the
7 applicant and filed with the facility. A copy of the
8 inspection report shall be made available to the applicant or
9 his representative upon request. If no insurer has been
10 designated by the applicant, the facility shall proceed as
11 provided in paragraph (9).

12 (4) After the inspection report is received by an
13 insurer, it shall promptly determine if the risk meets
14 reasonable underwriting standards at the applicable premium
15 rate, including approved surcharges for physical
16 characteristics, and shall promptly return to the industry
17 placement facility the inspection report and provide an
18 action report, both of which shall be kept on file with the
19 facility. The action report shall set forth:

20 (i) the amount of coverage it agrees to write and,
21 if the insurer agrees to write the coverage with an
22 approved surcharge, the improvements necessary before it
23 will provide coverage at an unsurcharged premium rate;

24 (ii) the amount of coverage it agrees to write if
25 certain improvements to the property specified in the
26 action report are made; or

27 (iii) the specific reasons for which it declines to
28 write coverage.

29 (5) If the insurer declines the risk or agrees to write
30 it on condition that the property be improved as specified,

1 the insurer shall, at the time of returning the inspection
2 and action reports to the facility, send a copy of both
3 reports to the applicant for insurance. The insurer shall
4 advise the applicant at the time of sending the reports to
5 him of his right to appeal the determination to the
6 department and shall advise the applicant of the means by
7 which to initiate an appeal.

8 (6) The inspection bureau shall submit to the department
9 periodic reports setting forth information by individual
10 insurers, including the number of risks inspected under the
11 plan, the number of risks accepted, the number of risks
12 conditionally accepted and reinspections made, the number of
13 risks declined and such other information as the department
14 may request.

15 (7) All policies written pursuant to the fair plan shall
16 be promptly written after inspection or reinspection and
17 shall be separately coded so that appropriate records may be
18 compiled for purposes of ratemaking and performing loss
19 prevention and other studies of the operation of the fair
20 plan.

21 (8) If any single insurer will underwrite only a portion
22 of the full insurable value of the property, the industry
23 placement facility shall assist the owner and his agent or
24 broker in obtaining the remaining coverage from other members
25 of the facility, except to the extent that deductibles,
26 percentage participation clauses and other accepted
27 underwriting devices are needed to meet special problems of
28 insurability.

29 (9) If no insurer to which an inspection report has been
30 forwarded pursuant to paragraph (3) agrees promptly to

1 provide basic property insurance for the property in
2 question, or if no insurer has been designated by the
3 applicant, the facility shall take appropriate action to
4 ascertain whether any member of the facility will provide
5 basic property insurance for the subject property at the
6 applicable premium rate, including approved surcharges for
7 physical characteristics.

8 (10) An insurer shall not direct any agent or broker or
9 other producer to avoid soliciting business through the fair
10 plan, and an agent, broker or other producer shall not be
11 penalized by an insurer for submitting applications for
12 insurance to it under the fair plan.

13 (11) Records of insurance procured under the fair plan
14 shall be maintained separately from other records of an
15 agent's or broker's business conducted with an insurer.

16 (12) Written notice will be given to any policyholder at
17 least 20 days prior to the cancellation or nonrenewal of any
18 risk eligible under the fair plan, except in the case of
19 nonpayment of premium or evidence of incendiarism, and the
20 insurer shall, in the notice of cancellation or nonrenewal,
21 explain to the policyholder the procedures for obtaining an
22 inspection under the plan.

23 (13) An agent or broker shall not be permitted to refuse
24 an application for basic property insurance within an urban
25 area if he is licensed to write and is actively engaged in
26 writing such insurance.

27 (14) A cooperative and continuing public education
28 program shall be undertaken by the department, the industry
29 placement facility and the members of the facility to assure
30 that the fair plan is given adequate publicity.

1 § 5713. Distribution of risks.

2 (a) Powers of facility.--The facility shall have the
3 following powers, on behalf of its members:

4 (1) To direct one or more of its members to issue
5 policies of basic property insurance to applicants.

6 (2) To assume reinsurance from its members.

7 (3) To cede reinsurance.

8 (b) Ceding of coverage.--Any member of the facility may cede
9 to the facility basic property insurance covering property in
10 urban areas to the extent and on the terms and conditions set
11 forth in the plan of operation of the facility.

12 (c) Determination by facility.--If the facility has been
13 unable to obtain basic property insurance for any property
14 through the voluntary action of its members pursuant to section
15 5712 (relating to fair plan), it shall promptly determine
16 whether the property is insurable and whether there is any
17 unpaid premium due from the applicant for prior insurance on the
18 property. Any hazardous environmental condition that might give
19 rise to loss under an insurance contract but which is beyond the
20 control of the property owners shall not be considered by the
21 facility in determining insurability. If the facility determines
22 that the property is insurable and that no unpaid premium is
23 due, it shall promptly cause one or more of its members to issue
24 a policy or policies of basic property insurance at the
25 applicable premium rate, including approved surcharges for
26 physical characteristics, in the full insurable value of the
27 property, for a term of one year, subject to total reinsurance
28 of the risk by the facility.

29 § 5714. Uninsurable risks.

30 If the facility finds that the property is not insurable, it

1 shall promptly supply to the applicant a written statement
2 setting forth the features or conditions of the property which
3 prevent it from constituting an insurable risk and the actions,
4 if any, which would make the property an insurable risk.

5 § 5715. Regulation by department.

6 The operation of the inspection bureau and the industry
7 placement facility shall at all times be subject to the
8 supervision and regulation of the department. The department, or
9 any person designated by it, shall have the power of visitation
10 of and examination into such operations at any time in the
11 discretion of the department. In connection therewith, the
12 department shall have the powers granted it by section 512
13 (relating to powers with regard to examinations) and the
14 expenses of the examination shall be borne and paid as provided
15 in section 512.

16 § 5716. Annual and other statements.

17 The inspection bureau and the industry placement facility
18 shall each file with the department annually on or before March
19 1 a statement which shall contain information with respect to
20 its transactions, condition, operations and affairs during the
21 preceding year. This statement shall contain the information
22 prescribed by the department and shall be in the form approved
23 by it. The department may at any time require the bureau or
24 facility to furnish it with additional information with respect
25 to its transactions, condition, operations and affairs or any
26 matter connected therewith which it considers to be material and
27 which will assist it in evaluating their scope, operation and
28 experience.

29 § 5717. Privileged communications.

30 There shall be no liability on the part of, and no cause of

1 action shall arise against, insurers, the inspection bureau, the
2 industry placement facility, their agents or employees, or the
3 department or its authorized representatives, for any statements
4 made in good faith by them in any reports or communications
5 concerning the property to be insured, or in the course of any
6 hearings conducted in connection therewith, or in the findings
7 required by the provisions of this subchapter. The inspection
8 reports and communications of the inspection bureau and the
9 industry placement facility shall not be considered public
10 documents.

11 § 5718. Review.

12 Any applicant for insurance and any affected insurer may
13 appeal to the department within 30 days after any ruling, action
14 or decision by or on behalf of the inspection bureau or industry
15 placement facility. After a hearing upon not less than ten days'
16 written notice to the aggrieved person and the bureau or
17 facility, the department shall issue an order approving the
18 action or decision appealed from, disapproving such action or
19 decision or directing the bureau or facility to give further
20 consideration to the matter. All hearings, orders and decisions
21 of the department pursuant to this subchapter shall be subject
22 to Title 2 (relating to administrative law and procedure).

23 SUBCHAPTER C

24 PENNSYLVANIA CIVIL DISORDER AUTHORITY

25 Sec.

26 5721. Formation of authority.

27 5722. Board of directors.

28 5723. Powers of authority.

29 5724. Civil Disorder Authority Fund.

30 5725. Reimbursement payments to Federal reinsurance facility.

1 5726. Bonds of authority.

2 5727. Remedies of bondholder.

3 § 5721. Formation of authority.

4 In order to make available to insurers which participate in
5 the industry placement facility, the reinsurance afforded by the
6 Federal reinsurance facility against losses resulting from riots
7 and civil disorders, there shall be a separate and distinct body
8 corporate and politic which shall be known as the Pennsylvania
9 Civil Disorder Authority. The authority shall be an
10 instrumentality of the Commonwealth, and the exercise by the
11 authority of the powers conferred by this subchapter shall be
12 deemed an essential governmental function of the Commonwealth.
13 Bonds issued and other obligations incurred by the Pennsylvania
14 Civil Disorder Authority shall not be impaired by the
15 termination of the Federal reinsurance facility, and the
16 authority shall continue for the purpose of servicing these
17 bonds and performing these obligations.

18 § 5722. Board of directors.

19 (a) Composition.--The powers of the authority shall be
20 exercised by a board of directors composed of the Attorney
21 General, the Secretary of Revenue, the General Counsel and the
22 commissioner, who shall select from among themselves a chairman
23 and a vice chairman. The State Treasurer shall be the treasurer
24 of the authority.

25 (b) Bonds and obligations.--The members of the board shall
26 not be liable personally on the bonds or other obligations of
27 the authority, and the rights of creditors shall be solely
28 against the authority.

29 (c) Compensation and expenses.--The members of the board
30 shall receive no compensation for their services as members but

1 shall be entitled to reimbursement for all necessary expenses
2 incurred in connection with the performance of their duties as
3 members.

4 (d) Agents and employees.--The authority may employ a
5 secretary, an executive director, its own counsel and legal
6 staff and such technical experts and other agents and employees,
7 permanent or temporary, as it may require, and may determine the
8 qualifications and fix the compensation of such persons. The
9 authority may delegate to one or more of its agents or employees
10 such of its powers as it deems necessary to carry out the
11 purposes of this chapter, subject to its supervision and
12 control.

13 § 5723. Powers of authority.

14 The authority shall exercise public powers of the
15 Commonwealth as an agency thereof, including the following
16 powers in addition to those otherwise granted in this chapter:

17 (1) To cooperate with any government or municipality.

18 (2) To act as agent of any government agency for the
19 public purposes set out in this chapter.

20 (3) To borrow funds from private lenders or from the
21 Commonwealth or the Federal Government, as may be necessary
22 for the operation and work of the authority, and to carry out
23 the purposes and provisions of this chapter.

24 (4) To invest any funds held in reserves or sinking
25 funds or any funds not required for immediate disbursement,
26 in such investments as may be lawful for executors,
27 administrators, guardians, trustees and other fiduciaries
28 under the law of this Commonwealth.

29 (5) To sue and be sued.

30 (6) To adopt a seal and to alter the same at pleasure.

1 (7) To make and execute contracts and other instruments
2 necessary or convenient to the exercise of the powers of the
3 authority. Any contract or instrument when signed by the
4 chairman or vice chairman of the authority and by the
5 secretary or assistant secretary or treasurer or assistant
6 treasurer of the authority, or by an authorized use of their
7 facsimile signatures, shall be deemed properly executed for
8 and on its behalf.

9 (8) To make, amend and repeal bylaws, rules, regulations
10 and resolutions.

11 (9) To do all acts and things necessary or convenient to
12 carry out the powers granted to it by law, except that the
13 authority shall have no power to pledge the credit or taxing
14 power of the Commonwealth, nor shall any of its obligations
15 be deemed to be obligations of the Commonwealth.

16 § 5724. Civil Disorder Authority Fund.

17 (a) Purpose of fund.--The authority shall establish a Civil
18 Disorder Authority Fund which shall be available without fiscal
19 year limitation for the following purposes:

20 (1) To make such payments as may, from time to time, be
21 required by the Federal reinsurance facility.

22 (2) To pay proper administrative expenses of the
23 authority.

24 (3) To repay the obligations of the authority, including
25 interest thereon, incurred by the authority pursuant to the
26 provisions of this subchapter.

27 (b) Sources of revenue.--The fund shall be credited with:

28 (1) Such amounts as may be advanced to the fund from
29 whatever source in order to maintain the fund in a solvent
30 condition and able to satisfy its obligations.

1 (2) Interest which may be earned on investments of the
2 fund.

3 (3) Moneys borrowed by the authority and deposited in
4 the fund.

5 (4) Receipts from any other source which may, from time
6 to time, be credited to the fund.

7 (c) Deposits.--All moneys of the fund, from whatever source
8 derived, shall be paid to the treasurer of the authority and
9 deposited by him in one or more banks or trust companies, in one
10 or more special accounts. Each of the special accounts shall be
11 continuously secured by a pledge of direct obligations of the
12 United States or of the Commonwealth, having an aggregate market
13 value, exclusive of accrued interest, at all times at least
14 equal to the balance on deposit in the account. The securities
15 shall either be deposited with the treasurer or be held by a
16 trustee or agent satisfactory to the authority. All banks and
17 trust companies are authorized to give security for these
18 deposits. The moneys in these accounts shall be paid out on the
19 warrant or other order of the treasurer of the authority or of
20 such other person or persons as it may authorize to execute such
21 warrants or orders.

22 (d) Examination of records.--The Department of Revenue and
23 the Auditor General and their legally authorized representatives
24 may from time to time examine the accounts and books of the
25 authority and any other matters relating to its finances,
26 operations and affairs.

27 § 5725. Reimbursement payments to Federal reinsurance facility.

28 (a) Authority to pay.--Payments under section 5724(a)(1)
29 (relating to Civil Disorder Authority Fund) shall be made only
30 upon direction of the State Treasurer and after receipt by him

1 of a claim from the Federal reinsurance facility. Prior to
2 making the payment, the authority shall make such investigation
3 as it deems appropriate in order to verify the correctness of
4 the claim made by the Federal reinsurance facility.

5 (b) Limitation on amount.--The total amount of any such
6 payments made during any calendar year shall not exceed 5% of
7 the aggregate property insurance premiums earned in this
8 Commonwealth during the preceding calendar year on those lines
9 of insurance reinsured by the Federal reinsurance facility in
10 this Commonwealth during the current year.

11 § 5726. Bonds of authority.

12 (a) Determination of amount.--Within 30 days following
13 receipt of a direction from the State Treasurer to make payment
14 of a claim to the Federal reinsurance facility, the authority
15 shall make an offer to sell bonds. The aggregate principal
16 amount of these bonds shall be adequate to pay the total amount
17 of the claim received from the Federal reinsurance facility,
18 subject to the limitation contained in section 5725(b) (relating
19 to reimbursement payments to Federal reinsurance facility), plus
20 the reasonable expenses of the sale, due consideration having
21 been first given to the moneys in the fund and available for
22 payment of the claim of the Federal reinsurance facility.

23 (b) Disposition of proceeds.--The proceeds of the sale of
24 such bonds shall be paid into the fund and shall be used to
25 satisfy the claim of the Federal reinsurance facility which
26 occasioned the sale of the bonds. Any amount remaining after
27 satisfaction of the claim shall be held in the fund and may be
28 used for any of the purposes set forth in section 5724 (relating
29 to Civil Disorder Authority Fund).

30 (c) Form and delivery.--The bonds of the authority shall be

1 authorized by resolution of the board or by and pursuant to an
2 indenture of trust and shall be of the series, bear the date or
3 dates, be stated to mature at the time or times, not exceeding
4 30 years from their respective dates, be issued as serial or
5 term bonds, or as part serial and part term bonds, or any
6 combination thereof, or as a single bond payable in
7 installments, bear interest payable annually, semiannually or
8 quarterly, be in the denominations, be in the form, either as
9 negotiable commercial paper, or as investment securities in
10 bearer or registered form, carry the registration,
11 exchangeability and interchangeability privileges, be payable in
12 the medium of payment and at the place or places, be subject to
13 the terms of redemption at the prices not exceeding 106% of the
14 principal amount thereof, and be entitled to the priorities in
15 the revenues or receipts of authority as the resolution or
16 indenture may provide. The bonds shall be signed manually or by
17 facsimile by such officers as the authority shall determine, and
18 coupon bonds shall have attached thereto interest coupons
19 bearing the facsimile signature of the treasurer of the
20 authority, as may be prescribed in the resolution or indenture.
21 A bond shall not be issued or delivered without at least one
22 manual signature, which may be that of an officer of the fiscal
23 agent or of the trustee under the resolution or indenture. The
24 bonds may be issued and delivered notwithstanding that one or
25 more of the officers signing the bonds, or the treasurer whose
26 facsimile signature is upon the coupons or any thereof, has
27 ceased to hold the office when the bonds are delivered.

28 (d) Additional terms.--Any resolution or indenture
29 authorizing any bonds may contain provisions which shall be part
30 of the contract with the bondholders as to:

1 (1) Pledge of the full faith and credit of the
2 authority, but not of the Commonwealth or any political
3 subdivision thereof, for the bonds or restricting the same to
4 all or any of the revenues or receipts of the authority.

5 (2) The terms of the bonds.

6 (3) The setting aside of reserves or sinking funds and
7 the regulation and disposition thereof.

8 (4) Any terms for the security of the bonds or under
9 which the bonds may be issued.

10 (5) Any other or additional agreements with the holder
11 of the bonds.

12 (e) Sale.--The bonds shall be sold to the highest
13 responsible bidders proposing the lowest net interest cost to
14 the authority, determined by computing the interest on the bonds
15 to their stated maturity dates and adding the discount or
16 subtracting the premium specified in the bid. There shall be
17 public notice of the sale by two advertisements in not less than
18 three nor more than five newspapers of large general circulation
19 in different parts of this Commonwealth, the first advertisement
20 to be published not less than 20 days and the second not less
21 than five days before the day fixed for the opening of bids. The
22 advertisement of sale shall contain a general description of the
23 bonds, the manner, place and time of the sale, or the time limit
24 for the receipt of proposals, the name of the officer to whom,
25 or to whose designee, bids or proposals shall be delivered and a
26 statement of the terms and conditions of sale. The bonds may be
27 sold to the State Employees' Retirement Board, or to any other
28 custodial board or fund, or to the State Employees' Retirement
29 Fund, or by private placement with a group of not more than 25
30 ultimate investors who purchase for investment and not with a

1 view to distribution, without advertisement or competitive
2 bidding. Bonds shall not be sold if the net interest cost,
3 computed to stated maturity dates of the bonds, of the money
4 received for any issue of the bonds exceeds 6% a year. Pending
5 the preparation of the definitive bonds, interim receipts or
6 temporary bonds may be issued to the purchasers of the bonds and
7 may contain such terms and conditions as the authority may
8 determine.

9 (f) Agreements.--The authority may enter into any indentures
10 of trust or other agreements with any bank or trust company or
11 other person in the United States having power to enter into
12 such agreements, or may designate any such person as fiscal
13 agent under a bond resolution, in order to provide for the
14 security for such bonds, and may assign and pledge all or any of
15 its revenues or receipts thereunder. The indenture, resolution
16 or other agreement may contain such provisions as may be
17 customary in such instruments or as the authority may authorize,
18 including provisions as to:

19 (1) The application of funds and the safeguarding of
20 funds on hand, invested or on deposit.

21 (2) The rights and remedies of the trustees or fiscal
22 agent and the bondholders (which may include restrictions
23 upon the individual right of action of the bondholders).

24 (3) The terms and provisions of the bonds or the
25 resolutions or indentures authorizing their issuance.

26 § 5727. Remedies of bondholder.

27 (a) Remedies cumulative.--The rights and the remedies
28 conferred by this section upon or granted to the bondholders
29 shall be in addition to and not in limitation of any rights and
30 remedies lawfully granted to the bondholders by the resolution

1 or indenture providing for the issuance of bond.

2 (b) Appointment of trustee.--If the authority:

3 (1) defaults in the payment of the interest on any of
4 the bonds after it becomes due and the default continues for
5 30 days;

6 (2) defaults in the payment of principal after it
7 becomes due whether at maturity or upon any unrevoked call
8 for redemption;

9 (3) fails or refuses to comply with the provisions of
10 this chapter; or

11 (4) defaults in any agreement made with the holders of
12 the bonds;

13 the holders of 25% in aggregate principal amount of bonds then
14 outstanding under the indenture or bond resolution involved, by
15 instrument or instruments filed in the office of the Recorder of
16 Deeds of the County of Dauphin and proved or acknowledged in the
17 same manner as a deed to be recorded may, except as this right
18 is limited under any such indenture or other agreement, appoint
19 a trustee to represent the bondholders for the purposes provided
20 in this section.

21 (c) Powers of trustee.--The trustee or any trustee under an
22 indenture or the fiscal agent under resolution or other
23 agreement may, and upon written request of the holders of 25% in
24 principal amount of the bonds outstanding under the authorizing
25 indenture or resolution, or other percentage specified in any
26 resolution, indenture or other agreement, shall, in his or its
27 own name:

28 (1) by mandamus or other action or proceeding at law or
29 in equity, enforce all rights of the bondholders, including
30 the right to require the authority to carry out any agreement

1 as to, or pledge of, the revenues or receipts of the
2 authority and to require the authority to carry out any other
3 agreements with, or for the benefit of, the bondholders, and
4 to perform its duties under this chapter;

5 (2) bring suit upon the bonds;

6 (3) by action or suit in equity, require the authority
7 to account as if it were the trustees of an express trust for
8 the bondholders; or enjoin any acts or things which may be
9 unlawful or in violation of the rights of the bondholders; or

10 (4) by notice in writing to the authority, declare all
11 bonds due and payable and, if all defaults shall be made
12 good, then with the consent of the holders of 25% of the
13 principal amount of the bonds then outstanding, or other
14 percentage specified in any indenture, resolution or other
15 agreement aforesaid, annul the declaration and its
16 consequences.

17 SUBCHAPTER D

18 BASIC PROPERTY INSURANCE ASSESSMENT

19 Sec.

20 5731. Levy and amount of assessment.

21 5732. Payments to Pennsylvania Civil Disorder Authority.

22 5733. Reports and statements.

23 5734. Duration of assessment.

24 § 5731. Levy and amount of assessment.

25 In order to provide for the payment of the principal of and
26 interest on bonds of the authority, issued pursuant to section
27 5726 (relating to bonds of authority), an assessment shall be
28 levied on each insurer which is a member of the industry
29 placement facility. The amount of the assessment shall be 2% of
30 the aggregate gross premiums received by the insurer for

1 policies of basic property insurance or any component thereof,
2 including homeowners and commercial multiple peril policies,
3 written in this Commonwealth.

4 § 5732. Payments to Pennsylvania Civil Disorder Authority.

5 Every insurer shall, on or before April 15 of each year,
6 compute and pay to the treasurer of the Pennsylvania Civil
7 Disorder Authority the aggregate assessments due upon the gross
8 premiums received by it for basic property insurance written in
9 this Commonwealth during the calendar year immediately preceding
10 the payment date. The aggregate assessments shall bear interest
11 at the rate of 6% a year from the date due and payable to the
12 authority until payment is made.

13 § 5733. Reports and statements.

14 The department may at any time require any insurer to furnish
15 it with such information as it, in its discretion, deems
16 necessary in order to determine whether or not the insurer is
17 complying with this subchapter.

18 § 5734. Duration of assessment.

19 The assessment provided for under this subchapter shall be
20 collectible on all policies of basic property insurance or any
21 component thereof, including homeowners and commercial multiple
22 peril policies, written on and after the 30th day following
23 issuance by the authority of its bonds under section 5726
24 (relating to bonds of authority). The assessment shall remain in
25 full force and effect until all bonds issued by the Pennsylvania
26 Civil Disorder Authority have been retired, and shall thereafter
27 terminate at such time and upon such terms and conditions as
28 shall be specified by the board of the authority.

29

CHAPTER 59

30

FIRE AND MARINE INSURANCE

1 Subchapter

2 A. Insurers Generally

3 B. Stock Companies

4 C. Mutual Companies

5 SUBCHAPTER A

6 INSURERS GENERALLY

7 Sec.

8 5901. Resident agents for foreign or alien insurance entities.

9 5902. Examination of foreign or alien entities by department.

10 5903. Annual returns.

11 5904. Penalties and revocation of license.

12 5905. Reports of fires to Bureau of Fire Protection.

13 5906. Provisions of fire insurance policies.

14 5907. Penalties for issuing other than standard fire policies.

15 § 5901. Resident agents for foreign or alien insurance
16 entities.

17 (a) General rule.--An authorized foreign or alien stock or
18 mutual fire insurance entity authorized to transact business in
19 this Commonwealth shall not make, write or place, or cause to be
20 made, written or placed, any policy, duplicate policy, contract
21 of insurance or general or floating policy upon property located
22 in this Commonwealth except after the risk has been approved in
23 writing by an agent, who is a resident of or whose principal
24 place of business is in this Commonwealth and who is licensed to
25 transact insurance business in this Commonwealth. The agent
26 shall countersign all policies so issued and receive the
27 commission thereon when the premium is paid, so that the
28 Commonwealth may receive the taxes required to be paid on the
29 premiums collected for insurance on all property located in this
30 Commonwealth.

1 (b) Policies written at principal office.--The entity may
2 issue policies at its principal or department offices covering
3 property in this Commonwealth, if these policies are issued upon
4 applications procured and submitted to the entity by agents who
5 are residents of this Commonwealth and licensed to transact the
6 business of insurance in this Commonwealth, and who shall
7 receive the commission thereon when paid.

8 (c) Exclusions.--This section does not apply to direct
9 insurance covering the rolling stock of railroad corporations,
10 or property in transit while in the possession and custody of
11 railroad corporations or other common carriers nor to the
12 property of such common carriers used or employed by them in
13 their business as common carriers of freight, merchandise or
14 passengers, nor in the case of bid bonds issued in connection
15 with public or private contracts. Except as to payment of taxes,
16 this section does not apply to authorized foreign or alien
17 insurance exchanges maintaining no office in this Commonwealth
18 and paying no commissions to agents or representatives in this
19 Commonwealth.

20 § 5902. Examination of foreign or alien entities by department.

21 Whenever the department has information that any foreign or
22 alien insurance entity has violated section 5901 (relating to
23 resident agents for foreign or alien insurance entities), it
24 may, at the expense of the entity, examine all books, records
25 and papers of the entity and examine the officers, managers and
26 agents of the entity under oath as to any violation. The
27 examination may take place at the principal office or offices of
28 the entity located in the United States or in any foreign
29 country and at its other offices or agencies. The refusal of any
30 entity to submit to examination shall be presumptive evidence

1 that it has violated section 5901 and shall subject it to the
2 penalties prescribed and imposed by section 5904 (relating to
3 penalties and revocation of license).

4 § 5903. Annual returns.

5 Every foreign or alien stock and mutual fire insurance entity
6 shall, annually and at such other times as the department
7 requires, make a return to the department, in such form and
8 detail as shall be prescribed by it, of all insurance,
9 reinsurance or cessions of risks or liability contracted for or
10 effected by it, whether by issue of policy, entry on bordereau,
11 general participation agreement, excess loss reinsurance or any
12 other manner upon property located in this Commonwealth, or
13 covering any risk or liability upon property so located. The
14 return shall be certified:

15 (1) if a foreign entity, by the oath of its president
16 and secretary or attorney; or

17 (2) if an alien company or association, by the oath of
18 its managers in the United States, as to the reinsurance or
19 cessions effected through its branch office in the United
20 States, and by the oath of its president and secretary or by
21 officers corresponding thereto at its home office, as to
22 reinsurance or cessions as aforesaid contracted for or
23 effected through any office in a foreign county.

24 The refusal of any such entity to make the returns required
25 under this section shall be presumptive evidence that it is
26 guilty of violating section 5901 (relating to resident agents
27 for foreign or alien insurance entities) and shall subject it to
28 the penalties under section 5904 (relating to penalties and
29 revocation of license).

30 § 5904. Penalties and revocation of license.

1 (a) Penalty.--Any foreign or alien stock or mutual fire
2 insurance entity violating section 5901 (relating to resident
3 agents for foreign or alien insurance entities), 5902 (relating
4 to examination of foreign or alien entities by department) or
5 5903 (relating to annual returns) shall be subject to a penalty
6 of \$500 for each violation. This penalty may be imposed by the
7 department upon satisfactory evidence of the violation by any
8 such entity.

9 (b) Revocation of authority.--Any foreign or alien fire
10 insurance entity which neglects or refuses to pay the penalty
11 for 30 days after the imposition thereof shall have its
12 authority to transact business in this Commonwealth revoked by
13 the department for at least one year from the date of the
14 violation. A fire insurance entity whose authority to transact
15 business in this Commonwealth has been so revoked shall not be
16 again authorized to transact business until it has paid the
17 penalty, and has filed with the department a certificate, signed
18 by its president or other chief officer, stating that the
19 provisions of this chapter are accepted by it as a part of the
20 conditions of its authority to transact business.

21 (c) Administrative procedure.--Before the department takes
22 any action under this section, it shall give written notice to
23 the person accused of violating the law, stating specifically
24 the nature of the alleged violation and fixing a time and place,
25 at least ten days thereafter, when a hearing of the matter shall
26 be held. Proceedings under this section are subject to Title 2
27 (relating to administrative law and procedure).

28 § 5905. Reports of fires to Bureau of Fire Protection.

29 Every stock or mutual fire insurance entity transacting
30 business in this Commonwealth shall file with the Bureau of Fire

1 Protection in the Pennsylvania State Police annual and monthly
2 reports in writing, containing such information as is required
3 to be reported by the entities under the act of April 27, 1927
4 (P.L.450, No.291), relating to fire and fire prevention. Any
5 entity which fails to make that report shall forfeit its
6 authority to do business in this Commonwealth.

7 § 5906. Provisions of fire insurance policies.

8 (a) Standard provisions.--Except as provided in this
9 section, an insurance entity shall not issue a policy affording
10 fire insurance on property in this Commonwealth unless the
11 policy contains the following provisions as to such insurance:

12 (1) Introductory provisions.--In Consideration of the
13 Provisions and Stipulations herein or added hereto and of
14 Dollars Premium this company, for the
15 term of from the day of 19.., at
16 noon to the day of 19.., at noon, at (location
17 of property involved) to an amount not exceeding
18 Dollars, does insure
19 and legal representatives, to the extent
20 of the actual cash value of the property at the time of loss,
21 but not exceeding the amount which it would cost to repair or
22 replace the property with material of like kind and quality
23 within a reasonable time after such loss, without allowance
24 for any increased cost of repair or reconstruction by reason
25 of any ordinance or law regulating construction or repair,
26 and without compensation for loss resulting from interruption
27 of business or manufacture, nor in any event for more than
28 the interest of the insured, against all DIRECT LOSS BY FIRE,
29 LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE
30 PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER

1 PROVIDED, to the property described hereinafter while located
2 or contained as described in this policy, or pro rata for
3 five days at each proper place to which any of the property
4 shall necessarily be removed for preservation from the perils
5 insured against in this policy, but not elsewhere.

6 Assignment of this policy shall not be valid except with
7 the written consent of this Company.

8 This policy is made and accepted subject to the foregoing
9 provisions and stipulations and those hereinafter stated,
10 which are hereby made a part of this policy, together with
11 such other provisions, stipulations and agreements as may be
12 added hereto, as provided in this policy.

13 IN WITNESS WHEREOF, this Company has executed and
14 attested these presents: but this policy shall not be valid
15 unless countersigned by the duly authorized agent of this
16 Company at Secretary. President.

17 Countersigned this day of 19 ... Agent.

18 (2) Concealment and fraud.--This entire policy shall be
19 void if, whether before or after a loss, the insured has
20 willfully concealed or misrepresented any material fact or
21 circumstance concerning this insurance or the subject
22 thereof, or the interest of the insured therein, or in case
23 of any fraud or false swearing by the insured relating
24 thereto.

25 (3) Uninsurable and excepted property.--This policy
26 shall not cover accounts, bills, currency, deeds, evidences
27 of debt, money or securities; nor, unless specifically named
28 hereon in writing, bullion or manuscripts.

29 (4) Perils not included.--This Company shall not be
30 liable for loss by fire or other perils insured against in

1 this policy caused, directly or indirectly, by:

2 (i) enemy attack by armed forces, including action
3 taken by military, naval or air forces in resisting an
4 actual or an immediately impending enemy attack;

5 (ii) invasion;

6 (iii) insurrection;

7 (iv) rebellion;

8 (v) revolution;

9 (vi) civil war;

10 (vii) usurped power;

11 (viii) order of any civil authority except acts of
12 destruction at the time of and for the purpose of
13 preventing the spread of fire, if the fire did not
14 originate from any of the perils excluded by this policy;

15 (ix) neglect of the insured to use all reasonable
16 means to save and preserve the property at and after a
17 loss, or when the property is endangered by fire in
18 neighboring premises; or

19 (x) theft.

20 (5) Other insurance.--Other insurance may be prohibited
21 or the amount of insurance may be limited by endorsement
22 attached hereto.

23 (6) Conditions suspending or restricting insurance.--
24 Unless otherwise provided in writing added hereto this
25 Company shall not be liable for loss occurring:

26 (i) While the hazard is increased by any means
27 within the control or knowledge of the insured.

28 (ii) While a described building, whether intended
29 for occupancy by owner or tenant, is vacant or unoccupied
30 beyond a period of 60 consecutive days.

1 (iii) As a result of explosion or riot, unless fire
2 ensues, and in that event for loss by fire only.

3 (7) Other perils or subjects.--Any other peril to be
4 insured against or subject of insurance to be covered in this
5 policy shall be by endorsement in writing hereon or added
6 hereto.

7 (8) Added provisions.--The extent of the application of
8 insurance under this policy and of the contribution to be
9 made by this Company in case of loss, and any other provision
10 or agreement not inconsistent with the provisions of this
11 policy, may be provided for in writing added hereto, but no
12 provision may be waived except such as by the terms of this
13 policy is subject to change.

14 (9) Waiver provisions.--No permission affecting this
15 insurance shall exist, or waiver of any provision be valid,
16 unless granted herein or expressed in writing added hereto.
17 No provision, stipulation or forfeiture shall be held to be
18 waived by any requirement or proceeding on the part of this
19 Company relating to appraisal or to any examination provided
20 for herein.

21 (10) Cancellation of policy.--This policy shall be
22 canceled at any time at the request of the insured, in which
23 case this Company shall, upon demand and surrender of this
24 policy, refund the excess of paid premium above the customary
25 short rates for the expired time. This policy may be canceled
26 at any time by this Company by giving to the insured a five
27 days' written notice of cancellation with or without tender
28 of the excess of paid premium above the pro rata premium for
29 the expired time, which excess, if not tendered, shall be
30 refunded on demand. Notice of cancellation shall state that

1 the excess premium (if not tendered) will be refunded on
2 demand.

3 (11) Mortgagee interests and obligations.--If loss
4 hereunder is made payable, in whole or in part, to a
5 designated mortgagee not named herein as the insured, such
6 interest in this policy may be canceled by giving to the
7 mortgagee a ten days' written notice of cancellation. If the
8 insured fails to render proof of loss, the mortgagee, upon
9 notice, shall render proof of loss in the form herein
10 specified within 60 days thereafter and shall be subject to
11 the provisions hereof relating to appraisal and time of
12 payment and of bringing suit. If this Company shall claim
13 that no liability existed as to the mortgagor or owner, it
14 shall, to the extent of payment of loss to the mortgagee, be
15 subrogated to all the mortgagee's rights of recovery, but
16 without impairing mortgagee's right to sue; or it may pay off
17 the mortgage debt and require an assignment thereof and of
18 the mortgage. Other provisions relating to the interests and
19 obligations of such mortgagee may be added hereto by
20 agreement in writing.

21 (12) Pro rata liability.--This Company shall not be
22 liable for a greater proportion of any loss than the amount
23 hereby insured shall bear to the whole insurance covering the
24 property against the peril involved, whether collectible or
25 not.

26 (13) Requirements in case loss occurs.--The insured
27 shall give immediate written notice to this Company of any
28 loss, protect the property from further damage, forthwith
29 separate the damaged and undamaged personal property, put it
30 in the best possible order, furnish a complete inventory of

1 the destroyed, damaged and undamaged property, showing in
2 detail quantities, costs, actual cash value and amount of
3 loss claimed; and within 60 days after the loss, unless such
4 time is extended in writing by this Company, the insured
5 shall render to this Company a proof of loss, signed and
6 sworn to by the insured, stating the knowledge and belief of
7 the insured as to the following: the time and origin of the
8 loss, the interest of the insured and of all others in the
9 property, the actual cash value of each item thereof and the
10 amount of loss thereto, all encumbrances thereon, all other
11 contracts of insurance, whether valid or not, covering any of
12 the property, any changes in the title, use, occupation,
13 location, possession or exposures of the property since the
14 issuing of this policy, by whom and for what purpose any
15 building herein described and the several parts thereof were
16 occupied at the time of loss and whether or not it then stood
17 on leased ground, and shall furnish a copy of all the
18 descriptions and schedules in all policies and, if required,
19 verified plans and specifications of any building, fixtures
20 or machinery destroyed or damaged. The insured, as often as
21 may be reasonably required, shall exhibit to any person
22 designated by this Company all that remains of any property
23 herein described, and submit to examinations under oath by
24 any person named by this Company, and subscribe the same;
25 and, as often as may be reasonably required, shall produce
26 for examination all books of account, bills, invoices and
27 other vouchers, or certified copies thereof if originals be
28 lost, at such reasonable time and place as may be designated
29 by this Company or its representative, and shall permit
30 extracts and copies thereof to be made.

1 (14) Appraisal.--In case the insured and this Company
2 shall fail to agree as to the actual cash value or the amount
3 of loss, then, on the written demand of either, each shall
4 select a competent and disinterested appraiser and notify the
5 other of the appraiser selected within 20 days of such
6 demand. The appraisers shall first select a competent and
7 disinterested umpire; and failing for 15 days to agree upon
8 such umpire, then, on request of the insured or this Company,
9 such umpire shall be selected by a judge of a court of record
10 in the state in which the property covered is located. The
11 appraisers shall then appraise the loss, stating separately
12 actual cash value and loss to each item; and, failing to
13 agree, shall submit their differences, only, to the umpire.
14 An award in writing, so itemized, of any two when filed with
15 this Company shall determine the amount of actual cash value
16 and loss. Each appraiser shall be paid by the party selecting
17 him and the expenses of appraisal and umpire shall be paid by
18 the parties equally.

19 (15) Company's options.--It shall be optional with this
20 Company to take all, or any part, of the property at the
21 agreed or appraised value, and also to repair, rebuild or
22 replace the property destroyed or damaged with other of like
23 kind and quality within a reasonable time, on giving notice
24 of its intention so to do within 30 days after the receipt of
25 the proof of loss herein required.

26 (16) Abandonment.--There can be no abandonment to this
27 Company of any property.

28 (17) When loss payable.--The amount of loss for which
29 this Company may be liable shall be payable 60 days after
30 proof of loss, as herein provided, is received by this

1 Company and ascertainment of the loss is made either by
2 agreement between the insured and this Company expressed in
3 writing or by the filing with this Company of an award as
4 herein provided.

5 (18) Suit.--No suit or action on this policy for the
6 recovery of any claim shall be sustainable in any court of
7 law or equity unless all the requirements of this policy
8 shall have been complied with, and unless commenced within
9 twelve months next after inception of the loss.

10 (19) Subrogation.--This Company may require from the
11 insured an assignment of all right of recovery against any
12 party for loss to the extent that payment therefor is made by
13 this Company.

14 (b) Designation.--There may be printed upon the face of a
15 policy which contains the provisions set forth in subsection (a)
16 the words "Standard Fire Insurance Policy of the State of
17 Pennsylvania" and including the name of any other states which
18 adopt this form of policy.

19 (c) Applicability.--Subsections (a) and (b) do not apply to
20 policies of perpetual insurance, policies of reinsurance,
21 policies of an all-risk type, policies insuring aircraft,
22 automobile or other motor vehicles against loss by fire, or
23 policies insuring against loss by fire resulting directly or
24 indirectly from bombardment, invasion, insurrection, riot, civil
25 war, commotion or military or usurped power or by order of civil
26 authority.

27 (d) Approved modifications.--A policy affording fire
28 insurance may, subject to the approval of the department as
29 provided in section 3515 (relating to approval of contracts by
30 department), include any other insurances which the insurer is

1 authorized to make, and the wording set out in subsection (a)
2 may be modified in conformity with the provisions thereof or to
3 accommodate additional property coverages and perils.

4 (e) Exceptions.--Notwithstanding any other provisions of
5 this section:

6 (1) An insurer may print on its policy its name, such
7 device or devices as the insurer issuing the policy may
8 desire, the location of its principal office, the date of its
9 formation, plan of operation, the amount of its paid-up
10 capital, if any, the name of its officers and agents, the
11 number and date of the policy, and, if it is issued through
12 an agent, the words: "This policy shall not be valid unless
13 countersigned by the duly authorized agent of the company at
14"

15 (2) An insurer may print in its policies any provisions
16 which it is authorized or required by law to insert therein,
17 and a foreign or alien insurer may, with the approval of the
18 department, so print any provisions required by its charter
19 or deed of settlement or by the laws of its own State or
20 country not contrary to the law of this Commonwealth.

21 (3) An insurer may add, either upon the face of the
22 policy or on the riders or endorsements to be attached
23 thereto, printed or written forms of description and
24 specification or schedules of the property covered by any
25 particular policy and any other matter necessary to express
26 clearly all the facts and conditions of insurance on any
27 particular risk. Insurers issuing the standard policy defined
28 in subsection (a) may affix thereto or include therein a
29 written statement that the policy does not cover loss or
30 damage caused by nuclear reaction or nuclear radiation or

1 radioactive contamination, whether directly or indirectly
2 resulting from an insured peril under the policy. This
3 subsection does not prohibit the attachment to any such
4 policy of an endorsement or endorsements specifically
5 assuming coverage for such loss or damage. Any endorsements
6 or riders so attached must be signed by officers or agents of
7 the company so issuing them.

8 (4) Binders or other contracts for temporary insurance
9 including fire insurance may be made orally or in writing,
10 for a period which shall not exceed 30 days, and shall be
11 deemed to include all the provisions of subsection (a) and
12 all applicable endorsements approved by the department as may
13 be designated in the contract of temporary insurance, except
14 that the cancellation clause and the clause specifying the
15 hour of the day at which the insurance shall commence may be
16 provided by the express terms of the contract of temporary
17 insurance.

18 (5) Appropriate forms of supplemental contracts or
19 extended coverage endorsements whereby the interest in the
20 property described in a policy affording fire insurance shall
21 be insured against one or more of the other perils which the
22 insurer is empowered to assume may be approved by the
23 department, and their use in connection with the fire
24 insurance policy may be authorized by it. A form of policy
25 affording fire insurance may be arranged to provide space for
26 the listing of amounts of insurance, with insurance rates and
27 premiums for the basic coverage insured thereunder, and for
28 additional coverages or perils insured under endorsements
29 attached, and such other data as may be conveniently included
30 for duplication on daily reports for office records.

1 (f) Printing on form.--The form of policy, including fire
2 insurance, upon property in this Commonwealth shall be plainly
3 printed, and no portion thereof shall be in type smaller than
4 seven point.

5 (g) Statement of location.--A foreign fire insurance company
6 shall not issue a policy affording fire insurance on property in
7 this Commonwealth unless the policy contains the exact name of
8 the municipal corporation in which the insured property is
9 located and the mailing address for each insured property.

10 (h) Definition.--As used in this section the term "fire
11 insurance" means insurance against loss by fire, lightning or
12 removal, as specified in section 3302(b)(1) (relating to
13 authorized classes of insurance) and does not include insurance
14 of the kind specified in any other portion of section 3302
15 whether or not the risks of fire, lightning or removal are
16 included.

17 § 5907. Penalties for issuing other than standard fire
18 policies.

19 (a) Civil penalties.--Upon satisfactory evidence that any
20 person, corporation or insurance entity has issued, or caused to
21 be issued, any policy or contract of fire insurance on property
22 situated in this Commonwealth contrary to the provisions of
23 section 5906 (relating to provisions of fire insurance
24 policies), the department may take against the offending party
25 any one or more of the following courses of actions:

26 (1) Suspend or revoke his or its license.

27 (2) Refuse, for a period not exceeding one year
28 thereafter, to issue him or it a new license.

29 (3) Impose a penalty of not more than \$1,000 for each
30 violation.

1 (b) Criminal penalties.--Any person, corporation or
2 insurance entity that, either as principal or agent, willfully
3 issues, or causes to be issued, any policy or contract of fire
4 insurance on property in this Commonwealth in violation of
5 section 5906 commits a summary offense.

6 (c) Construction of contract.--Any policy issued in
7 violation of section 5906 shall nevertheless be construed in
8 accordance with its provisions.

9 SUBCHAPTER B

10 STOCK COMPANIES

11 Sec.

12 5921. Capital of foreign or alien companies.

13 5922. Authorized investment of capital.

14 5923. Investment of surplus.

15 5924. Treasury stock.

16 5925. Estimation of surplus for dividends.

17 5926. Authorized holdings of real estate.

18 5927. Procedure when capital impaired.

19 § 5921. Capital of foreign or alien companies.

20 A foreign or alien stock fire, stock marine and stock fire
21 and marine insurance company shall not be authorized in this
22 Commonwealth to transact any of the classes of business referred
23 to in section 3302(b) (relating to authorized classes of
24 insurance) unless it has a paid-up and safely invested capital,
25 if a foreign company, or a deposit in the United States, if an
26 alien company, of not less than \$200,000. The company shall not
27 be authorized to do all of the classes of business referred to
28 in section 3302(b) unless it has a paid-up capital or deposit of
29 not less than \$400,000.

30 § 5922. Authorized investment of capital.

1 Every domestic stock fire, stock marine or stock fire and
2 marine insurance company shall invest and keep invested all its
3 capital in sound investments within the classes described in
4 section 5503 (relating to investment of capital), except such
5 cash as is required in the transaction of its business.

6 § 5923. Investment of surplus.

7 Any money over and above the capital of any stock fire, stock
8 marine and stock fire and marine insurance company, may be
9 invested in:

10 (1) The securities authorized for investment of capital.

11 (2) Any investment described in section 5505(a)(1) or

12 (3) (relating to investment of surplus).

13 (3) The stock or other evidence of indebtedness of any
14 solvent corporation created under the law of the United
15 States or any state, foreign country or political subdivision
16 thereof, or loaned upon the pledge of such a corporation.

17 The total investments made by such company in stocks of other
18 insurance companies which have invested in or loaned its funds
19 on the stock of the first investing company shall not exceed 5%
20 of the gross assets of the first investing company. The total
21 investments hereafter made by such company in the stocks or
22 other evidence of indebtedness of solvent alien corporations
23 shall not exceed 10% of the moneys of such company over and
24 above its capital and the reserves which it is required to
25 maintain under the law of this Commonwealth. The current market
26 value of securities shall at the time of any loan thereon be at
27 least 20% more than the sum loaned. The insurance company shall
28 not invest any of its funds in any unincorporated business or
29 enterprise or the stocks or evidence of indebtedness of any
30 corporation, if the owners or holders of its securities are or

1 may become liable on account thereof to any assessment, except
2 for taxes. The funds of such a company shall not be loaned on
3 personal security except for defraying the expenses of an
4 employee transferred or about to be transferred to a new place
5 of employment with the company. Not more than 20% of its capital
6 shall be invested in a single mortgage. If any investment or
7 loan is made or held which is not authorized by this section,
8 the officers and directors making or authorizing the investment
9 or loan shall be personally liable for any loss occasioned
10 thereby, and no value as an asset shall be allowed for the
11 investment or loan.

12 § 5924. Treasury stock.

13 Any stock fire, stock marine or stock fire and marine
14 insurance company may, with the approval of its board of
15 directors, acquire, retain, cancel or dispose of shares of its
16 own capital stock, but no such company shall acquire such stock
17 without the prior approval of the department, reduce its capital
18 stock without complying with law or directly or indirectly vote
19 shares of its own stock held by it.

20 § 5925. Estimation of surplus for dividends.

21 (a) General rule.--In estimating the surplus of a stock
22 fire, stock marine and stock fire and marine insurance company,
23 for the purpose of making any dividend upon its capital stock,
24 there shall be reserved from its admitted assets a sum equal to
25 the unearned premiums on unexpired risks and policies and all
26 outstanding liabilities. A company may not declare dividends to
27 the stockholders exceeding 10% on its capital stock in any one
28 year unless, in addition to the amount of its capital stock, the
29 dividend, all outstanding liabilities and the amount of all
30 unearned premiums on unexpired risks and policies, it has a

1 surplus to an amount equalling 30% of its unearned premiums or
2 50% of its capital stock, whichever is greater.

3 (b) Penalties.--Any dividend declared and paid contrary to
4 this section shall make the directors of the company voting in
5 favor of the dividend jointly and severally liable to the
6 creditors of the company to the extent of the dividend. Each
7 stockholder receiving the dividend shall be liable to the
8 creditors of the company to the extent of the dividend received,
9 in addition to any other penalties prescribed by law.

10 § 5926. Authorized holdings of real estate.

11 A domestic stock fire, stock marine or stock fire and marine
12 insurance company shall not purchase, hold or convey real
13 estate, except as authorized for domestic stock casualty
14 insurance companies under section 5506 (relating to authorized
15 holdings of real estate).

16 § 5927. Procedure when capital impaired.

17 Any stock fire, stock marine and stock fire and marine
18 insurance company, receiving notice from the department that its
19 capital is impaired, shall proceed as prescribed for stock
20 casualty insurance companies by section 5509 (relating to
21 procedure when capital impaired).

22 SUBCHAPTER C

23 MUTUAL COMPANIES

24 Sec.

25 5931. Licensing of foreign mutual companies.

26 5932. Rechartering of companies.

27 5933. Cash premium policies.

28 5934. Cash premiums.

29 5935. Surplus.

30 § 5931. Licensing of foreign mutual companies.

1 (a) Old companies.--A foreign mutual fire, mutual marine or
2 mutual fire and marine insurance company which was originally
3 licensed to transact business in this Commonwealth prior to and
4 was transacting business in this Commonwealth on June 23, 1931,
5 may be relicensed to transact the class of business referred to
6 in section 3302(b)(1) (relating to authorized classes of
7 insurance) if it has a surplus over all liabilities, including
8 unearned premiums, computed in accordance with the law of this
9 Commonwealth of not less than \$100,000, or has continuously
10 transacted business for not less than five years and has such a
11 surplus not less than \$50,000. To be relicensed to transact the
12 classes of business referred to in section 3302(b)(2) and (3),
13 the surplus shall be not less than \$250,000.

14 (b) More recent companies.--Any other foreign mutual fire,
15 mutual marine or mutual fire and marine insurance company may be
16 licensed and relicensed to transact the class of business
17 referred to in section 3302(b)(1) if it has a surplus over all
18 liabilities, including unearned premiums, computed in accordance
19 with the law of this Commonwealth of not less than \$150,000. To
20 be licensed or relicensed to transact the classes of business
21 referred to:

22 (1) in either section 3302(b)(2) or (3), the surplus
23 shall be of not less than \$200,000;

24 (2) in section 3302(b)(1) and in either section
25 3302(b)(2) or (3), the surplus shall be not less than
26 \$350,000;

27 (3) in both section 3302(b)(2) and (3), the surplus
28 shall be not less than \$400,000; or

29 (4) in section 3302(b)(1), (2) and (3), the surplus
30 shall be not less than \$550,000.

1 § 5932. Rechartering of companies.

2 Any domestic mutual fire or mutual fire and marine insurance
3 company, whose charter is about to expire, may call a special
4 meeting of the members. Notice of the object of this meeting
5 shall be given by advertisement for four weeks preceding, in at
6 least two daily or weekly newspapers published in the city or
7 county where the principal office of the company is located, or
8 by circular mailed to the address of each member. If at the
9 meeting two-thirds of the votes cast in person or by proxy favor
10 a resolution agreeing that the corporation shall hold its
11 charter subject to the provisions of the Constitution of
12 Pennsylvania, setting forth at length the sections of its
13 existing charter which it desires to retain and agreeing to be
14 subject to the provisions of this title so far as not
15 inconsistent with the charter, the resolution and the number of
16 votes cast for and against it at the special meeting shall be
17 stated in the records of the company. A certified copy of the
18 record shall be forwarded to the department, which shall submit
19 the same to the Attorney General. If the Attorney General
20 approves the resolution, he shall certify his approval to the
21 Governor, who shall cause letters patent to issue certifying the
22 company as a corporation under this title.

23 § 5933. Cash premium policies.

24 Any domestic mutual fire insurance company organized prior to
25 May 1, 1876, having a surplus not less than the minimum capital
26 required for the organization of a domestic stock fire insurance
27 company and an unearned premium reserve computed upon the same
28 basis as that required of domestic stock fire insurance
29 companies, may issue policies for a cash premium without any
30 contingent liability for assessment.

1 § 5934. Cash premiums.

2 Any domestic mutual fire insurance company, incorporated by a
3 special act of the General Assembly prior to May 1, 1876, and
4 having a surplus and unearned premium reserve as required in
5 section 5933 (relating to cash premium policies) may, instead of
6 collecting the deposit money as provided under its charter,
7 charge a cash premium in advance, on which no dividend or return
8 shall be due or accrue, other than return premiums on canceled
9 policies, if its charter provides:

10 (1) for a premium deposit, which shall remain as a
11 pledge for the performance of the depositor's covenants,
12 which deposit, under the provision of the charter, shall be
13 returned to the depositor at the expiration of the policy,
14 together with a proportional dividend of the profits after
15 deducting losses and incidental charges; and

16 (2) that the net profit, arising by interest or
17 otherwise, shall be ascertained yearly to every member in
18 proportion to his deposit for which the member shall have
19 credit on the company's books, payable at the cancellation of
20 the policy.

21 § 5935. Surplus.

22 The surplus of any domestic mutual fire insurance companies
23 issuing policies in accordance with section 5933 (relating to
24 cash premium policies) or 5934 (relating to cash premiums) shall
25 be held as a reserve for the payment of losses and expenses. In
26 the event of dissolution of the company, this surplus shall be
27 divided pro rata among the policyholders whose policies are in
28 force at the time of dissolution, but no policyholder, other
29 than a loss claimant, shall receive more than the amount of the
30 unearned cash premium last paid to the company for the current

1 term of such policy. Any balance remaining shall escheat to the
2 Commonwealth.

3 CHAPTER 61

4 ELIGIBILITY FOR MOTOR VEHICLE INSURANCE

5 Sec.

6 6101. Definitions.

7 6102. General provisions.

8 6103. Insufficient grounds for failure to insure.

9 6104. Grounds for cancellation.

10 6105. Premium increase or surcharge.

11 6106. Notice of refusal.

12 6107. Exclusions.

13 6108. Information regarding refusal to insure.

14 6109. Request for review.

15 6110. Review procedure.

16 6111. Powers of department.

17 6112. Penalty.

18 § 6101. Definitions.

19 The following words and phrases when used in this chapter
20 shall have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

22 "Insurer." Any insurance entity authorized to transact the
23 business of automobile insurance in this Commonwealth.

24 "Nonpayment of premium." Failure of the named insured to
25 discharge when due any of his obligations in connection with the
26 payment of premiums on a policy, or any installment of the
27 premium, whether the premium is payable directly to the insurer
28 or its agent or indirectly under any premium finance plan or
29 extension of credit.

30 "Policy." A policy of motor vehicle insurance delivered or

1 issued for delivery in this Commonwealth insuring a natural
2 person as named insured or one or more related individuals
3 resident of the same household, and under which the insured
4 vehicles therein designated are of the following types only:

5 (1) A motor vehicle of the private passenger or station
6 wagon type that is not used as a public or livery conveyance
7 for passengers and is not rented to others.

8 (2) Any other four-wheel motor vehicle with a gross
9 weight not exceeding 9,000 pounds which is not principally
10 used in the occupation, profession or business of the insured
11 other than farming.

12 "Renewal" or "to renew." The issuance and delivery by an
13 insurer of a policy superseding at the end of the policy period
14 a policy previously issued and delivered by the same insurer, if
15 the renewal policy provides types and limits of coverage at
16 least equal to those contained in the policy being superseded,
17 or the issuance and delivery of a certificate or notice
18 extending the term of a policy beyond its policy period or term
19 with types and limits of coverage at least equal to those
20 contained in the policy being extended.

21 § 6102. General provisions.

22 (a) Term of certain policies.--Any policy with a policy
23 period or term of less than 12 months or any period with no
24 fixed expiration date shall for purposes of this chapter be
25 considered as if written for successive policy periods or terms
26 of 12 months.

27 (b) Applicability to policies.--This chapter applies only to
28 that portion of a policy providing bodily injury and property
29 damage liability, comprehensive and collision coverages and to
30 the provisions in the policy relating to medical payments and

1 uninsured motorists coverage.

2 § 6103. Insufficient grounds for failure to insure.

3 (a) Prohibited grounds.--An insurer shall not cancel or
4 refuse to write or renew a policy for one or more of the
5 following reasons:

6 (1) Age.

7 (2) Residence or operation of a motor vehicle in a
8 specific geographic area.

9 (3) Race.

10 (4) Color.

11 (5) Creed.

12 (6) National origin.

13 (7) Ancestry.

14 (8) Marital status.

15 (9) Sex.

16 (10) Lawful occupation (including military service).

17 (11) The refusal of another insurer to write a policy,
18 or the cancellation or refusal to renew an existing policy by
19 another insurer.

20 (12) Illness or permanent or temporary disability, where
21 the insured can medically document that the illness or
22 disability will not impair his ability to operate a motor
23 vehicle. Failure to provide this documentation shall be
24 proper reason for the insurer to amend the policy of the
25 named insured to exclude the disabled insured from coverage
26 under the policy while operating a motor vehicle after the
27 effective date of the policy amendment, but shall not be
28 proper reason to cancel or refuse to write or renew the
29 policy. This paragraph does not affect the excluded
30 individual's eligibility for coverage under the named

1 insured's policy for any injury sustained while not operating
2 a motor vehicle. Illness or permanent or temporary disability
3 on the part of any insured shall not be proper reason for
4 canceling the policy of the named insured.

5 (13) Any accident which occurred under any of the
6 following circumstances:

7 (i) The motor vehicle was lawfully parked, except
8 that if the vehicle rolled from the parked position, any
9 accident shall be charged to the person who parked the
10 auto.

11 (ii) The applicant, owner or other resident operator
12 was reimbursed by, or on behalf of, a person who was
13 responsible for the accident or had a judgment against
14 such a person.

15 (iii) The vehicle was struck in the rear by another
16 vehicle and the applicant or other resident operator was
17 not convicted of a moving traffic violation in connection
18 with the accident.

19 (iv) The operator of the other vehicle involved in
20 the accident was convicted of a moving traffic violation,
21 and the applicant or resident operator was not convicted
22 of a moving traffic violation in connection with the
23 accident.

24 (v) The vehicle operated by the applicant or any
25 resident operator was struck by a "hit-and-run" vehicle,
26 if the accident was reported to the proper authority
27 within 24 hours by the applicant or resident operator.

28 (vi) The accident involved damage by contact with
29 animals or fowl.

30 (vii) The accident involved physical damage caused

1 by flying gravel, missiles or falling objects.

2 (viii) The accident occurred when using the vehicle
3 in response to any emergency if the operator of the
4 vehicle at the time of the accident was a paid or
5 volunteer member of any police or fire department, first
6 aid squad or any law enforcement agency, but not after
7 the auto ceased to be used in response to the emergency.

8 (ix) The accident occurred more than 36 months prior
9 to the later of the inception of the insurance policy or
10 the upcoming anniversary date of the policy.

11 (14) Any claim under the comprehensive portion of the
12 policy unless the loss was intentionally caused by the
13 insured.

14 (15) Any one accident occurring within the 36-month
15 period prior to the upcoming anniversary date of the policy.

16 (b) Terminated agent within one year.--For a period 12
17 months after notice of termination given to an agent, an insurer
18 shall not cancel or refuse to renew existing policies written
19 through the terminated agent because of the termination, unless
20 the action could have been taken had the agency relationship
21 continued. An insurer shall pay commissions for the policies
22 that are continued or renewed through the terminated agent,
23 except where:

24 (1) the insurer retained ownership of the expirations of
25 such policies; or

26 (2) the agent has misappropriated funds or property of
27 the insurer, has failed to remit to the insurer funds due it
28 promptly upon demand, has been terminated for insolvency,
29 abandonment or gross and willful misconduct or has had his
30 license suspended or revoked.

1 (c) Terminated agent after one year.--Subsequent to the 12-
2 month period after notice of termination given to an agent, an
3 insurer shall not cancel or refuse to renew existing policies
4 written through the terminated agent without offering to cover
5 the insured on a direct basis or refer the insured to one or
6 more new agents if the terminated agent could not find a
7 suitable insurer acceptable to the policyholder. The offer need
8 not be made if the insurer could have canceled or failed to
9 renew the policy had the agency relationship continued. If the
10 insurer retains ownership of the expirations of the policies,
11 the insurer is not required to offer a new agent.

12 (d) Accumulation of points.--An insurer shall not cancel or
13 refuse to renew a policy for two or fewer moving violations in
14 any jurisdiction or jurisdictions during a 24-month period when
15 the operator's record indicates that the named insured presently
16 bears five points or fewer under Title 75 (relating to
17 vehicles). However, this subsection does not apply under the
18 following conditions:

19 (1) All five points are incurred from one violation.

20 (2) The driver's license or motor vehicle registration
21 of the named insured has been suspended or revoked at any
22 time during the 24-month period.

23 (e) Other insureds.--The applicability of subsection (d) to
24 an individual, other than the named insured, who either is a
25 resident in the same household or who customarily operates a
26 vehicle insured under the policy shall be proper reason for the
27 insurer excluding the individual from coverage under the policy,
28 but not for canceling the policy.

29 § 6104. Grounds for cancellation.

30 An insurer shall not cancel a policy except for one or more

1 of the following reasons:

2 (1) Nonpayment of premium.

3 (2) The driver's license or motor vehicle registration
4 of the named insured has been under suspension or revocation
5 at any time during the policy period. The applicability of
6 this reason to one who either is a resident in the same
7 household or who customarily operates a vehicle insured under
8 the policy shall be proper reason for the insurer excluding
9 the individual from coverage under the policy, but not for
10 canceling the policy.

11 (3) A determination that the insured has concealed a
12 fact, has made an allegation contrary to fact or has made a
13 misrepresentation of a fact if the fact concealed, alleged or
14 misrepresented was material to the acceptance of the risk by
15 the insurer.

16 § 6105. Premium increase or surcharge.

17 An insurer shall not increase an individual insured's premium
18 or assess a premium surcharge on the basis of any moving traffic
19 violation records, any revocation or suspension records or any
20 accident records, if the insured establishes that the records
21 are erroneous or inaccurate.

22 § 6106. Notice of refusal.

23 A cancellation or refusal to renew by an insurer of a policy
24 shall not be effective unless the insurer delivers or mails to
25 the named insured at the address shown in the policy a written
26 notice of the cancellation or refusal to renew. The notice
27 shall:

28 (1) Be approved as to form by the department prior to
29 use.

30 (2) State the date, not less than 30 days after the date

1 of such mailing or delivering, on which the cancellation or
2 refusal to renew shall become effective, except that the
3 effective date may be 15 days from the date of mailing or
4 delivery when it is being canceled or not renewed for the
5 reasons set forth in section 6104(1) or (2) (relating to
6 grounds for cancellation).

7 (3) State the specific reasons of the insurer for
8 cancellation or refusal to renew.

9 (4) Advise the insured of his right to request in
10 writing, within 20 days of the receipt of the notice of
11 cancellation or intention not to renew, that the department
12 review the action of the insurer.

13 (5) Either in the notice or in an accompanying
14 statement, advise the insured of his possible eligibility for
15 insurance through the automobile assigned risk plan.

16 (6) Advise the insured that he must obtain automobile
17 insurance coverage or otherwise comply with Chapter 63
18 (relating to motor vehicle financial responsibility) if he
19 operates or registers a motor vehicle in this Commonwealth
20 and that the insured shall notify the Department of
21 Transportation that he has replaced such coverage.

22 § 6107. Exclusions.

23 This chapter does not apply:

24 (1) If the insurer has manifested its willingness to
25 renew by issuing or offering to issue a renewal policy,
26 certificate or other evidence of renewal, or has manifested
27 such intention by any other means.

28 (2) If the named insured has demonstrated by some overt
29 action to the insurer or its agent that he wishes the policy
30 to be canceled or that he does not wish the policy to be

1 renewed.

2 (3) To any policy which has been in effect less than 60
3 days, unless it is a renewal policy, except that no insurer
4 shall decline to continue in force such a policy on the basis
5 of the grounds set forth in section 6103(a)(1) through (14)
6 (relating to insufficient grounds for failure to insure) and
7 except that, if an insurer cancels a policy in the first 60
8 days, the insurer shall supply the insured with a written
9 statement of the reason for cancellation.

10 (4) To any policy issued under an automobile assigned
11 risk plan.

12 (5) To any policy insuring more than four automobiles.

13 (6) To any policy covering the hazards of operation of a
14 garage, automobile sales agency repair shop, service station
15 or public parking place.

16 § 6108. Information regarding refusal to insure.

17 (a) Immunity.--A cause of action shall not arise against the
18 department, any insurer, the authorized representatives, agents
19 and employees of either or any firm, person or corporation
20 furnishing to the insurer information as to reasons for
21 cancellation or refusal to write or renew for making any
22 statement in complying with this chapter or for providing
23 information pertaining thereto.

24 (b) Notification to insured.--The insurer shall furnish the
25 insured the notification required by the Fair Credit Reporting
26 Act (Public Law 91-508, 15 U.S.C. § 1681 et seq.) at the time of
27 the cancellation or refusal to write or renew.

28 (c) Records of insurer.--Each insurer shall maintain records
29 of the numbers of cancellations and refusals to write or renew
30 policies and the reasons therefor and shall supply to the

1 department such information therefrom as it may request.

2 § 6109. Request for review.

3 (a) Cancellation or failure to renew.--Any insured may
4 within 20 days of the receipt by the insured of notice of
5 cancellation or notice of intention not to renew request the
6 department in writing to review the action of the insurer.

7 (b) Refusal to write policy.--Any applicant for a policy who
8 is refused the policy by an insurer shall be given a written
9 notice of refusal to write by the insurer, which shall state the
10 specific reasons for the refusal. Within 20 days of the receipt
11 of the notice, the applicant may request the department in
12 writing to review the action of the insurer.

13 § 6110. Review procedure.

14 (a) Notice of hearing.--If, upon receipt of a request for
15 review or if as a result of investigation, the department has
16 good cause to believe that an insurer is violating this chapter,
17 the department shall notify the insurer thereof and shall review
18 the matter to determine whether the cancellation or refusal to
19 renew or to write was in violation of this chapter. The
20 department shall within 40 days of the receipt of the request
21 either order the policy written or reinstated or uphold the
22 cancellation or refusal to renew. If either of the parties
23 disputes the department's findings, the party shall have the
24 right to a hearing. If a hearing is requested, the department
25 shall immediately issue notice of the hearing, stating the time
26 and place, which shall not be less than 30 days from the date of
27 the notice.

28 (b) Hearing procedure.--The hearing shall be held at the
29 time and place fixed for the hearing in the notice. The insurer
30 may show cause why an order should not be made by the department

1 to cease and desist from acts constituting a violation of this
2 chapter. Upon good cause shown, the department shall permit any
3 person to intervene, appear and be heard at the hearing, in
4 person or by counsel. The department may administer oaths,
5 examine and cross-examine witnesses, receive oral and
6 documentary evidence and subpoena witnesses, compel their
7 attendance and require the production of books, papers, records
8 or other documents which it deems relevant to the hearing. The
9 department shall cause a record to be kept of all evidence and
10 all proceedings at the hearing.

11 (c) Order.--Following the hearing, the department shall
12 issue a written order resolving the factual issues presented at
13 the hearing and stating what remedial action, if any, is
14 required. The department shall send a copy of the order to the
15 persons participating in the hearing. In the case of a
16 cancellation of or refusal to renew a policy, the policy shall
17 remain in effect until the conclusion of the review or the date
18 referred to in section 6106(2) (relating to notice of refusal),
19 whichever is later, except for review of cancellations by reason
20 of nonpayment of premium, in which case the policy shall
21 terminate as of the date provided in the notice under of section
22 6106(2), unless the cancellation or refusal to renew is upheld
23 or the policy reinstated.

24 (d) Applicability of Title 2.--The review by the department
25 under this chapter shall not be subject to 2 Pa.C.S. Ch. 5
26 Subch. A (relating to practice and procedure of Commonwealth
27 agencies). The decision of the department shall be subject to
28 appeal in accordance with 2 Pa.C.S. Ch. 7 Subch. A (relating to
29 judicial review of Commonwealth agency action).

30 § 6111. Powers of department.

1 (a) Regulations.--The department shall promulgate
2 regulations necessary for the administration of this chapter.

3 (b) Filing fee.--The department may provide in these
4 regulations for the establishment of a filing fee not exceeding
5 \$15, to accompany the request for review. If the department
6 decides the appeal in favor of the insured, the filing fee shall
7 be returned immediately and the fee shall be paid by the
8 insurer.

9 (c) Cease and desist order.--Upon a determination that this
10 chapter has been violated, the department may issue an order
11 requiring the insurer to cease and desist from engaging in the
12 violation, and may enforce the order by an action for
13 injunction, regardless of whether the insurer is licensed by the
14 department.

15 § 6112. Penalty.

16 Any individual or insurer who violates this chapter commits a
17 misdemeanor of the second degree.

18 CHAPTER 63

19 MOTOR VEHICLE FINANCIAL RESPONSIBILITY

20 Subchapter

- 21 A. General Provisions
- 22 B. Motor Vehicle Liability Insurance First Party Benefits
- 23 C. Uninsured and Underinsured Motorist Coverage
- 24 D. Assigned Risk Plan
- 25 E. Assigned Claims Plan
- 26 F. Catastrophic Loss Trust Fund
- 27 G. Nonpayment of Judgments
- 28 H. Proof of Financial Responsibility
- 29 I. Miscellaneous Provisions

30 SUBCHAPTER A

1 GENERAL PROVISIONS

2 Sec.

3 6301. Short title of chapter.

4 6302. Definitions.

5 6303. Applicability of chapter.

6 6304. Administration of chapter.

7 § 6301. Short title of chapter.

8 This chapter shall be known and may be cited as the Motor
9 Vehicle Financial Responsibility Law.

10 § 6302. Definitions.

11 The following words and phrases when used in this chapter
12 shall have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Benefits" or "first party benefits." Medical benefits,
15 income loss benefits, accidental death benefits and funeral
16 benefits.

17 "Financial responsibility." The ability to respond in
18 damages for liability on account of accidents arising out of the
19 maintenance or use of a motor vehicle in the amount of \$15,000
20 because of injury to one person in any one accident, in the
21 amount of \$30,000 because of injury to two or more persons in
22 any one accident and in the amount of \$5,000 because of damage
23 to property of others in any one accident. The financial
24 responsibility shall be in a form acceptable to the Department
25 of Transportation.

26 "Injury." Accidentally sustained bodily harm to an
27 individual and that individual's illness, disease or death
28 resulting therefrom.

29 "Insured." Any of the following:

30 (1) An individual identified by name as an insured in a

1 policy of motor vehicle liability insurance.

2 (2) If residing in the household of the named insured:

3 (i) a spouse or other relative of the named insured;

4 or

5 (ii) a minor in the custody of either the named

6 insured or relative of the named insured.

7 "Insurer" or "insurance company." A motor vehicle liability
8 insurer subject to the requirements of this chapter.

9 "Self-insurer." An entity providing benefits and qualified
10 in the manner set forth in section 6387 (relating to self-
11 insurance).

12 "Underinsured motor vehicle." A motor vehicle for which the
13 limits of available liability insurance and self-insurance are
14 insufficient to pay losses and damages.

15 "Uninsured motor vehicle." Any of the following:

16 (1) A motor vehicle for which there is no liability
17 insurance or self-insurance applicable at the time of the
18 accident.

19 (2) A motor vehicle for which the insurance company
20 denies coverage or the insurance company is or becomes
21 involved in insolvency proceedings in any jurisdiction.

22 (3) An unidentified motor vehicle that causes an
23 accident resulting in injury provided the accident is
24 reported to the police or proper governmental authority and
25 claimant notifies his insurer within 30 days, or as soon as
26 practicable thereafter, that the claimant or his legal
27 representative has a legal action arising out of the
28 accident.

29 § 6303. Applicability of chapter.

30 This chapter does not apply with respect to any motor vehicle

1 owned by the Federal Government.

2 § 6304. Administration of chapter.

3 (a) General rule.--Except as provided in subsection (b), the
4 Department of Transportation shall administer and enforce this
5 chapter and may make rules and regulations necessary for that
6 purpose.

7 (b) Insurance matters.--The department shall administer and
8 enforce those provisions of this chapter as to matters under its
9 jurisdiction as determined by this chapter or other statute and
10 may make rules and regulations necessary for that purpose.

11 SUBCHAPTER B

12 MOTOR VEHICLE LIABILITY INSURANCE

13 FIRST PARTY BENEFITS

14 Sec.

15 6311. Required benefits.

16 6312. Availability of benefits.

17 6313. Source of benefits.

18 6314. Ineligible claimants.

19 6315. Availability of adequate limits.

20 6316. Payment of benefits.

21 6317. Stacking of benefits.

22 6318. Exclusion from benefits.

23 6318.1. Certain nonexcludable conditions.

24 6319. Coordination of benefits.

25 6320. Subrogation.

26 6321. Statute of limitations.

27 6322. Preclusion of recovering required benefits.

28 6323. Reporting requirements.

29 § 6311. Required benefits.

30 An insurer issuing or delivering liability insurance policies

1 covering any motor vehicle of the type required to be registered
2 under Title 75 (relating to vehicles), except recreational
3 vehicles not intended for highway use, motorcycles, motor-driven
4 cycles or motorized pedalcycles or like type vehicles,
5 registered and operated in this Commonwealth, shall include
6 coverage providing a medical benefit in the amount of \$10,000,
7 an income loss benefit up to a monthly maximum of \$1,000 up to a
8 maximum benefit of \$5,000 and a funeral benefit in the amount of
9 \$1,500, as defined in section 6312 (relating to availability of
10 benefits), with respect to injury arising out of the maintenance
11 or use of a motor vehicle. The income loss benefit provided
12 under this section may be expressly waived by the named insured
13 provided the named insured has no expectation of actual income
14 loss due to age, disability or lack of employment history.

15 § 6312. Availability of benefits.

16 An insurer issuing or delivering liability insurance policies
17 covering any motor vehicle required to be covered under section
18 6311 (relating to required benefits) shall make available for
19 purchase first party benefits with respect to injury arising out
20 of the maintenance or use of a motor vehicle as follows:

21 (1) Medical benefit.--Coverage to provide for reasonable
22 and necessary medical treatment and rehabilitative services,
23 including, but not limited to, hospital, dental, surgical,
24 psychiatric, psychological, osteopathic, ambulance,
25 chiropractic, licensed physical therapy, nursing services,
26 vocational rehabilitation and occupational therapy, speech
27 pathology and audiology, optometric services, medications,
28 medical supplies and prosthetic devices, all without
29 limitation as to time in cases where within 18 months from
30 the date of the accident causing injury, it is ascertainable

1 with reasonable medical probability that further expenses may
2 be incurred as a result of the injury. Benefits under this
3 paragraph may include any nonmedical remedial care and
4 treatment rendered in accordance with a recognized religious
5 method of healing.

6 (2) Income loss benefit.--Includes the following:

7 (i) Eighty percent of actual loss of gross income.

8 (ii) Reasonable expenses actually incurred for
9 hiring a substitute to perform self-employment services
10 thereby mitigating loss of gross income or for hiring
11 special help thereby enabling a person to work and
12 mitigate loss of gross income.

13 Income loss does not include loss of expected income for any
14 period following the death of an individual or expenses
15 incurred for services performed following the death of an
16 individual. Income loss shall not commence until five working
17 days have been lost after the date of the accident.

18 (3) Accidental death benefit.--A death benefit paid to
19 the personal representative of the insured, if injury
20 resulting from a motor vehicle accident causes death within
21 24 months from the date of the accident.

22 (4) Funeral benefit.--Expenses directly related to the
23 funeral, burial, cremation or other form of disposition of
24 the remains of a deceased individual, incurred as a result of
25 the death of the individual as a result of the accident and
26 within 24 months from the date of the accident.

27 (5) Combination benefit.--A combination of benefits
28 described in paragraphs (1) through (4) as an alternative to
29 the separate purchase of those benefits.

30 § 6313. Source of benefits.

1 (a) General rule.--Except as provided in section 6314
2 (relating to ineligible claimants), a person who suffers injury
3 arising out of the maintenance or use of a motor vehicle shall
4 recover first party benefits against applicable insurance
5 coverage in the following order of priority:

6 (1) For a named insured, the policy on which he is the
7 named insured.

8 (2) For an insured, the policy covering the insured.

9 (3) For the occupants of an insured motor vehicle, the
10 policy on that motor vehicle.

11 (4) For a person who is not the occupant of a motor
12 vehicle, the policy on any motor vehicle involved in the
13 accident. For the purpose of this paragraph, a parked and
14 unoccupied motor vehicle is not deemed to be involved in an
15 accident unless it was parked so as to cause unreasonable
16 risk of injury.

17 (b) Multiple sources of equal priority.--The insurer against
18 whom a claim is asserted first under the priorities set forth in
19 subsection (a) shall process and pay the claim as if wholly
20 responsible. The insurer may thereafter recover contribution pro
21 rata from any other insurer for the benefits paid and the costs
22 of processing the claim. If contribution is sought among
23 insurers responsible under subsection (a)(4), proration shall be
24 based on the number of involved motor vehicles.

25 § 6314. Ineligible claimants.

26 An owner of a currently registered motor vehicle who does not
27 have financial responsibility or an operator or occupant of a
28 recreational vehicle not intended for highway use, motorcycle,
29 motor-driven cycle, motorized pedalcycle or like type vehicle
30 required to be registered under Title 75 (relating to vehicles)

1 cannot recover first party benefits.

2 § 6315. Availability of adequate limits.

3 (a) General rule.--An insurer shall make available for
4 purchase first party benefits as follows:

5 (1) For medical benefits, up to at least \$100,000.

6 (2) For income loss benefits, up to at least \$2,500 per
7 month up to a maximum benefit of at least \$50,000.

8 (3) For accidental death benefits, up to at least
9 \$25,000.

10 (4) For funeral benefits, \$2,500.

11 (5) For combination of benefits enumerated in paragraphs
12 (1) through (4) and subject to a limit on the accidental
13 death benefit of up to \$25,000 and a limit on the funeral
14 benefit of \$2,500, up to at least \$277,500 of benefits in the
15 aggregate or benefits payable up to three years from the date
16 of the accident, whichever occurs first.

17 (b) Higher or lower limits and additional benefits.--
18 Insurers may make available higher or lower limits or benefits
19 in addition to those enumerated in subsection (a).

20 (c) Restriction on providing first party benefits.--An
21 insurer shall not issue or deliver a policy providing first
22 party benefits in accordance with this subchapter unless the
23 policy also contains coverage for liability in amounts at least
24 equal to the limits required for financial responsibility.

25 § 6316. Payment of benefits.

26 Benefits are overdue if not paid within 30 days after the
27 insurer receives reasonable proof of the amount of the benefits.
28 If reasonable proof is not supplied as to all benefits, the
29 portion supported by reasonable proof is overdue if not paid
30 within 30 days after the proof is received by the insurer.

1 Overdue benefits shall bear interest at the rate of 12% a year
2 from the date the benefits become due. If the insurer is found
3 to have acted in an unreasonable manner in refusing to pay the
4 benefits when due, the insurer shall pay, in addition to the
5 benefits owed and the interest thereon, a reasonable attorney
6 fee based upon actual time expended.

7 § 6317. Stacking of benefits.

8 First party benefits shall not be increased by stacking the
9 limits of coverage of:

10 (1) multiple motor vehicles covered under the same
11 policy of insurance; or

12 (2) multiple motor vehicle policies covering the
13 individual for the same loss.

14 § 6318. Exclusion from benefits.

15 (a) General rule.--An insurer shall exclude from benefits
16 any insured, or his personal representative, under a policy
17 described in section 6311 (relating to required benefits) or
18 6312 (relating to availability of benefits), when the conduct of
19 the insured contributed to the injury sustained by the insured
20 in any of the following ways:

21 (1) While intentionally injuring himself or another or
22 attempting to intentionally injure himself or another.

23 (2) While committing a felony.

24 (3) While seeking to elude lawful apprehension or arrest
25 by a law enforcement official.

26 (b) Conversion of vehicle.--A person who knowingly converts
27 a motor vehicle is ineligible to receive first party benefits
28 from any source other than a policy of insurance under which he
29 is an insured for any injury arising out of the maintenance or
30 use of the converted vehicle.

1 (c) Named driver exclusion.--An insurer may exclude any
2 insured or his personal representative from benefits under a
3 policy described in section 6311 or 6312 when the insured is
4 excluded from coverage while operating a motor vehicle in
5 accordance with Chapter 61 (relating to eligibility for motor
6 vehicle insurance).

7 § 6318.1. Certain nonexcludable conditions.

8 (a) General rule.--Insurance benefits may not be denied
9 solely because the driver of the insured motor vehicle is
10 determined to be under the influence of drugs or intoxicating
11 beverages at the time of the accident for which benefits are
12 sought.

13 (b) Contract exclusions.--Provisions of an insurance policy
14 which exclude insurance benefits if the insured causes a
15 vehicular accident while under the influence of drugs or
16 intoxicating beverages at the time of the accident are void.

17 § 6319. Coordination of benefits.

18 (a) General rule.--Except for workmen's compensation, a
19 policy of insurance issued or delivered pursuant to this
20 subchapter shall be primary. Any program, group contract or
21 other arrangement for payment of benefits such as described in
22 section 6311 (relating to required benefits), 6312(1) and (2)
23 (relating to availability of benefits) or 6315 (relating to
24 availability of adequate limits) shall be construed to contain a
25 provision that all benefits provided therein shall be in excess
26 of and not in duplication of any valid and collectible first
27 party benefits provided under section 6311, 6312 or 6315 or
28 workmen's compensation.

29 (b) Definition.--As used in this section the term "program,
30 group contract or other arrangement" includes, but is not

1 limited to, benefits payable by a hospital plan corporation or a
2 professional health service corporation subject to Chapter 75
3 (relating to hospital plan corporations) or 77 (relating to
4 professional health services plan corporations).

5 § 6320. Subrogation.

6 In actions arising out of the maintenance or use of a motor
7 vehicle, there shall be no right of subrogation or reimbursement
8 from a claimant's tort recovery with respect to workmen's
9 compensation benefits, benefits available under section 6311
10 (relating to required benefits), 6312 (relating to availability
11 of benefits) or 6315 (relating to availability of adequate
12 limits) or benefits in lieu thereof paid or payable under
13 section 6319 (relating to coordination of benefits).

14 § 6321. Statute of limitations.

15 (a) General rule.--If benefits have not been paid, an action
16 for first party benefits shall be commenced within four years
17 from the date of the accident giving rise to the claim. If first
18 party benefits have been paid, an action for further benefits
19 shall be commenced within four years from the date of the last
20 payment. The benefits claimed in the action may not include
21 expenses incurred more than four years before the date the
22 action is commenced.

23 (b) Minors.--For minors entitled to benefits described in
24 section 6311 (relating to required benefits) or 6312 (relating
25 to availability of benefits), an action for benefits shall be
26 commenced within four years from the date on which the injured
27 minor attains 18 years of age.

28 § 6322. Preclusion of recovering required benefits.

29 In any action for damages against a tortfeasor arising out of
30 the maintenance or use of a motor vehicle, a person who is

1 eligible to receive benefits under the coverages set forth in
2 section 6311 (relating to required benefits) may not plead,
3 introduce into evidence or recover the amount of benefits paid
4 or payable under section 6311.

5 § 6323. Reporting requirements.

6 Beginning December 31, 1986, and each year thereafter, each
7 insurance company writing automobile insurance in this
8 Commonwealth shall file with the department the number of its
9 insureds, the number of its insureds who have purchased first
10 party medical benefits in excess of the minimum required by
11 section 6311 (relating to required benefits) and the number of
12 insureds who have purchased first party medical benefits in the
13 amount of \$100,000. The department shall furnish this
14 information to the General Assembly annually.

15 SUBCHAPTER C

16 UNINSURED AND UNDERINSURED MOTORIST COVERAGE

17 Sec.

18 6331. Scope and amount of coverage.

19 6332. Limits of coverage.

20 6333. Priority of recovery.

21 6334. Request for lower or higher limits of coverage.

22 6335. Workmen's compensation benefits.

23 6336. Coverage in excess of required amounts.

24 § 6331. Scope and amount of coverage.

25 (a) General rule.--A motor vehicle liability insurance
26 policy shall not be delivered or issued for delivery in this
27 Commonwealth, with respect to any motor vehicle registered or
28 principally garaged in this Commonwealth, unless uninsured
29 motorist and underinsured motorist coverages are provided
30 therein or supplemental thereto in amounts equal to the bodily

1 injury liability coverage except as provided in section 6334
2 (relating to request for lower or higher limits of coverage).

3 (b) Uninsured motorist coverage.--Uninsured motorist
4 coverage shall provide protection for persons who suffer injury
5 arising out of the maintenance or use of a motor vehicle and are
6 legally entitled to recover damages therefor from owners or
7 operators of uninsured motor vehicles.

8 (c) Underinsured motorist coverage.--Underinsured motorist
9 coverage shall provide protection for persons who suffer injury
10 arising out of the maintenance or use of a motor vehicle and are
11 legally entitled to recover damages therefor from owners or
12 operators of underinsured motor vehicles.

13 (d) Limitation on recovery.--A person who recovers damages
14 under uninsured motorist coverage or coverages cannot recover
15 damages under underinsured motorist coverage or coverages for
16 the same accident.

17 § 6332. Limits of coverage.

18 Coverages offered under section 6331 (relating to scope and
19 amount of coverage) shall be written for the same limits. A
20 change shall not be made in the limits of one of these coverages
21 without an equal change in the limits of the other coverage.

22 § 6333. Priority of recovery.

23 Where multiple policies apply, payment shall be made in the
24 following order of priority:

25 (1) A policy covering a motor vehicle occupied by the
26 injured person at the time of the accident.

27 (2) A policy covering a motor vehicle not involved in
28 the accident with respect to which the injured person is an
29 insured.

30 § 6334. Request for lower or higher limits of coverage.

1 A named insured may request in writing the issuance of
2 coverages under section 6331 (relating to scope and amount of
3 coverage) in amounts less than the limits of liability for
4 bodily injury, but not less than the amounts required by this
5 chapter for bodily injury. If the named insured has selected
6 uninsured and underinsured motorist coverage in connection with
7 a policy previously issued to him by the same insurer under
8 section 6331, the coverages offered need not be provided in
9 excess of the limits of liability previously issued for
10 uninsured and underinsured motorist coverage unless the named
11 insured requests in writing higher limits of liability for those
12 coverages.

13 § 6335. Workmen's compensation benefits.

14 The coverages required by this subchapter shall not be made
15 subject to an exclusion or reduction in amount because of any
16 workmen's compensation benefits payable as a result of the same
17 injury.

18 § 6336. Coverage in excess of required amounts.

19 The coverages provided under this subchapter may be offered
20 by insurers in amounts higher than those required by this
21 chapter but may not be greater than the limits of liability
22 specified in the bodily injury liability provisions of the
23 insured's policy.

24

SUBCHAPTER D

25

ASSIGNED RISK PLAN

26 Sec.

27 6341. Establishment of assigned risk plan.

28 6342. Scope of assigned risk plan.

29 6343. Rates.

30 6344. Termination of policies.

1 § 6341. Establishment of assigned risk plan.

2 The department shall, after consultation with the insurers
3 licensed to write motor vehicle liability insurance in this
4 Commonwealth, adopt a reasonable assigned risk plan for the
5 equitable apportionment among those insurers of applicants for
6 motor vehicle liability insurance who are entitled to procure
7 insurance through ordinary methods, but are unable to do so.
8 When the plan has been adopted, all motor vehicle liability
9 insurers shall subscribe thereto and shall participate in the
10 plan. The plan may provide reasonable means for the transfer of
11 individuals insured thereunder into the ordinary market, at the
12 same or lower rates, pursuant to regulations established by the
13 department.

14 § 6342. Scope of assigned risk plan.

15 The assigned risk plan shall include rules for the
16 classification of risks and rates therefor and shall provide for
17 the installment payment of premiums subject to customary terms
18 and conditions.

19 § 6343. Rates.

20 All rates for the assigned risk plan shall be subject to the
21 provisions of Chapter 19 (relating to insurance rates) which are
22 applicable to the classes of insurance described in section
23 1902(a) (relating to scope of chapter) and shall not be
24 inadequate, excessive or unfairly discriminatory.

25 § 6344. Termination of policies.

26 Cancellation, refusal to renew and other termination of
27 policies issued under the assigned risk plan shall be in
28 accordance with the rules of the plan.

29

SUBCHAPTER E

30

ASSIGNED CLAIMS PLAN

1 Sec.

2 6351. Organization of assigned claims plan.

3 6352. Eligible claimants.

4 6353. Benefits available.

5 6354. Additional coverage.

6 6355. Coordination of benefits.

7 6356. Subrogation.

8 6357. Statute of limitations.

9 § 6351. Organization of assigned claims plan.

10 Insurers providing financial responsibility as required by
11 law shall organize and maintain an assigned claims plan, subject
12 to approval and regulation by the department, and adopt rules
13 for the operation and for the assessment of costs on a fair and
14 equitable basis.

15 § 6352. Eligible claimants.

16 (a) General rule.--A person may recover benefits from the
17 assigned claims plan if the person:

18 (1) is a resident of this Commonwealth;

19 (2) is injured as the result of a motor vehicle accident
20 occurring in this Commonwealth;

21 (3) is not an owner of a motor vehicle required to be
22 registered under 75 Pa.C.S. Ch. 13 (relating to registration
23 of vehicles);

24 (4) is not the operator or occupant of a motor vehicle
25 owned by the Federal Government;

26 (5) is not the operator or occupant of a motor vehicle
27 owned by a self-insurer or by an individual or entity who or
28 which is immune from liability or is not required to provide
29 benefits or uninsured and underinsured motorist coverage;

30 (6) is otherwise not entitled to receive any first party

1 benefits under section 6311 (relating to required benefits)
2 or 6312 (relating to availability of benefits) applicable to
3 the injury arising from the accident; and

4 (7) is not the operator or occupant of a recreational
5 vehicle not intended for highway use, motorcycle, motor-
6 driven cycle or motorized pedalcycle or other like type
7 vehicle required to be registered under Title 75 (relating to
8 vehicles) and involved in the accident.

9 (b) Grounds for ineligibility.--A person otherwise
10 qualifying as an eligible claimant under subsection (a) may
11 nevertheless not recover benefits from the assigned claims plan
12 if that person contributed to his own injury in any of the
13 following ways:

14 (1) While intentionally injuring himself or another or
15 attempting to intentionally injure himself or another.

16 (2) While committing a felony.

17 (3) While seeking to elude lawful apprehension or arrest
18 by a law enforcement official.

19 (4) While knowingly converting a motor vehicle.

20 § 6353. Benefits available.

21 An eligible claimant may recover medical benefits, as
22 described in section 6312(1) (relating to availability of
23 benefits), up to a maximum of \$5,000. An income loss benefit or
24 accidental death benefit shall not be payable under this
25 subchapter. Funeral expenses, as described in section 6312(4),
26 in the amount of \$1,500 shall be recoverable as an offset to the
27 maximum amount of medical benefits available under this section.

28 § 6354. Additional coverage.

29 An eligible claimant who has no other source of applicable
30 uninsured motorist coverage and is otherwise entitled to recover

1 in an action in tort against a party who has failed to comply
2 with this chapter may recover for losses or damages suffered as
3 a result of the injury up to \$15,000 subject to an aggregate
4 limit for all claims arising out of any one motor vehicle
5 accident of \$30,000. If a claimant recovers medical benefits
6 under section 6353 (relating to benefits available), the amount
7 of medical benefits recovered or recoverable up to \$5,000 shall
8 be set off against any amount recoverable under this section.

9 § 6355. Coordination of benefits.

10 (a) Workmen's compensation.--All benefits, less reasonably
11 incurred collection costs, that an eligible claimant receives or
12 is entitled to receive from workmen's compensation and from any
13 other like source under local, state or Federal law shall be
14 subtracted from any benefits available in section 6353 (relating
15 to benefits available) unless the law authorizing or providing
16 for those benefits makes them excess or secondary to the
17 benefits payable under this subchapter.

18 (b) Accident and health benefits.--All benefits an eligible
19 claimant receives or is entitled to receive as a result of
20 injury from any available source of accident and health benefits
21 shall be subtracted from those benefits available in section
22 6353.

23 § 6356. Subrogation.

24 The assigned claims plan or its assignee may, in accordance
25 with the tort liability law of this Commonwealth, recover
26 reimbursement for benefits or coverages paid, loss adjustment
27 costs and any other sums paid to an eligible claimant under this
28 subchapter.

29 § 6357. Statute of limitations.

30 (a) General rule.--An action by an eligible claimant to

1 recover benefits or coverages from the assigned claims plan
2 shall be commenced within four years from the date of the
3 accident.

4 (b) Minors.--For minors entitled to benefits under section
5 6353 (relating to benefits available) or 6354 (relating to
6 additional coverage), an action to recover these benefits or
7 coverages shall be commenced within four years from the date on
8 which the injured minor attains 18 years of age.

9 SUBCHAPTER F

10 CATASTROPHIC LOSS TRUST FUND

11 Sec.

12 6361. Definitions.

13 6362. Funding.

14 6363. Enforcement.

15 6364. Catastrophic Loss Trust Fund.

16 6365. Catastrophic Loss Trust Fund Board.

17 6366. Benefits.

18 6367. Annual reports.

19 6368. Appeals.

20 6369. Miscellaneous provisions.

21 § 6361. Definitions.

22 The following words and phrases when used in this subchapter
23 shall have the meanings given to them in this section unless the
24 context clearly indicates otherwise:

25 "Administrator." The administrator designated by the
26 Catastrophic Loss Trust Fund Board.

27 "Board." The Catastrophic Loss Trust Fund Board.

28 "Catastrophic loss." An injury, arising out of the
29 maintenance or use of a motor vehicle, for which the reasonable
30 and necessary expenses for medical treatment and rehabilitative

1 services, as described in section 6312(1) (relating to
2 availability of benefits), exceed \$100,000.

3 "Catastrophic loss benefit." Payments by the Catastrophic
4 Loss Trust Fund for those reasonable and necessary expenses only
5 for medical treatment and rehabilitative services which, as
6 described in section 6312(1), exceed \$100,000, subject to the
7 limitations provided in section 6366 (relating to benefits).
8 Catastrophic loss benefits shall not duplicate any other
9 payments for medical treatment and rehabilitative services.

10 "Eligible claimant." Except as provided in the definition of
11 ineligible claimant, includes a resident of this Commonwealth
12 who suffers injury arising out of the maintenance or use of a
13 motor vehicle in the United States, its territories or
14 possessions and Canada. The estate of an eligible claimant shall
15 be entitled to receive catastrophic loss benefits pursuant to
16 section 6366 to the extent that financial obligations for
17 reasonable and necessary medical treatment and rehabilitative
18 services were incurred by the eligible claimant prior to the
19 death of that person.

20 "Executive director." The executive director of the
21 Catastrophic Loss Trust Fund Board.

22 "Fund." The Catastrophic Loss Trust Fund.

23 "Fund charge." The fund charge established under this
24 subchapter.

25 "Ineligible claimant." Any of the following:

26 (1) A person who is the owner of a motor vehicle who has
27 not complied with the registration requirements of 75 Pa.C.S.
28 Ch. 13 (relating to registration of vehicles).

29 (2) A person who is the driver or occupant of a
30 recreational vehicle not intended for highway use, a

1 motorcycle, a motorized pedalcycle, a motor-driven cycle or
2 like type vehicle required to be registered under Title 75
3 (relating to vehicles), but not subject to the charge levied
4 in section 6362 (relating to funding).

5 "Manager." The manager designated by the Catastrophic Loss
6 Trust Fund Board.

7 § 6362. Funding.

8 The Catastrophic Loss Trust Fund shall be funded by levying
9 an initial charge of \$5 upon all motor vehicles required to be
10 registered under 75 Pa.C.S. Ch. 13 (relating to registration of
11 vehicles) except trailers, recreational vehicles not intended
12 for highway use, motorcycles, motor-driven cycles, motorized
13 pedalcycles or like type vehicles. This charge shall be remitted
14 to an insurance company or other party as designated by the
15 department. Upon receipt of the charge, the insurance company or
16 other designated party shall remit it to the department for
17 deposit in the trust fund. The Catastrophic Loss Trust Fund
18 Board shall, by regulation, determine by January 1 of each
19 calendar year the amount of the fund charge for each
20 registration year subsequent to the initial registration year
21 and shall notify the department which shall notify the insurance
22 companies or other designated parties of the amount of the
23 charge.

24 § 6363. Enforcement.

25 The Department of Transportation shall refuse registration or
26 renewal or transfer of registration to the owner of any motor
27 vehicle to be charged under section 6362 (relating to funding)
28 until there is proof that the charge was paid.

29 § 6364. Catastrophic Loss Trust Fund.

30 (a) Establishment.--A Catastrophic Loss Trust Fund shall be

1 established to provide funds necessary to pay catastrophic loss
2 benefits.

3 (b) Composition.--The fund shall be composed of moneys
4 contributed under section 6362 (relating to funding) and funds
5 earned by the investment and reinvestment of such moneys. The
6 fund shall be held in trust, be deposited in a separate account
7 and be the exclusive source of funding for the payment of
8 catastrophic loss benefits and the administration of the fund.

9 (c) Separation from General Fund and Motor License Fund.--
10 The fund and all income earned by it shall not become part of
11 the General Fund or Motor License Fund, and no obligations or
12 expense of or claim against the fund shall constitute a debt of
13 the Commonwealth or a charge against the General Fund or Motor
14 License Fund.

15 (d) Expenses in collecting fund charge.--Any expense
16 incurred by the Commonwealth in the collection of the fund
17 charge shall be paid by the fund. The department may determine a
18 formula to provide for the reimbursement by the fund for
19 expenses incurred by insurance companies or others in collecting
20 the fund charge.

21 § 6365. Catastrophic Loss Trust Fund Board.

22 (a) Composition.--The fund shall be under the general
23 supervision of a board of directors. The board shall be a
24 departmental administrative board in the department and shall be
25 composed of nine persons as follows:

26 (1) Four members of the General Assembly appointed for
27 two years as follows:

28 (i) One appointed by the Majority Leader of the
29 Senate.

30 (ii) One appointed by the Minority Leader of the

1 Senate.

2 (iii) One appointed by the Majority Leader of the
3 House of Representatives.

4 (iv) One appointed by the Minority Leader of the
5 House of Representatives.

6 (2) Four public members appointed by the Governor for
7 two years.

8 (3) The commissioner, who shall serve as chairman.

9 (b) Compensation.--Public members of the board shall receive
10 no compensation for their services but shall be reimbursed from
11 the fund for reasonable expenses incurred in carrying out their
12 duties.

13 (c) Powers and duties.--

14 (1) The board shall employ and fix the compensation of
15 an executive director which shall carry out the decisions of
16 the board. The executive director in consultation with the
17 commissioner and subject to the approval of the board shall
18 promulgate rules and regulations necessary to carry out the
19 purposes of the fund.

20 (2) The board shall contract with an administrator
21 approved as qualified by the department to provide eligible
22 claimants with catastrophic loss benefits. The contract shall
23 not be for a term in excess of two years. Contracts shall be
24 let pursuant to the bidding procedures of the Commonwealth.

25 (3) The board shall contract with a manager approved as
26 qualified by the commissioner and the State Treasurer to
27 manage the moneys of the fund, including their investment and
28 reinvestment, subject to the regulations of the fund.

29 (4) The board shall contract for providers of other
30 professional services, including, but not limited to,

1 accountants, quality control auditors and actuaries,
2 necessary to ensure contract compliance by the administrator
3 and manager, and determine future fund charges.

4 (5) The board may purchase on behalf of the fund
5 insurance and reinsurance as necessary to preserve the
6 financial solvency of the fund.

7 (6) Annually, the board shall consult with the
8 administrator, the manager and an actuary to determine the
9 fund charge. The charge shall be sufficient to ensure that
10 the fund is able to pay all claims and expenses for the
11 succeeding year and to develop actuarially sound reserves for
12 incurred claims.

13 (d) Duties of executive director.--The executive director
14 shall perform the following duties:

15 (1) Receive all claims for catastrophic loss benefits,
16 forward them to the administrator for handling and monitor
17 their progress.

18 (2) Assist any party with whom the board has contracted
19 under this section in the performance of its duties.

20 (3) Establish a program to assure continuing publicity
21 to the residents of this Commonwealth with respect to the
22 existence of the fund, the coverages afforded thereby and the
23 manner of the presentation of claims thereto.

24 (4) Employ, subject to the approval of the board,
25 clerical staff as necessary to perform his duties.

26 (e) Duties of administrator.--The administrator shall
27 perform the following duties:

28 (1) Determine the eligibility of the claimant, upon
29 receipt of a claim for catastrophic loss benefits.

30 (2) Establish a mechanism whereby payments to the

1 provider for reasonable and necessary medical treatment and
2 rehabilitative services shall be promptly made in amounts not
3 in excess of the limitations set forth in this subchapter.

4 (3) Evaluate, not less than annually, the medical
5 treatment and rehabilitative services being provided eligible
6 claimants to assure that these represent the most prudent
7 expenditure of funds.

8 (f) Duties of manager.--The manager shall accept all moneys
9 collected for the fund and may invest and reinvest the moneys of
10 the fund in the type of investments and in a manner as
11 determined by the commissioner based upon investments by law and
12 investment policies for similar fiduciaries.

13 § 6366. Benefits.

14 (a) General rule.--Subject to the limitations set forth in
15 subsection (b), the Catastrophic Loss Trust Fund shall provide
16 catastrophic loss benefits to eligible claimants only for the
17 payment of expenses for medical treatment and rehabilitative
18 services in excess of \$100,000.

19 (b) Maximum benefit.--The maximum catastrophic loss benefit
20 which shall be paid by the fund on behalf of any one eligible
21 claimant shall be \$50,000 a year and \$1,000,000 lifetime
22 aggregate. During the first 18 months of eligibility, the
23 administrator may approve payments on behalf of a claimant
24 without regard to the \$50,000 a year limit but subject to the
25 \$1,000,000 lifetime aggregate.

26 (c) Effect of other benefits.--Except for workmen's
27 compensation, catastrophic loss benefits paid or payable by the
28 fund shall be primary to any other available source of accident
29 or health benefits including any program, group contract or
30 other private or public source of benefits unless the law

1 authorizing or providing those benefits makes the benefits
2 primary to the benefits provided under this subchapter.

3 (d) Structured settlements.--The administrator may enter
4 into structured settlements to pay benefits under this
5 subchapter. Where it appears the settlement will be both cost
6 effective to the fund and in the best interest of the claimant,
7 the restrictions in subsection (b) shall not apply to this
8 subsection, but the cost of the structured settlement shall not
9 exceed the present value of the future annual payments up to the
10 maximum lifetime aggregate benefit remaining calculated at 6%
11 simple interest.

12 (e) Preclusion of recovering benefits.--In any action for
13 damages against a tortfeasor arising out of the maintenance or
14 use of a motor vehicle, a person who is eligible to receive
15 catastrophic loss benefits shall not plead, introduce into
16 evidence or recover the amount of medical and rehabilitative
17 expenses for which catastrophic loss benefits were paid or are
18 payable.

19 (f) Subrogation.--There shall be no subrogation or
20 reimbursement from a claimant's tort recovery with respect to
21 catastrophic loss benefits.

22 § 6367. Annual reports.

23 By March 1 of each year, the department shall prepare and
24 provide to the Governor and to the General Assembly a written
25 report of the status and activities of the Catastrophic Loss
26 Trust Fund. In its second annual report and in every second
27 annual report thereafter, the department shall include in this
28 report findings and recommendations with respect to the
29 operation of the fund and the actuarial soundness of the fund.
30 Each annual report shall also include an audit by the Auditor

1 General of the amounts paid to each eligible person so as to
2 avoid duplication, error or fraud.

3 § 6368. Appeals.

4 When any person making a claim for benefits from the
5 Catastrophic Loss Trust Fund disputes a determination of the
6 administrator concerning eligibility for benefits, allowance of
7 benefits or otherwise, the person may request that the
8 department review the determination of the administrator. The
9 department shall provide the person so claiming and the
10 administrator the opportunity to present statements or other
11 documents and, at the election of either of these individuals,
12 the opportunity for a hearing pursuant to Title 2 (relating to
13 administrative law and procedure).

14 § 6369. Miscellaneous provisions.

15 (a) Sunset review.--This subchapter shall be subject to
16 periodic evaluation, review and termination or continuation
17 under the act of December 22, 1981 (P.L.508, No.142), known as
18 the Sunset Act, every six years commencing with an initial
19 termination date of December 31, 1990.

20 (b) Nonseverability.--The provisions of this subchapter are
21 nonseverable. If any provision of this subchapter or its
22 application to any person or circumstance is held invalid, the
23 remaining provisions or applications of this subchapter are
24 void.

25 SUBCHAPTER G

26 NONPAYMENT OF JUDGMENTS

27 Sec.

28 6371. Court reports on nonpayment of judgments.

29 6372. Suspension for nonpayment of judgments.

30 6373. Duration of suspension.

1 6374. Satisfaction of judgments.

2 6375. Installment payment of judgments.

3 § 6371. Court reports on nonpayment of judgments.

4 (a) General rule.--Whenever any person fails within 60 days
5 to satisfy any judgment arising from a motor vehicle accident,
6 the judgment creditor may forward to the Department of
7 Transportation a certified copy of the judgment.

8 (b) Notice to state of nonresident defendant.--If the
9 defendant named in any certified copy of a judgment reported to
10 the Department of Transportation is a nonresident, the
11 Department of Transportation shall transmit a certified copy of
12 the judgment to the official in charge of the issuance of
13 licenses and registration certificates of the state of which the
14 defendant is a resident.

15 § 6372. Suspension for nonpayment of judgments.

16 (a) General rule.--The Department of Transportation, upon
17 receipt of a certified copy of a judgment, shall suspend the
18 operating privilege of each person against whom the judgment was
19 rendered except as otherwise provided in this section and in
20 section 6375 (relating to installment payment of judgments).

21 (b) Nonsuspension with consent of judgment creditor.--If the
22 judgment creditor consents in writing, in such form as the
23 Department of Transportation may prescribe, that the judgment
24 debtor's operating privilege be retained or restored, the
25 Department of Transportation shall not suspend or shall restore
26 the operating privilege until the consent is revoked in writing,
27 notwithstanding default in the payment of the judgment or of any
28 installment thereof prescribed in section 6375, provided the
29 judgment debtor furnishes proof of financial responsibility.

30 (c) Financial responsibility in effect at time of

1 accident.--Any person whose operating privilege has been
2 suspended, or is about to be suspended or become subject to
3 suspension, under this chapter shall be relieved from the effect
4 of the judgment as prescribed in this chapter if the person
5 files evidence satisfactory to the Department of Transportation
6 that financial responsibility was in force at the time of the
7 accident resulting in the judgment and is or should be available
8 for the satisfaction of the judgment. If insurance already
9 obtained is not available because the insurance company has gone
10 into receivership or bankruptcy, the person shall only be
11 required to present to or file with the Department of
12 Transportation proper evidence that an insurance policy was in
13 force at the time of the accident.

14 § 6373. Duration of suspension.

15 A person's operating privilege shall remain suspended and
16 shall not be renewed in the name of that person until every
17 judgment is stayed or satisfied in full or to the extent
18 provided in this subchapter, and until the person furnishes
19 proof of financial responsibility as required.

20 § 6374. Satisfaction of judgments.

21 (a) General rule.--For the purpose of this chapter only,
22 judgments shall be deemed satisfied upon the occurrence of one
23 of the following:

24 (1) When \$15,000 has been credited upon any judgment or
25 judgments rendered in excess of that amount because of injury
26 to one person as the result of any one accident.

27 (2) When \$30,000 has been credited upon any judgment or
28 judgments rendered in excess of that amount because of injury
29 to two or more persons as the result of any one accident.

30 (3) When \$5,000 has been credited upon any judgment or

1 judgments rendered in excess of that amount because of damage
2 to property of others as the result of any one accident.

3 (b) Credit for payment under settlement.--Payments made in
4 settlement of any claims because of bodily injury or property
5 damage arising from a motor vehicle accident shall be credited
6 in reduction of the amounts provided for in this section.

7 (c) Escrow deposit by judgment debtor.--When the judgment
8 creditor cannot be found, the judgment debtor may deposit in
9 escrow with the prothonotary of the court where the judgment was
10 entered an amount equal to the amount of the judgment, subject
11 to the limits set forth in subsection (a), interest to date and
12 record costs, whereupon the prothonotary shall notify the
13 Department of Transportation and the judgment shall be deemed
14 satisfied. The amount deposited shall be retained by the
15 prothonotary for a period of five years from the date of the
16 deposit, after which, if it has not been claimed by the judgment
17 creditor, it shall be returned to the judgment debtor. When the
18 deposit is made, the prothonotary shall notify the judgment
19 creditor and his counsel, if any, by certified or registered
20 mail at his last known address. Interest shall not run on any
21 judgment with respect to the amount deposited with the
22 prothonotary under this subsection.

23 § 6375. Installment payment of judgments.

24 (a) Order authorizing installment payment.--A judgment
25 debtor, upon notice to the judgment creditor, may apply to the
26 court in which the judgment was rendered for the privilege of
27 paying the judgment in installments and the court, in its
28 discretion and without prejudice to any other remedies which the
29 judgment creditor may have, may so order and fix the amounts and
30 times of payment of the installments.

1 (b) Suspension prohibited during compliance with order.--The
2 Department of Transportation shall not suspend a driver's
3 operating privilege and shall restore any operating privilege
4 suspended following nonpayment of a judgment when the judgment
5 debtor obtains an order permitting payment of the judgment in
6 installments and while the payment of any installment is not in
7 default, if the judgment debtor furnishes proof of financial
8 responsibility.

9 (c) Suspension for default in payment.--If the judgment
10 debtor fails to pay any installment as specified by the order,
11 then, upon notice of the default, the Department of
12 Transportation shall suspend the operating privilege of the
13 judgment debtor until the judgment is satisfied as provided in
14 this chapter.

15 SUBCHAPTER H

16 PROOF OF FINANCIAL RESPONSIBILITY

17 Sec.

18 6381. Notice of sanction for not evidencing financial
19 responsibility.

20 6382. Manner of providing proof of financial responsibility.

21 6383. Proof of financial responsibility before restoring
22 operating privilege or registration.

23 6384. Proof of financial responsibility following violation.

24 6385. Proof of financial responsibility following accident.

25 6386. Self-certification of financial responsibility.

26 6387. Self-insurance.

27 § 6381. Notice of sanction for not evidencing financial
28 responsibility.

29 An applicant for registration of a vehicle shall acknowledge
30 on a form developed by the Department of Transportation that the

1 applicant knows he may lose his operating privilege or vehicle
2 registrations if he fails to evidence financial responsibility
3 for the purposes described in section 6372 (relating to
4 suspension for nonpayment of judgments), 6383 (relating to proof
5 of financial responsibility before restoring operating privilege
6 or registration), 6384 (relating to proof of financial
7 responsibility following violation) or 6385 (relating to proof
8 of financial responsibility following accident).

9 § 6382. Manner of providing proof of financial responsibility.

10 (a) General rule.--Proof of financial responsibility may be
11 furnished by filing evidence satisfactory to the Department of
12 Transportation that all motor vehicles registered in the
13 person's name are covered by motor vehicle liability insurance
14 or by a program of self-insurance as provided by section 6387
15 (relating to self-insurance) or other reliable financial
16 arrangements, deposits, resources or commitments acceptable to
17 the Department of Transportation.

18 (b) Nonresident.--The nonresident owner of a motor vehicle
19 not registered in this Commonwealth may give proof of financial
20 responsibility by filing with the Department of Transportation a
21 written certificate or certificates of an insurance company
22 authorized to transact business in the state in which the motor
23 vehicle or motor vehicles described in the certificate are
24 registered or, if the nonresident does not own a motor vehicle,
25 then evidence satisfactory to the Department of Transportation
26 that the person does not own a motor vehicle. The Department of
27 Transportation shall accept the certificate if the insurance
28 company complies with the following provisions with respect to
29 the policies so certified:

30 (1) The insurance company executes a power of attorney

1 authorizing the Department of Transportation to accept
2 service on its behalf or process in any action arising out of
3 a motor vehicle accident in this Commonwealth.

4 (2) The insurance company agrees in writing that the
5 policies shall be deemed to conform with the law of this
6 Commonwealth relating to the terms of motor vehicle liability
7 policies issued in this Commonwealth.

8 (c) Default by foreign insurance company.--If any insurance
9 company not authorized to transact business in this
10 Commonwealth, which has qualified to furnish proof of financial
11 responsibility, defaults in any undertakings or agreements, the
12 Department of Transportation shall not thereafter accept as
13 proof any certificate of the company whether theretofore filed
14 or thereafter tendered as proof as long as the default
15 continues.

16 § 6383. Proof of financial responsibility before restoring
17 operating privilege or registration.

18 Whenever the Department of Transportation suspends or revokes
19 the operating privilege of any person or the registration of any
20 vehicle under section 6372 (relating to suspension for
21 nonpayment of judgments), 6384 (relating to proof of financial
22 responsibility following violation) or 6385 (relating to proof
23 of financial responsibility following accident) or 75 Pa.C.S. §
24 1532 (relating to revocation or suspension of operating
25 privilege) or 1542 (relating to revocation of habitual
26 offender's license) or upon receiving the record of a conviction
27 or forfeiture of bail, the Department of Transportation shall
28 not restore the operating privilege or the applicable
29 registration until the person furnishes proof of financial
30 responsibility.

1 § 6384. Proof of financial responsibility following violation.

2 A defendant who is convicted of a traffic offense that
3 requires a court appearance, other than a parking offense, shall
4 be required to show proof of financial responsibility covering
5 the operation of the vehicle at the time of the offense. If the
6 defendant fails to show proof of financial responsibility, the
7 court shall notify the Department of Transportation of that
8 fact. Upon receipt of the notice, the Department of
9 Transportation shall revoke the registration of the vehicle. If
10 the defendant is the owner of the vehicle, the Department of
11 Transportation shall also suspend the operating privilege of the
12 defendant.

13 § 6385. Proof of financial responsibility following accident.

14 If the Department of Transportation determines that the owner
15 of a motor vehicle involved in an accident requiring notice to a
16 police department under 75 Pa.C.S. § 3746 (relating to immediate
17 notice of accident to police department) did not maintain
18 financial responsibility on the motor vehicle at the time of the
19 accident, the Department of Transportation shall suspend the
20 operating privilege of the owner, where applicable, and shall
21 revoke the registration of the vehicle.

22 § 6386. Self-certification of financial responsibility.

23 The Department of Transportation shall require that each
24 motor vehicle registrant certify that the registrant is
25 financially responsible at the time of registration or renewal
26 thereof. The Department of Transportation shall refuse to
27 register or renew the registration of a vehicle for failure to
28 comply with this requirement or falsification of self-
29 certification.

30 § 6387. Self-insurance.

1 (a) General rule.--Self-insurance is effected by filing with
2 the Department of Transportation, in satisfactory form, evidence
3 that reliable financial arrangements, deposits, resources or
4 commitments exist such as will satisfy the Department of
5 Transportation that the self-insurer will:

6 (1) Provide the benefits required by section 6311
7 (relating to required benefits), subject to Subchapter B
8 (relating to motor vehicle liability insurance first party
9 benefits), except the additional benefits and limits provided
10 in sections 6312 (relating to availability of benefits) and
11 6315 (relating to availability of adequate limits).

12 (2) Make payments sufficient to satisfy judgments as
13 required by section 6374 (relating to satisfaction of
14 judgments).

15 (3) Provide uninsured motorist coverage up to the limits
16 set forth in section 6374.

17 (b) Stacking limits prohibited.--Any recovery of uninsured
18 motorist benefits under this section only shall not be increased
19 by stacking the limits provided in section 6374, in
20 consideration of the ownership or operation of multiple vehicles
21 or otherwise.

22 (c) Assigned Risk and Assigned Claims Plans.--Self-insurers
23 shall not be required to accept assigned risks under Subchapter
24 D (relating to Assigned Risk Plan) or contribute to the Assigned
25 Claims Plan under Subchapter E (relating to Assigned Claims
26 Plan).

27 (d) Catastrophic Loss Trust Fund.--Self-insurers shall
28 contribute to the Catastrophic Loss Trust Fund in the manner
29 provided in Subchapter F (relating to Catastrophic Loss Trust
30 Fund).

1 (e) Promulgation of regulations.--The Department of
2 Transportation may, jointly with the department, promulgate
3 regulations for reviewing and establishing the financial
4 eligibility of self-insurers.

5 SUBCHAPTER I

6 MISCELLANEOUS PROVISIONS

7 Sec.

8 6391. Notice of available benefits and limits.

9 6392. Availability of certain coverage.

10 6393. Premiums.

11 6394. Jurisdictional limit on judicial arbitration.

12 6395. Insurance fraud reporting immunity.

13 6396. Mental or physical examinations.

14 6397. Customary charges for treatment.

15 6398. Attorney fees and costs.

16 § 6391. Notice of available benefits and limits.

17 It shall be presumed that the insured has been advised of the
18 benefits and limits available under this chapter if the
19 following notice in bold print of at least ten-point type is
20 given to the applicant at the time of application for original
21 coverage or at the time of the first renewal after October 1,
22 1984:

23 IMPORTANT NOTICE

24 Insurance companies operating in the Commonwealth of
25 Pennsylvania are required by law to make available for
26 purchase the following benefits for you, your spouse or
27 other relatives or minors in your custody or in the
28 custody of your relatives, residing in your household,
29 occupants of your motor vehicle or persons struck by your
30 motor vehicle:

1 (1) Medical benefits, up to at least \$100,000.

2 (2) Income loss benefits, up to at least \$2,500 a
3 month up to a maximum benefit of at least \$50,000.

4 (3) Accidental death benefits, up to at least
5 \$25,000.

6 (4) Funeral benefits, \$2,500.

7 (5) As an alternative to paragraphs (1) through (4),
8 a combination benefit, up to at least \$177,500 of
9 benefits in the aggregate or benefits payable up to three
10 years from the date of the accident, whichever occurs
11 first, subject to a limit on accidental death benefit of
12 up to \$25,000 and a limit on funeral benefit of \$2,500.

13 (6) Uninsured, underinsured and bodily injury
14 liability coverage up to at least \$100,000 because of
15 injury to one person in any one accident and up to at
16 least \$300,000 because of injury to two or more persons
17 in any one accident or, at the option of the insurer, up
18 to at least \$300,000 in a single limit for these
19 coverages, except for policies issued under the Assigned
20 Risk Plan. Also, at least \$5,000 for damage to property
21 of others in any one accident.

22 Additionally, insurers may offer higher benefit levels
23 than those enumerated above as well as additional
24 benefits. However, an insured may elect to purchase lower
25 benefit levels than those enumerated above. Your
26 signature on this notice or your payment of any renewal
27 premium evidences your actual knowledge and understanding
28 of the availability of these benefits and limits as well
29 as the benefits and limits you have selected.

30 § 6392. Availability of certain coverage.

1 Except for policies issued under Subchapter D (relating to
2 Assigned Risk Plan), an insurer issuing a policy of bodily
3 injury liability coverage pursuant to this chapter shall make
4 available for purchase higher limits of uninsured, underinsured
5 and bodily injury liability coverages up to at least \$100,000
6 because of injury to one person in any one accident and up to at
7 least \$300,000 because of injury to two or more persons in any
8 one accident or, at the option of the insurer, up to at least
9 \$300,000 in a single limit for these coverages. Additionally, an
10 insurer shall make available for purchase at least \$5,000
11 because of damage to property of others in any one accident.
12 However, the exclusion of availability relating to the Assigned
13 Risk Plan shall not apply to damage to property of others in any
14 one accident.

15 § 6393. Premiums.

16 (a) Limitation on premium increases.--

17 (1) An insurer shall not increase the premium rate of an
18 owner of a policy of insurance subject to this chapter solely
19 because one or more of the insureds under the policy made a
20 claim under the policy and was paid thereon unless it is
21 determined that the insured was at fault in contributing to
22 the accident giving rise to the claim.

23 (2) An insurer shall not charge an insured who has been
24 convicted of a violation of an offense enumerated in 75
25 Pa.C.S. § 1535 (relating to schedule of convictions and
26 points) a higher rate for a policy of insurance solely on
27 account of the conviction. An insurer may charge an insured a
28 higher rate for a policy of insurance if a claim is made
29 under paragraph (1).

30 (b) Surcharge disclosure plan.--All insurers shall provide

1 to the insured a surcharge disclosure plan. The insurer
2 providing the surcharge disclosure plan shall detail the
3 provisions of the plan, including, but not limited to:

4 (1) A description of conditions that would assess a
5 premium surcharge to an insured along with the estimated
6 increase of the surcharge per policy period per policyholder.

7 (2) The number of years any surcharge will be in effect.
8 The surcharge disclosure plan shall be delivered to each insured
9 by the insurer at least once annually. Additionally, the
10 surcharge information plan shall be given to each prospective
11 insured at the time application is made for motor vehicle
12 insurance coverage.

13 (c) Return of premiums of canceled policies.--When an
14 insurer cancels a motor vehicle insurance policy which is
15 subject to section 6107(3) (relating to exclusions), the insurer
16 shall within 30 days of canceling the policy return to the
17 insured all premiums paid under the policy less any proration
18 for the period the policy was in effect. Premiums are overdue if
19 not paid to the insured within 30 days after canceling the
20 policy. Overdue return premiums shall bear interest at the rate
21 of 12% a year from the date the return premium became due.

22 (d) Rules and regulations.--The department shall promulgate
23 rules and regulations establishing guidelines and procedures for
24 determining fault of an insured for the purpose of subsection
25 (a) and guidelines for the content and format of the surcharge
26 disclosure plan.

27 § 6394. Jurisdictional limit on judicial arbitration.

28 Beginning January 1, 1987, the monetary limit under 42
29 Pa.C.S. § 7361(b)(2)(i) (relating to compulsory arbitration) for
30 the submission of matters to judicial arbitration in judicial

1 districts embracing first and second class counties shall be
2 \$25,000 for actions arising from the maintenance or use of a
3 motor vehicle.

4 § 6395. Insurance fraud reporting immunity.

5 (a) General rule.--An insurance company, and any agent,
6 servant or employee acting in the course and scope of his
7 employment, shall be immune from civil or criminal liability
8 arising from the supply or release of written or oral
9 information to any duly authorized Federal or state law
10 enforcement agency, including the department, if the following
11 conditions obtain:

12 (1) The information is supplied to the agency in
13 connection with an allegation of fraudulent conduct on the
14 part of any person relating to the filing or maintenance of a
15 motor vehicle insurance claim for bodily injury or property
16 damage.

17 (2) The insurance company, agent, servant or employee
18 has probable cause to believe that the information supplied
19 is reasonably related to the allegation of fraud.

20 (b) Notice to policyholder.--The insurance company shall
21 send written notice to the policyholder or policyholders about
22 whom the information pertains unless the insurance company
23 receives notice that the authorized agency finds, based on
24 specific facts, that there is reason to believe that the
25 information will result in any of the following:

26 (1) Endangerment to the life or physical safety of any
27 person.

28 (2) Flight from prosecution.

29 (3) Destruction of or tampering with evidence.

30 (4) Intimidation of any potential witness or witnesses.

1 (5) Obstruction of or serious jeopardy to an
2 investigation.

3 The insurance company shall send written notice not sooner than
4 45 days nor more than 60 days from the time the information is
5 furnished to an authorized agency, except when the agency
6 specifies that a notice should not be sent in accordance with
7 the exceptions enumerated in this subsection, in which event the
8 insurance company shall send written notice to the policyholder
9 not sooner than 180 days nor more than 190 days following the
10 date the information is furnished.

11 (c) Immunity for sending notice.--An insurance company or
12 authorized agency and any person acting on behalf of an
13 insurance company or authorized agency complying with or
14 attempting in good faith to comply with subsection (b) shall be
15 immune from civil liability arising out of any acts or omissions
16 in so doing.

17 (d) Effect.--This section does not create any rights to
18 privacy or causes of action on behalf of policyholders that were
19 not in existence as of October 1, 1984.

20 § 6396. Mental or physical examinations.

21 (a) General rule.--Whenever the mental or physical condition
22 of a person is material to any claim for medical, income loss or
23 catastrophic loss benefits, a court of competent jurisdiction or
24 the administrator of the Catastrophic Loss Trust Fund for
25 catastrophic loss claims may order the person to submit to a
26 mental or physical examination by a physician. The order may
27 only be made upon motion for good cause shown. The order shall
28 give the person to be examined adequate notice of the time and
29 date of the examination and shall state the manner, conditions
30 and scope of the examination and the physician by whom it is to

1 be performed. If a person fails to comply with an order to be
2 examined, the court or the administrator may order that the
3 person be denied benefits until compliance.

4 (b) Report of examination.--If requested by the person
5 examined, a party causing an examination to be made shall
6 promptly deliver to the person examined a copy of every written
7 report concerning the examination at least one of which shall
8 set forth the physician's findings and conclusions in detail.
9 Upon failure to promptly provide copies of these reports, the
10 court or the administrator shall prohibit the testimony of the
11 examining physician in any proceeding to recover benefits.

12 § 6397. Customary charges for treatment.

13 A person or institution providing treatment, accommodations,
14 products or services to an injured person for an injury covered
15 by medical or catastrophic loss benefits shall not make a charge
16 for the treatment, accommodations, products or services in
17 excess of the amount the person or institution customarily
18 charges for like treatment, accommodations, products and
19 services in cases involving no insurance.

20 § 6398. Attorney fees and costs.

21 (a) Basis for reasonable fee.--No attorney fee for
22 representing a claimant in connection with a claim for first
23 party benefits provided under Subchapter B (relating to motor
24 vehicle liability insurance first party benefits) or a claim for
25 catastrophic loss benefits under Subchapter F (relating to
26 Catastrophic Loss Trust Fund) shall be calculated, determined or
27 paid on a contingent fee basis, nor shall any attorney fees be
28 deducted from the benefits enumerated in this subsection which
29 are otherwise due such claimant. An attorney may charge a
30 claimant a reasonable fee based upon actual time expended.

1 (b) Unreasonable refusal to pay benefits.--If an insurer is
2 found to have acted unreasonably in refusing to pay the benefits
3 enumerated in subsection (a) when due, the insurer shall pay, in
4 addition to the benefits owed and the interest thereon, a
5 reasonable attorney fee based upon actual time expended.

6 (c) Payment by fund.--The Catastrophic Loss Trust Fund may
7 award the claimant's attorney a reasonable fee based upon actual
8 time expended if a claimant is unable to otherwise pay the fees
9 and costs.

10 (d) Fraudulent or excessive claims.--If, in any action by a
11 claimant to recover benefits under this chapter, the court
12 determines that the claim, or a significant part thereof, is
13 fraudulent or unreasonably excessive, the court may award the
14 insurer's attorney a reasonable fee based upon actual time
15 expended. The court may direct that the fee shall be paid by the
16 claimant or that the fee may be treated in whole or in part as
17 an offset against any benefits due or to become due the
18 claimant.

19 CHAPTER 65

20 CREDIT INSURANCE

21 Sec.

22 6501. General provisions.

23 6502. Definitions.

24 6503. Forms.

25 6504. Amount of insurance.

26 6505. Term of insurance.

27 6506. Disclosure to debtors.

28 6507. Review of forms and premium rates.

29 6508. Premiums and refunds.

30 6509. Issuance of policies.

1 6510. Claims.

2 6511. Choice of insurer.

3 6512. Enforcement.

4 6513. Judicial review.

5 6514. Penalties.

6 § 6501. General provisions.

7 (a) Short title of chapter.--This chapter shall be known and
8 may be cited as the Model Act for the Regulation of Credit Life
9 Insurance and Credit Accident and Health Insurance.

10 (b) Purpose.--The purpose of this chapter is to promote the
11 public welfare by regulating credit life insurance and credit
12 accident and health insurance. This chapter is not intended to
13 prohibit or discourage reasonable competition.

14 (c) Construction.--The provisions of this chapter shall be
15 liberally construed.

16 (d) Scope of chapter.--All life insurance and all accident
17 and health insurance in connection with loans or other credit
18 transactions shall be subject to this chapter, except the
19 following types of health and accident insurance:

20 (1) Insurance in connection with a loan or other credit
21 transaction or more than 20 years' duration.

22 (2) Insurance in connection with a first real estate
23 mortgage, but if the mortgage is secured by a new or used
24 mobile home or dwelling trailer the insurance shall be
25 subject to the provisions of this chapter, regardless of the
26 duration of the underlying loan or other credit transaction.

27 (3) Insurance issued as an isolated transaction on the
28 part of the insurer not related to an agreement or a plan for
29 insuring debtors of the creditor.

30 § 6502. Definitions.

1 The following words and phrases when used in this chapter
2 shall have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Credit accident and health insurance." Insurance on a
5 debtor to provide indemnity for payments becoming due on a
6 specific loan or other credit transaction while the debtor is
7 disabled as defined in the policy.

8 "Credit insurance." Credit life insurance and credit
9 accident and health insurance.

10 "Credit life insurance." Insurance on the life of a debtor
11 pursuant to or in connection with a specific loan or other
12 credit transaction.

13 "Creditor." The lender of money or vendor or lessor of
14 goods, services, property rights or privileges for which payment
15 is arranged through a credit transaction or any successor to the
16 right, title or interest of any such lender, vendor or lessor
17 and an affiliate, associate or subsidiary of any of them.

18 "Debtor." A borrower of money or a purchaser or lessee of
19 goods, services, property rights or privileges for which payment
20 is arranged through a credit transaction.

21 "Dwelling trailer." Any portable dwelling structure or
22 movable dwelling unit designed, constructed and equipped for
23 human use with a chassis or undercarriage as an integral part
24 thereof, with or without independent motive power, capable of
25 being drawn or driven upon highways.

26 "Indebtedness." The total amount payable by a debtor to a
27 creditor in connection with a loan or other credit transaction.

28 "Mobile home." Any portable structure or movable unit
29 equipped to be drawn or travel on the highways that is used
30 either temporarily or permanently as a residence home, dwelling

1 unit, apartment or other housing accommodation or as an office.

2 § 6503. Forms.

3 Credit insurance shall be issued only in the following forms:

4 (1) Individual policies of life insurance to insure the
5 lives of debtors on the term plan.

6 (2) Individual policies of accident and health insurance
7 to insure debtors on a term plan or disability benefit
8 provisions in individual policies of credit life insurance.

9 (3) Group policies of life insurance issued for delivery
10 to creditors providing insurance upon the lives of debtors on
11 the term plan.

12 (4) Group policies of accident and health insurance
13 issued for delivery to creditors on a term plan insuring
14 debtors or disability benefit provisions in group credit life
15 insurance policies to provide such coverage.

16 § 6504. Amount of insurance.

17 (a) General rule.--The initial amount of credit life
18 insurance shall not exceed the total amount repayable under the
19 contract of indebtedness. Where an indebtedness repayable in
20 substantially equal installments is secured by an individual
21 policy of credit life insurance, the amount of insurance shall
22 not exceed the scheduled amount of indebtedness or the amount of
23 unpaid indebtedness, whichever is the greater, and where secured
24 by a group policy of credit life insurance shall not exceed the
25 amount of unpaid indebtedness.

26 (b) Exceptions.--Notwithstanding any other provisions of
27 this chapter, insurance on agricultural credit transaction
28 commitments not exceeding one year in duration may be written up
29 to the amount of the loan commitment on a nondecreasing or level
30 term plan. Notwithstanding any other provisions of this title,

1 insurance on educational credit transaction commitments may be
2 written for the amount of the portion of the commitment that has
3 not been advanced by the creditor.

4 (c) Periodic indemnity.--The total amount of periodic
5 indemnity payable by credit accident and health insurance in the
6 event of disability as defined in the policy shall not exceed
7 the aggregate of the periodic scheduled unpaid installments of
8 the indebtedness, and the amount of each periodic indemnity
9 payment shall not exceed the original indebtedness divided by
10 the number of periodic installments.

11 § 6505. Term of insurance.

12 The term of any credit insurance shall, subject to acceptance
13 by the insurer, commence on the date when the debtor becomes
14 obligated to the creditor or the date from which interest or
15 finance charges accrue if later, except that when a group policy
16 provides coverage with respect to existing obligations, the
17 insurance on a debtor with respect to the indebtedness shall
18 commence on the effective date of the policy. When evidence of
19 insurability is required and is furnished more than 30 days
20 after the date when the debtor becomes obligated to the
21 creditor, the term of the insurance may commence on the date on
22 which the insurance company determines the evidence to be
23 satisfactory and shall make an appropriate refund or adjustment
24 of any charge to the debtor for insurance. The term of credit
25 insurance shall not extend more than 15 days beyond the
26 scheduled maturity date of the indebtedness, except when
27 extended without additional cost to the debtor. If the
28 indebtedness is discharged due to renewal or refinancing prior
29 to the scheduled maturity date, the insurance in force shall be
30 terminated before any new insurance may be issued in connection

1 with the renewed or refinanced indebtedness. In all cases of
2 termination prior to scheduled maturity, a refund shall be paid
3 or credited as provided in section 6508 (relating to premiums
4 and refunds).

5 § 6506. Disclosure to debtors.

6 (a) Policies and certificates.--All credit insurance shall
7 be evidenced by an individual policy or in the case of group
8 insurance by a certificate of insurance, which policy or
9 certificate shall be delivered to the debtor within 30 days
10 after the date the indebtedness is incurred. Each individual
11 policy or group certificate of credit insurance shall, in
12 addition to other requirements of law, include:

13 (1) The name and home office address of the insurer.

14 (2) The name or names of the debtor or in the case of a
15 certificate under a group policy the identity by name or
16 otherwise of the debtor.

17 (3) The rate or amount of payment, if any, by the debtor
18 separately for credit life insurance and credit accident and
19 health insurance.

20 (4) A description of the amount, term and coverage,
21 including any exceptions, limitations or restrictions.

22 (5) A statement that the benefits shall be paid to the
23 creditor to reduce or extinguish the unpaid indebtedness and
24 that, if the amount of insurance exceeds the unpaid
25 indebtedness, the excess shall be payable to a beneficiary
26 other than the creditor named by the debtor or to his estate.

27 (b) Preliminary disclosures.--If a separate identifiable
28 charge is made to the debtor for the insurance and an individual
29 policy or group certificate of insurance is not delivered to the
30 debtor at the time the indebtedness is incurred, a copy of the

1 application for the policy or a notice of proposed insurance
2 shall be delivered to the debtor at that time, which shall
3 include the following:

4 (1) The identity by name or otherwise of the person or
5 persons insured.

6 (2) The rate or amount of payment by the debtor
7 separately for credit life insurance and credit accident and
8 health insurance.

9 (3) A statement that, subject to acceptance by the
10 insurer and within 30 days, there will be delivered to the
11 debtor a policy or certificate of insurance naming the
12 insurer and fully describing the insurance.

13 The copy of the application for or notice of proposed insurance
14 shall also refer exclusively to insurance coverage and shall be
15 separate and apart from the loan, sale or other credit statement
16 of account, instrument or agreement, unless the information
17 required by this subsection is prominently set forth therein.

18 The application or notice of proposed insurance shall state
19 that, upon acceptance by the insurer, the insurance shall become
20 effective as provided in section 6505 (relating to term of
21 insurance). Upon acceptance of the insurance by the insurer and
22 within 30 days of the date upon which the indebtedness is
23 incurred, the insurer shall deliver an individual policy or
24 group certificate of insurance under subsection (a).

25 (c) Refusal of risk.--If the named insurer does not accept
26 the risk, the debtor shall promptly receive a policy or
27 certificate of insurance setting forth the name and home office
28 address of the substituted insurer and the amount of the premium
29 to be charged and, if the amount of premium is less than that
30 set forth in the notice of proposed insurance, an appropriate

1 refund shall be made.

2 § 6507. Review of forms and premium rates.

3 (a) Review by department.--All policies, certificates of
4 insurance, notices of proposed insurance, applications for
5 insurance, endorsements and riders delivered or issued for
6 delivery in this Commonwealth, together with the premium rates
7 therefor, shall be filed with the department for approval. Forms
8 and rates so filed shall be deemed approved at the expiration of
9 30 days after filing unless earlier approved or disapproved by
10 the department. The department by written notice to the insurer
11 may, with the 30-day period, extend the period for approval or
12 disapproval for an additional 30 days. A form subject to this
13 section or premium rate shall not be issued or used until the
14 expiration of the time for the consideration by the department,
15 unless the department has given its written approval thereto.

16 (b) Disapproval.--The department shall disapprove any form
17 or premium rate if the table of premium rates appears by
18 reasonable assumptions to be excessive in relation to benefits,
19 or if the form contains provisions which are unfair, unjust,
20 misleading, deceptive or are contrary to law. In determining
21 whether to disapprove any such form or premium rates, the
22 department shall give due consideration to past and prospective
23 loss experience in and outside this Commonwealth, to
24 underwriting practice and judgment, to a reasonable margin for
25 underwriting profit and contingencies, to past and prospective
26 expenses in and outside this Commonwealth and to all other
27 relevant factors. If the form or premium rate is disapproved,
28 the insurer shall not issue or use the form or rates.

29 (c) Notice of disapproval.--The department shall promptly
30 give notice to the insurer of its disapproval of a form or

1 premium rate under subsection (b). In the notice, the department
2 shall specify the reason for its disapproval and state that a
3 hearing will be granted within 20 days after request in writing
4 by the insurer.

5 (d) Withdrawal of approval.--The department may, at any time
6 after a hearing held not less than 20 days after written notice
7 to the insurer, withdraw its approval of any such form or
8 premium rate on any ground set forth in subsection (b). The
9 written notice of the hearing shall state the reason for the
10 proposed withdrawal. The insurer shall not issue or use such
11 forms or rates after the effective date of the withdrawal.

12 (e) Judicial review.--Any order or final determination of
13 the department after a hearing under this section shall be
14 subject to judicial review.

15 (f) Group policies.--With regard to group policies of credit
16 insurance delivered in this Commonwealth before November 1,
17 1961, or delivered in another state at any time, the insurer
18 shall be required to file only the group certificate and notice
19 of proposed insurance, delivered or issued for delivery in this
20 Commonwealth as specified in section 6506 (relating to
21 disclosure to debtors). These forms shall be approved by the
22 department if they contain the information specified therein and
23 if the schedules of premium rates applicable to the insurance
24 evidenced by the certificate or notice are not in excess of the
25 insurer's schedules of premium rates on file with the
26 department.

27 § 6508. Premiums and refunds.

28 (a) Revision of rates.--Any insurer may revise its schedules
29 of premium rates from time to time and shall file such revised
30 schedules with the department. An insurer shall not issue any

1 credit insurance policy for which the premium rate exceeds that
2 determined by the schedules of the insurer as then on file with
3 the department.

4 (b) Refunds.--Each individual policy or group certificate
5 shall provide that, in the event of termination of the insurance
6 prior to the scheduled maturity date of the indebtedness, any
7 refund of an amount paid by the debtor for insurance shall be
8 paid or credited promptly to the person entitled thereto, except
9 that the department shall prescribe a minimum refund, and no
10 refund which would be less than such minimum need be made. The
11 formula to be used in computing the refund shall be filed with
12 and approved by the department.

13 (c) Payments required by creditor.--If a creditor requires a
14 debtor to make any payment for credit insurance and an
15 individual policy or group certificate of insurance is not
16 issued, the creditor shall immediately give written notice to
17 the debtor and shall promptly make an appropriate credit to the
18 account.

19 (d) Limitation on charges.--The amount charged to a debtor
20 for any credit insurance shall not exceed the aggregate of the
21 premiums to be charged by the insurer as computed at the time
22 the charge to the debtor is determined.

23 (e) Payments under other law.--This chapter does not
24 authorize any payments for credit insurance now prohibited under
25 any statute or regulation thereunder governing credit
26 transactions, except that when payment for credit insurance is
27 not prohibited under any statute or rule thereunder governing
28 credit transactions, the commissions, dividends or other returns
29 to the creditor therefrom shall not be deemed a violation of
30 law.

1 § 6509. Issuance of policies.

2 All policies of credit life insurance and credit accident and
3 health insurance shall be delivered or issued for delivery in
4 this Commonwealth only by an insurer authorized to do an
5 insurance business in this Commonwealth and shall be issued only
6 through holders of licenses or authorizations issued by the
7 department.

8 § 6510. Claims.

9 (a) Method of payment.--All claims shall be paid either by
10 draft drawn upon the insurer or by check of the insurer to the
11 order of the claimant to whom payment of the claim is due
12 pursuant to the policy provisions or upon direction of the
13 claimant to one specified.

14 (b) Authority to settle claims.--A plan or arrangement shall
15 not be used whereby any person, firm or corporation other than
16 the insurer or its designated claim representative are
17 authorized to settle or adjust claims. The creditor shall not be
18 designated as claim representative for the insurer in adjusting
19 claims, except that a group policyholder may, by arrangement
20 with the group insurer, draw drafts or checks in payment of
21 claims due to the group policyholder subject to audit and review
22 by the insurer.

23 § 6511. Choice of insurer.

24 When credit insurance is required as additional security for
25 any indebtedness, the debtor may, upon request to the creditor,
26 furnish the required amount of insurance through existing
27 policies of insurance owned or controlled by him or of procuring
28 and furnishing the required coverage through any insurer
29 authorized to transact an insurance business in this
30 Commonwealth.

1 § 6512. Enforcement.

2 Whenever the department finds that there has been a violation
3 of this chapter or any rules and regulations promulgated
4 thereunder, after written notice thereof and hearing given to
5 the insurer or other person authorized or licensed by the
6 department, it shall set forth the details of its findings,
7 together with an order for compliance by a specified date. The
8 order shall be binding on the person so ordered on the date
9 specified unless the order is withdrawn by the department or a
10 stay is ordered by a court.

11 § 6513. Judicial review.

12 Any party to a proceeding affected by an order of the
13 department shall be entitled to judicial review.

14 § 6514. Penalties.

15 (a) Monetary penalties.--Any insurer or any person who
16 violates an order of the department after it has become final
17 and while the order is in effect shall, upon proof thereof to
18 the satisfaction of the court, pay to the Commonwealth a sum not
19 to exceed \$250 which may be recovered in a civil action. If the
20 violation is found to be willful, the penalty shall be a sum not
21 to exceed \$1,000.

22 (b) Licensure penalties.--The department may revoke or
23 suspend the license or certificate of authority of the insurer
24 or the person guilty of such a violation.

25 CHAPTER 67

26 TITLE INSURANCE

27 Subchapter

28 A. General Provisions

29 B. Business Operations

30 C. Investment and Reserves

1 D. Rate Regulation

2 E. Penalties and Procedures

3 SUBCHAPTER A

4 GENERAL PROVISIONS

5 Sec.

6 6701. Definitions.

7 6702. Applicability of chapter.

8 6703. Applicability of other provisions of title.

9 § 6701. Definitions.

10 The following words and phrases when used in this chapter
11 shall have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Applicant for insurance." Includes approved attorneys, real
14 estate brokers, real estate salesmen, attorneys at law and all
15 others who from time to time apply to a title insurance company
16 or to an agent of a title insurance company, for title
17 insurance, and who at the time of the application are not agents
18 for a title insurance company.

19 "Approved attorney." An attorney at law in good standing
20 upon whose examination of title and report of title thereon a
21 title insurance company may issue a policy of title insurance.

22 "Business of title insurance."

23 (1) The making as insurer, guarantor or surety, or
24 proposing to make as insurer, guarantor or surety, of any
25 contract or policy of title insurance.

26 (2) The transacting, or proposing to transact, any phase
27 of title insurance, including solicitation, negotiation
28 preliminary to execution, execution of a contract of title
29 insurance, insuring and transacting matters subsequent to the
30 execution of the contract and arising out of it, including

1 reinsurance.

2 (3) The doing, or proposing to do, any business in
3 substance equivalent to any of the foregoing in a manner
4 designed to evade the provisions of this chapter.

5 "Fee." The premium, the examination and settlement or
6 closing fees, and every other charge, whether denominated
7 premium or otherwise, made by a title insurance company, agent
8 of a title insurance company or an approved attorney of a title
9 insurance company to an insured or to an applicant for
10 insurance, for any policy or contract for the issuance of, or an
11 application for title insurance. The term does not include any
12 charges paid by an insured or by an applicant for insurance for
13 any policy or contract, to an attorney at law acting as an
14 independent contractor and retained by such attorney at law,
15 whether or not he is acting as an agent of or an approved
16 attorney of a title insurance company, or any charges made for
17 special services not constituting title insurance, even though
18 performed in connection with a title insurance policy or
19 contract.

20 "Title insurance."

21 (1) Insuring, guaranteeing or indemnifying against loss
22 or damage suffered by owners of real property or by
23 mortgagees or others interested therein by reason of liens,
24 encumbrances upon, defects in or the unmarketability of the
25 title to the real property.

26 (2) Guaranteeing, warranting or otherwise insuring the
27 correctness of searches relating to the title to real
28 property, and doing any business in substance equivalent to
29 any of the foregoing in a manner designed to evade this
30 chapter.

1 "Title insurance company."

2 (1) A domestic company organized under the provisions of
3 this chapter for the purpose of insuring titles to real
4 estate.

5 (2) A title insurance company organized under the laws
6 of another state or a foreign government and licensed to
7 insure titles to real estate in this Commonwealth pursuant to
8 section 6719 (relating to licensure of foreign insurers).

9 (3) A domestic or foreign company, including any
10 domestic bank or trust company, which has the power and is
11 authorized to insure titles to real estate in this
12 Commonwealth as of September 1, 1963, and which is not
13 disqualified under section 6715 (relating to loss of power to
14 transact title insurance).

15 § 6702. Applicability of chapter.

16 This chapter applies to all title insurance companies, title
17 rating organizations, title insurance agents, applicants for
18 title insurance and policyholders and to all persons and
19 business entities engaged in the business of title insurance.

20 § 6703. Applicability of other provisions of title.

21 In addition to the provisions of this chapter, only the
22 following provisions of this title, except as they are
23 inconsistent with this chapter, shall apply to the business of
24 title insurance and to title insurance companies, which shall be
25 considered as within the class of insurance companies regulated
26 by those provisions solely for the purpose of being subject to
27 such provisions:

28 Chapter 1 (relating to general provisions).

29 Chapter 3 (relating to general provisions).

30 Chapter 5 (relating to Insurance Department).

1 Subchapter E of Chapter 7 (relating to title insurance).

2 Section 901 (relating to deposit of securities with
3 department).

4 Section 904 (relating to actions in equity regarding
5 deposits).

6 Sections 1102 (relating to certification of agents)
7 through 1107 (relating to penalty for soliciting for
8 nonexistant company).

9 Section 1142 (relating to theft offense).

10 Sections 1145 (relating to offering rebates and
11 inducements) through 1149 (relating to penalties imposed by
12 department).

13 Subchapter E of Chapter 11 (relating to managers and
14 exclusive general agents).

15 Chapter 15 (relating to unfair insurance practices).

16 Sections 1705 (relating to reports of financial
17 condition) and 1706 (relating to additional reports from
18 foreign or alien entities).

19 Sections 3101 (relating to scope of part) through 3104
20 (relating to power of General Assembly regarding charters).

21 Section 3106 (relating to judicial proceedings).

22 Sections 3303 (relating to articles of agreement) through
23 3305 (relating to capital stock).

24 Sections 3307 (relating to officers and directors) and
25 3308 (relating to subscriptions).

26 Subchapter B of Chapter 33 (relating to promotion).

27 Subchapter C of Chapter 33 (relating to authorization).

28 Section 3351 (relating to valuation of securities).

29 Sections 3501 (relating to use of company name) through
30 3508 (relating to execution of insurance policies).

1 Sections 3510 (relating to incorporation of documents in
2 policy) through 3516 (relating to mortgage insurance).

3 Sections 3531 (relating to annual meetings) through 3533
4 (relating to election of directors and trustees).

5 Sections 3535 (relating to voting by stockholders and
6 members) through 3539 (relating to directors and trustees).

7 Subchapter C of Chapter 35 (relating to fundamental
8 changes).

9 Sections 3565 (relating to protection of competition)
10 through 3571 (relating to dissolution for failure to do
11 business).

12 Subchapter E of Chapter 35 (relating to foreign or alien
13 companies).

14 Section 3581 (relating to embezzlement by officers or
15 agents) through 3587 (relating to buying proxies).

16 Section 3589 (relating to fraud in obtaining licenses or
17 certificates).

18 Chapter 39 (relating to suspension of business and
19 dissolution).

20 Sections 5507 (relating to dividends), 5508 (relating to
21 reduction and withdrawal of capital stock) and 5510 (relating
22 to resident agents for foreign or alien insurance entities).

23 SUBCHAPTER B

24 BUSINESS OPERATIONS

25 Sec.

26 6711. Powers of title insurance companies.

27 6712. Corporate form.

28 6713. Title examination and records.

29 6714. Prohibition of guaranteeing mortgages.

30 6715. Loss of power to transact title insurance.

- 1 6716. Primary retained liability.
- 2 6717. Power to reinsure.
- 3 6718. Special reinsurance.
- 4 6719. Licensure of foreign or alien insurers.
- 5 6720. Resident agents for foreign or alien insurers.
- 6 6721. Regulation of agents.
- 7 6722. Commissions.
- 8 6723. Mergers and consolidations.
- 9 6724. Other corporate acquisitions.
- 10 6725. Change in corporate control.

11 § 6711. Powers of title insurance companies.

12 Only a title insurance company as defined in section 6701
13 (relating to definitions) may underwrite or issue a policy of
14 title insurance. A person shall not engage in the business of
15 title insurance in this Commonwealth unless authorized to
16 transact such a business by this chapter. A title insurance
17 company shall not transact, underwrite or issue any kind of
18 insurance other than title insurance.

19 § 6712. Corporate form.

20 A title insurance company shall be organized as a stock
21 corporation as provided in sections 3303 (relating to articles
22 of agreement), 3304 (relating to name of company), 3305
23 (relating to capital stock), 3307 (relating to officers and
24 directors) and 3308 (relating to subscriptions) and authorized
25 under Subchapter C of Chapter 33 (relating to authorization),
26 except as prescribed in this chapter, to do the kind of
27 insurance business, with incidental powers, specified in this
28 chapter.

29 § 6713. Title examination and records.

30 A policy of title insurance, excluding reinsurance, shall not

1 be written unless the title insurance company, through its own
2 employees, agents or approved attorneys, has conducted a
3 reasonable examination of the record title or has caused such an
4 examination to be conducted. The abstract of title or the report
5 of the examination thereof shall be in writing and shall be kept
6 on file by the title insurance company, its agent or an approved
7 attorney for a period of not less than 20 years after the policy
8 of title insurance has been issued. In lieu of retaining the
9 original copy, the title insurance company, its agent or the
10 approved attorney may record, copy or reproduce all or some of
11 these documents.

12 § 6714. Prohibition of guaranteeing mortgages.

13 A title insurance company shall not guarantee the payment of
14 the principal or the interest of bonds or other obligations
15 secured by mortgages upon real property.

16 § 6715. Loss of power to transact title insurance.

17 (a) Break in use of power.--Every title insurance company
18 which does not exercise for any period of 12 months the power to
19 insure owners of real property, mortgagees and others interested
20 in real property from loss by reason of defective titles, liens
21 and encumbrances, shall be forever barred from the exercise of
22 such power.

23 (b) Banking powers.--Any title insurance company which
24 possesses the further powers to receive deposits or otherwise to
25 engage in a banking business, and which does not exercise any of
26 these powers for any consecutive period of one year, upon
27 exercising either of these powers again, shall make no further
28 contracts or policies of title insurance.

29 (c) Fiduciary powers.--Any title insurance company which
30 possesses the further powers to act as trustee, guardian,

1 executor or administrator or in any similar fiduciary capacity,
2 and which does not exercise these powers for any consecutive
3 period of one year, upon exercising again any of such further
4 powers shall make no further contracts or policies of title
5 insurance.

6 § 6716. Primary retained liability.

7 (a) Limit of net primary retention.--A title insurance
8 company shall not issue a policy of title insurance for a single
9 transaction, the net primary retained liability under which
10 shall exceed an amount which is equal to its assets, not
11 including agency and escrow funds, less an amount equal to the
12 sum of the minimum capital required by this chapter for a title
13 insurance company, unearned premium reserve and the value of
14 title plant. One or more title insurance companies may assume
15 the liability on a single policy jointly with another title
16 insurance company or companies in excess of this amount if the
17 total amount of insurance does not exceed the aggregate maximum
18 net primary retentions of all companies liable under the
19 insurance, and if none of the companies exceeds the limit of its
20 net primary retention for a single transaction.

21 (b) Primary liability.--A title insurance company shall not
22 issue a policy of title insurance for a single transaction under
23 which its primary liability as coinsurer exceeds the limit of
24 net primary retention prescribed in subsection (a).

25 (c) Secondary liability.--A title insurance company shall
26 not issue a policy of title insurance for a single transaction
27 under which its secondary liability as reinsurer exceeds the
28 limit of net primary retention prescribed in subsection (a),
29 except that if the ceding company or companies retain primary
30 liability at least equal to 10% of the total amount at risk, a

1 title insurance company may issue a policy of reinsurance for a
2 single transaction under which its secondary liability exceeds
3 the limit of net primary retention prescribed in subsection (a).
4 The total amount of its secondary liability for a single
5 transaction shall not exceed an amount which is equal to its
6 assets, not including agency or escrow funds, less an amount
7 equal to the sum of the unearned premium reserve and the value
8 of title plant. One or more title insurance companies may assume
9 the liability on a single policy jointly with another title
10 insurance company or companies in excess of this amount, if the
11 total amount of insurance does not exceed the aggregate maximum
12 net retentions of all companies liable under the insurance and
13 if none of the companies exceeds the limit of its net retention
14 for a single transaction.

15 § 6717. Power to reinsure.

16 Any authorized title insurance company may reinsure all or
17 any part of its liability under one or more of its policy
18 contracts with any authorized title insurance company or
19 companies authorized to insure titles to real estate in any
20 state, if the reinsuring company at all times remains of the
21 same standard of solvency and complies with all other
22 requirements fixed by the law of this Commonwealth for
23 authorized title insurance companies. Any authorized title
24 insurance company shall pay to this Commonwealth taxes required
25 on all business taxable in this Commonwealth and reinsured under
26 this section with any foreign company not authorized to do
27 business in this Commonwealth.

28 § 6718. Special reinsurance.

29 If the risk of a single transaction involving a parcel of
30 real estate situated in this Commonwealth exceeds the total net

1 retention, both primary and secondary, permitted by this chapter
2 for all authorized title insurance companies, and the total
3 reinsurance available from companies authorized to reinsure
4 risks by section 6717 (relating to power to reinsure),
5 reinsurance may be obtained from companies not authorized to
6 reinsure risks in this Commonwealth with the prior approval in
7 writing of the department.

8 § 6719. Licensure of foreign or alien insurers.

9 Any foreign or alien insurance company shall be licensed to
10 transact the business of title insurance in this Commonwealth
11 only if the company is and remains of the same standard of
12 solvency and complies with other requirements under this title
13 for title insurance companies organized and authorized to
14 transact the business of title insurance pursuant to the laws of
15 this Commonwealth. The company shall not be licensed to transact
16 any business in this Commonwealth until it complies with the
17 requisites for doing business under section 3577 (relating to
18 conditions for authorization of foreign or alien companies).

19 § 6720. Resident agents for foreign or alien insurers.

20 A foreign or alien company licensed to do a title insurance
21 business in this Commonwealth shall transact such business only
22 through resident agents in the manner prescribed in section 5510
23 (relating to resident agents for foreign or alien insurance
24 entities).

25 § 6721. Regulation of agents.

26 (a) Disqualifications.--A bank, trust company, bank and
27 trust company or other lending institution, mortgage service,
28 mortgage brokerage or mortgage guaranty company or any officer
29 or employee of any of the foregoing, may not act as an agent of
30 a title insurance company; nor shall any appointed attorney or

1 officer or salaried employee of any title insurance company act
2 as such an agent.

3 (b) Certification.--Every title insurance company shall
4 certify to the department as it shall direct the names of all
5 agents appointed by the company in this Commonwealth.

6 (c) Licensure.--Agents of a title insurance company shall be
7 licensed in the manner provided for agents of insurance
8 companies in section 1103 (relating to licenses of agents). If
9 an applicant for an agent's license is an agent of a title
10 insurer or a licensed insurance broker or an attorney at law,
11 the applicant shall not be required to take an examination to
12 qualify for such license. Licenses of title insurance agents
13 shall expire annually at midnight of June 30, unless sooner
14 terminated as the result of severance of business relations
15 between the company and the agent, or unless revoked by the
16 department for cause.

17 (d) Records.--Every agent of a title insurance company shall
18 keep his books, records, accounts and vouchers pertaining to the
19 business of title insurance in such manner that the department
20 may readily ascertain, from time to time, whether or not the
21 agent has complied with this title. Failure to comply with this
22 section shall be a ground for revocation of the agent's license.

23 (e) Replies to inquiries by department.--Every agent of a
24 title insurance company shall promptly reply in writing to any
25 inquiry of the department relative to the agent's conduct of the
26 business of title insurance, and failure to reply shall be a
27 ground for revocation of the agent's license.

28 (f) Prohibited names.--An agent of a title insurance company
29 shall not adopt a firm name containing the words "title," "title
30 company," "title insurance company," "guaranty," "guarantee,"

1 "guaranty company," "guarantee company" or similar combination
2 thereof.

3 (g) Definition.--As used in this section the term "agent"
4 means a person authorized in writing by a title insurance
5 company directly or indirectly:

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

8 (2) to solicit risks and collect premiums in its behalf.

9 § 6722. Commissions.

10 (a) Attorneys and brokers.--A title insurance company or an
11 agent of a title insurance company may pay a cash commission to
12 an attorney at law in good standing, or a real estate broker
13 licensed in this Commonwealth, for procuring a title insurance
14 for a client in a real estate transaction. A commission may not
15 be paid to an attorney at law in any transaction in which he
16 acts as an approved attorney. An attorney at law or a licensed
17 real estate broker may credit his commission to the account of
18 the client for whom the policy of title insurance was obtained
19 without violating the rebate provisions of this chapter. The
20 cash commission paid by a title insurance company or an agent of
21 a title insurance company shall not exceed the amount set forth
22 in the schedule of commissions filed with the department by the
23 title insurance company.

24 (b) Applicants for title insurance.--A title insurance
25 company or agent or approved attorney of a title insurance
26 company shall not pay, give or award to an applicant for title
27 insurance any other compensation, consideration, benefit or
28 remuneration, directly or indirectly.

29 § 6723. Mergers and consolidations.

30 (a) General rule.--Subject to the provisions of this

1 section, a domestic title insurance company may merge or
2 consolidate with one or more domestic or foreign title insurance
3 companies authorized to transact title insurance in this
4 Commonwealth, by complying with Article IX of the act of May 5,
5 1933 (P.L.364, No.106), known as the Business Corporation Law,
6 relating to merger or consolidation.

7 (b) Approval by department.--A merger or consolidation shall
8 not be effected unless in advance thereof the plan and agreement
9 therefor have been filed with the department. The department
10 shall examine the terms and conditions of the merger or
11 consolidation, and of any exchange of shares or securities
12 pursuant thereto, after holding a hearing at which all persons
13 to whom it is proposed to issue shares or securities in the
14 exchange may appear. After the hearing, the department shall
15 either approve or disapprove the terms and conditions of
16 exchange. The department shall approve within a reasonable time
17 after the filing unless it finds that the plan or agreement:

18 (1) is contrary to law;

19 (2) is inequitable to the stockholders of any title
20 insurance company; or

21 (3) would substantially reduce the security of and
22 services to be rendered to policyholders of the domestic
23 title insurance company in this Commonwealth or elsewhere.

24 (c) Disclosure of consideration.--A director, officer, agent
25 or employee of a title insurance company party to a merger or
26 consolidation shall not receive any fee, commission or other
27 valuable consideration for aiding, promoting or assisting
28 therein except as set forth in the plan or agreement.

29 (d) Notice of disapproval.--If the department does not
30 approve a plan or agreement, it shall notify the title insurance

1 company in writing, specifying its objections in detail.

2 § 6724. Other corporate acquisitions.

3 (a) General rule.--A domestic title insurance company may
4 issue stock in exchange for all or substantially all the assets
5 or stock of a domestic or foreign title insurance or abstract
6 company if a plan or agreement of acquisition has been filed
7 with the department.

8 (b) Approval by department.--The department shall examine
9 the terms and conditions of the plan or agreement and of any
10 exchange of shares or securities pursuant thereto, after holding
11 a hearing at which all persons to whom it is proposed to issue
12 shares or securities in the exchange may appear. After the
13 hearing, the department shall either approve or disapprove the
14 terms and conditions of exchange. The department shall approve
15 within a reasonable time after the filing unless it finds that
16 the plan or agreement:

17 (1) is contrary to law;

18 (2) is inequitable to the stockholders of any title
19 insurance or abstract company involved; or

20 (3) would substantially reduce the security of and
21 service to be rendered to policyholders of the domestic title
22 insurance company in this Commonwealth or elsewhere.

23 (c) Disclosure of consideration.--A director, officer, agent
24 or employee of a title insurance company or abstract company
25 party to an acquisition shall not receive any fee, commission or
26 other valuable consideration for aiding, promoting or assisting
27 therein except as set forth in the plan or agreement.

28 (d) Notice of disapproval.--If the department does not
29 approve a plan or agreement, it shall notify the title insurance
30 company in writing specifying its objections in detail.

1 § 6725. Change in corporate control.

2 (a) Approval by department.--If any person proposes to
3 acquire the controlling capital stock of any domestic title
4 insurance company and thereby change the control of the company,
5 he shall first apply to the department for approval of the
6 change of control. The change in control shall not be effective
7 unless so approved. The application shall contain the name and
8 address of the proposed new owners of the controlling stock.

9 (b) Criteria for approval.--The department shall approve the
10 proposed change of control only after it determines that the
11 proposed new owners of the controlling stock are qualified by
12 character, experience and financial responsibility to control
13 and operate the company in a lawful and proper manner and that
14 the interest of the company stockholders and policyholders and
15 the interest of the public generally will not be jeopardized by
16 the proposed change in ownership and management.

17 (c) Procedure.--If the department does not approve or
18 disapprove the proposed change within 30 days after the date the
19 application was filed with it, the proposed change shall be
20 deemed to be approved as of the expiration of the 30-day period.
21 If the department disapproves the proposed change in control, it
22 shall give written notice thereof to the persons so applying for
23 approval, setting forth its objections.

24 SUBCHAPTER C

25 INVESTMENT AND RESERVES

26 Sec.

27 6731. Financial requirements.

28 6732. Procedure when capital impaired.

29 6733. Unearned premium reserve.

30 6734. Amount of unearned premium reserve.

- 1 6735. Maintenance of unearned premium reserve.
- 2 6736. Use of unearned premium reserve.
- 3 6737. Reserves for unpaid losses and loss expenses.
- 4 6738. Investment of capital.
- 5 6739. Investment of surplus.
- 6 6740. Investment of unearned premium reserve.
- 7 6741. Other reserves.
- 8 § 6731. Financial requirements.

9 Every title insurance company shall have a minimum capital,
10 which shall be paid in and maintained, of not less than \$250,000
11 and, in addition, paid-in initial surplus at least equal to 50%
12 of its capital.

13 § 6732. Procedure when capital impaired.

14 If the capital of a title insurance company becomes impaired,
15 the title insurance company shall immediately give written
16 notice thereof to the department and shall make no further
17 policies or contracts or reinsurance agreements of title
18 insurance while the impairment exists. The title insurance
19 company shall immediately call upon its stockholders for such
20 amounts as will restore its capital to an amount prescribed by
21 the department. If any stockholder fails to pay the amount
22 called for, after notice personally given or by advertisement,
23 at the time and in the manner the department approves, the title
24 insurance company shall require the return of the original
25 certificates of stock held by the stockholder or issue new
26 certificates in the proportion, as determined by the department,
27 that the ascertained value of the assets bears to the capital
28 existing immediately prior to the impairment, the title
29 insurance company paying for any fractional parts of shares. The
30 directors of the title insurance company, with the prior consent

1 and approval of the department, may create new stock and issue
2 certificates therefor, and dispose of this stock at not less
3 than par for an amount sufficient to make up the original
4 capital, or the department may permit the company to reduce its
5 capital and the par value of its shares in proportion to the
6 extent of the impairment, but the capital shall at no time be
7 reduced to an amount less than that required by law for the
8 organization of the company. In fixing the reduced capital, not
9 more than 50% of the original capital shall be deducted from the
10 assets on hand to be retained as surplus funds, nor shall any
11 part of assets be distributed to stockholders. When the amount
12 of capital prescribed by the department has been restored, the
13 title insurance company shall notify the department which, upon
14 being satisfied that the impairment no longer exists and is not
15 likely to recur, shall authorize the title insurance company in
16 writing to again issue policies or contracts or reinsurance
17 agreements of title insurance.

18 § 6733. Unearned premium reserve.

19 (a) Establishment of reserve.--Every title insurance company
20 shall, in addition to other reserves, establish and maintain a
21 reserve to be known as the "unearned premium reserve" for title
22 insurance, which shall constitute the unearned portions of
23 premiums due or received and shall be charged as a reserve
24 liability of the title insurance company in determining its
25 financial condition.

26 (b) Purpose.--The unearned premium reserve shall be retained
27 by the title insurance company for the protection of the
28 policyholders' interest in policies which have not expired.

29 (c) Distribution.--Except as provided in section 6736
30 (relating to use of unearned premium reserve), assets equal to

1 the amount of the reserve shall not be subject to distribution
2 among depositors or other creditors or stockholders of the title
3 insurance company until all claims of its policyholders or
4 holders of its other title insurance contracts or agreements
5 have been paid in full and all liability on the policies or
6 other title insurance contracts or agreements, whether
7 contingent or actual, has been discharged or lawfully reinsured.
8 Income from the investment of the reserve shall be the
9 unrestricted property of the title insurance company.

10 § 6734. Amount of unearned premium reserve.

11 (a) General rule.--The unearned premium reserve of every
12 title insurance company shall consist of the amount of the
13 unearned premium reserve held as of September 1, 1963, plus all
14 additions required to be made to the reserve by this section,
15 less the withdrawals therefrom as permitted by this section.

16 (b) Additions.--Except as otherwise provided in this
17 subsection, a title insurance company shall add to its unearned
18 premium reserve, in respect to each policy or contract or
19 reinsurance agreement issued by it, a sum of money out of the
20 fees due or received for the title insurance made by it, equal
21 to \$1 for each policy or contract or agreement, plus 10¢ for
22 each \$1,000 face amount of net retained liability. The company
23 shall each year separately report the amounts so set aside in
24 respect to policies, contracts or agreements written in that
25 year. If substantially the entire outstanding liability of the
26 company is reinsured, the unearned premium reserve of the
27 reinsurer shall be equal in amount to the reserve of the ceding
28 title insurance company in respect to the outstanding liability
29 so reinsured.

30 (c) Relation to net profit.--The amounts set aside as

1 additions to the unearned premium reserve shall be deducted in
2 determining the net profit of any title insurance company.

3 (d) Date assumed.--For the purposes of determining the
4 amounts of the unearned premium reserve that may be withdrawn
5 and the interest of the policyholders therein under section 6736
6 (relating to use of unearned premium reserve), all policies,
7 contracts or reinsurance agreements of title insurance shall be
8 deemed as dated on July 1 in the year of issue.

9 (e) Withdrawals from reserve.--Additions to the unearned
10 premium reserve which have been held for a period of 20 years
11 shall be withdrawn from the unearned premium reserve and shall
12 constitute a part of net profit for the year in which the
13 withdrawal is made.

14 § 6735. Maintenance of unearned premium reserve.

15 If by reason of depreciation in the market value of
16 investments or other cause, the amount of the assets eligible
17 for investment of the unearned premium reserve is on any date
18 less than the amount required to be maintained by law in the
19 reserve, and the deficiency is not promptly cured, the title
20 insurance company shall immediately give written notice thereof
21 to the department. The company shall make no further policies,
22 contracts or reinsurance agreements of title insurance until the
23 amounts of the eligible investments have been restored and until
24 it has received written approval from the department authorizing
25 it to again issue such policies, contracts or agreements.

26 § 6736. Use of unearned premium reserve.

27 (a) General rule.--If a title insurance company becomes
28 insolvent, or is in the process of liquidation or dissolution,
29 or in the possession of the department, such amount of the
30 assets of the title insurance company, equal to the unearned

1 premium reserve as is necessary, shall be used with the written
2 approval of the department to pay for reinsurance of the
3 outstanding liability of the title insurance company upon all
4 policies, contracts or reinsurance agreements of title insurance
5 in force as to which claims for losses by the holders are not
6 then pending. The balance of the unearned premium reserve fund
7 shall be transferred to the general assets of the title
8 insurance company. The assets other than the unearned premium
9 reserve shall be available to pay claims for losses sustained by
10 holders of policies then pending or arising up to the time
11 reinsurance is affected. If claims for losses are in excess of
12 these assets, claims shall be paid out of the assets
13 attributable to the unearned premium reserve.

14 (b) Reinsurance.--The department may enter into a contract
15 with one or more title insurance companies to reinsure all the
16 obligations under outstanding policies of the title insurance
17 company subject to this section in accordance with their terms,
18 covenants and conditions, the cost of the reinsurance to be paid
19 out of the assets of that company.

20 (c) Reinsurance unavailable.--If reinsurance is unavailable,
21 the unearned premium reserve and assets constituting minimum
22 capital remaining after outstanding claims have been paid shall
23 constitute a trust fund, which shall be held by the department
24 for 20 years, out of which claims of policyholders shall be paid
25 as they arise. The balance of this fund shall, at the expiration
26 of 20 years, revert to the general assets of the title insurance
27 company, after reasonable charges for administration of the fund
28 have been charged against the balance by the department.

29 § 6737. Reserves for unpaid losses and loss expenses.

30 Each title insurance company shall establish and maintain, in

1 addition to other reserves, reserves against unpaid losses and
2 against loss expense. The company shall calculate these reserves
3 by making a careful estimate in each case of the loss and loss
4 expense likely to be incurred, by reason of every claim
5 presented or that may be presented, pursuant to notice from or
6 on behalf of the insured, of a title defect in or lien or
7 adverse claim against the title insured, that may result in a
8 loss of cause expense to be incurred for the proper disposition
9 of the claim. The amounts so estimated shall be revised as
10 circumstances warrant. The amounts set aside in these reserves
11 in any year shall be deducted in determining the net profit for
12 such year of the company.

13 § 6738. Investment of capital.

14 (a) General rule.--The capital of a title insurance company
15 shall be invested in the following classes of investment:

16 (1) Government obligations.--Bonds, notes or obligations
17 issued, assumed or guaranteed by the United States or the
18 Dominion of Canada or by any state.

19 (2) Governmental subdivision or public instrumentality
20 obligations.--Valid and legally authorized bonds, notes or
21 obligations issued, assumed or guaranteed by:

22 (i) Any municipality, school district, poor district
23 or water, sewer, drainage, road or other governmental
24 district or division located in the United States or any
25 state.

26 (ii) Any public instrumentality other than a
27 municipal authority of one or more of the foregoing if,
28 by statutory or other legal requirements applicable
29 thereto, the bonds or other evidences of indebtedness of
30 such instrumentality are payable, as to principal and

1 interest, from taxes levied or by law required to be
2 levied upon all taxable property or all taxable income
3 within the jurisdiction of the governmental unit or units
4 of which it is an instrumentality, or from revenues
5 pledged or otherwise appropriated or by law required to
6 be provided for the purpose of such payment.

7 (iii) Any municipal authority created pursuant to
8 the laws of this Commonwealth if the obligations are not
9 in default as to principal or interest and if:

10 (A) the project for which the obligations were
11 issued is under lease to a school district or school
12 districts;

13 (B) the project for which the obligations were
14 issued is under lease to a municipality or
15 municipalities or subject to a service contract with
16 a municipality or municipalities, pursuant to which
17 the municipal authority will receive lease rentals or
18 service charges available for fixed charges on the
19 obligations, which will average not less than one and
20 one-fifth times the average annual fixed charges of
21 the obligations over the life thereof; or

22 (C) for the period of five fiscal years next
23 preceding the date of acquisition, the income of the
24 authority available for fixed charges has averaged
25 not less than one and one-fifth times the average
26 annual fixed charges of obligations over the life
27 thereof.

28 As used in this subparagraph the term "income available
29 for fixed charges" means income after deducting operating
30 and maintenance expenses, and, unless the obligations are

1 payable in serial, annual maturities, or are supported by
2 annual sinking fund payments, depreciation, but excluding
3 extraordinary nonrecurring items of income or expenses.
4 The term "fixed charges" includes principal, both
5 maturity and sinking fund, and interest on bonded debt.
6 In computing the income available for fixed charges for
7 the purpose of this subparagraph, the income so available
8 of any corporation acquired by any municipal authority
9 may be included, such income to be calculated as though
10 the corporation had been operated by a municipal
11 authority and an equivalent amount of bonded debt were
12 outstanding. The eligibility for investment purposes of
13 obligations of each project of a municipal authority
14 shall be separately considered.

15 (3) Public utility obligations.--Bonds, notes or
16 obligations issued, assumed or guaranteed by any solvent
17 public utility corporation or public utility business trust,
18 incorporated or existing under the laws of the United States
19 or of any state.

20 (4) Other corporate obligations.--Bonds, notes or
21 obligations issued, assumed or guaranteed by any other
22 corporation, including railroads, or business trust,
23 incorporated or existing under the Federal law or the law of
24 any state, whose income available for fixed charges for the
25 period of five fiscal years next preceding the date of
26 investment has averaged not less than one and one-half times
27 its average annual fixed charges applicable to that period.
28 As used in this paragraph the term "income available for
29 fixed charges" means income, after deducting operating and
30 maintenance expenses, depreciation and depletion, and taxes

1 other than Federal or state income taxes, excluding
2 extraordinary nonrecurring items of income or expense
3 appearing in the regular financial statements of the
4 corporation or business trust. The term "fixed charges"
5 includes interest on funded and unfunded debt and
6 amortization of debt discount and expense. If income is
7 determined in reliance upon consolidated income statements of
8 parent and subsidiary corporations or business trusts, the
9 income shall be determined after provision for Federal and
10 state income taxes of subsidiaries, and after proper
11 allowance for minority stock interest. The required coverage
12 of fixed charges shall be computed on a basis including fixed
13 charges and preferred dividends of subsidiaries, other than
14 those payable by subsidiaries to the parent corporation or
15 business trust, or to other subsidiaries. In applying an
16 income test to any issuing, assuming or guaranteeing
17 corporation or business trust, whether or not in legal
18 existence during the whole of the five-year period next
19 preceding the date of investment, which has at any time after
20 the beginning of the period acquired the assets or the
21 outstanding shares of capital stock of any other corporation
22 or business trust by purchase, merger, consolidation or
23 otherwise, substantially as an entirety, or has been
24 reorganized pursuant to the bankruptcy law, the income of the
25 other predecessor or constituent corporation or business
26 trust or of the corporation or business trust so reorganized,
27 available for interest and dividends for such portion of the
28 period as shall have preceded acquisition or reorganization,
29 may be included in the income of the issuing, assuming or
30 guaranteeing corporation or business trust for such portion

1 of the period as may be determined in accordance with
2 adjusted or pro forma consolidated income statements covering
3 that portion of the period, and giving effect to all stock or
4 shares outstanding and all fixed charges existing immediately
5 after acquisition or reorganization.

6 (5) Trustee, receiver or equipment trust obligations.--

7 (i) Certificates, notes or obligations issued by
8 trustees or receivers of any corporation or business
9 trust created or existing under Federal law or the law of
10 any state, if the corporation or trust, or its assets,
11 are being administered under the direction of any court,
12 and the obligation is adequately secured as to principal
13 and interest.

14 (ii) Equipment trust obligations or certificates,
15 which are adequately secured, or other adequately secured
16 instruments, evidencing an interest in transportation
17 equipment, located within the United States and a right
18 to receive determined portions of rental, purchase or
19 other fixed obligatory payments for the use or purchase
20 of such transportation equipment.

21 (6) Acceptances and bills of exchange.--Bank and
22 bankers' acceptances and other bills of exchange of the kind
23 and maturities made eligible pursuant to law for purchase in
24 the open market by Federal Reserve Banks.

25 (7) Real estate loans.--Ground rents and bonds, notes or
26 other evidences of indebtedness, secured by mortgages or
27 trust deeds upon unencumbered real property located in any
28 state, and in investments in the equity of the seller under
29 contracts for deeds covering the entire balance due on bona
30 fide sales of such real property. A loan guaranteed or

1 insured in full by the Administrator of Veterans' Affairs
2 under the Servicemen's Readjustment Act (Public Law 85-857,
3 38 U.S.C. § 1801 et seq.) may be subject to a prior
4 encumbrance.

5 (i) Real property shall not be considered to be
6 encumbered within the meaning of this paragraph by reason
7 of the existence of:

8 (A) instruments reserving mineral, oil, water or
9 timber rights, rights-of-way, sewer rights, rights in
10 walls or driveways;

11 (B) liens inferior to the lien securing the loan
12 of the title insurance company or liens for taxes or
13 assessments not yet delinquent;

14 (C) building restrictions or other restrictive
15 covenants; or

16 (D) leases under which rents or profits are
17 reserved to the owner;

18 if the security for the loan is a first lien upon the
19 real property, and if there is no condition or right of
20 reentry or forfeiture under which the lien can be cut
21 off, subordinated or otherwise disturbed.

22 (ii) A mortgage or trust deed, loan or investment in
23 a seller's equity under a contract for deed made or
24 acquired by the title insurance company on any one
25 property shall not at the date of investment exceed two-
26 thirds of the value of the real property securing the
27 loan, or subject to the contract, but this limitation
28 does not apply to a loan which is:

29 (A) Insured by, or for which a commitment to
30 insure has been made by, the Federal Housing

1 Administrator or Commissioner, pursuant to the
2 provisions of the National Housing Act (48 Stat.
3 1247, 12 U.S.C. § 1707 et seq.).

4 (B) Guaranteed by the Administrator of Veterans'
5 Affairs under the Servicemen's Readjustment Act of
6 1944 (58 Stat. 284) or Public Law 85-857 (72 Stat.
7 1203, 38 U.S.C. § 1801 et seq) except that if only a
8 portion of a loan is so guaranteed, the limitation
9 shall apply to the portion not so guaranteed or
10 insured by the administrator under these statutes.

11 (C) Upon real estate under lease to a
12 corporation or business trust, incorporated or
13 existing under the law of the United States or any
14 state, whose income available for fixed charges for
15 the period of five fiscal years next preceding the
16 date of investment has averaged not less than one and
17 one-half times its average annual fixed charges
18 applicable to that period, if there is pledged and
19 assigned, as additional security for the loan and for
20 application thereon, sufficient of the rentals
21 payable under the lease to provide for repayment of
22 the loan within the unexpired term of the lease.

23 (D) Upon such terms that the principal thereof
24 will be amortized by repayments of principal at least
25 once in each year in amounts sufficient to repay the
26 loan within a period of not more than 30 years, and
27 the loan is upon improved real estate, and at the
28 date investment does not exceed three-quarters of the
29 value of the real estate securing the loan.

30 (8) Purchase money securities.--Purchase money mortgages

1 or similar securities received by it upon the sale or
2 exchange of real property acquired pursuant to paragraph
3 (20).

4 (9) Federal Housing Administrator's debentures.--
5 Debentures issued by the Federal Housing Administrator or
6 Commissioner in settlement of claims pursuant to the National
7 Housing Act (48 Stat. 1247, 12 U.S.C. § 1707 et seq.).

8 (10) National mortgage association securities.--
9 Securities of national mortgage associations or similar
10 national mortgage credit institutions organized under the
11 National Housing Act (48 Stat. 1247, 12 U.S.C. § 1707 et
12 seq.).

13 (11) Federal land bank, Federal intermediate credit bank
14 and bank for cooperative securities.--Bonds, debentures and
15 other obligations of Federal land banks, Federal intermediate
16 credit banks or banks for cooperatives issued under the
17 Federal Farm Loan Act (39 Stat. 360, 12 U.S.C. § 641 et seq.)
18 or under the Farm Credit Act of 1971 (Public Law 92-181, 12
19 U.S.C. § 2001 et seq.).

20 (12) Loans upon leaseholds.--Loans upon leasehold
21 estates or unencumbered real estate located in any state but
22 no such loan shall exceed two-thirds of the value of the
23 leasehold at the date of investment, unless:

24 (i) the loan is guaranteed or insured by, or
25 commitment to guarantee or insure the loan has been made
26 by, the Federal Housing Administrator or Commissioner
27 under the National Housing Act (48 Stat. 1247, 12 U.S.C.
28 § 1707 et seq.);

29 (ii) the leasehold is of improved real estate and
30 the loan provides for amortization by repayments of

1 principal at least once in each year in amounts
2 sufficient to repay the loan within a period of four-
3 fifths of the unexpired term of the leasehold, but within
4 a period of not more than 30 years, and does not exceed
5 three-fourths of the value of the leasehold at the date
6 of investment; or

7 (iii) the real estate is under lease to a
8 corporation or business trust, incorporated or existing
9 under the laws of the United States or any state, whose
10 income available for fixed charges for the period of five
11 fiscal years next preceding the date of investment has
12 averaged not less than one and one-half times its average
13 annual fixed charges applicable to the period, if there
14 is pledged and assigned as additional security for the
15 loan and for application thereon sufficient of the
16 rentals payable under the lease to provide for repayment
17 of the loan within the unexpired term of the lease.

18 The terms of any loan under this paragraph shall require
19 repayments of principal at least once in each year in amounts
20 sufficient to repay the loan within the term of the
21 leasehold, unexpired at the date of investment, unless a
22 shorter period is required under subparagraph (ii).

23 (13) Savings and loan shares.--Shares of any Federal
24 savings and loan association, or of any building and loan or
25 savings and loan association, to the extent that the
26 withdrawal or repurchasable value of the shares is insured by
27 the Federal Savings and Loan Insurance Corporation under the
28 National Housing Act (48 Stat. 1247, 12 U.S.C. § 1707 et
29 seq.).

30 (14) Federal Savings and Loan Insurance Corporation

1 Obligations.--Bonds, notes or obligations issued, assumed or
2 guaranteed by the Federal Savings and Loan Insurance
3 Corporation under the National Housing Act.

4 (15) Federal Home Loan Bank Obligations.--Bonds, notes
5 or obligations issued, assumed or guaranteed by the Federal
6 Home Loan Bank or the Federal Home Loan Bank Board under the
7 Federal Home Loan Bank Act (47 Stat. 725, 12 U.S.C. § 1421 et
8 seq.).

9 (16) International Bank obligations.--Bonds, notes or
10 obligations issued, assumed or guaranteed by the
11 International Bank for Reconstruction and Development.

12 (17) Business development credit corporation shares.--
13 Shares of state and regional business development credit
14 corporations formed under the law of this Commonwealth.

15 (18) Pennsylvania Housing Finance Agency bonds and
16 notes.--Bonds and notes of the Pennsylvania Housing Finance
17 Agency created by the act of December 3, 1959 (P.L.1688,
18 No.621), known as the Housing Finance Agency Law.

19 (19) Inter-American Development Bank obligations.--
20 Bonds, notes or obligations issued, assumed or guaranteed by
21 the Inter-American Development Bank.

22 (20) Title plant.--A title plant if it keeps at least
23 \$250,000 invested in the classes of securities authorized for
24 the investment of capital other than title plant and real
25 estate. The title plant shall be considered an admitted asset
26 at the fair value thereof. In determining the fair value of a
27 title plant, no value shall be attributed to furniture and
28 fixtures, and the real estate in which the title plant is
29 housed shall be carried as real estate. The value of title
30 abstracts, title briefs, copies of conveyances or other

1 documents, indices and other records comprising the title
2 plant, shall be determined by considering the expenses
3 incurred in obtaining them, the age thereof, the cost of
4 replacements less depreciation and all other relevant
5 factors. Once the value of a title plant has been determined,
6 the value may be increased only by the acquisition of another
7 title plant by purchase, consolidation or merger. The value
8 of the title plant shall not be increased by additions made
9 thereto as part of the normal course of abstracting and
10 insuring titles to real estate. Subject to these limitations
11 and with the approval of the department, a title insurance
12 company may enter into agreements with one or more other
13 authorized title insurance companies whereby the companies
14 will participate in the ownership, management and control of
15 a title plant to service the needs of all the companies or
16 the companies may hold stock of a corporation owning and
17 operating a title plant for such purposes if each of the
18 companies participating in the ownership, management and
19 control of the jointly owned title plant keeps the sum of
20 \$250,000 invested as set forth in this paragraph.

21 (b) Real estate.--Any domestic title insurance company may
22 purchase, receive, hold and convey real estate or any interest
23 therein:

24 (1) required for its convenient accommodation in the
25 transaction of its business with reasonable regard to future
26 needs;

27 (2) acquired in connection with a claim under a policy
28 of title insurance;

29 (3) acquired in satisfaction or on account of loans,
30 mortgages, liens, judgments or decrees, owed to it in the

1 course of its business;

2 (4) acquired in part payment of the consideration of the
3 sale of real property owned by it if the transaction results
4 in a net reduction in the company's investment in real
5 estate; or

6 (5) reasonably necessary for the purpose of maintaining
7 or enhancing the sale value of real property previously
8 acquired or held by it under subparagraph (i), (ii), (iii) or
9 (iv), but no title insurance company shall continue to hold
10 any real estate acquired by it under subparagraph (ii), (iii)
11 or (iv) for more than five years from the date of acquisition
12 thereof unless it obtains the written approval of the
13 department to hold the real estate for a longer period of
14 time.

15 § 6739. Investment of surplus.

16 Money over and above capital, other than the unearned premium
17 reserve, may be invested in the following classes of
18 investments:

19 (1) Investments authorized for capital.--Any of the
20 classes of investment authorized in section 6738 (relating to
21 investment of capital).

22 (2) Corporate stock or shares.--Stock or shares of any
23 solvent corporation, incorporated under the law of the United
24 States or any state or of the Dominion of Canada or any
25 province thereof, including the stock of another title
26 insurance company.

27 (3) Corporate obligations.--Bonds, notes or obligations
28 issued, assumed or guaranteed by any solvent corporation or
29 business trust, incorporated or existing under the law of the
30 United States or any state or of the Dominion of Canada or

1 any province thereof.

2 (4) Canadian governmental subdivision obligations.--
3 Valid and legally authorized bonds, notes or obligations
4 issued, assumed or guaranteed by any province or political
5 subdivision of the Dominion of Canada.

6 (5) Other Loans or investments.--Loans or investments
7 not qualifying or permitted under paragraphs (1) through (4)
8 to an amount not exceeding 5% of the company's admitted
9 assets.

10 § 6740. Investment of unearned premium reserve.

11 The unearned premium reserve of a title insurance company
12 shall be invested in the same classes of investments, other than
13 title plant and real estate, authorized in section 6738
14 (relating to investment of capital), except that one-fourth of
15 the reserve may be invested in preferred or guaranteed stocks or
16 shares of any solvent corporation or business trust,
17 incorporated or existing under the law of the United States or
18 of any state, whose net earnings available for its fixed
19 charges, during either of the two years preceding the date of
20 such investment have been, and during each of the five years
21 preceding such date have averaged, not less than one and one-
22 half times the sum of its average annual fixed charges, as
23 referred to in section 6738(4) and its average annual preferred
24 dividend requirements. For the purposes of this section, the
25 computation refers to the fiscal year immediately preceding the
26 date of acquisition of an investment by the insurer, and the
27 term "preferred dividend requirement" includes cumulative or
28 noncumulative dividends, whether paid, earned or not.

29 § 6741. Other reserves.

30 Reserves other than the unearned premium reserve may be

1 invested in any of the classes of investments authorized in
2 section 6739 (relating to investment of surplus).

3 SUBCHAPTER D

4 RATE REGULATION

5 Sec.

6 6751. Rate filing.

7 6752. Justification for rates.

8 6753. Making of rates.

9 6754. Disapproval of filings.

10 6755. Rating organizations.

11 6756. Deviations.

12 6757. Appeals by minority.

13 6758. Information to be furnished insureds.

14 6759. Hearings and appeals of insureds.

15 6760. Examination of rating organizations.

16 6761. Recording and reporting of loss and expense experience.

17 6762. False or misleading information.

18 § 6751. Rate filing.

19 (a) General rule.--Every title insurance company shall file
20 with the department every manual of classifications, rules,
21 plans, schedules of fees and commissions payable to applicants
22 for title insurance and every modification of any of the
23 foregoing relating to the rates which it proposes to use. Each
24 filing shall state the proposed effective date thereof and shall
25 indicate the character and extent of the coverage contemplated.
26 A title insurance company or agent of a title insurance company
27 shall not charge any fee for any policy or contract of title
28 insurance except in accordance with filings or rates which are
29 in effect for the company or agent of the company as provided in
30 this chapter.

1 (b) Rating organizations.--A title insurance company may
2 satisfy its obligations to make its filings by becoming a member
3 of, or a subscriber to, a licensed rating organization which
4 makes such filings and by authorizing the department to accept
5 such filings on its behalf.

6 (c) Review.--The department shall make such review of the
7 filings as may be necessary to carry out the provisions of this
8 chapter.

9 (d) Waiting period.--Subject to subsections (f) and (g),
10 each filing shall be on file for a period of 30 days before it
11 becomes effective. The department may, upon written notice given
12 within such period to the person making the filing, extend the
13 waiting period for an additional period, not to exceed 30 days,
14 to enable it to complete the review of the filing. Further
15 extensions of the waiting period may also be made with the
16 consent of the title insurance company or rating organization
17 making the filing. Upon written application by the company or
18 organization making the filing, the department may authorize a
19 filing or any part thereof which it has reviewed to become
20 effective before the expiration of the waiting period or
21 extension thereof.

22 (e) Effective filings.--Except in the case of rates filed
23 under subsections (f) and (g), a filing which has become
24 effective shall be deemed to meet the requirements of this
25 chapter.

26 (f) Special permission by department.--When the department
27 finds that any rate for a particular kind or class of risk
28 cannot practicably be filed before it is used, or any contract
29 or kind of title insurance, by reason of rarity or peculiar
30 circumstances, does not lend itself to advance determination and

1 filing of rates, the department may, under such regulations as
2 it may prescribe, permit the rates to be used without a previous
3 filing and waiting period.

4 (g) Waiver by insured.--Upon the written consent of the
5 insured stating his reasons therefor, filed with the department,
6 a rate in excess of that provided by a filing which might
7 otherwise be deemed applicable may be used on any specific risk.
8 The rate shall become effective when the consent is filed.

9 § 6752. Justification for rates.

10 (a) Statement.--A rate filing shall be accompanied by a
11 statement of the title insurance company or rating organization
12 making the filing, setting forth the basis upon which the rate
13 was fixed and the fees are to be computed. Any filing may be
14 justified by:

15 (1) the experience or judgment of the company or
16 organization making the filing;

17 (2) the experience of other title insurance companies or
18 rating organizations; or

19 (3) any other factors which the company or organization
20 deems relevant.

21 (b) Public inspection.--The statement and justification
22 shall be open to public inspection after the rate to which it
23 applies becomes effective.

24 § 6753. Making of rates.

25 (a) General rule.--Rates shall not be inadequate or unfairly
26 discriminatory, nor shall rates be so excessive as to permit
27 title insurance companies to earn a greater profit, after
28 payment of all taxes upon all income, than is necessary to
29 enable them to earn sufficient amounts to pay their actual
30 expenses and losses arising in the conduct of their title

1 insurance business, plus a reasonable profit.

2 (b) Factors considered.--In making rates, due consideration
3 shall be given to past and prospective loss experience; exposure
4 to loss; underwriting practice and judgment; past and
5 prospective expenses, including commissions paid to agents and
6 applicants for title insurance; a reasonable margin for profit
7 and contingencies; and all other relevant factors both in and
8 outside this Commonwealth. The systems of expense provisions and
9 the amount of expense charged against each class of contract or
10 policy may vary between title insurance companies. Rates may, in
11 the discretion of any title insurance company, be less than the
12 cost of performing the work in the case of smaller risks, and
13 the excess may be charged against the larger risks without
14 rendering the rates unfairly discriminatory.

15 (c) Reasonable profit.--In ascertaining the estimated future
16 earnings of title insurance companies, the department shall
17 utilize a properly weighted cross section of title insurance
18 companies operating in this Commonwealth representative of the
19 average of efficiently operated title insurance companies,
20 including on a weighted basis both title insurance companies
21 having their own title plants and those not operating upon the
22 title plant system. In ascertaining what is a reasonable profit
23 after payment of all taxes on such income, the department shall
24 give due consideration to the following matters:

25 (1) The average rates of profit after payment of taxes
26 on all income earned by other industry generally.

27 (2) The desirability of stability of rate structure.

28 (3) The necessity of insuring through growth in assets
29 in times of high business activity, the financial solvency of
30 title insurance companies in times of economic depression.

1 (4) The necessity for earning sufficient dividends on
2 the stock of title insurance companies to induce capital to
3 be invested therein.

4 § 6754. Disapproval of filings.

5 (a) Standard of review.--A filing or modification thereof
6 shall not be disapproved if the rates in connection therewith
7 meet the requirements of this chapter.

8 (b) Hearing for insurer.--Upon the review at any time by the
9 department of a filing, it shall, before issuing an order of
10 disapproval, hold a hearing upon not less than ten days written
11 notice, specifying the matters to be considered at the hearing,
12 to every title insurance company and rating organization which
13 made the filing. A company or organization may at any time
14 withdraw a filing or a part thereof, subject to the provisions
15 of section 6756 (relating to deviations) in the case of a
16 deviation filing.

17 (c) Hearing for aggrieved parties.--Any person or
18 organization aggrieved with respect to any filing which is in
19 effect, except the company or organization which made the
20 filing, may make written application to the department for a
21 hearing thereon. The application shall specify the grounds to be
22 relied upon. If the department finds that the application may
23 justify relief, it shall, within 30 days after receipt of the
24 application, hold a hearing upon not less than ten days' written
25 notice to the applicant and to every company and organization
26 which made the filing.

27 (d) Decision of department.--If, after the hearing, the
28 department finds that the filing or a part thereof does not meet
29 the requirements of this chapter, it shall issue an order
30 specifying its objections. If the filing has become effective

1 under section 6751 (relating to rate filing) or otherwise, the
2 order shall state the time, within a reasonable period
3 thereafter, at which the filing or part thereof shall be deemed
4 no longer effective. Copies of the order shall be sent to the
5 applicant and to every title insurance company and rating
6 organization affected. The order shall not affect any contract
7 or policy made or issued prior to the expiration of the period
8 set forth in the order.

9 § 6755. Rating organizations.

10 (a) Licensure.--Any person located in or outside this
11 Commonwealth may apply to the department for a license as a
12 rating organization for title insurance companies. The
13 application shall include all of the following:

14 (1) A copy of its constitution, its articles of
15 agreement or association or its certificate of incorporation,
16 and of its bylaws, rules and regulations governing the
17 conduct of its business.

18 (2) A list of its members and subscribers.

19 (3) The name and address of a resident of this
20 Commonwealth upon whom notices or orders of the department or
21 process affecting the rating organization may be served.

22 (4) A statement of its qualifications as a rating
23 organization.

24 If the department finds that the applicant is competent,
25 trustworthy and otherwise qualified to act as a rating
26 organization, and that the documents submitted under paragraph
27 (1) conform to the requirements of law, it shall issue a license
28 authorizing the applicant to act as a rating organization for
29 title insurance. The application shall be granted or denied in
30 whole or in part by the department within 60 days of the date of

1 its filing with it. Licenses issued under this section shall
2 remain in effect for three years unless sooner suspended or
3 revoked by the department or withdrawn by the licensee. The fee
4 for the license shall be \$25. Licenses may be suspended or
5 revoked by the department, after hearing upon notice, if the
6 rating organization ceases to meet the requirements for
7 licensure under this section. Every rating organization shall
8 notify the department promptly of every change in the items
9 listed in paragraph (1), (2) or (3).

10 (b) Subscribers.--Subject to regulations approved by the
11 department, each rating organization shall permit any title
12 insurance company, not a member, to be a subscriber to its
13 rating services. Notices of proposed changes in its regulations
14 shall be given to subscribers. Each rating organization shall
15 furnish its rating services without discrimination to its
16 members and subscribers. The reasonableness of any regulation in
17 its application to subscribers or the refusal of any rating
18 organization to admit a title insurance company as a subscriber
19 shall, at the request of any subscriber or any such title
20 insurance company, be reviewed by the department at a hearing
21 held upon at least ten days' written notice to the rating
22 organization and to the subscriber or title insurance company.
23 If the department finds that the regulation is unreasonable in
24 its application to subscribers, it shall order that the
25 regulation shall not apply to subscribers. If the rating
26 organization fails to grant or reject an application of a title
27 insurance company for subscribership within 30 days after it is
28 made, the title insurance company may request a review by the
29 department as if the application had been rejected. If the
30 department finds that the title insurance company has been

1 refused admittance to the rating organization as a subscriber,
2 without justification, it shall order the rating organization to
3 admit the title insurance company as a subscriber; if the
4 department finds that the action of the rating organization was
5 justified, it shall make an order affirming its action.

6 (c) Cooperative activities.--Cooperation among rating
7 organizations, or among rating organizations and title insurance
8 companies, and concert of action among title insurance companies
9 under the same general management and control in rate making or
10 in other matters within the scope of this chapter is permitted,
11 but the filings resulting therefrom are subject to this chapter.
12 The department may review these activities and practices, and if
13 after a hearing it finds that any activity or practice is
14 unfair, unreasonable or otherwise inconsistent with this
15 chapter, it may issue a written order specifying its objections
16 and requiring the discontinuance of the activity or practice.
17 § 6756. Deviations.

18 (a) Deviation filings.--Every member of or subscriber to a
19 rating organization shall adhere to the filings made on its
20 behalf by such organization, except that a title insurance
21 company which is such a member or subscriber may file with the
22 department a uniform percentage of decrease or increase to be
23 applied to any or all elements of the fees produced by the
24 rating system so filed for a class of title insurance which is
25 found by the department to be a proper rating unit for the
26 application of such a uniform decrease or increase, or to be
27 applied to the rates for a particular area, or to be applied to
28 the amount of commissions to be paid.

29 (b) Contents of filings.--The deviation filing shall specify
30 the basis for the modification and shall be accompanied by the

1 data or historical pattern upon which the applicant relies. A
2 copy of the filing and data shall be sent simultaneously to the
3 rating organization.

4 (c) Waiting period.--Each deviation filing shall be on file
5 for 30 days before it becomes effective. The waiting period may
6 be extended in the same manner as under section 6751(d)
7 (relating to rate filing). Upon written application of the
8 person making the filing, the department may authorize a
9 deviation filing or any part thereof to become effective before
10 the expiration of the waiting period or any extension thereof.

11 (d) Effect.--Deviation filings shall be subject to section
12 6754 (relating to disapproval of filings). Each deviation shall
13 be effective for at least one year from the date the deviation
14 is filed unless terminated sooner with the approval of the
15 department or under section 6754.

16 § 6757. Appeals by minority.

17 (a) Right to appeal.--Any member of or subscriber to a
18 rating organization may appeal to the department from any
19 decision of the rating organization approving or rejecting any
20 proposed change in or addition to the filings of the rating
21 organization. The failure of a rating organization to make a
22 decision within 30 days after submission to it of a proposal
23 under this section shall be deemed a rejection of the proposal.

24 (b) Decision by department.--The department shall, after a
25 hearing held upon not less than ten days' written notice to the
26 appellant and to the rating organization, issue an order
27 approving the decision of the rating organization or directing
28 it to give further consideration to the proposal and to take
29 action upon it within 30 days. If the appeal is from a decision
30 of the rating organization rejecting a proposed addition to its

1 filings, the department may issue an order directing the rating
2 organization to make an addition to its filings on behalf of its
3 members and subscribers in a manner consistent with its
4 findings, within a reasonable time. If the appeal is from a
5 decision of the rating organization with regard to a rate or a
6 proposed change in or addition to its filings relating to the
7 character and extent of coverage, the department shall approve
8 the rate applied by the rating organization or the rate
9 suggested by the appellant, if either rate is in accordance with
10 this chapter. If the appeal is based upon the failure of the
11 rating organization to make a filing on behalf of the member or
12 subscriber which is based on a system of expense provisions
13 which differs, in accordance with section 6753(b) (relating to
14 making of rates), from the system of expense provisions included
15 in a filing made by the rating organization, the department
16 shall, if it grants the appeal, order the rating organization to
17 make the requested filing for use by the appellant. In deciding
18 the appeal, the department shall apply the standards set forth
19 in section 6753.

20 § 6758. Information to be furnished insureds.

21 Every rating organization and every title insurance company
22 which makes its own rates shall, within a reasonable time after
23 receiving written request therefor and upon payment of such
24 reasonable charge as it may make, furnish all pertinent
25 information as to the rate to any insured affected by a rate
26 made by it or to the authorized representative of such an
27 insured.

28 § 6759. Hearings and appeals of insureds.

29 Every rating organization and every title insurance company
30 which makes its own rates shall provide reasonable means whereby

1 any person aggrieved by the application of its rating system may
2 be heard, in person or by his authorized representative, on his
3 written request to review the manner in which the rating system
4 has been applied in connection with the insurance afforded him.
5 If the organization or company fails to grant or reject the
6 request within 30 days after it is made, the applicant may
7 proceed as if his application had been rejected. Any party
8 affected by the action of the organization or company on such a
9 request may, within 30 days after written notice of the action,
10 appeal to the department, which, after a hearing held upon not
11 less than ten days' written notice to the appellant and to the
12 organization or company, may affirm or reverse the action.

13 § 6760. Examination of rating organizations.

14 The department shall, at least once in five years, make an
15 examination of each rating organization licensed under this
16 chapter. The reasonable costs of any such examination shall be
17 paid by the organization examined upon presentation to it of a
18 detailed account of these costs. The officer, manager, agents
19 and employees of the organization may be examined at any time
20 under oath and shall exhibit all books, records, accounts,
21 documents or agreements governing its method of operation. The
22 department shall furnish two copies of the examination report to
23 the organization examined and shall notify it that it may,
24 within 20 days thereafter, request a hearing on the report or on
25 any facts or recommendations therein. Before filing a report for
26 public inspection, the department shall grant a hearing to the
27 organization examined. The report of any examination, when filed
28 for public inspection, shall be admissible in evidence in any
29 action or proceeding brought by the department against the
30 organization examined or its officers or agents, and shall be

1 prima facie evidence of the facts stated therein. The department
2 may withhold the report of any examination from public
3 inspection for such time as it deems proper. In lieu of an
4 examination, the department may accept the report of an
5 examination made by the insurance supervisory official of
6 another state pursuant to the law of that state.

7 § 6761. Recording and reporting of loss and expense experience.

8 The department shall promulgate reasonable regulations and
9 statistical plans, reasonably adapted to each of the rating
10 systems on file with it, which may be modified from time to
11 time, and which shall be used by each title insurance company in
12 the recording and reporting of the composition of its business,
13 its loss and countrywide expense experience and those of its
14 title insurance underwriters in order that the experience of all
15 companies may be made available at least annually in such form
16 and detail as necessary to aid the department in determining
17 whether rating systems comply with the standards set forth in
18 this chapter. These regulations and plans may also provide for
19 the recording and reporting of expense experience items which
20 are specially applicable to this Commonwealth and are not
21 susceptible of determination by a prorating of countrywide
22 expense experience. In promulgating the regulations and plans,
23 the department shall give due consideration to the rating
24 systems on file with it and, in order that the regulations and
25 plans may be as uniform as practicable among the several states,
26 to the regulations and the form of the plans used for rating
27 systems in other states. The regulations and plans shall be
28 drafted so as not to place an unreasonable burden of expense on
29 any company. A company shall not be required to record or report
30 its expense and loss experience on a classification basis that

1 is inconsistent with the rating system filed by it, nor shall
2 any company be required to report its experience to any agency
3 of which it is not a member or subscriber. The department may
4 designate one or more rating organizations or other agencies to
5 assist it in making compilations of experience information.
6 These compilations shall be made available, subject to
7 reasonable regulations promulgated by the department, to title
8 insurance companies and rating organizations.

9 § 6762. False or misleading information.

10 A person or organization shall not willfully withhold
11 information from, or knowingly give false or misleading
12 information to, the department, any statistical agency
13 designated by the department rating organization, or title
14 insurance company, which will affect the rates or fees
15 chargeable under this chapter.

16 SUBCHAPTER E

17 PENALTIES AND PROCEDURES

18 Sec.

19 6771. Penalties.

20 6772. Hearing procedure.

21 § 6771. Penalties.

22 (a) Fines.--The department may, if it finds that any person
23 or organization has violated this chapter, impose a penalty of
24 not more than \$50 for each violation, but if it finds the
25 violation to be willful, it may impose a penalty of not more
26 than \$500 for each violation. These penalties may be in addition
27 to any other penalty provided by law.

28 (b) Suspension of license.--The department may suspend the
29 license of any rating organization or title insurance company
30 which fails to comply with an order of the department within the

1 time limited by the order or any extension thereof granted by
2 the department. The department shall not suspend the license of
3 any organization or company for failure to comply with an order
4 until the time prescribed for an appeal therefrom has expired,
5 or if an appeal has been taken, until the order has been
6 affirmed. The department may determine when a suspension of
7 license shall become effective, and it shall remain in effect
8 for the period fixed by the department, unless the department
9 modifies or rescinds the suspension, or until the order upon
10 which the suspension is based is modified, rescinded or reversed
11 by a court.

12 (c) Procedure.--A penalty shall not be imposed or license
13 suspended or revoked except upon a written order of the
14 department, stating its findings, made after a hearing held upon
15 not less than ten days' written notice to the person or
16 organization, specifying the alleged violation.

17 § 6772. Hearing procedure.

18 (a) Right to hearing.--Any title insurance company, rating
19 organization or other person aggrieved by any action of the
20 department, except disapproval of a filing or a part thereof, or
21 by any regulation promulgated by the department, may file a
22 complaint with the department and have a hearing thereon before
23 it. Pending the hearing and the decision thereon, the department
24 may suspend or postpone the effective date of its previous
25 action, rule or regulation.

26 (b) Procedure.--All hearings provided for under this chapter
27 shall be conducted, and the decision of the department on the
28 issue or filing involved shall be rendered, pursuant to Title 2
29 (relating to administrative law and procedure).

1 HEALTH AND ACCIDENT INSURANCE

2 Subchapter

- 3 A. Preliminary Provisions
- 4 B. General Requirements
- 5 C. Group, Blanket and Franchise Policies
- 6 D. Minimum Standards for Individual Policies
- 7 E. Medicare Supplement Insurance

8 SUBCHAPTER A

9 PRELIMINARY PROVISIONS

10 Sec.

- 11 6901. Definitions.
- 12 6902. Organizations included.
- 13 6903. Applicability.
- 14 6904. Nonconforming policies.
- 15 6905. Penalties.

16 § 6901. Definitions.

17 The following words and phrases when used in this chapter
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise.

20 "Forms." Policies, contracts, riders, endorsements and
21 applications relating to health and accident insurance subject
22 to approval by the department under section 3515 (relating to
23 approval of contracts by department), 7524 (relating to rates
24 and contracts), 7525 (relating to reports and examinations) or
25 7729 (relating to rates and contracts).

26 "Health and accident insurance." Insurance written under
27 section 3302(a)(1) or (2) or (c)(2) (relating to authorized
28 classes of insurance). The term does not include life insurance,
29 annuities or insurance subject to Chapter 65 (relating to credit
30 insurance).

1 "Insured." Includes a person other than the insured with a
2 proper insurable interest who makes application for or owns a
3 policy covering the insured, with respect to the person's rights
4 under the policy to the indemnities, benefits and rights
5 provided therein.

6 "Policy." A contract issued by any person providing health
7 and accident insurance, including such a subscriber contract
8 issued by a health plan corporation or nonprofit health service
9 plan or such a certificate issued by a fraternal benefit
10 society, and including any riders or endorsements and the
11 application, if attached.

12 § 6902. Organizations included.

13 For the purposes of this chapter, health plan corporations,
14 nonprofit health service plans and fraternal benefit societies
15 are deemed to be engaged in the business of insurance.

16 § 6903. Applicability.

17 (a) Workmen's compensation insurance.--Subchapters B
18 (relating to general requirements) and C (relating to group,
19 blanket and franchise policies) do not apply to any policy of
20 workmen's compensation insurance.

21 (b) Group health and accident policies.--Policies of group
22 health and accident insurance, as defined in section 6931
23 (relating to definitions), shall not be subject to section
24 6904(b) and (c) (relating to nonconforming policies), sections
25 6911 (relating to approval of policies by department) through
26 6915 (relating to relationship of policy provisions) or section
27 6922(b) and (c) (relating to applications for insurance).

28 However, no policy of group health and accident insurance shall
29 be issued or delivered in this Commonwealth unless the form of
30 the policy is filed with the department and approved by it in

1 accordance with section 6911.

2 (c) Life insurance.--Subchapters B and C do not apply to
3 life insurance, endowment or annuity contracts, or contracts
4 supplemental thereto, which contain only such provisions
5 relating to health and accident insurance as:

6 (1) provide additional benefits in case of death by
7 accidental means; and

8 (2) operate to safeguard such contracts against lapse,
9 or to give a special surrender value or special benefit or an
10 annuity if the insured or annuitant becomes totally and
11 permanently disabled, as defined by the contract or
12 supplemental contract.

13 (d) Liability insurance.--This subchapter and Subchapter B
14 do not apply to any insurance of medical, hospital, surgical and
15 funeral expenses and disability and death benefits issued with
16 and supplemental to a liability insurance policy as referred to
17 in section 3302(c)(4) (relating to authorized classes of
18 insurance).

19 § 6904. Nonconforming policies.

20 (a) Requirements of other jurisdictions.--Any policy of a
21 foreign or alien insurer, when delivered or issued for delivery
22 to any person in this Commonwealth, may contain any provision
23 which is not less favorable to the insured or the beneficiary
24 than the provisions of Subchapter B (relating to general
25 requirements) or C (relating to group, blanket and franchise
26 policies) and which is required by the law of the state under
27 which the insured is organized. Any policy of a domestic insurer
28 may, when issued for delivery in any other state or country,
29 contain any provision permitted or required by the law of the
30 other state or country.

1 (b) Certain policy provisions.--A policy provision which is
2 not subject to section 6913 (relating to mandatory policy
3 provisions) or 6914 (relating to optional policy provisions)
4 shall not make a policy, or any portion thereof, less favorable
5 in any respect to the insured or the beneficiary than the
6 provisions thereof which are subject to Subchapter B or C.

7 (c) Policy conflicting with chapter.--A policy delivered or
8 issued for delivery to any person in this Commonwealth in
9 violation of Subchapter B or C shall be held valid but shall be
10 construed as provided therein. When any provision in a policy is
11 in conflict with Subchapter B or C, the rights and duties of the
12 insurer, the insured and the beneficiary shall be governed by
13 the provisions thereof.

14 § 6905. Penalties.

15 (a) Criminal.--Any insurer, or any officer or agent thereof,
16 which issues or delivers a policy to any person in this
17 Commonwealth or which alters any written application for
18 insurance, in violation of Subchapter B (relating to general
19 requirements) or C (relating to group, blanket and franchise
20 policies), commits a summary offense.

21 (b) Civil.--The department may take any one or more of the
22 following courses of action:

23 (1) Revoke the license of any foreign or alien insurer,
24 or of any agent thereof, who violates Subchapter B or C.

25 (2) Impose a penalty of not more than \$1,000 for each
26 violation of Subchapter B or C.

27 Before the department takes any action under this section, it
28 shall give written notice to the person accused of the
29 violation, stating specifically the nature thereof and fixing a
30 time and place, at last ten days thereafter, when a hearing of

1 the matter shall be held. After the hearing or upon failure of
2 the accused to appear at the hearing, the department shall
3 impose the penalty.

4 SUBCHAPTER B

5 GENERAL REQUIREMENTS

6 Sec.

7 6911. Approval of policies by department.

8 6912. Formal requirements.

9 6913. Mandatory policy provisions.

10 6914. Optional policy provisions.

11 6915. Relationship of policy provisions.

12 6916. Coverage of certain services.

13 6917. Coverage of newborn children.

14 6918. Licensed medical treatment.

15 6919. Services of nurse midwives.

16 6919.1. Insurance payments to registered nurses.

17 6920. Age limits.

18 6921. Cost-of-living increases.

19 6922. Applications for insurance.

20 6923. Preservation of rights of insurer.

21 6924. Discrimination.

22 6925. Preferred provider organizations.

23 § 6911. Approval of policies by department.

24 An insurer shall not issue or deliver any policy to any
25 person in this Commonwealth unless a copy of the form thereof,
26 and of the classification of risks and the premium rates
27 pertaining thereto, has been filed with and formally approved by
28 the department. If the department notifies the insurer filing
29 the form that it does not comply with the requirements of law,
30 specifying its objections in writing, the insurer shall not

1 issue any policy in that form.

2 § 6912. Formal requirements.

3 (a) General rule.--A policy shall not be issued or delivered
4 to any person in this Commonwealth unless each of the following
5 requirements is complied with:

6 (1) The entire money and other considerations therefor
7 and the time when the insurance takes effect and terminates
8 shall be stated in the policy.

9 (2) The policy shall purport to insure only one person,
10 except that, upon the application of an adult head of a
11 family who shall be deemed the policyholder, a policy may
12 insure, originally or by amendment, any two or more eligible
13 members of that family, including husband, wife, dependent
14 children or any children under a specified age, which shall
15 not exceed 19 years, and any other person dependent upon the
16 policyholder.

17 (3) The style, arrangement and appearance of the policy
18 shall give no undue prominence to any portion of the text.
19 Unless every printed portion of the text of the policy and of
20 any endorsements or attached papers is plainly printed in
21 light-face type of a style in general use, the size of the
22 type throughout the form shall be uniform and not less than
23 ten-point with a lower-case unspaced alphabet length not less
24 than 120-point. For the purposes of this paragraph the term
25 "text" includes all printed matter except the name and
26 address of the insurer, name or title of the policy, a brief
27 description, if any, and captions and subcaptions.

28 (4) The exceptions and reductions of indemnity shall be
29 set forth in the policy. Except for the exceptions and
30 reductions set forth in sections 6913 (relating to mandatory

1 policy provisions) and 6914 (relating to optional policy
2 provisions), these may be printed, at the insurer's option,
3 either included with the benefit provision to which they
4 apply or under an appropriate caption, such as "exceptions"
5 or "exceptions and reductions". If an exception or reduction
6 specifically applies only to a particular benefit of the
7 policy, a statement of the exception or reduction shall be
8 included with the benefit provision to which it applies.

9 (5) Each form, including riders and endorsements, shall
10 be identified by a form number in the lower left-hand corner
11 of the first page.

12 (6) The policy shall contain no provision purporting to
13 make any portion of the charter, rules, constitution or
14 bylaws of the insurer a part of the policy unless the portion
15 is set forth in full in the policy, except for a statement of
16 rates or classification of risks, or short-rate table filed
17 with the department.

18 (7) If the policy is entitled or referred to as
19 "noncancelable," the policy shall be automatically renewable
20 until age 60 upon payment of the required premiums by the
21 insured.

22 (8) A policy delivered or issued for delivery after
23 January 1, 1968, under which coverage of a dependent of a
24 policyholder terminates at a specified age, with respect to
25 an unmarried child covered by the policy prior to the
26 attainment of 19 years of age, who is incapable of self-
27 sustaining employment by reason of mental retardation or
28 physical handicap, becomes so incapable prior to attainment
29 of 19 years of age and is chiefly dependent upon the
30 policyholder for support and maintenance, shall not so

1 terminate while the policy remains in force and the dependent
2 remains in such condition, if the policyholder has within 31
3 days of the dependent's attainment of the limiting age
4 submitted proof of the dependent's incapacity. This paragraph
5 does not require an insurer to insure a dependent who is a
6 mentally retarded or physically handicapped child if the
7 policy is underwritten on evidence of insurability based on
8 health factors set forth in the application or where the
9 dependent does not satisfy the conditions of the policy as to
10 any requirement for evidence of insurability or other
11 provisions of the policy, satisfaction of which is required
12 for coverage thereunder to take effect. In any such case the
13 terms of the policy shall apply with regard to the coverage
14 or exclusion from coverage of the dependent.

15 (9) Except for a single premium nonrenewable policy, the
16 policy form shall have prominently printed thereon a notice
17 that the policyholder shall be permitted to return the policy
18 within ten days of its delivery and to have the premium paid
19 refunded if after examination of the policy the policyholder
20 is not satisfied with it for any reason. If a policyholder,
21 pursuant to this notice, returns the policy to the insurer at
22 its home or branch office or to the agent through whom it was
23 purchased, it shall be deemed void from the beginning, and
24 the parties shall be in the same position as if no policy had
25 been issued.

26 (b) Policy on insured in other state.--If any policy is
27 issued by a domestic insurer for delivery to a person residing
28 in another state, and if the official having responsibility for
29 the administration of the insurance statutes of the other state
30 has advised the department that any such policy is not subject

1 to approval or disapproval by the official, the department may
2 by ruling require that the policy comply with subsection (a) and
3 sections 6913 (relating to mandatory policy provisions) through
4 6915 (relating to relationship of policy provisions).

5 § 6913. Mandatory policy provisions.

6 (a) General rule.--Except as provided in section 6915(a)
7 (relating to relationship of policy provisions), each such
8 policy delivered or issued for delivery to any person in this
9 Commonwealth shall contain the provisions specified in this
10 subsection in the words in which the provision appears in this
11 section, except that the insurer may, at its option, substitute
12 for one or more of these provisions corresponding provisions of
13 different wording approved by the department which are in each
14 instance not less favorable in any respect to the insured or the
15 beneficiary. These provisions shall be preceded individually by
16 the caption appearing in this subsection or, at the option of
17 the insurer, by such appropriate individual or group captions or
18 subcaptions as the department approves.

19 (b) Complete integration.--There shall be a provision as
20 follows:

21 Entire contract; changes: This policy, including the
22 endorsements and the attached papers, if any, constitutes
23 the entire contract of insurance. No change in this
24 policy shall be valid until approved by an executive
25 officer of the insurer and unless such approval be
26 endorsed hereon or attached hereto. No agent has
27 authority to change this policy or to waive any of its
28 provisions.

29 (c) Time limitation defenses.--

30 (1) There shall be a provision as follows:

1 Time Limit on Certain Defenses: After three years
2 from the date of issue of this policy no
3 misstatements, except fraudulent misstatements, made
4 by the applicant in the application for such policy
5 shall be used to void the policy or to deny a claim
6 for loss incurred or disability (as defined in the
7 policy) commencing after the expiration of such
8 three-year period.

9 (2) The policy provision set forth in paragraph (1)
10 shall not affect any legal requirement for avoidance of a
11 policy or denial of a claim during the initial three-year
12 period, nor shall it limit the application of section
13 6914(b), (c), (d) and (e) (relating to optional policy
14 provisions) in the event of misstatement with respect to age
15 or occupation or other insurance.

16 (3) In a policy where the premiums are payable weekly,
17 the words "if such application is made a part of the policy"
18 may be inserted in the policy provision set forth in
19 paragraph (1) between the word "policy" and the word "shall"
20 immediately following.

21 (4) A policy which the insured has the right to continue
22 in force subject to its terms by the timely payment of
23 premium until at least 50 years of age, or in the case of a
24 policy issued after 44 years of age, for at least five years
25 from its date of issue, may contain in lieu of the policy
26 provision set forth in paragraph (1) the following provision,
27 from which the clause in parentheses may be omitted at the
28 insurer's option:

29 Incontestable: After this policy has been in force
30 for a period of three years during the lifetime of

1 the insured (excluding any period during which the
2 insured is disabled), it shall become incontestable
3 as to the statements contained in the application.

4 (d) Prior condition.--

5 (1) There shall be a provision as follows:

6 Prior condition: No claim for loss incurred or
7 disability (as defined in the policy) commencing
8 after three years from the date of issue of this
9 policy shall be reduced or denied on the ground that
10 a disease or physical condition not excluded from
11 coverage by name or specific description effective on
12 the date of loss had existed prior to the effective
13 date of coverage of this policy.

14 (2) In policies whereon the premiums are payable weekly,
15 the words "or from the date of any reinstatement thereof" may
16 be inserted in the policy provision set forth in paragraph
17 (1) between the word "policy" and the word "shall"
18 immediately following.

19 (e) Grace period.--

20 (1) There shall be a provision as follows:

21 Grace Period: A grace period of (insert a number not
22 less than "7" for weekly premium policies, "10" for
23 monthly premium policies and "31" for all other
24 policies) days will be granted for the payment of
25 each premium falling due after the first premium,
26 during which grace period the policy shall continue
27 in force.

28 (2) A policy which contains a cancellation provision may
29 add at the end of the provision set forth in paragraph (1)
30 "subject to the right of the insurer to cancel in accordance

1 with the cancellation provision hereof."

2 (3) A policy in which the insurer reserves the right to
3 refuse any renewal shall have, at the beginning of the
4 provision set forth in paragraph (1): "Unless not less than
5 five days prior to the premium due date the insurer has
6 delivered to the insured or has mailed to his last address as
7 shown by the records of the insurer written notice of its
8 intention not to renew this policy beyond the period for
9 which the premium has been accepted, ..."

10 (f) Reinstatement.--

11 (1) There shall be a provision as follows:

12 Reinstatement: If any renewal premium be not paid
13 within the time granted the insured for payment, a
14 subsequent acceptance of premium by the insurer or by
15 any agent duly authorized by the insurer to accept
16 such premium, without requiring in connection
17 therewith an application for reinstatement, shall
18 reinstate the policy: Provided, however, That if the
19 insurer or such agent requires an application for
20 reinstatement and issues a conditional receipt for
21 the premium tendered, the policy will be reinstated
22 upon approval of such application by the insurer or,
23 lacking such approval, upon the 45th day following
24 the date of such conditional receipt unless the
25 insurer has previously notified the insured in
26 writing of its disapproval of such application. The
27 reinstated policy shall cover only loss resulting
28 from such accidental injury as may be sustained after
29 the date of reinstatement and loss due to such
30 sickness as may begin more than ten days after such

1 date. In all other respects the insured and insurer
2 shall have the same rights thereunder as they had
3 under the policy immediately before the due date of
4 the defaulted premium, subject to any provisions
5 endorsed hereon or attached hereto in connection with
6 the reinstatement. Any premium accepted in connection
7 with a reinstatement shall be applied to a period for
8 which premium has not been previously paid, but not
9 to any period more than 60 days prior to the date of
10 reinstatement.

11 (2) The last sentence of the provision set forth in
12 paragraph (1) may be omitted:

13 (i) from any policy which the insured has the right
14 to continue in force subject to its terms by the timely
15 payment of premiums:

16 (A) until at least 50 years of age; or

17 (B) in the case of a policy issued after 44
18 years of age, for at least five years from the date
19 of its issue; or

20 (ii) from any policy on which the premiums are
21 payable weekly.

22 (g) Notification of claim.--

23 (1) There shall be a provision as follows:

24 Notice of Claim: Written notice of claim must be
25 given to the insurer within 20 days after the
26 occurrence or commencement of any loss covered by the
27 policy, or as soon thereafter as is reasonably
28 possible. Notice given by or on behalf of the insured
29 or the beneficiary to the insurer at (insert the
30 location of such office as the insurer may designate

1 for the purpose), or to any authorized agent of the
2 insurer, with information sufficient to identify the
3 insured, shall be deemed notice to the insurer.

4 (2) In a policy whereon the premiums are payable weekly,
5 the first sentence of the policy provision set forth in
6 paragraph (1) may read:

7 Written notice of claim must be given to the insurer
8 within ten days of the commencement of any
9 nonhospital confining sickness covered by the policy
10 and within 20 days after the occurrence or
11 commencement of any other loss covered by the policy,
12 or as soon thereafter as is reasonably possible.

13 (3) In a policy providing a loss-of-time benefit which
14 may be payable for at least two years, an insurer may, at its
15 option, insert the following between the first and second
16 sentences of the policy provision set forth in paragraph (1):

17 Subject to the qualifications set forth below, if the
18 insured suffers loss of time on account of disability
19 for which indemnity may be payable for at least two
20 years, he shall, at least once in every six months
21 after having given notice of claim, give to the
22 insurer notice of continuance of said disability,
23 except in the event of legal incapacity.

24 (4) The period of six months following any filing of
25 proof by the insured or any payment by the insurer on account
26 of such claim or any denial of liability in whole or in part
27 by the insurer shall be excluded in applying the policy
28 provision set forth in paragraph (3). Delay in the giving of
29 such notice under that provision shall not impair the
30 insured's right to any indemnity which would otherwise have

1 accrued during the period of six months preceding the date on
2 which the notice is actually given.

3 (h) Claim forms.--There shall be a provision as follows:

4 Claim Forms: The insurer, upon receipt of a notice of
5 claim, will furnish to the claimant such forms as are
6 usually furnished by it for filing proofs of loss. If
7 such forms are not furnished within 15 days after the
8 giving of such notice, the claimant shall be deemed to
9 have complied with the requirements of this policy as to
10 proof of loss upon submitting, within the time fixed in
11 the policy for filing proofs of loss, written proof
12 covering the occurrence, the character and the extent of
13 the loss for which claim is made.

14 (i) Proofs of loss.--There shall be a provision as follows:

15 Proofs of Loss: Written proof of loss must be furnished
16 to the insurer at its said office in case of claim for
17 loss for which this policy provides any periodic payment
18 contingent upon continuing loss within 90 days after the
19 termination of the period for which the insurer is liable
20 and in case of claim for any other loss within 90 days
21 after the date of such loss. Failure to furnish such
22 proof within the time required shall not invalidate nor
23 reduce any claim if it was not reasonably possible to
24 give proof within such time, provided such proof is
25 furnished as soon as reasonably possible and in no event,
26 except in the absence of legal capacity, later than one
27 year from the time proof is otherwise required.

28 (j) Time of payment of claims.--There shall be a provision
29 as follows:

30 Time of Payment of Claims: Indemnities payable under this

1 policy for any loss other than loss for which this policy
2 provides any periodic payment will be paid immediately
3 upon receipt of due written proof of such loss. Subject
4 to due written proof of loss, all accrued indemnities for
5 loss for which this policy provides periodic payment will
6 be paid (insert period for payment, which
7 must not be less frequently than monthly) and any balance
8 remaining unpaid upon the termination of liability will
9 be paid immediately upon receipt of due written proof.

10 (k) Manner of payment of claims.--

11 (1) There shall be a provision as follows:

12 Payment of Claims: Indemnity for loss of life will be
13 payable in accordance with the beneficiary
14 designation and the provisions respecting such
15 payment which may be prescribed herein and effective
16 at the time of payment. If no such designation or
17 provision is then effective, such indemnity shall be
18 payable to the estate of the insured. Any other
19 accrued indemnities unpaid at the insured's death
20 may, at the option of the insurer, be paid either to
21 such beneficiary or to such estate. All other
22 indemnities will be payable to the insured.

23 (2) The policy provisions set forth in subparagraphs (i)
24 and (ii), or either of them, may be included with the policy
25 provision set forth in paragraph (1) at the option of the
26 insurer:

27 (i) If any indemnity of this policy shall be payable
28 to the estate of the insured, or to an insured or
29 beneficiary who is a minor or otherwise not competent to
30 give a valid release, the insurer may pay such indemnity,

1 up to an amount not exceeding \$ (insert an amount which
2 shall not exceed \$1,000), to any relative by blood or
3 connection by marriage of the insured or beneficiary who
4 is deemed by the insurer to be equitably entitled
5 thereto. Any payment made by the insurer in good faith
6 pursuant to this provision shall fully discharge the
7 insurer to the extent of such payment.

8 (ii) Subject to any written direction of the insured
9 in the application or otherwise, all or a portion of any
10 indemnities provided by this policy on account of
11 hospital, nursing, medical or surgical services may, at
12 the insurer's option and, unless the insured requests
13 otherwise in writing, not later than the time of filing
14 proofs of such loss, be paid directly to the hospital or
15 person rendering such services; but it is not required
16 that the service be rendered by a particular hospital or
17 person.

18 (l) Physical examinations.--There shall be a provision as
19 follows:

20 Physical Examinations and Autopsy: The insurer at its own
21 expense shall have the right and opportunity to examine
22 the person of the insured when and as often as it may
23 reasonably require during the pendency of a claim
24 hereunder and to make an autopsy in case of death where
25 it is not forbidden by law.

26 (m) Legal actions.--There shall be a provision as follows:

27 Legal Actions: No action at law or in equity shall be
28 brought to recover on this policy prior to the expiration
29 of 60 days after written proof of loss has been furnished
30 in accordance with the requirements of this policy. No

1 such action shall be brought after the expiration of
2 three years after the time written proof of loss is
3 required to be furnished.

4 (n) Change of beneficiary.--

5 (1) There shall be a provision as follows:

6 Change of Beneficiary: Unless the insured makes an
7 irrevocable designation of beneficiary, the right to
8 change of beneficiary is reserved to the insured and
9 the consent of the beneficiary or beneficiaries shall
10 not be requisite to surrender or assignment of this
11 policy or to any change of beneficiary or
12 beneficiaries, or to any other changes in this
13 policy.

14 (2) The first clause of the policy provision set forth
15 in paragraph (1), relating to the irrevocable designation of
16 beneficiary, may be omitted at the insurer's option.

17 (o) Common carriers.--The provisions contained in
18 subsections (b), (f), (j) and (l) may be omitted from ticket
19 policies sold only to passengers by common carriers.

20 § 6914. Optional policy provisions.

21 (a) General rule.--Except as provided in section 6915(a)
22 (relating to relationship of policy provisions), a policy issued
23 or delivered to any person in this Commonwealth shall not
24 contain provisions respecting the matters set forth in this
25 section unless the provisions are in the words appearing in this
26 section. However, the insurer may use in lieu of any such
27 provision a corresponding provision of different wording
28 approved by the department, which is not less favorable in any
29 respect to the insured or the beneficiary. Any such provision
30 contained in the policy shall be preceded individually by the

1 appropriate caption appearing in this subsection or, at the
2 option of the insurer, by such appropriate individual or group
3 captions or subcaptions as the department approves.

4 (b) Change of occupation.--The provision on change of
5 occupation shall be as follows:

6 Change of Occupation: If the insured be injured or
7 contract sickness after having changed his occupation to
8 one classified by the insurer as more hazardous than that
9 stated in this policy or while doing for compensation
10 anything pertaining to an occupation so classified, the
11 insurer will pay only such portion of the indemnities
12 provided in this policy as the premium paid would have
13 purchased at the rates and within the limits fixed by the
14 insurer for such more hazardous occupation. If the
15 insured changes his occupation to one classified by the
16 insurer as less hazardous than that stated in this
17 policy, the insurer, upon receipt of proof of such change
18 of occupation, will reduce the premium rate accordingly,
19 and will return the excess pro rata unearned premium from
20 the date of change of occupation or from the policy
21 anniversary date immediately preceding receipt of such
22 proof, whichever is the more recent. In applying this
23 provision, the classification of occupational risk and
24 the premium rates shall be such as have been last filed
25 by the insurer prior to the occurrence of the loss for
26 which the insurer is liable or prior to date of proof of
27 change in occupation with the state official having
28 supervision of insurance in the state where the insured
29 resided at the time this policy was issued; but if such
30 filing was not required, then the classification of

1 occupational risk and the premium rates shall be those
2 last made effective by the insurer in such state prior to
3 the occurrence of the loss or prior to the date of proof
4 of change in occupation.

5 (c) Misstatement of age.--The provision on misstatement of
6 age shall be as follows:

7 Misstatement of Age: If the age of the insured has been
8 misstated, all amounts payable under this policy shall be
9 such as the premium paid would have purchased at the
10 correct age.

11 (d) Other insurance in the same insurer.--The provision on
12 other insurance by the insured in the same insurer shall be as
13 follows:

14 Other Insurance in This Insurer: If an accident or
15 sickness or accident and sickness policy or policies
16 previously issued by the insurer to the insured be in
17 force concurrently herewith, making the aggregate
18 indemnity for (insert type of coverage or coverages) in
19 excess of \$ (insert maximum limit of indemnity or
20 indemnities), the excess insurance shall be void and all
21 premiums paid for such excess shall be returned to the
22 insured or to his estate or, in lieu thereof, insurance
23 effective at any one time on the insured under a like
24 policy or policies in this insurer is limited to the one
25 such policy elected by the insured, his beneficiary or
26 his estate, as the case may be, and the insurer will
27 return all premiums paid for all other such policies.

28 (e) Insurance with other insurers.--

29 (1) The provision on insurance by the insured with other
30 insurers shall be as follows, except as provided in paragraph

1 (3):

2 Insurance with Other Insurers: If there be other
3 valid coverage, not with this insurer, providing
4 benefits for the same loss on a provision of service
5 basis or on an expense incurred basis and of which
6 this insurer has not been given written notice prior
7 to the occurrence or commencement of loss, the only
8 liability under any expense incurred coverage of this
9 policy shall be for such proportion of the loss as
10 the amount which would otherwise have been payable
11 hereunder plus the total of the like amounts under
12 all such other valid coverages for the same loss of
13 which this insurer had notice bears to the total like
14 amounts under all valid coverages for such loss, and
15 for the return of such portion of the premiums paid
16 as shall exceed the pro rata portion for the amount
17 so determined. For the purpose of applying this
18 provision when other coverage is on a provision of
19 service basis, the "like amount" of such other
20 coverage shall be taken as the amount which the
21 services rendered would have cost in the absence of
22 such coverage.

23 (2) If the policy provision set forth in paragraph (1)
24 is included in a policy which also contains the policy
25 provision set forth in paragraph (3), there shall be added to
26 the caption of the policy provision set forth in paragraph
27 (1) the phrase "----- Expense Incurred Benefits".

28 (3) The following provision may appear in addition to or
29 in lieu of the provision set forth in paragraph (1):

30 Insurance with Other Insurers: If there be other

1 valid coverage, not with this insurer, providing
2 benefits for the same loss on other than an expense
3 incurred basis and of which this insurer has not been
4 given written notice prior to the occurrence or
5 commencement of loss, the only liability for such
6 benefits under this policy shall be for such
7 proportion of the indemnities otherwise provided
8 hereunder for such loss as the like indemnities of
9 which the insurer had notice (including the
10 indemnities under this policy) bear to the total
11 amount of all like indemnities for such loss, and for
12 the return of such portion of the premium paid as
13 shall exceed the pro rata portion for the indemnities
14 thus determined.

15 (4) If the policy provision set forth in paragraph (3)
16 is included in a policy which also contains the policy
17 provision set forth in paragraph (1), there shall be added to
18 the caption of the policy provision set forth in paragraph
19 (3) the phrase "----- Other Benefits".

20 (5) The insurer may include in the provisions set forth
21 in this subsection a definition of "other valid coverage",
22 approved as to form by the department, which definition shall
23 be limited in subject matter to coverage provided by
24 organizations subject to regulation by insurance law or by
25 insurance authorities of this or any other state or any
26 province of the Dominion of Canada, and to any other coverage
27 the inclusion of which is approved by the department. In the
28 absence of this definition, the term shall not include group
29 insurance, or benefits provided by union welfare plans or by
30 employer or employee benefit organizations. For the purpose

1 of applying the policy provisions set forth in this
2 subsection with respect to any insured, any amount of benefit
3 provided for the insured pursuant to any compulsory benefit
4 statute, including any workmen's compensation or employers'
5 liability statute, whether provided by a governmental agency
6 or otherwise, shall be deemed to be "other valid coverage" of
7 which the insurer has had notice. In applying these policy
8 provisions, third-party liability coverage shall not be
9 included as "other valid coverage".

10 (f) Relation of earnings to insurance.--

11 (1) The provision on relation of earnings to insurance
12 shall be as follows:

13 Relation of Earnings to Insurance: If the total
14 monthly amount of loss of time benefits promised for
15 the same loss under all valid loss of time coverage
16 upon the insured, whether payable on a weekly or
17 monthly basis, shall exceed the monthly earnings of
18 the insured at the time disability commenced or his
19 average monthly earnings for the period of two years
20 immediately preceding a disability for which claim is
21 made, whichever is the greater, the insurer will be
22 liable only for such proportionate amount of such
23 benefits under this policy as the amount of such
24 monthly earnings or such average monthly earnings of
25 the insured bears to the total amount of monthly
26 benefits for the same loss under all such coverage
27 upon the insured at the time such disability
28 commences and for the return of such part of the
29 premiums paid during such two years as shall exceed
30 the pro rata amount of the premiums for the benefits

1 actually paid hereunder; but this shall not operate
2 to reduce the total monthly amount of benefits
3 payable under all such coverage upon the insured
4 below the sum of \$200 or the sum of the monthly
5 benefits specified in such coverages, whichever is
6 less, nor shall it operate to reduce benefits other
7 than those payable for loss of time.

8 (2) The policy provision set forth in paragraph (1) may
9 be inserted only in a policy which the insured has the right
10 to continue in force subject to its terms by the timely
11 payment of premiums until at least 50 years of age or, in the
12 case of a policy issued after 44 years of age, for at least
13 five years from its date of issue.

14 (3) The insurer may include in the policy provision set
15 forth in paragraph (1) a definition of "valid loss of time
16 coverage", approved as to form by the department, which
17 definition shall be limited in subject matter to coverage
18 provided by governmental agencies or by organizations subject
19 to regulation by insurance law or by insurance authorities of
20 this or any other state or any province of the Dominion of
21 Canada, or to any other coverage the inclusion of which may
22 be approved by the department, or any combination of such
23 coverages. In the absence of this definition, the term shall
24 not include any coverage provided for such insured pursuant
25 to any compulsory benefit statute, including any workmen's
26 compensation or employers' liability statute, or benefits
27 provided by union welfare plans or by employer or employee
28 benefit organizations.

29 (g) Unpaid premium.--The provision on setoff of unpaid
30 premium shall be as follows:

1 Unpaid Premium: Upon the payment of a claim under this
2 policy, any premium then due and unpaid or covered by any
3 note or written order may be deducted therefrom.

4 (h) Cancellation.--The provision on cancellation of the
5 policy shall be as follows:

6 Cancellation: The insurer may cancel this policy at any
7 time by written notice delivered to the insured, or
8 mailed to his last address as shown by the records of the
9 insurer, stating when, not less than five days
10 thereafter, such cancellation shall be effective; and
11 after the policy has been continued beyond its original
12 term, the insured may cancel this policy at any time by
13 written notice delivered or mailed to the insurer,
14 effective upon receipt or on such later date as may be
15 specified in such notice. In the event of cancellation,
16 the insurer will return promptly the unearned portion of
17 any premium paid. If the insured cancels, the earned
18 premium shall be computed by the use of the short-rate
19 table last filed with the state official having
20 supervision of insurance in the state where the insured
21 resided when the policy was issued. If the insurer
22 cancels, the earned premium shall be computed pro rata.
23 Cancellation shall be without prejudice to any claim
24 originating prior to the effective date of cancellation.

25 (i) Conformity with state statutes.--The provision on
26 conformity of the policy with state statutes shall be as
27 follows:

28 Conformity with State Statutes: Any provision of this
29 policy which, on its effective date, is in conflict with
30 the statutes of the state in which the insured resides on

1 such date, is hereby amended to conform to the minimum
2 requirements of such statutes.

3 (j) Illegal activity.--The provision on denial of coverage
4 for claims arising from illegal activity shall be as follows:

5 Illegal Occupation: The insurer shall not be liable for
6 any loss to which a contributing cause was the insured's
7 commission of or attempt to commit a felony, or to which
8 a contributing cause was the insured's being engaged in
9 an illegal occupation.

10 (k) Intoxicants and narcotics.--

11 (1) The provision on denial of coverage for claims
12 arising from the use of intoxicants and narcotics shall
13 appear as follows:

14 Intoxicants and Narcotics: The insurer shall not be
15 liable for any loss sustained or contracted in
16 consequence of the insured's being intoxicated, or
17 under the influence of any narcotic unless
18 administered on the advice of a physician.

19 (2) Paragraph (1) does not permit any policy provisions
20 which would deny or purport to deny benefits for alcohol
21 abuse and dependency where such benefits are required under
22 Article VI-A of the act of May 17, 1921 (P.L.682, No.284),
23 known as The Insurance Company Law of 1921.

24 § 6915. Relationship of policy provisions.

25 (a) Inapplicable or inconsistent provisions.--If any policy
26 provision referred to in section 6913 (relating to mandatory
27 policy provisions) or 6914 (relating to optional policy
28 provisions) is in whole or in part inapplicable to or
29 inconsistent with the coverage provided by a particular form of
30 policy, the insurer, with the approval of the department, shall

1 omit from the policy any inapplicable provision or part of a
2 provision, and shall modify any inconsistent provision or part
3 of the provision.

4 (b) Order of certain policy provisions.--The provisions
5 which are the subject of sections 6913 and 6914, or any
6 corresponding provisions which are used in lieu thereof under
7 those sections, may be printed in the consecutive order of the
8 provisions in those sections or, at the option of the insurer,
9 any such provision may appear as a unit in any part of the
10 policy, with other provisions to which it is logically related,
11 provided the resulting policy shall not be in whole or in part
12 unintelligible, ambiguous or likely to mislead a person to whom
13 the policy is offered, delivered or issued.

14 § 6916. Coverage of certain services.

15 (a) Psychological services.--This subsection applies to
16 every group or individual policy delivered or issued for
17 delivery in this Commonwealth. Whenever such a policy provides
18 for reimbursement for any psychologically necessary service
19 which is within those areas for which the psychologist is
20 licensed pursuant to the act of March 23, 1972 (P.L.136, No.52),
21 referred to as the Psychologists License Act, the insured or any
22 other person covered by the policy, contract or certificate
23 shall be entitled to reimbursement for such service whether the
24 service is performed by a physician or a psychologist operating
25 within those area for which he is licensed. Public hearings
26 shall be held prior to the promulgation of any substantial
27 regulation under this section, or substantial change thereof.
28 The hearing shall be transcribed and cross-examination of all
29 witnesses shall be permitted in accordance with law.

30 (b) Optometric services.--Whenever any insurer, under any

1 policy or plan of insurance, or any self-insured health or
2 welfare plan, provides for a service or for the reimbursement of
3 a service to or on behalf of any of its individual or group
4 policyholders or subscribers or any other person or groups,
5 which service is within the lawful scope of practice of a
6 licensed optometrist, the person rendering such service or such
7 policyholder, subscriber or other person shall be entitled to
8 the same reimbursement for the service whether the service is
9 performed by a licensed physician or by a licensed optometrist.
10 Under any such contract, policy or plan which pays on the basis
11 of usual, customary and reasonable charges or on some similar
12 basis, only the method of determining the amount of
13 reimbursement shall be the same. Unless the policy provides
14 otherwise, there shall be no reimbursement for ophthalmic
15 materials, lenses, eyeglasses or appurtenances thereto.

16 § 6917. Coverage of newborn children.

17 (a) General rule.--All health insurance policies providing
18 coverage on an expense incurred basis and service or indemnity
19 type contracts issued by a nonprofit corporation subject to
20 Chapter 75 (relating to hospital plan corporations) or 77
21 (relating to professional health services plan corporations) and
22 all health services provided by plans operating under Chapter 73
23 (relating to health maintenance organizations) shall also
24 provide that the health insurance benefits or health services
25 applicable shall be payable with respect to a newborn child of
26 the insured or subscriber the moment of birth.

27 (b) Policy provisions.--The coverage for newborn children
28 shall consist of coverage of injury or sickness, including the
29 necessary care and treatment of medically diagnosed congenital
30 defects, birth abnormalities, prematurity and routine nursery

1 care, but need not include routine well-baby care, immunizations
2 and medical examinations or tests not necessary for the
3 treatment of a covered injury, illness, defect, deformity or
4 disease except to the extent that these coverages are provided
5 the insured or for dependent children under the same class of
6 coverage.

7 (c) Notice of birth.--If payment of a specific premium or
8 subscription fee is required to provide coverage for a child,
9 the policy or contract may require that notification of birth of
10 a newborn child and payment of the required premium or fees
11 shall be furnished to the insurer or nonprofit service or
12 indemnity corporation within 31 days after the date of birth in
13 order to have the coverage continue beyond that 31-day period.
14 § 6918. Licensed medical treatment.

15 Notwithstanding any provision of any policy of insurance or
16 self-insured health or welfare plan providing benefits whenever
17 the policy or plan provides for reimbursement for any service
18 which may be legally performed by a person licensed under the
19 law of this Commonwealth for the practice of medicine,
20 osteopathy, dentistry, chiropractic podiatry, physical therapy
21 or midwifery reimbursement under the policy or plan shall not be
22 denied when the service is rendered by a person so licensed.
23 § 6919. Services of nurse midwives.

24 (a) Applicability.--This section applies to all policies of
25 health and accident insurance and all private and public
26 programs for health services and facilities reimbursement,
27 including, but not limited to, any such reimbursement programs
28 operated by the Commonwealth.

29 (b) Reimbursement for services.--Whenever a policy or
30 program within subsection (a) provides for reimbursement for any

1 health care service which is within those areas of practice for
2 which a midwife may be licensed in this Commonwealth or in the
3 state where the service is delivered, or for the cost of
4 birthing facilities, the insured or any other person covered
5 thereby shall be entitled to reimbursement for the service or
6 use of the facilities whenever the service is performed by a
7 licensed nurse midwife or other person licensed to perform such
8 services. Whenever the service is performed by a licensed
9 certified nurse midwife and reimbursed by a professional health
10 services corporation, the licensed certified nurse midwife shall
11 have such rights of participation, plan admission and
12 registration as are granted by the professional health services
13 plan corporation under Chapter 77 (relating to professional
14 health services plan corporations) to a physician or osteopath
15 performing such service. When payment is made for health care
16 services performed by a licensed certified nurse midwife, no
17 payment or reimbursement shall be payable to a physician or
18 osteopath for the service performed by the licensed nurse
19 midwife.

20 § 6919.1. Insurance payments to registered nurses.

21 (a) Scope of coverage.--When a service is performed by a
22 certified registered nurse anesthetist, certified registered
23 nurse practitioner, certified enterostomal therapy nurse,
24 certified community health nurse, certified psychiatric mental
25 health nurse or certified clinical nurse specialist who is
26 certified by the State Board of Nursing or a national nursing
27 organization recognized by the State Board of Nursing and is
28 lawfully permitted to perform that service under the act of May
29 22, 1951 (P.L.317, No.69), known as The Professional Nursing
30 Law, and a policy, contract or certificate provides for

1 reimbursement for that service, the insured or any other person
2 covered shall be entitled to reimbursement either to the insured
3 or to the registered professional nurse providing that service.
4 This section does not apply to registered professional nurses
5 who are employees of health care facilities as the term "health
6 care facilities" is defined in the act of July 19, 1979
7 (P.L.130, No.48), known as the Health Care Facilities Act, or to
8 anesthesiology groups. This subsection does not apply to the
9 assignment of benefits and payment of claims process of a stock
10 insurance company or a mutual insurance company described in
11 subsection (c)(1).

12 (b) Nonduplication of payments.--Duplicate payments shall
13 not be made to both a nurse provider as set forth in subsection
14 (a) and another provider, or to the same provider, for the same
15 services provided in a single encounter.

16 (c) Applicability.--This section applies to every group
17 policy, contract or certificate issued thereunder of health and
18 accident insurance delivered or issued for delivery within this
19 Commonwealth, including, but not limited to, policies, contracts
20 or certificates issued by:

21 (1) Any stock insurance company as described in section
22 3302(c)(4) and (11) (relating to authorized classes of
23 insurance) and any mutual insurance company as described in
24 section 3302(d)(1).

25 (2) Any hospital plan corporation as defined in Chapter
26 75 (relating to hospital plan corporations).

27 (3) Any professional health services plan corporation as
28 defined in Chapter 77 (relating to professional health
29 services plan corporations).

30 (4) Any person who sells or issues contracts or

1 certificates of insurance which meet the requirements of this
2 section.

3 This subsection shall apply to policies, contracts or
4 certificates issued, renewed, modified, altered, amended or
5 reissued on or after March 19, 1987.

6 (d) Regulations.--The department shall promulgate the
7 regulations and forms necessary to carry out the provisions of
8 this section. Following publication of the initial set of
9 proposed regulations in the Pennsylvania Bulletin, but prior to
10 their formal adoption, the department shall hold public hearings
11 thereon.

12 (e) Construction.--This section does not affect or impair
13 The Professional Nursing Law nor confer upon any public or
14 private organization or agency the power to interpret or enforce
15 this section, except as may be provided for in this section.
16 § 6920. Age limits.

17 If any policy contains a provision establishing, as an age
18 limit or otherwise, a date after which the coverage provided by
19 the policy will not be effective, and if the date falls within a
20 period for which a premium is accepted by the insurer or if the
21 insurer accepts a premium after that date, the coverage provided
22 by the policy will continue in force subject to any right of
23 cancellation until the end of the period for which premium has
24 been accepted. If the age of the insured has been misstated and
25 if, according to the correct age of the insured, the coverage
26 provided by the policy would not have become effective, or would
27 have ceased prior to the acceptance of such premium or premiums,
28 then the liability of the insurer shall be limited to the
29 refund, upon request, of all premiums paid for the period not
30 covered by the policy.

1 § 6921. Cost-of-living increases.

2 A claim for benefits for loss of time from the insured
3 person's occupation, under a group or individual policy issued
4 or renewed in this Commonwealth, shall not be reduced by reason
5 of any cost-of-living increase, designated as such under the
6 Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.), if
7 the cost-of-living increase occurs while the policy's benefits
8 are payable for that claim.

9 § 6922. Applications for insurance.

10 (a) False statements.--The falsity of any statement in the
11 application for any policy shall not bar the right to recover
12 thereunder, unless the false statement was made with intent to
13 deceive or unless the statement materially affected either the
14 acceptance of the risk or the hazard assumed by the insurer.

15 (b) Inclusion of representations in policy.--The insured
16 shall not be bound by any statement made in an application for a
17 policy unless a copy of the application is attached to or
18 endorsed on the policy when issued as a part thereof. If any
19 policy delivered or issued for delivery to any person in this
20 Commonwealth is reinstated or renewed, and the insured or the
21 beneficiary or assignee of the policy makes written request to
22 the insurer for a copy of the application for reinstatement or
23 renewal, the insurer shall, within 15 days after the receipt of
24 the request at its home office or any branch office of the
25 insurer, deliver or mail a copy of the application to the person
26 making the request. If the copy is not delivered or mailed, the
27 insurer shall not introduce the application as evidence in any
28 action or proceeding regarding the policy.

29 (c) Alterations.--An alteration of any written application
30 for any policy shall not be made by any person other than the

1 applicant without his written consent, except that insertions
2 may be made by the insurer, for administrative purposes only, in
3 such manner as to indicate clearly that the insertions are not
4 to be ascribed to the applicant.

5 § 6923. Preservation of rights of insurer.

6 The acknowledgment by any insurer of the receipt of notice
7 given under any policy, the furnishing of forms for filing
8 proofs of loss, the acceptance of such proofs or the
9 investigation of any claim thereunder shall not operate as a
10 waiver of any of the rights of the insurer in defense of any
11 claim arising under the policy.

12 § 6924. Discrimination.

13 Except as provided in section 6925 (relating to preferred
14 provider organizations), insurers shall not discriminate between
15 individuals of the same class in the amount of premiums or rates
16 charged for any policy, in the benefits payable thereon, in the
17 terms or conditions of the policy or in any other manner.

18 § 6925. Preferred provider organizations.

19 (a) General rule.--Upon compliance with the provisions of
20 this title and notwithstanding any other provision of law to the
21 contrary, any health care insurer or purchaser may do any of the
22 following:

23 (1) Enter into agreements with providers or physicians
24 relating to health care services which may be rendered to
25 persons for whom the insurer or purchaser is providing health
26 care coverage, including agreements relating to the amounts
27 to be charged by the provider or physician for services
28 rendered.

29 (2) Issue or administer policies or subscriber contracts
30 in this Commonwealth which include incentives for the covered

1 person to use the services of a provider who has entered into
2 an agreement with the insurer or purchaser.

3 (3) Issue or administer policies or subscriber contracts
4 in this Commonwealth that provide for reimbursement for
5 services only if the services have been rendered by a
6 provider or physician who has entered into an agreement with
7 the insurer or purchaser.

8 (b) Regulation by department.--The department shall
9 determine that:

10 (1) A preferred provider organization which assumes
11 financial risk is licensed as an insurer in this
12 Commonwealth, has adequate working capital and reserves, or
13 is governed and regulated under the provisions of the
14 Employee Retirement Income Security Act of 1974 (Public Law
15 93-406, 88 Stat. 829), referred to as ERISA, and has filed a
16 certificate to that effect with the department.

17 (2) Enrollee literature adequately discloses provisions,
18 limitations and conditions of benefits available or that the
19 preferred provider organization is governed and regulated
20 under the provisions of ERISA and has filed a certificate to
21 that effect with the department.

22 (c) Regulation by department and Department of Health.--The
23 department, in consultation with the Department of Health, shall
24 determine that arrangements and provisions for preferred
25 provider organizations which assume financial risk which may
26 lead to undertreatment or poor quality care are adequately
27 addressed by quality and utilization controls and by a formal
28 grievance system, unless the department makes a prior
29 determination that the preferred provider organization is
30 governed by and regulated under the provisions of the Employee

1 Retirement Income Security Act of 1974, and has filed a
2 certificate to that effect with the department.

3 (d) Requirements for commencement of operations.--No
4 preferred provider organization which assumes financial risk may
5 commence operations until it has reported to the department and
6 the Department of Health such information as the department and
7 the Department of Health require in accordance with the duties
8 required under this section. If, after 60 days, either the
9 department or the Department of Health has not informed the
10 preferred provider organization of deficiencies, the preferred
11 provider organization may commence operations unless and until
12 such time as the department or the Department of Health has
13 identified significant deficiencies and the deficiencies have
14 not subsequently been corrected within 60 days of notification.

15 (e) Appeal.--Any disapproval or order to cease operations
16 issued in accordance with this section shall be subject to
17 appeal in accordance with Title 2 (relating to administrative
18 law and procedure).

19 SUBCHAPTER C

20 GROUP, BLANKET AND FRANCHISE POLICIES

21 Sec.

22 6931. Definitions.

23 6932. Required provisions for group health and accident
24 policies.

25 6933. Provision for direct payment.

26 6934. Conversion privileges.

27 6935. Blanket health and accident insurance.

28 6936. Companies authorized to write policies.

29 § 6931. Definitions.

30 The following words and phrases when used in this subchapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Blanket health and accident insurance." That form of health
4 and accident insurance covering groups of persons under a policy
5 or contract issued:

6 (1) To any common carrier or to any operator, owner or
7 lessee of a means of transportation, which shall be deemed
8 the policyholder, covering all persons or all persons of a
9 class who may become passengers on the common carrier or
10 means of transportation.

11 (2) To an employer, which shall be deemed the
12 policyholder, covering all employees, dependents or guests
13 defined by reference to specified hazards incident to the
14 activities or operations of the employer or that class of
15 employees, dependents or guests.

16 (3) To a school or other institution of learning, camp
17 or sponsor thereof, or to the head or principal thereof, who
18 or which shall be deemed the policyholder, covering students
19 or campers and which may cover supervisors and employees.

20 (4) In the name of any religious, charitable,
21 recreational, educational or civic organization, which shall
22 be deemed the policyholder, covering participants in
23 activities sponsored by the organization.

24 (5) To a sports team or sponsors thereof, which shall be
25 deemed the policyholder, covering members, officials and
26 supervisors.

27 (6) To cover any other risk or class of risks, which in
28 the discretion of the department may be properly eligible for
29 blanket health and accident insurance. The discretion of the
30 department may be exercised on the basis of an individual

1 risk or class of risks, or both.

2 "Franchise health and accident insurance." That form of
3 health and accident insurance issued to:

4 (1) Five or more employees of any corporation,
5 partnership or individual employer or any governmental
6 corporation, agency or Department of Transportation thereof.

7 (2) Ten or more members, employees or employees of
8 members of any trade or professional association, labor union
9 or any other association having had an active existence for
10 at least two years, if the association or union has a
11 constitution or bylaws and is formed in good faith for
12 purposes other than that of obtaining insurance, and if the
13 persons, with or without their dependents, are issued the
14 same form of an individual policy, varying only as to amounts
15 and kinds of coverage applied for by such persons under an
16 arrangement whereby the premiums on such policies may be paid
17 to the insurer periodically by the employer, with or without
18 payroll deductions, or by the association for its members or
19 by some designated person acting on behalf of such employer
20 or association.

21 For the purposes of this definition the term "employees"
22 includes the officers, managers and employees of the employer
23 and the individual proprietor or partners, if the employer is an
24 individual proprietor or partnership.

25 "Group health and accident insurance." That form of health
26 and accident insurance covering groups of persons defined in
27 this section with or without one or more members of their
28 families or one or more of their dependents, or covering one or
29 more members of the families or one or more dependents of such
30 groups or persons and issued upon the following basis:

1 (1) Under a policy issued to an employer or trustees of
2 a fund established by an employer, who shall be deemed the
3 policyholder insuring at least ten employees of such employer
4 for the benefit of persons other than the employer. As used
5 in this paragraph the term "employees" means the officers,
6 managers and employees of the employer, the individual
7 proprietor or partner, if the employer is an individual
8 proprietor or partnership, the officers, managers and
9 employees of subsidiary or affiliated corporations, the
10 individual proprietors, partners and employees of individuals
11 and firms, if the business of the employer and the individual
12 or firm is under common control through stock ownership,
13 contract or otherwise, and the term may include retired
14 employees. A policy issued to insure employees of a public
15 body may provide that the term "employees" shall include
16 elected or appointed officials.

17 (2) Under a policy issued to an association, including a
18 labor union, which has a constitution and bylaws and which
19 has been organized and is maintained in good faith for
20 purposes other than that of obtaining insurance insuring at
21 least 25 members, employees or employees of members of the
22 association for the benefit of persons other than the
23 association or its officers or trustees. For the purposes of
24 this paragraph, the term "employees" may include retired
25 employees.

26 (3) Under a policy issued to the trustees of a fund
27 established by two or more employers in the same industry or
28 by one or more labor unions or by one or more employers and
29 one or more labor unions or by an association as defined in
30 paragraph (2), which trustees shall be deemed the

1 policyholder to insure employees of the employers or members
2 of the unions or such association for the benefit of persons
3 other than the employers or the unions or such association.
4 As used in this paragraph the term "employees" includes the
5 officers, managers and employees of the employer and the
6 individual proprietor or partners, if the employer is an
7 individual proprietor or partnership, and the term may
8 include retired employees. The policy may provide that the
9 term "employees" shall include the trustees or their
10 employees, or both, if their duties are principally connected
11 with such trusteeship.

12 (4) Under a policy issued to any person or organization
13 to which a policy of group life insurance may be issued or
14 delivered in this Commonwealth to insure any class or classes
15 of individuals that could be insured under the group life
16 policy.

17 (5) Under a policy issued to cover any other
18 substantially similar group, which in the discretion of the
19 department may be subject to the issuance of a policy of
20 group health and accident insurance.

21 (6) A policy delivered or issued for delivery on or
22 after January 1, 1968, under which coverage of a dependent of
23 an employee or other member of the insured group terminates
24 at a specified age, with respect to an unmarried child
25 covered by the policy prior to the attainment of 19 years of
26 age who is incapable of self-sustaining employment by reason
27 of mental retardation or physical handicap, who becomes so
28 incapable prior to the attainment of 19 years of age and who
29 is chiefly dependent upon the employee or member for support
30 and maintenance, shall not so terminate while the insurance

1 of the employee or member remains in force and the dependent
2 remains in such condition, if the insured employee or member
3 has within 31 days of the dependent's attainment of the
4 termination age submitted proof of the dependent's
5 incapacity. This paragraph does not require an insurer to
6 insure such a dependent if the dependent does not satisfy the
7 conditions of the group policy as to any requirements for
8 evidence of insurability or other provisions as stated in the
9 group policy required for coverage thereunder to take effect;
10 in any such case the terms of the policy shall apply with
11 regard to the coverage or exclusion from coverage of the
12 dependent.

13 § 6932. Required provisions for group health and accident
14 policies.

15 Each group health and insurance policy shall contain in
16 substance the following provisions:

17 (1) A provision that, in the absence of fraud, all
18 statements made by any applicant, the policyholder or an
19 insured person shall be deemed representations and not
20 warranties and that no statement made for the purpose of
21 effecting insurance shall avoid the insurance or reduce
22 benefits, unless contained in a written instrument signed by
23 the policyholder or the insured person, a copy of which has
24 been furnished to the policyholder, to the insured person or
25 his beneficiary.

26 (2) A provision that the insurer will furnish to the
27 policyholder, for delivery to each employee or member of the
28 insured group, an individual certificate setting forth, in
29 summary form, a statement of the essential features of the
30 insurance coverage of the employee or member and to whom

1 benefits thereunder are payable. If dependents are included
2 in the coverage, only one certificate need be issued for each
3 family unit.

4 (3) A provision that to the group originally insured may
5 be added from time to time eligible new employees, members or
6 dependents, as the case may be, in accordance with the terms
7 of the policy.

8 § 6933. Provision for direct payment.

9 Any group health and accident insurance policy may provide
10 that all or any portion of any indemnities provided by the
11 policy, on account of hospital, nursing, medical or surgical
12 services, may at the insurer's option be paid directly to the
13 hospital or person rendering the services. Except as provided in
14 section 6925 (relating to preferred provider organizations), the
15 policy may not require that the service be rendered by a
16 particular hospital or person. Payment so made shall discharge
17 the insurer's obligation with respect to the amount of insurance
18 so paid.

19 § 6934. Conversion privileges.

20 (a) Right to conversion.--A group health and accident
21 insurance policy delivered or issued for delivery in this
22 Commonwealth which provides hospital, surgical or major medical
23 expense insurance, or any combination of these coverages, on an
24 expense incurred basis, unless it is a policy which provides
25 indemnity benefits or benefits for specific diseases or for
26 accidental injuries only, shall provide that an employee or
27 member whose insurance under the group policy has been
28 terminated for any reason, including discontinuance of the group
29 policy in its entirety or with respect to an insured class, and
30 who has been continuously insured under the group policy, and

1 under any group policy providing similar benefits which it
2 replaces, for at least three months immediately prior to
3 termination, shall be entitled to have issued to him by the
4 insurer a policy of health insurance, referred to in this
5 subchapter as the "converted policy." An employee or member
6 shall not be entitled to have a converted policy issued to him
7 if termination of his insurance under the group policy occurred
8 because he failed to pay any required contribution, or if any
9 discontinued group coverage was replaced by similar group
10 coverage within 31 days.

11 (b) Terms of converted policies.--The issuance of a
12 converted policy shall be subject to the following conditions:

13 (1) Written application for the converted policy shall
14 be made and the first premium paid to the insurer not later
15 than 31 days after the termination.

16 (2) The converted policy shall be issued without
17 evidence of insurability.

18 (3) The premium on the individual policy shall be at the
19 insurer's then customary rate applicable to the form and
20 amount of the individual policy, to the class of risk to
21 which the person then belongs and to the age he has attained
22 on the effective date of the individual policy.

23 (4) The effective date of the converted policy shall be
24 the day following the termination of insurance under the
25 group policy.

26 (5) The converted policy shall cover the employee or
27 member and his dependents who were covered by the group
28 policy on the date of termination of insurance. At the option
29 of the insurer, a separate converted policy may be issued to
30 cover any dependent.

1 (6) The insurer shall not be required to issue a
2 converted policy covering any person if the person is or
3 could be covered by Medicare under the Health Insurance for
4 the Aged Act, Title XVIII of the Social Security Act (Public
5 Law 89-97, 42 U.S.C. § 1395 et seq.). The insurer shall not
6 be required to issue a converted policy covering any person
7 if:

8 (i) (A) the person is covered for similar benefits
9 by another hospital, surgical, medical or major
10 medical expense insurance policy or hospital or
11 medical service subscriber contract or medical
12 practice or other prepayment plan or by any other
13 plan or program;

14 (B) the person is eligible for similar benefits,
15 whether or not covered therefor, under any
16 arrangement of coverage for individuals in a group,
17 whether on an insured or uninsured basis; or

18 (C) similar benefits are provided for or
19 available to the person under any state or Federal
20 law; and

21 (ii) the benefits provided under any of the sources
22 referred to in subparagraph (i) for the person, together
23 with the benefits provided by the converted policy, would
24 result in overinsurance according to the insurer's
25 standards.

26 The insurer's standards must bear some reasonable
27 relationship to actual health care costs in the area in which
28 the insured lives at the time of conversion and must be filed
29 with the department prior to their use in denying coverage.

30 (7) A converted policy may include a provision whereby

1 the insurer may request information in advance of any premium
2 due date of the policy of any person covered thereunder as to
3 whether similar benefits are available to the person through
4 a source referred to in paragraph (6)(i).

5 (8) The converted policy may provide that the insurer
6 may refuse to renew the policy or the coverage of any person
7 insured thereunder for the following reasons only:

8 (i) Overinsurance as described in paragraph (6)(ii)
9 would result or the converted policyholder fails to
10 provide the requested information with respect to
11 possible overinsurance.

12 (ii) Fraud or material misrepresentation in applying
13 for any benefits under the converted policy.

14 (iii) Eligibility of the insured person for Medicare
15 coverage under the Health Insurance for the Aged Act,
16 Title XVIII of the Social Security Act (Public Law 89-97,
17 42 U.S.C. § 1395 et seq.) or under any other Federal or
18 state law providing for benefits similar to those
19 provided by the converted policy.

20 (iv) Other reasons approved by the department.

21 (9) An insurer shall not be required to issue a
22 converted policy which provides benefits in excess of those
23 provided under the group policy from which conversion is
24 made.

25 (10) The converted policy shall not exclude a
26 preexisting condition not excluded by the group policy.
27 However, the converted policy may provide that any hospital,
28 surgical or medical benefits payable thereunder may be
29 reduced by the amount of any such benefits payable under the
30 group policy after the termination of the individual's

1 insurance thereunder. The converted policy may also provide
2 that during the first policy year the benefits payable under
3 the converted policy, together with the benefits payable
4 under the group policy, shall not exceed those that would
5 have been payable had the individual insurance under the
6 group policy remained in force.

7 (11) Subject to the provisions and conditions of this
8 title, if the group insurance policy from which conversion is
9 made insures the employee or member for basic hospital or
10 surgical expense insurance, the employee or member shall be
11 entitled to obtain a converted policy providing, at his
12 option, coverage on an expense incurred basis under Plan A, B
13 or C meeting the following requirements:

14 (i) Plan A:

15 (A) Hospital room and board daily expense
16 benefits in a maximum dollar amount approximating the
17 average semiprivate rate charged in metropolitan
18 areas of this Commonwealth, for a maximum duration of
19 70 days.

20 (B) Miscellaneous hospital expense benefits of a
21 maximum amount of ten times the hospital room and
22 board daily expense benefits.

23 (C) Surgical operation expense benefits
24 according to a surgical schedule consistent with
25 those customarily offered by the insurer under group
26 or individual health insurance policies and providing
27 a maximum benefit of \$800.

28 (ii) Plan B:

29 (A) Hospital room and board daily expense
30 benefits in a maximum dollar amount equal to 75% of

1 the maximum dollar amount determined for Plan A, for
2 a maximum duration of 70 days.

3 (B) Miscellaneous hospital expense benefits of a
4 maximum amount of ten times the hospital room and
5 board daily expense benefits.

6 (C) Surgical operation expense benefits
7 according to a surgical schedule consistent with
8 those customarily offered by the insurer under group
9 or individual health insurance policies and providing
10 a maximum benefit of \$600.

11 (iii) Plan C:

12 (A) Hospital room and board daily expense
13 benefits in a maximum dollar amount equal to 50% of
14 the maximum dollar amount determined for Plan A, for
15 a maximum duration of 70 days.

16 (B) Miscellaneous hospital benefits of a maximum
17 amount of ten times the hospital room and board daily
18 expense benefits.

19 (C) Surgical operation expense benefits
20 according to a surgical schedule consistent with
21 those customarily offered by the insurer under group
22 or individual health insurance policies and providing
23 a maximum benefit of \$400.

24 (iv) The maximum dollar amounts in Plan A shall be
25 determined by the department and may be redetermined by
26 it, from time to time, as to converted policies issued
27 subsequent to the redetermination. A redetermination
28 shall not be made more often than once in three years.
29 The maximum dollar amounts in Plans A, B and C shall be
30 rounded to the nearest multiple of \$10.

1 (v) If the benefit levels otherwise required under
2 this paragraph exceed the benefit levels provided under
3 the group policy, the conversion policy may offer
4 benefits which are substantially similar to those
5 provided under the group policy in lieu of those
6 otherwise required under this paragraph.

7 (12) Subject to the provisions and conditions of this
8 title, if the group insurance policy from which conversion is
9 made insures the employee or member for major medical expense
10 insurance, the employee or member shall be entitled to obtain
11 a converted policy providing catastrophic or major medical
12 coverage under a plan meeting the following requirements:

13 (i) A maximum benefit at least equal to either, at
14 the option of the insurer the benefit described in clause
15 (A) or (B):

16 (A) The smaller of the following amounts: the
17 maximum benefit provided under the group policy or a
18 maximum payment of \$250,000 per covered person for
19 all covered medical expenses incurred during the
20 covered person's lifetime.

21 (B) The smaller of the following amounts: the
22 maximum benefit provided under the group policy or a
23 maximum payment of \$250,000 for each unrelated injury
24 or sickness.

25 (ii) Payment of benefits at the rate of 80% of
26 covered medical expenses which are in excess of the
27 deductible, until 20% of such expenses in a benefit
28 period reaches \$1,000, after which benefits will be paid
29 at the rate of 100% during the remainder of the benefit
30 period. Payment of benefits for outpatient treatment of

1 mental illness, if provided in the converted policy, may
2 be at a lesser rate but not less than 50%.

3 (iii) A deductible for each benefit period which, at
4 the option of the insurer, shall be:

5 (A) the sum of the benefits deductible and \$100;

6 (B) a cash deductible, not to exceed \$1,000;

7 (C) the greater of the benefits deductible or
8 \$500; or

9 (D) the corresponding deductible in the group
10 policy.

11 As used in this subparagraph the term "benefits
12 deductible" means the value of any benefits provided on
13 an expense incurred basis which are provided with respect
14 to covered medical expenses by any other hospital,
15 surgical or medical insurance policy or hospital or
16 medical service subscriber contract or medical practice
17 or other prepayment plan, or any other plan or program
18 whether on an insured or uninsured basis, or in
19 accordance with the requirements of any Federal or state
20 law and, if pursuant to paragraph (13), the converted
21 policy provides both basic hospital or surgical coverage
22 and major medical coverage, the value of such basic
23 benefits. If the maximum benefit is determined by
24 subparagraph (i)(B), the insurer may require that the
25 deductible be satisfied during a period of not less than
26 three months if the deductible is \$100 or less, and not
27 less than six months if the deductible exceeds \$100.

28 (iv) The benefit period shall be each calendar year
29 when the maximum benefit is determined by subparagraph

30 (i)(A) or 24 months when the maximum benefit is

1 determined by subparagraph (i)(B).

2 (v) For the purposes of this paragraph, the term
3 "covered medical expenses" includes at least, in the case
4 of hospital room and board charges, the lesser of the
5 dollar amount in Plan A and the average semiprivate room
6 and board rate for the hospital in which the individual
7 is confined and twice that amount for charges in an
8 intensive care unit. Any surgical schedule shall be
9 consistent with those customarily offered by the insurer
10 under group or individual health insurance policies and
11 shall provide at least a \$1,200 maximum benefit.

12 (13) The conversion privilege required by this section
13 shall, if the group insurance policy insures the employee or
14 member for both basic hospital or surgical expense insurance
15 and medical expense insurance, make available the plans of
16 benefits set forth in paragraphs (11) and (12). At the option
17 of the insurer, these plans of benefits may be provided under
18 one policy.

19 (14) The insurer may also, in lieu of the plans of
20 benefits set forth in paragraphs (11) and (12), provide a
21 policy of comprehensive medical expense benefits without
22 first dollar coverage. This policy shall conform to the
23 requirements of paragraph (12), except that an insurer
24 electing to provide such a policy shall make available a low
25 deductible option not to exceed \$100, a high deductible
26 option between \$500 and \$1,000 and a third deductible option
27 midway between the high and low deductible options.

28 (15) The insurer may offer alternative plans for group
29 health conversion in addition to those required by this
30 section. The insurer may provide group insurance coverage in

1 lieu of the issuance of a converted individual policy.

2 (16) If coverage would be continued under the group
3 policy on an employee following his retirement prior to the
4 time he is or could be covered by Medicare, he may elect, in
5 lieu of continuation of group insurance, to have the same
6 conversion rights as would apply had his insurance terminated
7 at retirement by reason of termination of employment or
8 membership.

9 (17) The converted policy may provide for reduction of
10 coverage on any person upon his eligibility for Medicare
11 coverage under the Health Insurance for the Aged Act, Title
12 XVII of the Social Security Act or under any other Federal or
13 state law providing for benefits similar to those provided by
14 the converted policy.

15 (18) The conversion privilege shall also be available:

16 (i) to the surviving spouse, if any, at the death of
17 the employee or member, with respect to the spouse and
18 the children whose coverage under the group policy
19 terminates by reason of the death, otherwise to each
20 surviving child whose coverage under the group policy
21 terminates by reason of the death, or, if the group
22 policy provides for continuation of dependents coverage
23 following the employee's or member's death, at the end of
24 such continuation;

25 (ii) to the spouse of the employee or member upon
26 termination of coverage of the spouse, while the employee
27 or member remains insured under the group policy, by
28 reason of ceasing to be a qualified family member under
29 the group policy, with respect to the spouse and those
30 children whose coverage under the group policy terminates

1 at the same time; or

2 (iii) to a child solely with respect to himself upon
3 termination of his coverage by reason of his ceasing to
4 be a qualified family member under the group policy, if a
5 conversion privilege is not otherwise provided in this
6 paragraph with respect to the termination.

7 (19) Each certificate holder in the insured group shall
8 be given written notice of the conversion privilege and its
9 duration within 15 days before or after the date of
10 termination of group coverage which notice shall be included
11 in his certificate of coverage. If the notice is given more
12 than 15 days but less than 90 days after the date of
13 termination of group coverage, the time allowed for the
14 exercise of the privilege of conversion shall be extended for
15 15 days after the giving of the notice. If the notice is not
16 given within 90 days after the date of termination of group
17 coverage, the time allowed for the exercise of the conversion
18 privilege shall expire at the end of the 90 days. Written
19 notice by the contract holder given to the certificate holder
20 or mailed to the certificate holder at his last known
21 address, or written notice by the insurer mailed to the
22 certificate holder at the last address furnished to the
23 insurer by the contract holder, shall be deemed full
24 compliance with the notification provisions of this
25 paragraph. A group contract issued by an insurer may provide
26 that notice of the conversion privilege and its duration
27 shall be given by the contract holder to each certificate
28 holder upon termination of his group coverage.

29 (20) If the contract holder is the employer of the
30 certificate holder, the insurer shall also give written

1 notice of termination of the group contract to any
2 organization representing the certificate holder for the
3 purpose of collective bargaining. The employer shall provide
4 to the insurer a written list of such organizations within
5 ten days after the date the policy is issued and thereafter
6 within ten days of the beginning or termination of
7 representation by the organization of any certificate holder
8 or holders by the organization, including the collective
9 bargaining unit and the group insurance contract to which the
10 request relates. There shall be no liability on the part of
11 any labor organization representing the employees of a
12 contract holder for the purposes of collective bargaining due
13 to any action it takes or fails to take as to the written
14 notice required to be given by the insurer under this
15 paragraph unless done in bad faith by the organization.
16 Compliance or noncompliance with this paragraph shall not
17 affect the rights or duties of the contract holder, insurer
18 or certificate holder as otherwise set forth in this title.

19 (21) A converted policy which is delivered outside this
20 Commonwealth may be on a form which could be delivered in the
21 other jurisdiction as a converted policy had the group policy
22 been issued in that jurisdiction.

23 § 6935. Blanket health and accident insurance.

24 (a) Required provisions.--Every blanket health and accident
25 insurance policy shall contain provisions which, in the opinion
26 of the department, are at least as favorable to the policyholder
27 and the individual insured as the following:

28 (1) A provision that the policy and the application
29 shall constitute the entire contract between the parties;
30 that all statements made by the policyholder shall, in the

1 absence of fraud, be deemed representations and not
2 warranties; and that no such statements shall be used in
3 defense to a claim under the policy, unless it is contained
4 in a written application.

5 (2) A provision that written notice of sickness or of
6 injury must be given to the insurer within 20 days after the
7 date when the sickness or injury occurred. Failure to give
8 notice within such time shall not invalidate nor reduce any
9 claim, if it is be shown not to have been reasonably possible
10 to give the notice, and that notice was given as soon as was
11 reasonably possible.

12 (3) A provision that the insurer will furnish to the
13 policyholder such forms as are usually furnished by it for
14 filing proof of loss. If such forms are not furnished before
15 the expiration of 15 days after the giving of such notice,
16 the claimant shall be deemed to have complied with the
17 requirements of the policy as to proof of loss upon
18 submitting, within the time fixed in the policy for filing
19 proof of loss, written proof covering the occurrence,
20 character and extent of the loss for which claim is made.

21 (4) A provision that in the case of claim for loss of
22 time for disability, written proof of the loss shall be
23 furnished to the insurer within 30 days after the
24 commencement of the period for which the insurer is liable;
25 that subsequent written proofs of the continuance of the
26 disability shall be furnished to the insurer at such
27 intervals as the insurer may reasonably require; and that in
28 the case of claim for any other loss written proof of loss
29 shall be furnished to the insurer within 90 days after the
30 date of the loss. Failure to furnish proof within the time

1 required shall not invalidate nor reduce any claim if it is
2 shown not to have been reasonably possible to furnish the
3 proof and that the proof was furnished as soon as was
4 reasonably possible.

5 (5) A provision that all benefits payable under the
6 policy, other than benefits for loss of time, will be payable
7 immediately upon receipt of due written proof of loss; that
8 subject to due proof of loss all accrued benefits payable
9 under the policy for loss of time will be paid not later than
10 at the expiration of each period of 30 days during the
11 continuance of the period for which the insurer is liable;
12 and that any balance remaining unpaid at the termination of
13 the period shall be paid immediately upon receipt of such
14 proof.

15 (6) A provision that the insurer, at its own expense,
16 may examine the person of the insured when and so often as it
17 may reasonably require during the pendency of claim under the
18 policy and may make an autopsy if not prohibited by law.

19 (7) A provision that no action at law or in equity shall
20 be commenced to recover under the policy prior to the
21 expiration of 60 days after written proof of loss has been
22 furnished in accordance with the requirements of the policy
23 and that no such action shall be brought after the expiration
24 of three years after the time written proof of loss is
25 required to be furnished.

26 (b) Application and certificates.--An individual application
27 shall not be required from a person covered under a blanket
28 accident or health policy or contract, nor shall it be necessary
29 for the insurer to furnish each person a certificate.

30 (c) Payment of benefits.--Except as otherwise provided in

1 this section, all benefits under any blanket health and accident
2 policy shall be payable to the person insured or his designated
3 beneficiaries or his estate. If the person insured is a minor or
4 mental incompetent, the benefits may be made payable to his
5 parent, guardian or other person actually supporting him. If the
6 entire cost of the insurance has been borne by the employer, the
7 benefits may be made payable to the employer. The policy may
8 provide that all or any portion of the indemnities provided by
9 the policy on account of hospital, nursing, medical or surgical
10 services may, at the insurer's option, be paid directly to the
11 hospital or person rendering the services; payment so made shall
12 discharge the insurer's obligation with respect to the amount of
13 insurance so paid. The policy may not require that the service
14 be rendered by a particular hospital or person.

15 § 6936. Companies authorized to write policies.

16 Any insurance company authorized to write health and accident
17 insurance in this Commonwealth may issue group, blanket or
18 franchise health and accident insurance but no such policy may
19 be issued or delivered in this Commonwealth unless a copy of the
20 form thereof has been filed in accordance with section 3515
21 (relating to approval of contracts by department).

22 SUBCHAPTER D

23 MINIMUM STANDARDS FOR INDIVIDUAL POLICIES

24 Sec.

25 6941. Short title of subchapter.

26 6942. Standards for policy provisions.

27 6943. Minimum standards for benefits.

28 6944. Outline of coverage.

29 6945. Preexisting conditions.

30 6946. Procedure regarding regulations.

1 § 6941. Short title of subchapter.

2 This subchapter shall be known and may be cited as the
3 Individual Accident and Health Insurance Minimum Standards Act.

4 § 6942. Standards for policy provisions.

5 (a) Scope of regulation.--The department shall issue
6 regulations to establish specific standards, including standards
7 of full and fair disclosure, that set forth the manner, content
8 and required disclosures for their sale for individual policies
9 of health and accident insurance and required disclosures for
10 their sale. These regulations shall be in addition to other
11 applicable laws and may cover, but need not be limited to:

12 (1) Terms of renewability.

13 (2) Initial and subsequent conditions of eligibility.

14 (3) Nonduplication of coverage provisions.

15 (4) Coverage of dependents.

16 (5) Preexisting conditions.

17 (6) Termination of insurance.

18 (7) Probationary periods.

19 (8) Limitations.

20 (9) Exceptions.

21 (10) Reductions.

22 (11) Elimination periods.

23 (12) Requirements for replacement.

24 (13) Recurrent conditions.

25 (14) Definitions of terms, including, but not limited
26 to, the following: "hospital," "accident," "sickness,"
27 "injury," "physician," "accidental means," "total
28 disability," "partial disability," "nervous disorder,"
29 "guaranteed renewable" and "noncancelable".

30 (15) Prohibited policy provisions not otherwise

1 specifically prohibited by statute which in the opinion of
2 the department are unjust, unfair or unfairly discriminatory
3 to the policyholder, subscriber, any insured or beneficiary.
4 § 6943. Minimum standards for benefits.

5 (a) Scope of regulations.--The department shall issue
6 regulations to establish minimum standards for benefits under
7 each of the following categories of coverage in policies:

8 (1) Basic hospital expense coverage.

9 (2) Basic medical-surgical expense coverage.

10 (3) Hospital confinement indemnity coverage.

11 (4) Major medical expense coverage.

12 (5) Disability income protection coverage.

13 (6) Accident only coverage.

14 (7) Specified disease or specified accident coverage.

15 (b) Permitted coverage.--Supplemental coverage shall be
16 permitted for all the categories of coverages listed in
17 subsection (a), except for specified disease or specified
18 accident coverage. This section does not preclude the issuance
19 of any policy or contract which combines two or more of the
20 categories of coverage listed in subsection (a).

21 (c) Compliance with regulations.--A policy shall not be
22 delivered or issued for delivery in this Commonwealth which does
23 not meet the prescribed minimum standards for those categories
24 of coverage listed in subsection (a) or supplemental coverage
25 under subsection (b), which are contained within the policy,
26 unless the department finds that the policy will not be unjust,
27 unfair or unfairly discriminatory to the policyholder,
28 subscriber, any insured or beneficiary. Changes to a policy
29 required by regulations promulgated pursuant to this subchapter,
30 including changes to premium rates applicable thereto, shall be

1 permitted by endorsement or rider unless the department
2 determines that the changes substantially alter the policy.

3 (d) Special approval of policies.--Notwithstanding any other
4 provision of this subchapter or regulations promulgated
5 thereunder, any policy submitted for approval which does not
6 meet the prescribed minimum standards for those categories of
7 coverage listed in subsection (a) or supplemental coverage under
8 subsection (b), which are contained within the policy may be
9 approved if, in the opinion of the department, the policy is not
10 unjust, unfair, or unfairly discriminatory to the policyholder,
11 subscriber or any insured or beneficiary.

12 § 6944. Outline of coverage.

13 (a) Requirement.--In order to provide for full and fair
14 disclosure in the sale of policies except for supplemental
15 policies sold on the debit plan, and except for riders or
16 amendments to policies, a policy shall not be delivered or
17 issued for delivery in this Commonwealth unless an outline of
18 coverage either accompanies the policy or is delivered to the
19 applicant at the time application is made.

20 (b) Regulation of form and contents.--The department shall
21 issue regulations prescribing the format and contents of the
22 outline of coverage. The outline of coverage shall include all
23 of the following, in a form understandable to a person of
24 average intelligence and education:

25 (1) A statement identifying the applicable category or
26 categories of coverage provided by the policy as prescribed
27 in section 6943 (relating to minimum standards for benefits).

28 (2) A description of the principal benefits and coverage
29 provided in the policy.

30 (3) A statement of the exceptions, reductions and

1 limitations contained in the policy.

2 (4) A statement of the renewal provisions including any
3 reservation by the insurer of a right to change premiums.

4 (5) A statement that the outline is a summary of the
5 policy issued or applied for and that the policy should be
6 consulted to determine the governing contractual provisions.

7 § 6945. Preexisting conditions.

8 Notwithstanding section 6913(c) (relating to mandatory policy
9 provisions), if an insurer elects to use a simplified
10 application form, with or without a question as to the
11 applicant's health at the time of application, but without any
12 questions concerning the insured's health history or medical
13 treatment history, the policy shall cover any loss occurring
14 after 12 months from any preexisting condition not specifically
15 excluded from coverage by terms of the policy. Except as so
16 provided, the policy shall not include any provision that would
17 permit a defense based upon preexisting conditions. Changes to
18 policies required under this section, including changes to
19 premium rates applicable thereto, shall be permitted by
20 endorsement or rider.

21 § 6946. Procedure regarding regulations.

22 All regulations promulgated under this subchapter, including
23 those under section 6943(c) (relating to minimum standards for
24 benefits), shall specify an effective date applicable to
25 policies or benefit riders delivered or issued for delivery in
26 this Commonwealth on or after the effective date, which shall
27 not be less than 365 days after their adoption or promulgation.
28 Public hearings shall be held prior to the promulgation of any
29 substantial regulation under this section or substantial change
30 thereof. The hearing shall be transcribed verbatim, and cross-

1 examination of all witnesses shall be permitted. The order
2 promulgating any such regulation shall contain findings and the
3 reasons for the regulation and copies of the order shall be
4 mailed to those appearing of record at the hearing. This section
5 does not create or permit any right of action at law or equity
6 not otherwise authorized or permitted under the law.

7 SUBCHAPTER E

8 MEDICARE SUPPLEMENT INSURANCE

9 Sec.

10 6951. Short title of subchapter.

11 6952. Definitions.

12 6953. Definitions in Medicare supplement policies.

13 6954. Prohibited policy provisions.

14 6955. Minimum benefit standards.

15 6956. Loss ratio standards.

16 6957. Required disclosures.

17 6958. Requirements for replacement.

18 6959. Regulations.

19 6960. Applicability of mandated coverages.

20 6961. Applicability of subchapter.

21 § 6951. Short title of subchapter.

22 This subchapter shall be known and may be cited as the
23 Medicare Supplement Insurance Act.

24 § 6952. Definitions.

25 The following words and phrases when used in this subchapter
26 shall have the meanings given to them in this section unless the
27 context clearly indicates otherwise:

28 "Applicant." The proposed certificate holder under a group
29 Medicare supplement policy or subscriber contract.

30 "Certificate." A certificate issued under a group Medicare

1 supplement policy, which policy has been delivered or issued for
2 delivery in this Commonwealth.

3 "Direct response certificate or policy." A certificate or
4 policy issued pursuant to the response to a direct solicitation
5 by means of mail or mass media from an insurer to an individual
6 eligible for Medicare by reason of age.

7 "Medicare." The Health Insurance for the Aged Act, Title
8 XVIII of the Social Security Act (Public Law 89-97, 42 U.S.C. §
9 1395 et seq.).

10 "Medicare supplement policy." A group policy of accident and
11 health insurance or group subscriber contract of health plan
12 corporations and nonprofit health service plans delivered or
13 issued for delivery in this Commonwealth which is advertised,
14 marketed or designed primarily to supplement coverage for the
15 hospital, medical or surgical expenses of persons eligible for
16 Medicare by reason of age. This term does not include:

17 (1) A policy or contract of one or more employers or
18 labor organizations, or of the trustees of a fund established
19 by one or more employers or labor organizations, or
20 combination thereof, for employees or former employees, or
21 combination thereof, or for members or former members, or
22 combination thereof, of the labor organizations.

23 (2) A policy or contract of any professional, trade or
24 occupational association for its members or former or retired
25 members, or combination thereof, if the association:

26 (i) is composed of individuals all of whom are
27 actively engaged in the same profession, trade or
28 occupation;

29 (ii) has been maintained in good faith for purposes
30 other than obtaining insurance; and

1 (iii) has been in existence for at least two years
2 prior to the date of its initial offering of such policy
3 or plan to its members.

4 § 6953. Definitions in Medicare supplement policies.

5 As used in any Medicare supplement policy issued under this
6 subchapter:

7 (1) "Accident," "accidental injury" and "accidental
8 means" shall be defined using "result" language and shall not
9 include words which establish an accidental means test or use
10 words such as "external, violent, visible wounds" or similar
11 words of description or characterization. The definition
12 shall not be more restrictive than the following: injury or
13 injuries, for which benefits are provided, means accidental
14 bodily injury sustained by the insured person which is the
15 direct result of an accident, independent of disease or
16 bodily infirmity or any other cause and occurrence while the
17 insurance is in force. The definition may provide that
18 injuries shall not include injuries for which benefits are
19 provided under any workmen's compensation, employers'
20 liability or similar law, or pursuant to Chapter 63 (relating
21 to motor vehicle financial responsibility), unless prohibited
22 by law, or injuries occurring while the insured person is
23 engaged in any activity pertaining to any trade, business,
24 employment or occupation for wage or profit.

25 (2) "Convalescent nursing home," "extended care
26 facility" or "skilled nursing facility" shall be defined in
27 relation to its status, facilities and available services;
28 and:

29 (i) The definition shall not be more restrictive
30 than one requiring that it:

- 1 (A) be operated pursuant to law;
- 2 (B) be primarily engaged in providing, in
3 addition to room and board accommodations, skilled
4 nursing care under the supervision of a duly licensed
5 physician;
- 6 (C) provide continuous 24-hour a day nursing
7 service by or under the supervision of a registered
8 graduate professional nurse; and
- 9 (D) maintain a daily medical record of each
10 patient.

11 (ii) The definition may provide that the term does
12 not include:

13 (A) any home, facility or part thereof used
14 primarily for rest;

15 (B) a home or facility for the aged or for the
16 care of drug addicts or alcoholics; or

17 (C) a home or facility primarily used for the
18 care and treatment of mental diseases or disorders or
19 custodial or educational care.

20 (3) "Hospital" may be defined in relation to its status,
21 facilities and available services or to reflect its
22 accreditation by the Joint Commission on Accreditation of
23 Hospitals or the American Osteopathic Association.

24 (i) The definition shall not otherwise be more
25 restrictive than one requiring that the hospital:

26 (A) be an institution operated pursuant to law;

27 (B) be primarily and continuously engaged in
28 providing the medical care and treatment of sick or
29 injured persons on an inpatient basis for which a
30 charge is made; and

1 (C) provide 24-hour nursing service by or under
2 the supervision of registered graduate professional
3 nurses.

4 (ii) The definition may state that the term does not
5 include:

6 (A) convalescent homes or convalescent, rest or
7 nursing facilities;

8 (B) facilities primarily affording custodial or
9 educational care;

10 (C) facilities for the aged, drug addicts or
11 alcoholics; or

12 (D) any military or veterans hospital or
13 soldiers home or any hospital contracted for or
14 operated by any national government or agency thereof
15 for the treatment of members or ex-members of the
16 armed forces, except for services rendered on an
17 emergency basis where a legal liability exists for
18 charges made to the individual for such services.

19 (4) "Mental or nervous disorders" shall not be defined
20 more restrictively than a definition including neurosis,
21 psychoneurosis, psychopathy, psychosis or mental or emotional
22 disease or disorder of any kind.

23 (5) "Nurses" may be defined so that the description of
24 nurse is restricted to a type of nurse, such as a registered
25 graduate professional nurse, a licensed practical nurse or a
26 licensed vocational nurse. If the words "nurse," "trained
27 nurse" or "registered nurse" are used without specific
28 instruction, then the use of those terms requires the insurer
29 to recognize the services of any individual who qualified
30 under such terminology in accordance with the law regarding

1 licensing of those professionals.

2 (6) "Physician" may be defined by including words such
3 as "duly qualified physician" or "duly licensed physician."
4 The use of such terms requires an insurer to recognize and to
5 accept, to the extent of its obligation under the contract,
6 all providers of medical care and treatment when such
7 services are within the scope of the provider's licensed
8 authority and are provided under applicable law.

9 (7) "Sickness" shall not be defined to be more
10 restrictive than the following: sickness means sickness or
11 disease of an insured person which is diagnosed or treated
12 after the effective date of insurance and while the insurance
13 is in force. The definition may exclude sickness or disease
14 for which benefits are provided under any workmen's
15 compensation, occupational disease, employers' liability or
16 similar law.

17 § 6954. Prohibited policy provisions.

18 A Medicare supplement policy shall not limit or exclude
19 coverage by type of illness, accident, treatment or medical
20 condition except to the extent they are excluded or limited by
21 Medicare. Such policies may exclude coverage for any expense to
22 the extent of any benefit available to the insured under
23 Medicare.

24 § 6955. Minimum benefit standards.

25 A policy shall not be filed with the department as a Medicare
26 supplement policy unless the policy meets or exceeds, either in
27 a single policy or, in the case of health plan corporations and
28 nonprofit health service plans, in one or more policies issued
29 in conjunction with one another, the requirements of the NAIC
30 Model Regulation to Implement the Individual Accident and

1 Sickness Insurance Minimum Standards Act, as adopted by the
2 National Association of Insurance Commissioners on June 6, 1979,
3 as it applies to Medicare supplement policies. At least the
4 following provisions and benefits shall be provided in the
5 policy:

6 (1) A Medicare supplement policy may not exclude losses
7 incurred more than six months from the effective date of
8 coverage for a preexisting condition. The policy may not
9 define a preexisting condition more restrictively than a
10 condition for which medical advice was given or treatment was
11 recommended by or received from a physician within six months
12 prior to the effective date of coverage.

13 (2) The term "Medicare benefit period" shall mean the
14 unit of time used in the Medicare program to measure use of
15 services and availability of benefits under Part A, medical
16 hospital insurance.

17 (3) The term "Medicare eligible expenses" shall mean
18 health care expenses of the kinds covered by Medicare to the
19 extent recognized as reasonable by Medicare. Payment of
20 benefits by insurers for Medicare eligible expenses may be
21 conditioned upon the same or less restrictive payment
22 conditions, including determinations of medical necessity as
23 are applicable to Medicare claims.

24 (4) Coverage shall not indemnify against losses
25 resulting from sickness on a different basis than losses
26 resulting from accidents. Coverage shall provide that
27 benefits designed to cover cost-sharing amounts under
28 Medicare shall be changed automatically to coincide with any
29 changes in the applicable Medicare deductible amount and
30 copayment percentage factors; premiums may be changed to

1 correspond with such changes.

2 (5) The Medicare supplement policy shall include all of
3 the following:

4 (i) Coverage of Part A Medicare eligible expenses
5 for hospitalization to the extent not covered by Medicare
6 from the 61st day through the 90th day in any Medicare
7 benefit period.

8 (ii) Coverage of Part A Medicare eligible expenses
9 incurred as daily hospital charges during use of
10 Medicare's lifetime hospital inpatient reserve days.

11 (iii) Upon exhaustion of all Medicare hospital
12 inpatient coverage including the lifetime reserve days,
13 coverage of 90% of all Medicare Part A eligible expenses
14 for hospitalization not covered by Medicare subject to a
15 lifetime maximum benefit of an additional 365 days.

16 (iv) Coverage of 20% of the amount of Medicare
17 eligible expenses under Part B regardless of hospital
18 confinement, subject to a maximum calendar year out-of-
19 pocket deductible of \$200 of such expenses and to a
20 maximum benefit of at least \$5,000 per calendar year.

21 (6) Insurers which make available in this Commonwealth
22 any Medicare supplement policy shall also simultaneously
23 offer to the prospective insureds an additional benefit plan
24 Medicare supplement coverage which both conforms to the terms
25 and conditions of section 6954 (relating to prohibited policy
26 provisions) and which also provides at least the following
27 coverages:

28 (i) The initial Part A deductible.

29 (ii) Skilled nursing home charges incurred in
30 addition to those covered by Medicare.

1 (iii) Coverage of 20% of eligible expenses incurred
2 under Part B of Medicare in excess of the deductible
3 amount applied to such expenses by Medicare.

4 This offer shall be given prominence in any solicitation of
5 the Medicare supplement policy benefits described in this
6 section and shall provide the prospective insured the
7 opportunity to simultaneously enroll or apply for the
8 additional benefit plan Medicare supplement coverage. The
9 description of the additional benefit plan Medicare
10 supplement coverage shall include a statement of the
11 coverages, the premium charges and any additional applicable
12 exclusions and limitations permitted for the additional
13 benefit plan Medicare supplement coverage. The additional
14 benefit plan coverage, if elected by the prospective insured
15 person, shall take effect no later than 15 days following the
16 effective date which applies to the rest of the Medicare
17 supplement coverage.

18 § 6956. Loss ratio standards.

19 The terms and premiums of Medicare supplement policies shall
20 be prepared so as to return to policyholders in the form of
21 aggregate benefits under the policy, as estimated for the entire
22 period for which rates are computed to provide coverage, on the
23 basis of incurred claims experience and earned premiums for such
24 period, and in accordance with accepted actuarial principles and
25 practices:

26 (1) at least 75% of the aggregate amount of premiums
27 collected; or

28 (2) in the case of direct certificates issued as a
29 result of solicitations of individuals through the mail or
30 mass media advertising, including both print and broadcast

1 advertising, at least 60% of the aggregate amount of premiums
2 collected.

3 § 6957. Required disclosures.

4 (a) Renewal provisions.--Each Medicare supplement policy
5 shall include a renewal, continuation or nonrenewal provision.
6 The terms of this provision shall be consistent with the type of
7 contract to be issued. The provision shall be appropriately
8 captioned, shall appear on the first page of the certificate and
9 shall clearly state the duration, where limited, of renewability
10 and the duration of the term of coverage for which the policy is
11 issued and for which it may be renewed.

12 (b) Standards for payment.--A Medicare supplement policy
13 which provides for the payment of benefits based on standards
14 described as "usual and customary," "reasonable and customary"
15 or words of similar import shall include a definition of the
16 terms and an explanation of the terms in its accompanying
17 outline of coverage.

18 (c) Preexisting condition provisions.--If a Medicare
19 supplement policy contains any limitations with respect to
20 preexisting conditions, these limitations shall appear as a
21 separate paragraph of the certificate and be labeled as
22 "Preexisting Condition Limitations."

23 (d) Right of return.--Certificates, other than those issued
24 pursuant to direct response solicitation, shall have a notice
25 prominently printed on the first page of the certificate or
26 attached thereto stating in substance that the certificate
27 holder shall have the right to return the certificate within ten
28 days of its delivery and to have the premium refunded if, after
29 examination of the certificate, the insured person is not
30 satisfied for any reason. Direct response Medicare supplement

1 certificates shall have a notice prominently printed on the
2 first page, or attached thereto, stating in substance that the
3 certificate holder shall have the right to return the
4 certificate within 30 days of its delivery and to have the
5 premium refunded if after examination the insured person is not
6 satisfied for any reason.

7 (e) Buyer's guide.--Insurers issuing accident and health
8 certificates under group policies delivered or issued for
9 delivery in this Commonwealth which provide hospital or medical
10 expense coverage on an expense incurred or indemnity basis,
11 other than incidentally, to a person eligible for Medicare by
12 reason of age, shall provide to the certificate holder a
13 Medicare supplement buyer's guide in the form consistent with
14 the then current edition of the model jointly developed by the
15 National Association of Insurance Commissioners and the Health
16 Care Financing Administration of the United States Department of
17 Health and Human Services. Delivery of the buyer's guide shall
18 be made whether or not the group policy qualifies as a Medicare
19 supplement policy. Except in the case of direct response
20 insurers, delivery of the buyer's guide shall be made at the
21 time of application, and acknowledgment of receipt of
22 certification of delivery of the buyer's guide shall be provided
23 to the insurer. Direct response insurers issuing Medicare
24 supplement policies shall deliver the buyer's guide upon
25 request, but not later than at the time the certificate is
26 delivered.

27 (f) Description of coverage.--The terms "Medicare
28 supplement," "medigap" and words of similar import shall not be
29 used unless the policy is issued in compliance with section 6955
30 (relating to minimum benefit standards).

1 (g) Outline of coverage.--Insurers issuing Medicare
2 supplement policies shall deliver an outline of coverage to the
3 applicant at the time application is made. Except in the case of
4 a direct response policy, an acknowledgment of receipt or
5 certification of delivery of the outline of coverage shall be
6 provided to the insurer. If an outline of coverage was delivered
7 at the time of application and the certificate is issued on a
8 basis which would require revision of the outline, a substitute
9 outline of coverage properly describing the certificate shall
10 accompany the certificate when it is delivered and shall contain
11 the following statement, in no less than 12-point type,
12 immediately above the company name:

13 "NOTICE: Read this outline of coverage carefully. It is
14 not identical to the outline of coverage provided upon
15 application and the coverage originally applied for has
16 not been issued."

17 The outline of coverage shall be in a form consistent with the
18 then current model adopted by the National Association of
19 Insurance Commissioners and amended to reflect changes in the
20 Medicare program.

21 § 6958. Requirements for replacement.

22 (a) Question to applicant.--Application or enrollment forms
23 shall include a question designed to elicit information as to
24 whether a certificate to be issued under a Medicare supplement
25 policy is intended to replace any other health and accident
26 insurance presently in force. A supplementary application or
27 other form to be signed by the applicant containing such a
28 question may be used.

29 (b) Notice.--Upon determining that a sale will involve
30 replacement, an insurer, other than a direct response insurer,

1 or its agent, shall furnish the applicant, prior to issuance or
2 delivery of the certificate, a notice designed to inform the
3 applicant of the essential differences in coverage on a form
4 consistent with the then current model notification form adopted
5 by the National Association of Insurance Commissioners. One copy
6 of the notice shall be retained by the applicant, and an
7 additional copy signed by the applicant shall be retained by the
8 insurer. A direct response insurer shall deliver the notice to
9 the applicant upon issuance of the certificate.

10 § 6959. Regulations.

11 (a) General rule.--Public hearings shall be held prior to
12 the promulgating of any regulations promulgated under this
13 subchapter unless the regulation is insubstantial. The order
14 promulgating the regulation shall contain findings and reasons
15 for the regulation. This section does not create or permit any
16 right or action at law or inequity not otherwise authorized by
17 law.

18 (b) Modifications required by Medicare statute.--The
19 department may promulgate regulations changing the requirements
20 of this subchapter, other than sections 6960 (relating to
21 applicability of mandated coverages) and 6961 (relating to
22 applicability of subchapter), to the extent necessary to comply
23 with changes made by Congress as to the requirements contained
24 in section 1882 of the Social Security Act (Public Law 96-26, 42
25 U.S.C. § 1395ss), as these requirements were in effect on July
26 1, 1983. These regulations shall take effect within 60 days
27 after their promulgation.

28 § 6960. Applicability of mandated coverages.

29 Coverage which is required to be included in any group or
30 blanket accident and health policy by any statute enacted on or

1 after July 1, 1983, shall not be required to be included in any
2 Medicare supplement policy, unless inclusion thereof is
3 specifically required by the statute.

4 § 6961. Applicability of subchapter.

5 This subchapter shall apply to all group health and accident
6 policies issued or renewed.

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CHAPTER 71

HEALTH CARE SERVICES MALPRACTICE

Subchapter

- A. General Provisions
- B. Arbitration Panels for Health Care
- C. Procedure in Malpractice Cases
- D. Medical Professional Liability Catastrophe Loss Fund
- E. Availability of Insurance
- F. Disciplinary Proceedings
- G. Miscellaneous Provisions

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

- 7101. Short title of chapter.
- 7102. Purpose of chapter.
- 7103. Definitions.
- 7104. Exemptions.
- 7105. Liability of nonqualifying health care providers.
- 7106. Informed consent.
- 7107. Official immunity.
- 7108. Cancellation of insurance policies.

§ 7101. Short title of chapter.

This chapter shall be known and may be cited as the Health Care Services Malpractice Act.

§ 7102. Purpose of chapter.

It is the purpose of this chapter to make available professional liability insurance at a reasonable cost and to establish a system through which a person who has sustained injury or death as a result of tort or breach of contract by a

1 health care provider can obtain a prompt determination and
2 adjudication of his claim and the determination of fair and
3 reasonable compensation.

4 § 7103. Definitions.

5 The following words and phrases when used in this chapter
6 shall have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 "Administrator." The Administrator for Arbitration Panels
9 for Health Care established under Subchapter B (relating to
10 arbitration panels for health care).

11 "Arbitration panels." The Arbitration panels for health care
12 established under Subchapter B.

13 "Claims made." Limiting or restricting the liability of the
14 insurer under the policy to those claims made or reported during
15 the period the policy is in effect and excluding coverage for
16 any claim reported subsequent to the termination of the policy
17 even when the claim arises from occurrences during the period
18 the policy is in effect.

19 "Court." The court of common pleas.

20 "Fund." The Medical Professional Liability Catastrophe Loss
21 Fund established under Subchapter D (relating to Medical
22 Professional Liability Catastrophe Loss Fund).

23 "Government." The Federal Government or the government of
24 any state, any political subdivision of a state, any
25 instrumentality of one or more states, or any agency,
26 subdivision or department of any such government, including any
27 corporation or other association organized by a government for
28 the execution of a government program and subject to control by
29 a government, or any corporation or agency established under an
30 interstate compact or international treaty.

1 "Health care provider." A primary health center or a person,
2 corporation, facility, institution or other organization
3 licensed or approved by the Commonwealth to provide health care
4 or professional medical services as a physician, a certified
5 nurse midwife, a podiatrist or a hospital, nursing home or birth
6 center, and except as to section 7141(b) (relating to
7 professional liability insurance), an officer, employee or agent
8 of any of them acting in the course and scope of his employment.

9 "Licensure board." The State Board of Medical Education and
10 Licensure, the State Board of Osteopathic Examiners, the State
11 Board of Podiatry Examiners, the Department of Public Welfare
12 and the Department of Health.

13 "Patient." A natural person who receives or should have
14 received health care from a licensed health care provider.

15 "Primary health center." A community-based nonprofit
16 corporation meeting standards prescribed by the Department of
17 Health, which provides preventive, diagnostic, therapeutic and
18 basic emergency health care by licensed practitioners who are
19 employees of the corporation or under contract to the
20 corporation.

21 "Professional liability insurance." Insurance against
22 liability on the part of a health care provider arising out of
23 any tort or breach of contract causing injury or death resulting
24 from the furnishing of medical services which were or should
25 have been provided.

26 § 7104. Exemptions.

27 Any physician who exclusively practices the specialty of
28 forensic pathology is exempt from the provisions of this
29 chapter. All health care providers who are members of the
30 Pennsylvania military forces as defined in 51 Pa.C.S. § 102

1 (relating to definitions) are exempt from the provisions of this
2 chapter while in the performance of their assigned duty in the
3 Pennsylvania military forces under orders.

4 § 7105. Liability of nonqualifying health care providers.

5 Any person rendering services normally rendered by a health
6 care provider who fails to qualify as a health care provider as
7 defined in section 7103 (relating to definitions) is subject to
8 liability without regard to this chapter.

9 § 7106. Informed consent.

10 (a) Liability of practitioner.--A physician or podiatrist
11 shall not be liable for a failure to obtain an informed consent
12 in the event of an emergency which prevents consulting the
13 patient. A physician or podiatrist shall not be liable for
14 failure to obtain an informed consent if it is established by a
15 preponderance of the evidence that furnishing the information in
16 question to the patient would have resulted in a seriously
17 adverse effect on the patient or on the therapeutic process to
18 the material detriment of the patient's health.

19 (b) Definition.--For purposes of this chapter and any action
20 described in section 7121(a) (relating to jurisdiction of
21 arbitration panel), the term "informed consent" means the
22 consent of a patient to the performance of health care services
23 by a physician or podiatrist if, prior to the consent having
24 been given, the physician or podiatrist has informed the patient
25 of the nature of the proposed procedure or treatment and of
26 those risks and alternatives to treatment or diagnosis that a
27 reasonable patient would consider material to the decision
28 whether or not to undergo treatment or diagnosis.

29 § 7107. Official immunity.

30 A cause of action for libel or slander or other liability of

1 any nature shall not arise against any member insurer, the State
2 Board of Medical Education and Licensure, the State Board of
3 Osteopathic Examiners, the State Board of Podiatry Examiners,
4 the arbitration panels, the administrator or the department, or
5 its representatives for any action taken by any of them in the
6 performance of their respective powers and duties under this
7 chapter.

8 § 7108. Cancellation of insurance policies.

9 Any termination of a professional liability insurance policy
10 by cancellation, except for suspension or revocation of the
11 insured's license or approval by the Commonwealth to provide
12 health care services or for reason of nonpayment of premium,
13 shall not be effective against the insured covered thereby,
14 unless notice of cancellation is given within 60 days after the
15 issuance of the contract of insurance against the insured
16 covered thereunder. The cancellation shall not take effect
17 unless a written notice stating the reasons for the cancellation
18 and the date and time upon which termination becomes effective
19 has been received by the department at its office. Mailing of
20 the notice to the department at its principal office address
21 shall constitute notice to the department.

22 SUBCHAPTER B

23 ARBITRATION PANELS FOR HEALTH CARE

24 Sec.

25 7111. Administrator for arbitration panels.

26 7112. Powers and duties of administrator.

27 7113. Arbitration panels for health care.

28 § 7111. Administrator for arbitration panels.

29 (a) Appointment and compensation.--There shall be within the
30 Office of General Counsel the office of Administrator for

1 Arbitration Panels for Health Care to be appointed by the
2 Governor. The salary of the administrator shall be set by the
3 Executive Board.

4 (b) Removal.--The administrator may be removed by the
5 Governor for incompetence, neglect of duty, misconduct in office
6 or other good cause to be stated in writing in the order of
7 removal.

8 § 7112. Powers and duties of administrator.

9 (a) Appointment of employees.--The administrator shall
10 appoint a secretary and such other employees as are required to
11 administer this chapter.

12 (b) Funding of arbitration panels.--The administration of
13 the arbitration panels shall be funded in part from annual fees
14 charged to each health care provider practicing in this
15 Commonwealth and payable to the administrator pursuant to
16 section 610-A of the act of April 9, 1929 (P.L.177, No.175),
17 known as The Administrative Code of 1929.

18 (c) Preparation and furnishing of documents.--The
19 administrator shall prepare, print and furnish, upon request and
20 free of charge, such blank forms and literature as are necessary
21 to facilitate and promote the efficient administration of this
22 chapter.

23 (d) Annual report.--The administrator shall submit to the
24 Governor and the General Assembly annually, on or before
25 December 1, a report of the work of the administrator's office
26 during the preceding fiscal year.

27 (e) Regulations.--The administrator shall promulgate such
28 uniform regulations as are necessary to carry out the provisions
29 of this chapter which relate to the work of the panels and shall
30 prescribe the methods and practices necessary to effectuate

1 these provisions. The regulations shall be consistent with the
2 law of this Commonwealth, including the Rules of Civil Procedure
3 and the rules of evidence. The regulations, after consultation
4 with the Secretary of Health, may include provisions for the use
5 of forms which provide for the disclosure of the nature of the
6 proposed treatment or diagnosis, risks of the proposed treatment
7 or diagnosis and alternate methods of treatment or diagnosis.

8 (f) Settlements.--The administrator may consider and approve
9 offers of settlement for fiduciaries, minors and incompetent
10 parties at any time prior to the first meeting of the
11 arbitration panel. The fund may be represented at any
12 negotiation of settlement exceeding the basic coverage insurance
13 carrier limit of liability.

14 (g) Preliminary motions.--Prior to appointment of an
15 arbitration panel chairman, the administrator may rule on any
16 preliminary motions before the panel.

17 § 7113. Arbitration panels for health care.

18 (a) Establishment of panels.--The administrator shall
19 establish and maintain a pool from which he shall select
20 arbitration panels to hear claims made under this chapter.
21 Appointments to the pool of panel members shall be made by the
22 administrator with due consideration given to persons
23 recommended by appropriate recognized professional or lay
24 organizations.

25 (b) Composition by administrator.--Each arbitration panel
26 selected by the administrator shall be composed of three
27 members, including one attorney, who shall be designated as
28 chairperson and who shall determine questions of law, one health
29 care provider and one lay person who is neither a health care
30 provider nor an attorney. The administrator may select a

1 hospital administrator, podiatrist or osteopathic physician or
2 surgeon as the health care provider panel member where the claim
3 involves a member of one of those classes of health care
4 providers.

5 (c) Challenges.--Any arbitration panel member selected by
6 the administrator shall be subject to challenge for cause by any
7 party. All challenges for cause shall be determined by the
8 administrator. Each party shall also be entitled to one
9 peremptory challenge.

10 (d) Composition by parties.--The parties shall not be
11 restricted to arbitration panels drawn from the pool. If all
12 parties mutually agree upon an arbitration panelist or
13 panelists, the panelist or panelists shall be invited to serve
14 by the administrator. A panel mutually agreed upon by the
15 parties shall be composed of three members: one attorney, one
16 health care provider and one lay person.

17 (e) Professional members.--The attorney members of the
18 arbitration panel pool shall be admitted to practice before the
19 Supreme Court of Pennsylvania. The health care provider members
20 of the arbitration panel pool who are subject to licensure shall
21 be licensed by the Commonwealth.

22 (f) Compensation and expenses.--Arbitration panel members
23 shall be paid at a daily or annual salary rate fixed by the
24 Executive Board, plus actual and necessary expenses incurred in
25 the performance of their official duties. The administrator
26 shall provide for all other necessary expenses of the
27 arbitration panels.

28 (g) Conflict of interest.--A member shall not participate in
29 a case in which he may have an interest.

PROCEDURE IN MALPRACTICE CASES

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- Sec.
- 7121. Jurisdiction of arbitration panel.
- 7122. Procedure for filing claims.
- 7123. Hearings and determinations.
- 7124. Transfer to court.
- 7125. Service of papers.
- 7126. Applicability of other law.
- 7127. Appointment of expert witnesses.
- 7128. Powers and duties of panel.
- 7129. Notice of award.
- 7130. Judicial review.
- 7131. Judgments.
- 7132. Advance payments.
- 7133. Submission of findings to licensing boards.
- 7134. Reduction of award by other benefits.
- 7135. Award of punitive damages.
- 7136. Attorney fees.

§ 7121. Jurisdiction of arbitration panel.

(a) Scope of jurisdiction.--The arbitration panel shall have concurrent original jurisdiction to hear and decide claims brought by a patient or his representative for loss or damages resulting from the performance or the failure to perform medical services. The arbitration panel shall also have concurrent original jurisdiction to hear and decide claims asserted against a nonhealth care provider who is made a party defendant with a health care provider.

(b) Jurisdictional requisites.--Cases within subsection (a) shall only be referred to an arbitration panel if:

- (1) all parties to the action stipulate to the

1 reference;

2 (2) the rules of the court authorize the reference, and
3 all conditions under those rules have been complied with; and

4 (3) all pleadings required by the Rules of Civil
5 Procedure have been filed.

6 § 7122. Procedure for filing claims.

7 A patient or his representative, having a claim described in
8 section 7121(a) (relating to jurisdiction of arbitration panel),
9 may commence proceedings under this subchapter by filing the
10 stipulation of reference, and such pleadings and fees as are
11 prescribed by the regulations promulgated by the administrator.
12 The administrator shall refer the claim to the appropriate
13 arbitration panel.

14 § 7123. Hearings and determinations.

15 Upon assignment of a claim to an arbitration panel, the panel
16 shall expeditiously hear and determine the claim in accordance
17 with the regulations promulgated by the administrator.

18 § 7124. Transfer to court.

19 (a) General rule.--If an arbitration panel is not selected
20 by the administrator within 90 days after the filing of a
21 certificate of readiness as provided for in the applicable
22 regulations, the administrator shall immediately transfer the
23 case to the court.

24 (b) Place of hearings.--Arbitration panel hearings shall be
25 conducted in the county where the cause of action arose, but
26 may, within the discretion of the administrator, be held in any
27 other place.

28 (c) Decisions.--A majority vote of the full arbitration
29 panel shall be required to decide all matters before it, except
30 that questions of law shall be decided by the member who is an

1 attorney.

2 § 7125. Service of papers.

3 Notice of all hearings and proceedings before the arbitration
4 panel, unless otherwise directed, shall be made personally or
5 given by certified mail, and proof of the mailing of notice
6 shall be prima facie evidence of service. All briefs or
7 litigation documents filed by any party with the administrator
8 or any panel shall contain a certification that, on or before
9 the day of filing, a copy of the document was served on opposing
10 counsel or on the adverse party if there is no counsel of
11 record.

12 § 7126. Applicability of other law.

13 Except as provided in this chapter, the arbitration panel is
14 bound by the law of this Commonwealth, the Rules of Civil
15 Procedure and the rules of evidence.

16 § 7127. Appointment of expert witnesses.

17 The arbitration panel may, upon the application of either
18 party or upon its own motion, appoint a disinterested and
19 qualified expert to make any necessary professional or expert
20 examination of the claimant or relevant evidentiary matter and
21 to testify as a witness with respect thereto. The expert witness
22 shall be allowed necessary expenses and a reasonable fee to be
23 fixed and paid by the arbitration panel.

24 § 7128. Powers and duties of panel.

25 The arbitration panel is authorized and empowered to:

26 (1) Examine the relevant facts to determine if a case
27 exists for recovery.

28 (2) Make findings of fact.

29 (3) Take depositions and testimony.

30 (4) Assure both parties full access to the facts.

1 (5) Make available to the parties the norms, standards
2 and criteria employed by health care providers in the
3 Professional Standards Review Organization region.

4 (6) Subpoena witnesses and administer oaths.

5 (7) Apply to the court to enforce the attendance and
6 testimony of witnesses and the production and examination of
7 books, papers and records.

8 (8) Consider and approve offers of settlement involving
9 fiduciaries, minors and incompetent parties.

10 (9) Make determinations as to liability and award of
11 damages.

12 (10) Exercise all other powers and duties conferred upon
13 it by law.

14 § 7129. Notice of award.

15 A copy of the arbitration panel's award shall be sent to each
16 party at the time it is submitted to the administrator.

17 § 7130. Judicial review.

18 (a) General rule.--Appeals from determinations made by the
19 arbitration panel shall be de novo in the court in accordance
20 with the rules regarding appeals in compulsory civil
21 arbitration, the Rules of Civil Procedure and the rules of
22 court.

23 (b) Admissibility of record.--If an appeal is taken, the
24 decision and any findings of fact of the arbitration panel shall
25 be admissible as evidence before the court, but any award of
26 damages shall not be admissible as evidence.

27 § 7131. Judgments.

28 If an appeal is not entered within the prescribed time, a
29 final judgment shall be entered by the court in accordance with
30 the rules regarding failure to appeal in compulsory civil

1 arbitration, the Rules of Civil Procedure and the rules of the
2 court.

3 § 7132. Advance payments.

4 (a) Effect on liability.--An advance payment made by the
5 defendant health care provider or his professional liability
6 insurer to or for the plaintiff in any action described in
7 section 7121(a) (relating to jurisdiction of arbitration panel)
8 shall not be deemed an admission of liability for injuries or
9 damages suffered by the plaintiff.

10 (b) Effect on damages awarded.--Any award or judgment in
11 favor of the plaintiff shall be reduced to the extent of any
12 advance payment. The advance payment shall inure to the
13 exclusive benefit of the defendant or the insurer making the
14 payment.

15 § 7133. Submission of findings to licensing boards.

16 If the arbitration panel finds that the injury or death of
17 the patient was the result in whole or in part of tort or breach
18 of contract by a health care provider, and the award is not
19 overturned on appeal, the arbitration panel shall report the
20 findings to the licensure board and the Professional Standards
21 Review Organization. The appropriate licensure board shall
22 promptly investigate the report and take such disciplinary
23 action as may be appropriate.

24 § 7134. Reduction of award by other benefits.

25 The damages awarded for a claim described in section 7121(a)
26 (relating to jurisdiction of arbitration panel) shall be reduced
27 by any public collateral source of compensation or benefits. A
28 right of subrogation is not enforceable against any benefit or
29 compensation awarded for such a claim or against any health care
30 provider or its liability insurer.

1 § 7135. Award of punitive damages.

2 If the arbitration panel finds that the injury or damage to
3 the patient was caused in whole or in part by the willful or
4 wanton misconduct of any of the defendants, the panel may award
5 such punitive damages against the defendant as may be awarded at
6 law.

7 § 7136. Attorney fees.

8 (a) Limit on contingent fees.--When a plaintiff is
9 represented by an attorney in the prosecution of his claim, the
10 plaintiff's attorney fees from any award of an arbitration panel
11 may not exceed the sum of:

12 (1) thirty percent of the first \$100,000 of the award;

13 (2) twenty-five percent of the next \$100,000; and

14 (3) twenty percent of the remaining amount.

15 (b) Per diem fee arrangements.--A plaintiff may elect to pay
16 for the attorney's services on a mutually satisfactory per diem
17 basis if this election is exercised in writing at the time of
18 employment.

19 SUBCHAPTER D

20 MEDICAL PROFESSIONAL LIABILITY CATASTROPHE

21 LOSS FUND

22 Sec.

23 7141. Professional liability insurance.

24 7142. Medical Professional Liability Catastrophe Loss Fund.

25 7143. Administration of fund.

26 7144. Liability of excess carriers.

27 7145. Licensure penalties.

28 § 7141. Professional liability insurance.

29 (a) General rule.--Every health care provider providing
30 health care or professional medical services in this

1 Commonwealth shall be subject to this subchapter and shall
2 insure his professional liability to the extent of basic
3 coverage with an insurer licensed or approved by the
4 Commonwealth or provide proof of self-insurance to the extent of
5 basic coverage in accordance with this section. Any health care
6 provider who does so may participate in the fund.

7 (b) Basic coverage.--With respect to a health care provider,
8 other than a hospital, who conducts more than 50% of his health
9 care business or practice in this Commonwealth, basic coverage
10 shall be \$100,000 per occurrence and \$300,000 per annual
11 aggregate; with respect to hospitals located in this
12 Commonwealth, basic coverage shall be \$100,000 per occurrence
13 and \$1,000,000 per annual aggregate. If the amounts which become
14 payable by the fund exceed \$20,000,000 in any year, basic
15 coverage commencing in the ensuing year shall become \$150,000
16 per occurrence and \$450,000 per annual aggregate with respect to
17 health care providers other than hospitals; with respect to
18 hospitals, basic coverage shall then become \$150,000 per
19 occurrence and \$1,000,000 per annual aggregate. If the amounts
20 which become payable by the fund exceed \$30,000,000 in any year,
21 basic coverage commencing in the ensuing year shall become
22 \$200,000 per occurrence and \$600,000 per annual aggregate with
23 respect to health care providers other than hospitals; with
24 respect to hospitals, basic coverage shall then become \$200,000
25 per occurrence and \$1,000,000 per annual aggregate.

26 (c) Foreign providers.--A health care provider who conducts
27 50% or less of his health care business or practice in the
28 Commonwealth shall insure or self-insure his professional
29 liability in the amount of \$200,000 per occurrence and \$600,000
30 per annual aggregate and shall not be required to contribute to

1 or be entitled to participate in the fund established under this
2 subchapter or in the plan set forth in Subchapter E (relating to
3 availability of insurance).

4 (d) Self-insurers.--All self-insurance plans shall be
5 submitted for approval with such information as the department
6 shall require and shall be approved by the department if it
7 finds that the plan constitutes protection equivalent to the
8 insurance requirements of a health care provider. A fee shall be
9 charged by the department to all self-insurers for examination
10 and approval of their plans. Self-insured health care providers
11 and hospitals who are otherwise exempt from this subchapter
12 shall submit the information required under section 7158
13 (relating to annual reports to department).

14 (e) Liability of carrier.--A professional liability insurer
15 shall not be liable for payment of any claim against a health
16 care provider for any loss or damages awarded in a professional
17 liability action in excess of the basic coverage for each health
18 care provider against whom an award is made unless the health
19 care provider's professional liability policy or self-insurance
20 plan provides for a higher annual aggregate limit.

21 (f) Governments.--A government may satisfy its obligations
22 pursuant to this chapter, as well as the obligations of its
23 employees to the extent of their employment, by either
24 purchasing insurance or assuming these obligations as a self-
25 insurer.

26 (g) Definition.--As used in this section the term "health
27 care business or practice" means the number of patients to whom
28 health care services are rendered by a health care provider
29 within an annual period.

30 § 7142. Medical Professional Liability Catastrophe Loss Fund.

1 (a) Creation of fund.--There shall be a contingency fund for
2 the purpose of paying all awards, judgments and settlements for
3 loss or damages against a health care provider entitled to
4 participate in the fund as a consequence of any claim for
5 professional liability brought against the provider as a
6 defendant or an additional defendant to the extent the
7 provider's share exceeds his basic coverage in effect at the
8 time of occurrence under section 7141(b) (relating to
9 professional liability insurance). This fund shall be known as
10 the Medical Professional Liability Catastrophe Loss Fund. The
11 limit of liability of the fund shall be \$1,000,000 for each
12 occurrence for each health care provider and \$3,000,000 per
13 annual aggregate for each health care provider. The fund and all
14 income from the fund shall be held in trust, deposited in a
15 segregated account and invested and reinvested by the director,
16 and shall not become a part of the General Fund of the
17 Commonwealth.

18 (b) Surcharge.--An annual surcharge shall be levied on or
19 after January 1 on all health care providers entitled to
20 participate in the fund. The surcharge shall be determined by
21 the director appointed pursuant to section 7143 (relating to
22 administration of fund) and shall be subject to the prior
23 approval of the department. The surcharge shall be the
24 percentage of the cost to each health care provider for
25 maintenance of professional liability insurance which is
26 necessary to produce an amount sufficient to reimburse the fund
27 for the payment of all claims paid and expenses incurred during
28 the preceding year and to provide an amount necessary to
29 maintain an additional \$15,000,000. Health care providers having
30 approved self-insurance plans shall be surcharged an amount

1 equal to the surcharge imposed on a health care provider of like
2 class, size, risk and kind as determined by the director.

3 (c) Computation and payment of claims.--All claims shall be
4 computed annually on August 31 for all claims which became final
5 between that date and September 1 of the preceding year. All
6 such claims shall be paid on or before December 31 following the
7 August 31 by which they became final.

8 (d) Emergency surcharge.--Notwithstanding subsection (b),
9 the department may during September of each year determine and
10 levy an emergency surcharge on all health care providers then
11 entitled to participate in the fund if the fund would be
12 exhausted by the payment in full of all claims which have become
13 final and the expenses of the office of the director. The
14 emergency surcharge shall be the percentage of the cost to each
15 health care provider for maintenance of professional liability
16 insurance which is necessary to produce an amount sufficient to
17 allow the fund to pay in full all claims determined to be final
18 as of August 31 of the year it is levied and the expenses of the
19 office of the director as of December 31 of the previous year.

20 (e) Financing.--The annual and emergency surcharges on
21 health care providers and any income realized by investment or
22 reinvestment shall constitute the sole and exclusive sources of
23 funding for the fund. Claims or expenses against the fund shall
24 not be deemed to constitute a debt of the Commonwealth or a
25 charge against the General Fund of the Commonwealth.

26 (f) Regulations and fees.--The director shall issue
27 regulations regarding the establishment and operation of the
28 fund including all procedures and the levying, payment and
29 collection of the surcharges, except that the department shall
30 issue regulations regarding the imposition of the emergency

1 surcharge. A fee shall be charged by the director to all self-
2 insurers for examination and approval of their plans.

3 § 7143. Administration of fund.

4 (a) Director.--The director of the fund shall be appointed
5 by the Governor. The salary of the director shall be fixed by
6 the Executive Board. The director may employ and fix the
7 compensation of such clerical and other assistants as are
8 necessary and may promulgate rules and regulations relating to
9 procedures for the reporting of claims to the fund. The director
10 shall be provided with adequate offices in which the records
11 shall be kept and official business shall be transacted and
12 shall also be provided with necessary office furniture and other
13 supplies.

14 (b) Powers and duties.--The director shall have the
15 following powers and duties:

16 (1) To administer the fund.

17 (2) To defend, litigate, settle or compromise any claim
18 payable by the fund, and to adjust or compromise any claim
19 payable by the fund.

20 (3) To purchase, on behalf of the fund, as much
21 insurance or reinsurance as is necessary to preserve the
22 fund.

23 (c) Claim exceeding coverage.--The basic coverage insurer or
24 self-insured provider shall promptly notify the director of any
25 case where it reasonably believes that the value of the claim
26 exceeds the basic insurer's coverage or self-insurance plan or
27 falls under subsection (e). This information shall be
28 confidential, notwithstanding the act of July 19, 1974 (P.L.486,
29 No.175), referred to as the Public Agency Open Meeting Law, and
30 the act of June 21, 1957 (P.L.390, No.212), referred to as the

1 Right-to-Know Law. Failure to so notify the director shall make
2 the basic coverage insurer or self-insured provider responsible
3 for the payment of the entire award or verdict if the fund has
4 been prejudiced by the failure of notice.

5 (d) Defense of the claim.--The basic coverage insurer or
6 self-insured provider shall be responsible to provide a defense
7 to the claim, including defense of the fund, except as provided
8 for in subsection (e). If the director has been notified in
9 accordance with subsection (c), the director may join in the
10 defense of the claim and be represented by counsel.

11 (e) Statute of limitation.--If any claim is made against a
12 health care provider subject to the provisions of this
13 subchapter more than four years after the breach of contract or
14 tort occurred which is filed within the statute of limitations,
15 the claim shall be defended and paid by the fund. If the claim
16 is made after four years because of the willful concealment by
17 the health care provider or his insurer, the fund shall have the
18 right of full indemnity, including defense costs, from the
19 health care provider or his insurer.

20 (f) Settlement.--If the basic coverage insurer or self-
21 insured provider enters into a settlement with the claimant to
22 the full extent of its liability as provided in section 7141(b)
23 (relating to professional liability insurance), it may obtain a
24 release from the claimant to the extent of its payment, which
25 payment shall have no effect upon any excess claim against the
26 fund or its duty to continue the defense of the claim. A health
27 care provider's basic coverage insurer may approve or disapprove
28 any settlement entered into by the director on behalf of its
29 insured health care provider. If the basic coverage insurer does
30 not disapprove a settlement prior to execution by the director,

1 it shall be deemed approved by the basic insurance coverage
2 carrier. If more than one health care provider defendant is
3 party to a settlement, the health care provider's basic coverage
4 insurer may approve or disapprove only that portion of the
5 settlement which is contributed on behalf of its insured health
6 care provider.

7 § 7144. Liability of excess carriers.

8 An insurer providing excess professional liability insurance
9 to any health care provider eligible for coverage under the fund
10 shall not be liable for payment of any claim against a health
11 care provider for any loss or damages except those in excess of
12 the limits of liability provided by the fund. A carrier
13 providing excess professional liability insurance for a health
14 care provider covered by the fund shall not be liable for any
15 loss resulting from the insolvency or dissolution of the fund.

16 § 7145. Licensure penalties.

17 The failure of any health care provider to comply with any of
18 the provisions of section 7141 (relating to professional
19 liability insurance) or 7142 (relating to Medical Professional
20 Liability Catastrophe Loss Fund) or any of the regulations
21 issued by the director shall result in the suspension or
22 revocation of the health care provider's license by the
23 licensure board.

24 SUBCHAPTER E

25 AVAILABILITY OF INSURANCE

26 Sec.

27 7151. Plan to assure availability of insurance.

28 7152. Participation in plan.

29 7153. Plan operation, rates and deficits.

30 7154. Authority of department.

- 1 7155. Financing and payment of premiums.
2 7156. Selection of insurer to administer plan.
3 7157. Approval of policies on claims made basis.
4 7158. Annual reports to department.
5 7159. Studies and recommendations.
6 7160. Coverage by joint underwriting association.
7 7161. Applicability of certain provisions.
8 § 7151. Plan to assure availability of insurance.

9 The department shall establish and implement or approve and
10 supervise a plan assuring that professional liability insurance
11 will be conveniently and expeditiously available, subject only
12 to payment or provisions for payment of the premium, to those
13 providers who cannot conveniently obtain insurance through
14 ordinary methods at rates not in excess of those applicable to
15 similarly situated health care providers under the plan. The
16 plan may provide reasonable means for the transfer of health
17 care providers insured thereunder into the ordinary insurance
18 market, at the same or lower rates pursuant to regulations
19 established by the department. The plan may be implemented by a
20 joint underwriting association that results in all applicants
21 being conveniently afforded access to the insurance coverage on
22 reasonable and not unfairly discriminatory terms.

23 § 7152. Participation in plan.

24 The plan shall consist of all insurers authorized to write
25 insurance pursuant to section 3302(c)(4) and (11) (relating to
26 authorized classes of insurance). The plan shall provide for
27 equitable apportionment of the financial burdens of insurance
28 provided to applicants under the plan and the costs of operation
29 of the plan among all participating insurers writing such
30 insurance coverage.

1 § 7153. Plan operation, rates and deficits.

2 (a) Cooperation of insurers.--Subject to the supervision and
3 approval of the department, insurers may consult and agree with
4 each other and with other appropriate persons as to the
5 organization, administration and operation of the plan and as to
6 rates and rate modifications for insurance coverages provided
7 under the plan. Rates and rate modifications adopted or changed
8 for insurance coverages provided under the plan shall be
9 approved by the department in accordance with Chapter 19
10 (relating to insurance rates), except as inconsistent with
11 subsection (c).

12 (b) Deficit of joint underwriting association.--If the joint
13 underwriting association suffers a deficit in any year, its
14 board of directors shall so certify to the director of the fund
15 and the department. This certification shall be subject to the
16 review and approval of the department. Within 60 days following
17 the certification and approval the director of the fund shall
18 make sufficient payment to the association to compensate for the
19 deficit. A deficit shall exist whenever the sum of the earned
20 premiums collected by the association and the investment income
21 therefrom is exhausted by virtue of payment of or allocation for
22 the association's necessary administrative expenses, taxes,
23 losses, loss adjustment expenses and reserves, including
24 reserves for losses incurred and reported, losses incurred but
25 not reported, loss adjustment expenses and unearned premiums.

26 (c) Premium increase.--Within 60 days after the
27 certification that the association has suffered a deficit, the
28 board of directors of the association shall file with the
29 department and the department shall approve a premium increase
30 sufficient to generate the requisite income to:

1 (1) reimburse the fund for any payment made by the fund
2 to compensate for the deficit; and

3 (2) increase premiums to a level actuarially sufficient
4 to avoid an operating deficit by the association during the
5 following 12 months.

6 The association shall reimburse the fund with interest at a rate
7 equal to that earned by the fund on its invested assets within
8 one year of any payment made by the fund as compensation for any
9 deficit incurred by the association.

10 § 7154. Authority of department.

11 (a) General rule.--To carry out the objectives of this
12 subchapter, the department may enter into agreements with other
13 governmental or private entities and individuals and form and
14 operate or authorize the formation and operation of bureaus and
15 other legal entities.

16 (b) Powers with respect to private market.--If the private
17 insurance market unfairly discriminates against higher risk
18 physicians by denying professional liability insurance coverage
19 to 50% or more of all physicians in insurance rating class 3, 4
20 or 5 or their equivalents, the department, after notice in the
21 Pennsylvania Bulletin and public hearings, may declare that the
22 plan established under this subchapter shall be the exclusive
23 source of professional liability insurance for health care
24 providers in this Commonwealth. The department may dissolve the
25 plan if it determines that the plan is no longer necessary and
26 that an adequate market will be maintained for professional
27 liability insurance for health care providers by the private
28 insurance market. The department may thereafter reestablish the
29 plan if it finds that the private industry has failed to provide
30 an adequate market for professional liability insurance by

1 denying professional liability insurance coverage to 50% or more
2 of all rating class 3, 4 or 5 or their equivalents, and may
3 declare it the sole and exclusive source of such insurance under
4 the procedure set forth in this subsection.

5 § 7155. Financing and payment of premiums.

6 The plan shall assure that there is available through the
7 private sector or otherwise, to all applicants, adequate premium
8 financing or provision for the installment payment of premiums
9 subject to customary terms and conditions.

10 § 7156. Selection of insurer to administer plan.

11 The department may select an authorized insurer to administer
12 any plan established pursuant to this article.

13 § 7157. Approval of policies on claims made basis.

14 The department shall not approve a policy written on a claims
15 made basis by any insurer doing business in this Commonwealth
16 unless the insurer guarantees to the department the continued
17 availability of suitable liability protection for health care
18 providers subsequent to the discontinuance of professional
19 practice by the health care provider or the sooner termination
20 of the insurance policy by the insurer or the health care
21 provider for as long as there is a reasonable probability of a
22 claim for injury for which the health care provider may be held
23 liable.

24 § 7158. Annual reports to department.

25 The plan shall report to the department annually on a date
26 and on a form prescribed by the department the total amount of
27 premium dollars collected, the total amount of claims paid and
28 expenses incurred therewith, the total amount of reserve set
29 aside for future claims, the nature and substance of each claim,
30 the date and place in which each claim arose, the amounts paid,

1 if any, the disposition of each claim and such additional
2 information as the department requires.

3 § 7159. Studies and recommendations.

4 The plan shall conduct studies and review member records for
5 the purpose of determining the causes of patient compensation
6 claims and make recommendations for legislative, regulatory and
7 other changes necessary to reduce the frequency and severity of
8 such claims.

9 § 7160. Coverage by joint underwriting association.

10 (a) General rule.--The joint underwriting association shall
11 offer basic coverage insurance to all professional corporations,
12 professional associations and partnerships entirely owned by
13 health care providers who cannot conveniently obtain insurance
14 through ordinary methods at rates not in excess of those
15 applicable to those similarly situated.

16 (b) Excess coverage.--If a professional corporation,
17 professional association or partnership entirely owned by health
18 care providers elects to be covered by basic coverage insurance,
19 and pays the annual surcharge as required by section 7142
20 (relating to Medical Professional Liability Catastrophe Loss
21 Fund), it shall be entitled to excess coverage from the fund as
22 provided in Subchapter D (relating to Medical Professional
23 Liability Catastrophe Loss Fund).

24 (c) Participation requirement.--Any professional
25 corporation, professional association or partnership which
26 acquires basic coverage insurance from the joint underwriting
27 association pursuant to subsection (a) or from an authorized
28 insurer shall participate in and contribute to the fund.

29 § 7161. Applicability of certain provisions.

30 Any professional corporation, professional association or

1 partnership which participates in or contributes to the fund
2 shall be subject to all other provisions of this chapter.

3 SUBCHAPTER F

4 DISCIPLINARY PROCEEDINGS

5 Sec.

6 7171. Investigations.

7 7172. Hearings.

8 7173. Decisions of hearing examiners.

9 7174. Evidence.

10 7175. Review and decision by licensing boards.

11 7176. Disposition of certain moneys.

12 § 7171. Investigations.

13 The State Board of Medical Education and Licensure, the State
14 Board of Osteopathic Examiners and the State Board of Podiatry
15 Examiners shall employ such qualified investigators and
16 attorneys as are necessary to implement their authority to
17 revoke, suspend, limit or otherwise regulate the licenses of
18 physicians; issue reprimands or impose fines; require refresher
19 educational courses; or require licensees to submit to medical
20 treatment.

21 § 7172. Hearings.

22 (a) Appointment of hearing examiners.--The State Board of
23 Medical Education and Licensure, the State Board of Osteopathic
24 Examiners and the State Board of Podiatry Examiners shall
25 appoint, with the approval of the Governor, such hearing
26 examiners as shall be necessary to conduct hearings in
27 accordance with the disciplinary authority granted by the act of
28 July 20, 1974 (P.L.551, No.190), known as the Medical Practice
29 Act of 1974, the act of October 5, 1978 (P.L.1109, No.261),
30 known as the Osteopathic Medical Practice Act, and the act of

1 March 2, 1956 (1955 P.L.1206, No.375), known as the Podiatry Act
2 of 1956.

3 (b) Regulations.--The State Board of Medical Education and
4 Licensure, the State Board of Osteopathic Examiners or the State
5 Board of Podiatry Examiners may promulgate regulations with
6 respect to the powers and duties of the hearing examiners
7 appointed under this section.

8 (c) Powers of hearing examiners.--The hearing examiners
9 shall have the power to conduct hearings in accordance with the
10 regulations of the State Board of Medical Education and
11 Licensure, the State Board of Osteopathic Examiners or the State
12 Board of Podiatry Examiners to administer oaths and to issue
13 subpoenas requiring the attendance and testimony of individuals
14 or the production of pertinent books, records, documents and
15 papers by persons whom they believe to have information relevant
16 to any matter pending before the examiner.

17 § 7173. Decisions of hearing examiners.

18 The hearing examiner shall hear evidence submitted and
19 arguments of counsel with reasonable dispatch and shall promptly
20 record his decision, including findings of fact. A copy of the
21 decision shall immediately be sent to the State Board of Medical
22 Education and Licensure, the State Board of Osteopathic
23 Examiners or the State Board of Podiatry Examiners and to
24 counsel of record, or the parties if not represented.

25 § 7174. Evidence.

26 In all hearings proof may be made by oral testimony or by
27 deposition or interrogatories. Depositions shall be taken in the
28 manner and upon the notice required by the rules for taking
29 depositions in civil cases and may be introduced into evidence
30 without regard to the availability of the witness to testify at

1 the time of trial. Any witness, however, may be subpoenaed by
2 any party to the controversy to testify pursuant to the rules
3 appropriate to civil actions and shall be considered to be the
4 witness of the party who offered the deposition.

5 § 7175. Review and decision by licensing boards.

6 (a) Review.--If application for review is made to the State
7 Board of Medical Education and Licensure, the State Board of
8 Osteopathic Examiners or the State Board of Podiatry Examiners
9 within 20 days from the date of any decision made as a result of
10 a hearing held by a hearing examiner, the board shall review the
11 evidence, and may hear argument and additional evidence.

12 (b) Decision.--As soon as practicable, the State Board of
13 Medical Education and Licensure, the State Board of Osteopathic
14 Examiners or the State Board of Podiatry Examiners shall make a
15 decision including findings of facts and shall send a copy
16 thereof to each of the parties to the dispute.

17 § 7176. Disposition of certain moneys.

18 All fees, charges and fines:

19 (1) collected under the act of July 20, 1974 (P.L.551,
20 No.190), known as the Medical Practice Act of 1974, are
21 specifically appropriated for the exclusive use by the State
22 Board of Medical Education and Licensure in carrying out the
23 provisions of this subchapter;

24 (2) collected under the act of October 5, 1978
25 (P.L.1109, No.261), known as the Osteopathic Medical Practice
26 Act, are specifically appropriated for the exclusive use by
27 the State Board of Osteopathic Examiners in carrying out the
28 provisions of this subchapter; or

29 (3) collected under the provisions of the act of March
30 2, 1956 (1955 P.L.1206, No.375), known as the Podiatry Act of

1 1956, are specifically appropriated for the exclusive use by
2 the State Board of Podiatry Examiners in carrying out the
3 provisions of this subchapter.

4 SUBCHAPTER G

5 MISCELLANEOUS PROVISIONS

6 Sec.

7 7181. Existing contract provisions.

8 7182. Joint committee.

9 § 7181. Existing contract provisions.

10 Every express contract between a patient and health care
11 provider in existence on January 13, 1976, containing provisions
12 inconsistent with the terms and provisions of this chapter,
13 remains unimpaired and effective as to all parties until the
14 contract expires or is rescinded by law or the mutual agreement
15 of the parties.

16 § 7182. Joint committee.

17 There shall be a committee consisting of the commissioner as
18 chairman, the Secretary of Health and two members of the Senate,
19 one member of each party, to be appointed by the President pro
20 tempore of the Senate and two members of the House of
21 Representatives, one member of each party, to be appointed by
22 the Speaker of the House of Representatives. The committee shall
23 study the distribution of professional liability insurance costs
24 as among the various classes of physicians and health care
25 providers and shall report its findings and recommendations to
26 the General Assembly. The committee shall also study all phases
27 and the financial impact of the operations of the fund. The
28 committee shall study the provisions, application and operation
29 of this chapter to determine if any changes in the law are
30 necessary or advisable. This study shall include consideration

1 of the advisability and potential effect of the application of
2 this chapter to mental health-mental retardation facilities. The
3 committee shall annually report on this study on or before July
4 1.

5 CHAPTER 73

6 HEALTH MAINTENANCE ORGANIZATIONS

7 Subchapter

8 A. General Provisions

9 B. Operation and Regulation

10 SUBCHAPTER A

11 GENERAL PROVISIONS

12 Sec.

13 7301. Short title of chapter.

14 7302. Purpose of chapter.

15 7303. Definitions.

16 7304. Applicability of chapter.

17 7305. Applicability of other law.

18 7306. Exemption from taxation.

19 7307. Regulations.

20 § 7301. Short title of chapter.

21 This chapter shall be known and may be cited as the Health
22 Maintenance Organization Act.

23 § 7302. Purpose of chapter.

24 The purpose of this chapter is to permit and encourage the
25 formation and regulation of health maintenance organizations and
26 to authorize the Department of Health to provide technical
27 advice and assistance to corporations desiring to establish,
28 operate and maintain a health maintenance organization to the
29 end that increased competition and consumer choice offered by
30 diverse health maintenance organizations can constructively

1 serve to advance the purposes of quality assurance, cost-
2 effectiveness and access.

3 § 7303. Definitions.

4 The following words and phrases when used in this chapter
5 shall have the meanings given to them in this section unless the
6 context clearly indicates otherwise:

7 "Basic health services." Those health services, including as
8 a minimum, but not limited to, emergency care, inpatient
9 hospital and physician care, ambulatory physician care and
10 outpatient and preventive medical services.

11 "Direct provider." An individual who is a direct provider of
12 health care services under a benefit plan of a health
13 maintenance organization or an individual whose primary current
14 activity is the administration of health facilities in which
15 such care is provided. An individual shall not be considered a
16 direct provider of health care solely because the individual is
17 a member of the governing body of a health-related organization.

18 "Health maintenance organization." An organized system which
19 combines the delivery and financing of health care and which
20 provides basic health services to voluntarily enrolled
21 subscribers for a fixed prepaid fee.

22 § 7304. Applicability of chapter.

23 (a) Unrelated activities.--Any requirements or privileges
24 granted under this chapter shall apply exclusively to that
25 portion of business or activities which reasonably relates to
26 the establishment, maintenance and operation of a health
27 maintenance organization pursuant to Subchapter B (relating to
28 operation and regulation).

29 (b) Prior authorization.--Any health maintenance
30 organization program approved by the department or the

1 Department of Health and operating under Chapter 75 (relating to
2 hospital plan corporations) or 77 (relating to professional
3 health services plan corporations) or under any statute
4 superseded thereby, prior to February 17, 1981, may continue to
5 operate thereunder.

6 § 7305. Applicability of other law.

7 (a) Exemptions from general insurance law.--Except as
8 otherwise provided in this chapter, a health maintenance
9 organization operating under Subchapter B (relating to operation
10 and regulation) is not subject to the present law of this
11 Commonwealth relating to insurance corporations engaged in the
12 business of insurance nor to any statute hereafter enacted
13 relating to the business of insurance unless the statute is
14 specifically made applicable by its terms. In the case of a
15 health maintenance organization established, operated and
16 maintained by a corporation, this exemption shall apply only to
17 the operations and subscribers of the health maintenance
18 organization.

19 (b) Inclusions.--All health maintenance organizations are
20 subject to Chapter 15 (relating to unfair insurance practices).
21 Any rehabilitation, liquidation or conservation of a health
22 maintenance organization shall be deemed to be the
23 rehabilitation, liquidation or conservation of an insurance
24 company and shall be conducted under the supervision of the
25 department under Chapter 39 (relating to suspension of business
26 and dissolution) and other applicable law.

27 § 7306. Exemption from taxation.

28 Every health maintenance organization established, maintained
29 and operated by a corporation not-for-profit shall be deemed a
30 charitable and benevolent institution, and its income, funds,

1 investments and property shall be exempt from taxation by the
2 Commonwealth or its political subdivisions.

3 § 7307. Regulations.

4 The department and the Department of Health shall promulgate
5 reasonable regulations as necessary to effectuate the purposes
6 and provisions of this chapter.

7 SUBCHAPTER B

8 OPERATION AND REGULATION

9 Sec.

10 7321. Scope of authorization.

11 7322. Certificates of authority.

12 7323. Foreign health maintenance organizations.

13 7324. Filing of rates and contract forms.

14 7325. Reports and examinations.

15 7326. Contracts.

16 7327. Services performed outside service area.

17 7328. Additional requirements.

18 7329. Penalties.

19 § 7321. Scope of authorization.

20 (a) General rule.--Notwithstanding any law to the contrary,
21 any corporation may establish, maintain and operate a health
22 maintenance organization upon receipt of a certificate of
23 authority to do so under this subchapter.

24 (b) Required services.--The health maintenance organization
25 shall:

26 (1) Provide basic health services, either directly or
27 through arrangements with other persons, to enrolled
28 subscribers.

29 (2) Provide physicians' services:

30 (i) directly through physicians who are employees of

1 the organization;

2 (ii) under arrangements with one or more groups of
3 physicians, organized on a group practice or individual
4 practice basis, under which each such group is reimbursed
5 for its services primarily on the basis of an aggregate
6 fixed sum or on a per capita basis, regardless of whether
7 the individual physician members of any such group are
8 paid on a fee-for-service or other basis; or

9 (iii) under similar arrangements which are found by
10 the secretary to provide adequate financial incentives
11 for the provision of quality and cost-effective care.

12 § 7322. Certificates of authority.

13 (a) Application for certificate.--Every application for a
14 certificate of authority under this subchapter shall be made to
15 the department and the Department of Health in writing and shall
16 be in such form and contain such information as the regulations
17 of the department and the Department of Health shall require.

18 (b) Criteria for issuance.--A certificate of authority shall
19 be jointly issued by order of the department and the Department
20 of Health when the following requirements are met:

21 (1) The Department of Health finds and determines that
22 the applicant:

23 (i) has demonstrated the potential ability to assure
24 both availability and accessibility of adequate personnel
25 and facilities in a manner enhancing availability,
26 accessibility and continuity of services;

27 (ii) has arrangements for an ongoing quality of
28 health care assurance program; and

29 (iii) has appropriate mechanisms whereby the health
30 maintenance organization will effectively provide or

1 arrange for the provision of basic health care services
2 on a prepaid basis.

3 (2) The department finds and determines that the
4 applicant has a reasonable plan to operate the health
5 maintenance organization in a financially sound manner and is
6 reasonably expected to meet its obligations to enrollees and
7 prospective enrollees. The department may require by
8 regulation a deposit of cash, a guaranty or the maintenance
9 of minimum restricted reserves, to assure that the
10 obligations to subscribers will be performed. In making the
11 determination as to qualification for the certificate, the
12 department may consider the following:

13 (i) The adequacy of working capital and funding
14 sources.

15 (ii) Arrangements for insuring the payment of the
16 cost of health care services or the provision for
17 automatic applicability of an alternative coverage in the
18 event of discontinuance of the health maintenance
19 organization.

20 (iii) Any agreement with providers of health care
21 services whereby they assume financial risk for the
22 provision of services to subscribers.

23 (c) Disposition of applications.--Within 90 days of receipt
24 of a completed application for a certificate of authority, the
25 department and the Department of Health shall jointly either
26 approve the application and issue a certificate of authority or
27 disapprove the application and specify in writing the reasons
28 for the disapproval. Any disapproval of an application may be
29 appealed in accordance with Title 2 (relating to administrative
30 law and procedure).

1 (d) Exclusions.--Certificates of authority shall not be
2 required of:

3 (1) Any health maintenance organization offered by an
4 employer for the exclusive enrollment of his employees or by
5 a union for the sole use of its members.

6 (2) Any plan, program or service offered by an employer
7 for the prevention of disease among his employees.

8 § 7323. Foreign health maintenance organizations.

9 (a) Authorization.--A health maintenance organization
10 approved and regulated under the law of another state may be
11 authorized by issuance of a certificate of authority to do
12 business in this Commonwealth by satisfying the department and
13 the Department of Health that it is fully and legally organized
14 under the law of its state and that it complies with all
15 requirements for health maintenance organizations organized in
16 this Commonwealth.

17 (b) Waivers.--The department and the Department of Health
18 may waive or modify the provisions of this chapter under which
19 they have authority to act, if they determine that the
20 provisions are not appropriate to a particular health
21 maintenance organization of another state and that the waiver or
22 modification will be consistent with the purposes and provisions
23 of this chapter and will not result in unfair discrimination in
24 favor of the health maintenance organization of another state.

25 (c) Reciprocal agreements.--The department and the
26 Department of Health shall develop with other states reciprocal
27 licensing agreements concerning the licensure of health
28 maintenance organizations which permit the department and the
29 Department of Health to accept audits, inspections and reviews
30 of agencies from other states to determine whether health

1 maintenance organizations licensed in other states meet the
2 requirements of this Commonwealth.

3 § 7324. Filing of rates and contract forms.

4 All rates charged subscribers or groups of subscribers by a
5 health maintenance organization and the form and content of all
6 contracts between a health maintenance organization and its
7 subscribers or groups of subscribers, all rates of payment to
8 hospitals made by a health maintenance organization pursuant to
9 contracts provided for in this subchapter, budgeted acquisition
10 costs in connection with the solicitation of subscribers and the
11 certificates issued by a health maintenance organization
12 representing its agreements with subscribers shall, at all
13 times, be on file with the department and shall be deemed
14 approved unless explicitly rejected within 60 days of filing.
15 These filings shall be made to the department in such form, and
16 shall set forth such information, as the department may require
17 to carry out the provisions of this chapter. Any disapproval of
18 a filing by the department may be appealed in accordance with
19 Title 2 (relating to administrative law and procedure).

20 § 7325. Reports and examinations.

21 (a) Annual reports.--The corporation shall, on or before
22 March 1 of each year, file with the department a statement,
23 verified by at least two of the principal officers of the
24 corporation, summarizing its financial activities during the
25 preceding calendar or fiscal year and showing its financial
26 condition at the close of that calendar or fiscal year. The
27 statement shall be in such form and shall contain such matter as
28 the department shall prescribe.

29 (b) Examinations and special reports.--The financial affairs
30 and status of every such corporation shall be examined by the

1 department not less frequently than once in every three years.
2 For this purpose the department shall be entitled to the aid and
3 cooperation of the officers and employees of the corporation and
4 shall have convenient access to all records and documents that
5 relate to the financial affairs of the corporation. The
6 department may examine under oath the officers, agents,
7 employees and subscribers for the health services of the
8 corporation, and all other persons having a substantial part in
9 the business of the corporation, in relation to its financial
10 affairs and financial condition. The department may at any time,
11 without making this examination, call on the corporation for a
12 written report, authenticated by at least two of its principal
13 officers, concerning the financial affairs and condition of the
14 corporation.

15 (c) Financial records.--A corporation shall maintain its
16 financial records in such a manner that the revenues and
17 expenses associated with the establishment, maintenance and
18 operation of its prepaid health care delivery system under this
19 subchapter are identifiable and distinct from other activities
20 it engages in which are not directly related thereto.

21 (d) Other records.--The secretary shall have convenient
22 access to all documents that relate to the business of the
23 corporation, other than financial.

24 § 7326. Contracts.

25 (a) Health service contracts.--Contracts enabling the
26 corporation to provide the services authorized under section
27 7321 (relating to scope of authorization) made with hospitals
28 and practitioners of medical, dental and related services shall
29 be filed with the Department of Health. The Department of Health
30 may have the power to require immediate renegotiation of such

1 contracts whenever it determines that they provide for excessive
2 payments, or that they fail to include reasonable incentives for
3 cost control, or that they otherwise substantially and
4 unreasonably contribute to escalation of the costs of providing
5 health care services to subscribers or that they are otherwise
6 inconsistent with the purposes of this chapter.

7 (b) Administrative contracts.--A health maintenance
8 organization may reasonably contract with any person for the
9 performance on its behalf of other necessary functions,
10 including, but not limited to, marketing, enrollment and
11 administration, and may contract with an insurance company
12 authorized to do an accident and health business in this
13 Commonwealth or a hospital plan corporation or a professional
14 health service corporation for the provision of insurance or
15 indemnity or reimbursement against the cost of health care
16 services provided by the health maintenance organization as it
17 deems necessary. These contracts shall be filed with the
18 department.

19 (c) Third-party payment contracts.--A health maintenance
20 organization established under this subchapter may receive and
21 accept from governmental or private agencies payments covering
22 all or part of the cost of subscriptions to provide its
23 services, facilities, appliances, medicines or supplies.
24 § 7327. Services performed outside service area.

25 If a subscriber entitled to services provided by the
26 corporation necessarily incurs expenses for such services while
27 outside the service area, the health maintenance organization to
28 which the person is a subscriber may, if satisfied that the
29 services were necessary and were such as the subscriber would
30 have been entitled to under similar circumstances in the service

1 area, reimburse the subscriber or pay on his behalf all or part
2 of the reasonable expenses incurred for the services. The
3 decision for reimbursement shall be subject to review by the
4 department at the request of a subscriber.

5 § 7328. Additional requirements.

6 (a) Board of directors.--At least one-third of the
7 membership of the board of directors of any health maintenance
8 organization authorized under this subchapter shall be selected
9 from the subscribers of the organization. The board of directors
10 shall be elected in the manner stated in the corporation's
11 charter or bylaws.

12 (b) Solicitors and agents.--Solicitors or agents compensated
13 directly or indirectly by any corporation subject to this
14 subchapter shall meet such prerequisites as the department by
15 regulation shall require.

16 (c) Grievance procedure.--A health maintenance organization
17 shall establish and maintain a grievance resolution system
18 satisfactory to the Department of Health whereby the complaints
19 of its subscribers shall be acted upon promptly and
20 satisfactorily.

21 (d) Optometric care.--If a health maintenance organization
22 offers eye care which is within the scope of the practice of
23 optometry, it shall make optometric care available to its
24 subscribers, and shall make the same reimbursement whether the
25 service is provided by an optometrist or a physician.

26 § 7329. Penalties.

27 (a) Grounds.--The department or the Department of Health may
28 suspend or revoke any certificate of authority issued to a
29 health maintenance organization under this subchapter, or impose
30 a penalty of not more than \$1,000 for each unlawful act

1 committed, if they find that any of the following conditions
2 exist:

3 (1) The health maintenance organization is providing
4 inadequate or poor quality care, thereby creating a threat to
5 the health and safety of its subscribers.

6 (2) The health maintenance organization is unable to
7 fulfill its contractual obligations to its subscribers.

8 (3) The health maintenance organization or any person on
9 its behalf has advertised its services in an untrue,
10 misrepresentative, misleading, deceptive or unfair manner.

11 (4) The health maintenance organization has otherwise
12 failed to substantially comply with this chapter.

13 (b) Procedure.--Before the department or the Department of
14 Health, whichever is appropriate, takes any action under
15 subsection (a), it shall give written notice to the health
16 maintenance organization accused of violating the law, stating
17 specifically the nature of the alleged violation and fixing a
18 time and place, at least ten days thereafter, when a hearing of
19 the matter shall be held. The hearing procedure and appeals from
20 decisions of the department or the Department of Health shall be
21 as provided in Title 2 (relating to administrative law and
22 procedure).

23 CHAPTER 74

24 CONTINUING CARE PROVIDERS

25 Sec.

26 7401. Short title of chapter.

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20 § 7401. Short title of chapter.

21 This chapter shall be known and may be cited as the
22 Continuing Care Provider Registration and Disclosure Act.

23 § 7402. Purpose of chapter.

24 The General Assembly recognizes that continuing care
25 communities have become an important and necessary alternative
26 for the long-term residential social and health maintenance
27 needs for many of the elderly citizens of this Commonwealth. The
28 General Assembly finds and declares that tragic consequences can
29 result to citizens of this Commonwealth when a provider of
30 services under a continuing care agreement becomes insolvent or

1 unable to provide responsible care. The General Assembly
2 recognizes the need for full disclosure with respect to the term
3 of agreements between prospective residents and the provider and
4 the operations of such providers. Accordingly, the General
5 Assembly has determined that these providers should be regulated
6 in accordance with the provisions of this chapter. The
7 provisions of this chapter shall be the minimum requirements to
8 be imposed upon any person or organization offering or providing
9 continuing care as set forth in this chapter.

10 § 7403. Definitions.

11 The following words and phrases when used in this chapter
12 shall have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Continuing care." The furnishing to an individual, other
15 than an individual related by consanguinity or affinity to the
16 person furnishing such care, of board and lodging together with
17 nursing services, medical services or other health-related
18 services, regardless of whether or not the lodging and services
19 are provided at the same location and pursuant to an agreement
20 effective for the life of the individual or for a period in
21 excess of one year, including mutually terminable contracts and
22 in consideration of the payment of an entrance fee with or
23 without other periodic charges.

24 "Entrance fee." An initial or deferred transfer to a
25 provider of a sum of money or other property made or promised to
26 be made as full or partial consideration for acceptance of a
27 specified individual as a resident in a facility. The term does
28 not include a fee which is less than the sum of the regular
29 periodic charges for one year of residence.

30 "Facility." The place or places in which a person undertakes

1 to provide continuing care to an individual.

2 "Living unit." A room, apartment, cottage or other area
3 within a facility set aside for the exclusive use or control of
4 one or more identified individuals.

5 "Manager." A person who operates a facility for the
6 provider.

7 "Provider." A person undertaking to provide continuing care
8 in a facility. If the provider is a corporation, partnership or
9 association, the term includes persons operating not-for-profit
10 as well as for-profit.

11 "Resident." An individual entitled to receive continuing
12 care in a facility.

13 "Solicit." All actions of a provider or manager in seeking
14 to have individuals residing in this Commonwealth pay an
15 application fee and enter into a continuing care agreement by
16 any means, including, but not limited to, personal, telephone or
17 mail communication or any other communication directed to and
18 received by any individual in this Commonwealth and any
19 advertisements in any media distributed or communicated by any
20 means to individuals in this Commonwealth.

21 § 7404. Certificates of authority.

22 (a) General rule.--A provider shall not engage in the
23 business of providing continuing care in this Commonwealth
24 without a certificate of authority therefor obtained from the
25 department as provided in this chapter.

26 (b) Filing.--The application for a certificate of authority
27 shall be filed with the department by the provider on forms
28 prescribed by the department and shall include all information
29 required by the department pursuant to regulations promulgated
30 under this chapter, including, but not limited to, the

1 disclosure statement meeting the requirements of this chapter.

2 (c) Approval or rejection of applications.--Upon receipt of
3 the application for a certificate of authority in proper form,
4 the department shall, within ten business days, issue a notice
5 of filing to the applicant. Within 60 days of the notice of
6 filing, the department shall enter an order issuing the
7 certificate of authority or rejecting the application.

8 (d) Defective application.--If the department determines
9 that any of the requirements of this chapter have not been met,
10 the department shall notify the applicant that the department
11 requires the application to be corrected within 30 days in such
12 particulars as designated by the department. If the requirements
13 are not met within the time allowed, the department may enter an
14 order rejecting the application, which shall include the
15 findings of fact upon which the order is based and which shall
16 not become effective until 20 days after the end of the 30-day
17 period. During the 20-day period, the applicant may petition for
18 reconsideration and shall be entitled to a hearing.

19 (e) Temporary certificate.--With respect to a provider who
20 has offered continuing care agreements to existing or
21 prospective residents in a facility established prior to
22 December 18, 1984, which facility has one or more residents
23 living there pursuant to such agreements entered into prior to
24 December 18, 1984, and if such a provider is unable to comply
25 with section 7409 (relating to reserves) within the time
26 provided, the department may, upon the filing of a petition by
27 the provider, issue a temporary certificate of authority to the
28 provider. The provider may then enter into continuing care
29 agreements in compliance with all other applicable provisions of
30 this chapter until the permanent certificate of authority has

1 been issued. This temporary certificate may only be issued to
2 those existing providers who will be able to comply with the
3 provisions of section 7409 within a period of time agreed to by
4 the department, which period shall not exceed two years. If a
5 provider is not in compliance on or before the expiration date
6 of the temporary certificate, it may petition the department for
7 an extension. Providers who may be able to comply with section
8 7409, as determined by the department, may be granted an
9 extension of up to three years.

10 (f) Disclosure to residents.--If an existing provider is
11 granted a permanent certificate of authority, any resident who
12 entered into an agreement before the certificate of authority
13 was granted shall be provided with all amendments to the
14 application for registration and the initial disclosure
15 statement.

16 (g) Remedies of residents.--If an existing provider is
17 denied a permanent certificate of authority, any resident who
18 entered into a continuing care agreement before the certificate
19 of authority shall be entitled to all the appropriate remedies
20 as provided in this chapter.

21 (h) Alternative accreditation.--If a facility is accredited
22 by a process approved by the department as substantially
23 equivalent to the requirements of this section, then the
24 facility shall be deemed to have met the requirements of this
25 section and the department shall issue a certificate of
26 authority to the facility.

27 § 7405. Revocation of certificate of authority.

28 (a) General rule.--The certificate of authority of a
29 provider shall remain in effect until revoked after notice and
30 hearing, upon written findings of fact by the department, that

1 the provider has:

2 (1) willfully violated this chapter;

3 (2) failed to file an annual disclosure statement or
4 resident agreement as required by this chapter;

5 (3) failed to deliver to prospective residents the
6 disclosure statements required by this chapter;

7 (4) delivered to prospective residents a disclosure
8 statement which makes an untrue statement or omits a material
9 fact and the provider, at the time of the delivery of the
10 disclosure statement, had actual knowledge of the
11 misstatement or omission; or

12 (5) failed to comply with a cease and desist order.

13 (b) Disclosure of grounds.--Findings of fact in support of
14 revocation, if set forth in statutory language, shall be
15 accompanied by a concise and explicit statement of the
16 underlying facts supporting the findings.

17 (c) Cease and desist order.--If the department finds good
18 cause to believe that the provider has been guilty of a
19 violation for which revocation could be ordered, the department
20 may first issue an order directed at the provider requiring the
21 provider to cease and desist from continuing the violation. If
22 the cease and desist order is not or cannot be effective in
23 remedying the violation, the department may, after notice and
24 hearing, order that the certificate of authority be revoked and
25 surrendered. The cease and desist order may be appealed to the
26 Commonwealth Court.

27 § 7406. Sales or transfers of ownership.

28 Any provider desiring to sell or transfer ownership of a
29 facility shall notify the department 30 days in advance of the
30 completion of the sale or transfer. The department may revoke,

1 after notice and hearing, upon written findings of fact, the
2 certificate of authority of any provider based upon a
3 substantial change in control or ownership of the provider if
4 the change is found not to be in the best interests of the
5 residents of any facilities owned or controlled by the provider
6 such that such facilities are in imminent danger of becoming
7 insolvent or that the care of present or prospective residents
8 is threatened thereby.

9 § 7407. Disclosure statements.

10 (a) Requirement.--At the time of or prior to the execution
11 of a contract to provide continuing care or at the time of or
12 prior to the transfer of any money or other property to a
13 provider by or on behalf of a prospective resident, whichever
14 first occurs, the provider shall deliver a disclosure statement
15 to the person with whom the contract is to be entered into.

16 (b) Contents.--The statement shall contain all of the
17 following information unless the information is in the contract,
18 a copy of which is required to be attached to the statement:

19 (1) The name and business address of the provider and a
20 statement of whether the provider is a partnership,
21 corporation or other type of legal entity.

22 (2) The names and business addresses of the officers,
23 directors, trustees, managing or general partners, and any
24 person having a 10% or greater equity or beneficial interest
25 in the provider and a description of such person's interest
26 in or occupation with the provider.

27 (3) With respect to the provider, any person named in
28 response to paragraph (2) and, if the facility will be
29 managed on a daily basis by a person other than an individual
30 directly employed by the provider, the proposed manager, the

1 statement shall include:

2 (i) A description of the business experience of the
3 person, if any, in the operation or management of similar
4 facilities.

5 (ii) The name and address of any professional
6 service, firm, association, trust, partnership or
7 corporation in which the person has, or which has in the
8 person, a 10% or greater interest and which it is
9 presently intended will or may provide goods, leases or
10 services to the facility of a value of \$500 or more,
11 within any year, including:

12 (A) A description of the goods, leases or
13 services and the probable or anticipated cost thereof
14 to the facility or provider.

15 (B) The process by which the contract was
16 awarded.

17 (C) Any additional offers that were received.

18 The department may request additional information,
19 detailing why a contract was awarded, as may be
20 necessary.

21 (iii) A description of any matter in which the
22 person:

23 (A) has been convicted of a felony or pleaded
24 nolo contendere to a felony charge or been held
25 liable or enjoined in a civil action by final
26 judgment if the felony or civil action involved
27 fraud, embezzlement, fraudulent conversion or
28 misappropriation of property; or

29 (B) is subject to a currently effective
30 injunctive or restrictive order of a court of record,

1 or within the past five years had any state or
2 Federal license or permit suspended or revoked as a
3 result of an action brought by a governmental agency
4 or department, arising out of or relating to business
5 activity or health care, including, without
6 limitation, actions affecting a license to operate a
7 foster care facility, nursing home, retirement home,
8 home for the aged or facility registered under this
9 chapter or a similar statute in another state.

10 (4) A statement as to the following:

11 (i) Whether the provider is or ever has been
12 affiliated with a religious, charitable or other
13 nonprofit organization.

14 (ii) The nature of the affiliation, if any.

15 (iii) The extent to which the affiliate organization
16 will be responsible for the financial and contract
17 obligations of the provider.

18 (iv) Any provision of the Internal Revenue Code (68A
19 Stat. 3, 26 U.S.C. § 1 et seq.) under which the provider
20 or affiliate is exempt from the payment of Federal income
21 tax.

22 (5) The location and description of the physical
23 property or properties of the facility, existing or proposed,
24 and, to the extent proposed, the estimated completion date or
25 dates, whether or not construction has begun and the
26 contingencies subject to which construction may be deferred.

27 (6) The services provided or proposed to be provided
28 under contracts for continuing care at the facility,
29 including the extent to which medical care is furnished. The
30 disclosure statement shall clearly state which services are

1 included in basic contracts for continuing care and which
2 services are made available at or by the facility at extra
3 charge.

4 (7) A description of all fees required of residents,
5 including any entrance fees and periodic charges. The
6 description shall include the manner by which the provider
7 may adjust periodic charges or other recurring fees and any
8 limitations on such adjustments. If the facility is already
9 in operation or if the provider or manager operates one or
10 more similar facilities in this Commonwealth, there shall be
11 included tables showing the frequency and average dollar
12 amount of each increase in periodic rates at each facility
13 for the previous five years or such shorter period as the
14 facility may have been operated by the provider or manager.

15 (8) Any provisions that have been made or will be made
16 to provide reserve funding or security to enable the provider
17 to fully perform its obligations under contracts to provide
18 continuing care at the facility, including the establishment
19 of escrow accounts, trusts or reserve funds, together with
20 the manner in which the funds will be invested and the names
21 and experience of persons who will make the investment
22 decisions.

23 (9) Certified financial statements of the provider,
24 including the following:

25 (i) A balance sheet as of the end of the two most
26 recent fiscal years.

27 (ii) Income statements of the provider for the two
28 most recent fiscal years or such shorter period of time
29 as the provider shall have been in existence.

30 (10) If operation of the facility has not yet commenced,

1 a statement of the anticipated source and application of the
2 funds used or to be used in the purchase or construction of
3 the facility, including the following:

4 (i) An estimate of the cost of purchasing or
5 constructing and equipping the facility including such
6 related costs as financing expense, legal expense, land
7 costs, occupancy development costs and all other similar
8 costs which the provider expects to incur or become
9 obligated for prior to the commencement of operations.

10 (ii) A description of any mortgage loan or other
11 long-term financing intended to be used for the financing
12 of the facility, including the anticipated terms and
13 costs of such financing.

14 (iii) An estimate of the total entrance fees to be
15 received from or on behalf of residents at or prior to
16 commencement of operation on the facility.

17 (iv) An estimate of any funds anticipated to be
18 necessary to defray start-up losses and provide reserve
19 funds to assure full performance of the obligations of
20 the provider under contracts for the provision of
21 continuing care.

22 (v) A projection of estimated income from fees and
23 charges other than entrance fees, showing individual
24 rates presently anticipated to be charged and including a
25 description of the assumptions used for calculating the
26 estimated occupancy rate of the facility and the effect
27 on the income of the facility of any government subsidies
28 for health care services to be provided pursuant to the
29 contracts for continuing care.

30 (vi) A projection of estimated operating expenses of

1 the facility, including a description of the assumptions
2 used in calculating the expenses and any separate
3 allowances for the replacement of equipment and
4 furnishings and anticipated major structural repairs or
5 additions.

6 (vii) Identification of any assets pledged as
7 collateral for any purpose.

8 (viii) An estimate of annual payments of principal
9 and interest required by any mortgage loan or other long-
10 term financing.

11 (11) Such other material information concerning the
12 facility or the provider as may be required by the department
13 or as the provider wishes to include.

14 (12) On the cover page of the statement, in a prominent
15 location and type face, the date of the disclosure statement
16 and that the issuance of a certificate of authority does not
17 constitute approval, recommendation or endorsement of the
18 facility by the department, nor is it evidence of, nor does
19 it attest to, the accuracy or completeness of the information
20 set out in the disclosure statement.

21 (13) A copy of any standard forms of contract for
22 continuing care used by the provider, attached as an exhibit
23 to the statement.

24 (c) Annual statements.--The provider shall file with the
25 department, annually within four months following the end of the
26 provider's fiscal year, an annual disclosure statement which
27 shall contain the information required by this chapter for the
28 initial disclosure statement. The annual disclosure statement
29 shall also be accompanied by a narrative describing any material
30 differences between the pro forma income statements filed under

1 this chapter either as part of the application for registration
2 or as part of the most recent annual disclosure statement, and
3 the actual results of operations during the fiscal year. The
4 annual disclosure statement shall also contain a revised pro
5 forma income statement for the next fiscal year. The department
6 may request additional income statements when it is shown that
7 these are necessary.

8 (d) Delivery of statements.--From the date an annual
9 disclosure statement is filed until the date the next succeeding
10 annual disclosure statement is filed with the department and
11 prior to the provider's acceptance of part or all of any
12 application fee or part of the entrance fee or the execution of
13 the continuing care agreement by the resident, whichever first
14 occurs, the provider shall deliver the current annual disclosure
15 statement to the current or prospective residents with whom the
16 continuing care agreement is or may be entered into.

17 (e) Amendment.--In addition to filing the annual disclosure
18 statement, the provider may amend its currently filed disclosure
19 statement at any other time if, in the opinion of the provider,
20 an amendment is necessary to prevent the disclosure statement
21 and annual disclosure statement from containing any material
22 misstatement of fact or omission to state a material fact
23 required to be stated therein. Any such amendment or amended
24 disclosure statement must be filed with the department before it
25 is delivered to any resident or prospective resident and is
26 subject to all the requirements, including those as to content
27 and delivery, of this chapter.

28 § 7408. False information.

29 (a) Statements.--A provider shall not make, publish,
30 disseminate, circulate or place before the public, or cause,

1 directly or indirectly, to be made, published, disseminated,
2 circulated or placed before the public, in a newspaper or other
3 publication, or in the form of a notice, circular, pamphlet,
4 letter or poster, or over any radio or television station, or in
5 any other way, an advertisement, announcement or statement
6 containing any assertion, representation or statement which is
7 untrue, deceptive or misleading.

8 (b) Financial statements.--A provider shall not file with
9 the department or make, publish, disseminate, circulate or
10 deliver to any person or place before the public, or cause,
11 directly or indirectly, to be made, published, disseminated,
12 circulated or delivered to any person or placed before the
13 public, any financial statement which does not accurately state
14 its true financial condition.

15 § 7409. Reserves.

16 Each provider shall establish and maintain liquid reserves in
17 an amount equal to or exceeding the greater of:

18 (1) the total of all principal and interest payments due
19 during the next 12 months on account of any mortgage loan or
20 other long-term financing of the facility; or

21 (2) ten percent of the projected annual operating
22 expenses of the facility exclusive of depreciation.

23 The provider shall notify the department in writing at least ten
24 days prior to reducing the funds available to satisfy this
25 requirement and may expend no more than one-twelfth of the
26 required balance each calendar month. In facilities where some
27 residents are not under continuing care agreements, the reserve
28 shall be computed only on the proportional share of financing or
29 operating expenses that is applicable to residents under
30 continuing care agreements at the end of the provider's most

1 recent fiscal year. Funds in escrow accounts may be used to
2 satisfy this reserve requirement if such funds are available to
3 make payments when operating funds are insufficient for those
4 purposes.

5 § 7410. Reserve fund escrow.

6 The department may require the provider to establish and to
7 maintain on a current basis, in escrow with a bank, trust
8 company or other escrow agent approved by the department, a
9 portion of all entrance fees received by the provider in an
10 aggregate amount not to exceed the total of all principal and
11 interest payments due during the next 12 months on account of
12 any first mortgage loan or other long-term financing of the
13 facility. The funds in the escrow account may be invested with
14 the earnings thereon payable to the provider. If the provider so
15 requests in writing, the escrow agent shall release up to one-
16 twelfth of the original principal balance of the escrow account.
17 A release of funds shall not be made more than once during any
18 calendar month and then only after the escrow agent has given
19 written notice to the department at least ten days prior to the
20 release. The amount of this escrow fund shall be included in
21 satisfying the reserves required under this chapter. This
22 section shall only apply when the department has cause to
23 believe that additional protection may be necessary to secure
24 the obligations assumed under all resident agreements.

25 § 7411. Liens on behalf of residents.

26 Prior to the issuance of a certificate of authority under
27 this chapter or at such other time as the department may
28 determine it in the best interests of residents of a facility,
29 the department may file a lien on the real and personal property
30 of the provider or facility to secure the obligations of the

1 provider pursuant to existing and future contracts for
2 continuing care. A lien filed under this section shall be
3 effective for a period of ten years after filing and may be
4 extended by the department upon a finding that the extension is
5 advisable for the protection of residents of the facility. The
6 lien may be foreclosed upon the liquidation of the facility or
7 the insolvency or bankruptcy of the provider, and, in such
8 event, the proceeds thereof shall be used in full or partial
9 satisfaction of obligations of the provider pursuant to
10 contracts for continuing care then in effect. The lien provided
11 for in this section shall be subordinate to the lien of any
12 first mortgage on the real property of the facility and may be
13 subordinated with the written consent of the department to the
14 claims of other persons if the department determines that
15 subordination is advisable for the efficient operation of the
16 facility.

17 § 7412. Entrance fee escrow.

18 The department shall require, as a condition of issuing a
19 certificate of authority, that the provider establish an
20 interest-bearing escrow account with a bank, trust company or
21 other escrow agent approved by the department. Any entrance fees
22 or payments that are in excess of 5% of the then existing
23 entrance fee for the unit, received by the provider prior to the
24 date the resident is permitted to occupy the living unit in the
25 facilities, shall be placed in the escrow account subject to
26 release as follows:

27 (1) If the entrance fee gives the resident the right to
28 occupy a living unit which has been previously occupied, the
29 entrance fee and any income earned thereon shall be released
30 to the provider at such time as the living unit becomes

1 available for occupancy by the new resident.

2 (2) If the entrance fee applies to a living unit which
3 has not been previously occupied, the entrance fee shall be
4 released to the provider at such time as the department is
5 satisfied that the following requirements are met:

6 (i) Aggregate entrance fees received or receivable
7 by the provider pursuant to executed continuing care
8 agreements equal not less than 50% of the sum of the
9 entrance fees due at full occupancy of the portion of the
10 facility under construction. For the purpose of this
11 subparagraph, entrance fees receivable pursuant to an
12 agreement will be counted only if the facility has
13 received a deposit of 35% or more of the entrance fee due
14 from the individual, or individuals, signing the
15 contract.

16 (ii) The entrance fees received or receivable
17 pursuant to subparagraph (i), plus anticipated proceeds
18 of any first mortgage loan or other long-term financing
19 commitment plus funds from other sources in the actual
20 possession of the provider, are equal to not less than
21 50% of the aggregate cost of constructing or purchasing,
22 equipping and furnishing the facility, plus not less than
23 50% of the funds estimated in the statement of
24 anticipated source and application of funds submitted by
25 the provider as part of its application to be necessary
26 to fund start-up losses of the facility.

27 (iii) A commitment has been received by the provider
28 for any permanent mortgage loan or other long-term
29 financing described in the statement of anticipated
30 source and application of funds submitted as part of the

1 application for certificate of authority and any
2 conditions of the commitment prior to disbursement of
3 funds thereunder, other than completion of the
4 construction or closing of the purchase of the facility,
5 have been substantially satisfied.

6 (3) If the funds in an escrow account to which
7 paragraphs (1) and (2) apply and any interest earned thereon
8 are not released within 36 months, or such greater time as
9 has been specified by the provider with the consent of the
10 department, then such funds shall be returned by the escrow
11 agent to the persons who made the payment to the provider.

12 (4) This section does not require the escrow of any
13 nonrefundable application fee charged to prospective
14 residents.

15 (5) In lieu of any escrow which is required by the
16 department under this section, a provider may post a letter
17 of credit from a financial institution, negotiable securities
18 or a bond by a surety authorized to do business in this
19 Commonwealth, approved by the department as to form and in an
20 amount not to exceed the amount required by paragraph (2)(i).
21 The bond, letter of credit or negotiable securities shall be
22 executed in favor of the department on behalf of individuals
23 who may be found entitled to a refund of entrance fees from
24 the provider.

25 (6) An entrance fee held in escrow may be returned by
26 the escrow agent at any time to the person who paid the fee
27 to the provider upon receipt by the escrow agent of notice
28 from the provider that the person is entitled to a refund of
29 the entrance fee.

30 § 7413. Cross-collateralization.

1 Only the unencumbered assets of a continuing care facility
2 may be pledged by the provider as collateral for the purpose of
3 securing loans for other continuing care facilities, whether
4 proposed or existing.

5 § 7414. Residents' agreements.

6 (a) General rule.--In addition to such other provisions as
7 may be considered proper to effectuate the purpose of any
8 continuing care agreement, each agreement executed on and after
9 the date of the promulgation of the regulations under this
10 chapter shall be written in nontechnical language easily
11 understood by a layperson and shall do the following:

12 (1) Provide for the continuing care of only one
13 resident, or for two or more persons occupying space designed
14 for multiple occupancy, under appropriate procedures
15 established by the provider.

16 (2) Show the value of all property transferred,
17 including donations, subscriptions, fees and any other
18 amounts paid or payable by, or on behalf of, the resident or
19 residents.

20 (3) Specify all services which are to be provided by the
21 provider to each resident, including, in detail, all items
22 which each resident will receive and whether the items will
23 be provided for a designated time period or for life and the
24 average annual cost to the provider of providing the care.
25 These items may include, but not be limited to, food,
26 shelter, nursing care, drugs, burial and incidentals.

27 (4) Describe the health and financial conditions upon
28 which the provider may have the resident relinquish his space
29 in the designated facility.

30 (5) Describe the health and financial conditions

1 required for a person to continue as a resident.

2 (6) Describe the circumstances under which the resident
3 will be permitted to remain in the facility in the event of
4 financial difficulties of the resident.

5 (7) State the fees that will be charged if the resident
6 marries while at the designated facility, the terms
7 concerning the entry of a spouse to the facility and the
8 consequences if the spouse does not meet the requirements for
9 entry.

10 (8) Provide that the agreement may be canceled upon the
11 giving of notice of cancellation of at least 30 days by the
12 provider or the resident. If an agreement is canceled because
13 there has been a good faith determination in writing, signed
14 by the medical director and the administrator of the
15 facility, that a resident is a danger to himself or others,
16 only such notice as is reasonable under the circumstances
17 shall be required.

18 (9) Provide, in print no smaller than the largest type
19 used in the body of said agreement, the terms governing the
20 refund of any portion of the entrance fee.

21 (10) State the terms under which an agreement is
22 canceled by the death of the resident. The agreement may
23 contain a provision to the effect that, upon the death of the
24 resident, the money paid for the continuing care of the
25 resident shall be considered earned and become the property
26 of the provider.

27 (11) Provide for advance notice to the resident, of not
28 less than 30 days, before any change in fees or charges or
29 the scope of care or services may be effective, except for
30 changes required by State or Federal assistance programs.

1 (12) Provide that charges for care paid in one lump sum
2 shall not be increased or changed during the duration of the
3 agreed upon care, except for changes required by State or
4 Federal assistance programs.

5 (b) Rescission.--A resident shall have the right to rescind
6 a continuing care agreement, without penalty or forfeiture,
7 within seven days after making an initial deposit or executing
8 the agreement. A resident shall not be required to move into the
9 facility designated in the agreement before the expiration of
10 the seven-day period. If a resident dies before the occupancy
11 date, or through illness, injury or incapacity is precluded from
12 becoming a resident under the terms of the continuing care
13 agreement, the agreement is automatically rescinded and the
14 resident or his legal representative shall receive a full refund
15 of all moneys paid to the facility, except those costs
16 specifically incurred by the facility at the request of the
17 resident and set forth in writing in a separate addendum, signed
18 by both parties to the agreement.

19 (c) Limitations on dismissal.--An agreement for care shall
20 not permit dismissal or discharge of the resident from the
21 facility providing care prior to the expiration of the agreement
22 without just cause for such a removal. "Just cause" includes,
23 but is not limited to, a good faith determination in writing,
24 signed by the medical director and the administrator of the
25 facility, that a resident is a danger to himself or others while
26 remaining in the facility. If a facility dismisses a resident
27 for just cause, the facility shall pay to the resident any
28 refund due in the same manner as if the resident's agreement was
29 terminated under this chapter.

30 (d) Protection from waiver.--An act, agreement or statement

1 of any resident, or of an individual purchasing care for a
2 resident under any agreement to furnish care to the resident,
3 shall not constitute a valid waiver of any provision of this
4 chapter intended for the benefit or protection of the resident
5 or the individual purchasing care for the resident.

6 (e) Prior agreements.--Those agreements entered into prior
7 to December 18, 1984, or prior to the issuance of a certificate
8 of authority to the provider shall be valid and binding upon
9 both parties in accordance with their terms.

10 § 7415. Organizational rights of residents.

11 (a) General rule.--Residents living in a facility holding a
12 certificate of authority under this chapter shall have the right
13 of self-organization.

14 (b) Quarterly meetings.--The board of directors, a
15 designated representative or other governing body of a
16 continuing care facility shall hold quarterly meetings with the
17 residents of the continuing care facility for the purpose of
18 free discussion of subjects which may include income,
19 expenditures and financial matters as they apply to the facility
20 and proposed changes in policies, programs and services.
21 Residents shall be entitled to at least seven days' notice of
22 each quarterly meeting.

23 § 7416. Rehabilitation or liquidation.

24 (a) General rule.--If, at any time, the department
25 determines, after notice and an opportunity for the provider to
26 be heard, that:

27 (1) a portion of a reserve fund escrow required under
28 this chapter has been or is proposed to be released;

29 (2) a provider has been or will be unable, in such a
30 manner as may endanger the ability of the provider to fully

1 perform its obligations pursuant to contracts for continuing
2 care, to meet the pro forma income or cash flow projections
3 previously filed by the provider;

4 (3) a provider has failed to maintain the reserves
5 required under this chapter; or

6 (4) a provider is bankrupt or insolvent, or in imminent
7 danger of becoming bankrupt or insolvent;

8 the department may apply to the appropriate court of this
9 Commonwealth or to the Federal bankruptcy court which has taken
10 jurisdiction over the provider or facility for an order
11 directing the department or authorizing the department to
12 appoint a trustee to rehabilitate or liquidate a facility.

13 (b) Contents of rehabilitation order.--An order to
14 rehabilitate a facility shall direct the department or trustee
15 to take possession of the property of the provider and to
16 conduct the business thereof, including the employment of such
17 managers or agents as the department or trustee may deem
18 necessary, and to take such steps as the court may direct toward
19 removal of the causes and conditions which have made
20 rehabilitation necessary.

21 (c) Termination of rehabilitation order.--If, at any time,
22 the court finds, upon petition of the department, trustee or
23 provider, or on its own motion, that the objectives of an order
24 to rehabilitate a provider have been accomplished and that the
25 facility can be returned to the provider's management without
26 further jeopardy to the residents of the facility, creditors,
27 owners of the facility and the public, the court may, upon a
28 full report and accounting of the conduct of the facility's
29 affairs during the rehabilitation and of the facility's current
30 financial condition, terminate the rehabilitation and, by order,

1 return the facility and its assets and affairs to the provider's
2 management.

3 (d) Bond of provider.--An order for rehabilitation under
4 this section shall be refused or vacated if the provider posts a
5 bond, by a recognized surety authorized to do business in this
6 Commonwealth and executed in favor of the department on behalf
7 of persons who may be found entitled to a refund of entrance
8 fees from the provider or other damages in the event the
9 provider is unable to fulfill its contracts to provide
10 continuing care at the facility, in an amount determined by the
11 court to be equal to the reserve funding which would otherwise
12 need to be available to fulfill such obligations.

13 (e) Order of liquidation.--If, at any time, the department
14 determines that further efforts to rehabilitate the provider
15 would be useless, the department may apply to the court for an
16 order of liquidation. An order to liquidate a facility may be
17 issued upon application of the department whether or not there
18 has been issued a prior order to rehabilitate the facility. The
19 order shall act as a revocation of the certificate of authority
20 of the facility under this chapter and shall direct the
21 department or a trustee to marshal and liquidate all of the
22 provider's assets located in this Commonwealth.

23 (f) Protection of contracting persons.--In applying for an
24 order to rehabilitate or liquidate a facility, the department
25 shall give due consideration in the application to the manner in
26 which the welfare of persons who have previously contracted with
27 the provider for continuing care may be best served. In
28 furtherance of this objective, the proceeds of any lien obtained
29 by the department under this chapter may be:

30 (1) used in full or partial payment of entrance fees;

1 (2) used on behalf of residents of a facility being
2 liquidated; or

3 (3) paid to other facilities operated by providers who
4 have registered the facilities under this chapter.

5 § 7417. Civil liability.

6 (a) Cause of action.--Any person who, as a provider, or on
7 behalf of a provider:

8 (1) enters into a contract for continuing care at a
9 facility which does not have a certificate of authority under
10 this chapter;

11 (2) enters into a contract for continuing care at a
12 facility without having first delivered a disclosure
13 statement meeting the requirements of this chapter to the
14 person contracting for continuing care; or

15 (3) enters into a contract for continuing care at a
16 facility with a person who has relied on a disclosure
17 statement which omits a material fact required to be stated
18 therein or necessary in order to make the statements made
19 therein, in light of the circumstances under which they are
20 made, not misleading;

21 shall be liable to the person contracting for the continuing
22 care for damages and repayment of all fees paid to the provider,
23 facility or person violating this chapter, less the reasonable
24 value of care and lodging provided to the resident by or on
25 whose behalf the contract for continuing care was entered into
26 prior to discovery of the violation, misstatement or omission or
27 the time the violation, misstatement or omission should
28 reasonably have been discovered, together with court costs and
29 reasonable attorney fees.

30 (b) Knowledge.--Liability under this section shall exist

1 regardless of whether or not the provider or person liable had
2 actual knowledge of the misstatement or omission.

3 (c) Offer of rescission.--A person may not file or maintain
4 an action under this section if the person, before filing the
5 action, received an offer, approved by the department, to refund
6 all amounts paid the provider, facility or person violating this
7 chapter together with interest from the date of payment, less
8 the reasonable value of care and lodging provided prior to
9 receipt of the offer, and the person failed to accept the offer
10 within 30 days of its receipt. At the time a provider makes a
11 written offer of rescission, the provider shall file a copy with
12 the department. The rescission offer shall include a statement
13 of the provisions of this section.

14 (d) Limitation on action.--An action shall not be maintained
15 to enforce a liability created under this chapter unless brought
16 before the expiration of six years after the execution of the
17 contract for continuing care which gave rise to the violation.

18 (e) Other civil liability.--Except as expressly provided in
19 this chapter, civil liability in favor of a private party shall
20 not arise against a person, by implication, from or as a result
21 of the violation of this chapter. This chapter does not limit a
22 liability which may exist by virtue of any other statute or
23 under common law if this chapter were not in effect.

24 § 7418. Investigations and compulsory process.

25 (a) Investigations.--The department may make such public or
26 private investigations in or outside this Commonwealth as the
27 department deems necessary:

28 (1) to determine whether any person has violated or is
29 about to violate this chapter; or

30 (2) to aid in the enforcement of this chapter or in the

1 prescribing of regulations and forms under this chapter.
2 The department may publish information concerning any violation
3 of this chapter.

4 (b) Compulsory process.--For the purpose of any
5 investigation or proceeding under this chapter, the department
6 or any officer designated by the department may administer
7 oaths, subpoena witnesses, compel their attendance, take
8 evidence and require the production of any books, papers,
9 correspondence, memoranda, agreements or other documents or
10 records which the department deems relevant to the inquiry, all
11 of which may be enforced in court.

12 § 7419. Audits.

13 The department shall visit each facility to examine its books
14 and records at least once every four years. A multifacility
15 provider may be required to provide the financial statements of
16 the facilities under its control at the request of the
17 department. The financial statements need not be certified
18 audited reports.

19 § 7420. Consumers' guides.

20 The department shall publish and distribute a consumers'
21 guide to continuing care facilities and an annual directory of
22 continuing care facilities.

23 § 7421. Civil relief from violations.

24 Whenever it appears to the department that any person has
25 engaged in, or is about to engage in, any act or practice
26 constituting a violation of this chapter, the department may:

27 (1) issue an order directed at the person requiring the
28 person to cease and desist from engaging in the act or
29 practice; or

30 (2) bring an action in court to enjoin the act or

1 practice and to enforce compliance with this chapter.
2 Upon a proper showing, a permanent or temporary injunction,
3 restraining order or order of mandamus shall be granted, and a
4 receiver or conservator may be appointed for the defendant or
5 the defendant's assets. The department shall not be required to
6 post a bond.

7 § 7422. Criminal penalties.

8 (a) General rule.--Any person who willfully and knowingly
9 violates this chapter commits a misdemeanor of the second
10 degree.

11 (b) Reference to prosecutors.--The department may refer such
12 evidence as is available concerning violations of this chapter
13 to the Attorney General or the proper county attorney who may,
14 with or without such a reference, institute the appropriate
15 criminal proceedings under this chapter.

16 (c) Other crimes.--This chapter does not limit the power of
17 the Commonwealth to punish any person for any conduct which
18 constitutes a crime under any other statute.

19 § 7423. Fees and expenses.

20 The regulations promulgated by the department shall determine
21 those transactions which shall require the payment of fees by a
22 provider and the fees which shall be charged. The department may
23 be reimbursed for any expenses it reasonably incurs in pursuing
24 its investigative and rehabilitation activities under this
25 chapter.

26 § 7424. Compliance period.

27 Any provider may be given a reasonable time, not to exceed
28 one year from the date of publication of any applicable
29 regulations promulgated under this chapter, within which to
30 comply with the regulations and to obtain a certificate of

1 authority.

2 CHAPTER 75

3 HOSPITAL PLAN CORPORATIONS

4 Subchapter

5 A. Preliminary Provisions

6 B. Certification

7 C. Regulation

8 SUBCHAPTER A

9 PRELIMINARY PROVISIONS

10 Sec.

11 7501. Definitions.

12 7502. (Reserved).

13 7503. Penalties.

14 § 7501. Definitions.

15 The following words and phrases when used in this chapter
16 shall have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "Hospital plan corporation." A corporation not-for-profit
19 engaged in the business of maintaining and operating a nonprofit
20 hospital plan.

21 "Nonprofit hospital plan." A plan whereby for prepayment,
22 periodical or lump-sum payment hospitalization or related health
23 benefits may be provided to subscribers to the plan.

24 § 7502. (Reserved).

25 § 7503. Penalties.

26 (a) Offenses.--Any person who:

27 (1) violates any of the provisions of this chapter or
28 any regulation or order of the department made pursuant
29 thereto;

30 (2) hinders or prevents the department in the discharge

1 of any duty imposed on it by this chapter;

2 (3) fraudulently procures or attempts to procure any
3 benefit from any hospital plan corporation holding a
4 certificate of authority under this chapter; or

5 (4) willfully makes any false statement in any
6 proceeding or report under this chapter;

7 commits a misdemeanor of the third degree.

8 (b) Persons liable.--Any act or default by any corporation,
9 association or common law trust, in violation of any provision
10 of this chapter or of any regulation or order of the department
11 made pursuant thereto, shall be deemed to be the act or default
12 of the officers or directors who participated in authorizing or
13 effecting the act or default or who knowingly permitted it.

14 SUBCHAPTER B

15 CERTIFICATION

16 Sec.

17 7511. Certification of hospital plan corporations.

18 7512. Exemptions for hospital plan corporations.

19 7513. Uncertified plans.

20 § 7511. Certification of hospital plan corporations.

21 (a) General rule.--A corporation not-for-profit incorporated
22 for the purpose of establishing, maintaining and operating a
23 nonprofit hospital plan shall not commence business until it has
24 received from the department a certificate of authority
25 authorizing the corporation to establish, maintain and operate
26 such a nonprofit hospital plan.

27 (b) Exemption.--Subsection (a) does not apply to any
28 nonprofit corporation incorporated with the approval of the
29 department under the former provisions of section 218 of the act
30 of May 5, 1933 (P.L.289, No.105), known as the Nonprofit

1 Corporation Law. For the purposes of this chapter, such a
2 corporation shall be deemed to be a holder of a certificate of
3 authority issued under this section.

4 (c) Form of application.--Every application for a
5 certificate of authority under this section shall be made to the
6 department in writing and shall be in such form and contain such
7 information as the regulations of the department require.

8 (d) Standards for issuance of certificate.--A certificate of
9 authority shall be issued by the department only if and when the
10 department finds and determines that the application complies
11 with this chapter and the regulations of the department
12 thereunder.

13 (e) Procedure.--For the purpose of enabling the department
14 to make the determination required by subsection (d), the
15 department, by publication of notice in the Pennsylvania
16 Bulletin, shall afford reasonable opportunity for hearing, which
17 shall be public. Before or after the hearing, it may make such
18 inquiries, audits and investigations, and may require the
19 submission of such supplemental studies and information, as
20 necessary to enable it to reach a finding or determination. The
21 department, in granting a certificate of authority, may impose
22 just and reasonable conditions. In every case the department
23 shall make a finding or determination in writing, stating
24 whether or not the application has been approved, and if it has
25 been approved in part only, specifying the part which has been
26 approved and the part which has been denied. Any holder of a
27 certificate of authority, exercising the authority conferred
28 thereby, shall be deemed to have waived any and all objections
29 to the terms and conditions of such certificate.

30 (f) Judicial review.--Orders of the department upon an

1 application for a certificate of authority under this section
2 shall be subject to judicial review as provided by law.

3 § 7512. Exemptions for hospital plan corporations.

4 (a) General insurance law.--Except as otherwise expressly
5 provided in this title, a hospital plan corporation holding a
6 certificate of authority under this chapter is not subject to
7 any other provision of this title or other law of this
8 Commonwealth relating to the business of insurance. No statute
9 hereafter enacted relating to the business of insurance shall
10 apply to such a corporation unless the statute specifically
11 refers and applies to such corporations.

12 (b) Taxation.--Every hospital plan corporation holding a
13 certificate of authority under this chapter shall be deemed a
14 charitable and benevolent institution, and all its funds and
15 investments shall be exempt from taxation by the Commonwealth or
16 its political subdivisions.

17 § 7513. Uncertified plans.

18 A person, other than a hospital plan corporation holding a
19 certificate of authority under this chapter, shall not
20 establish, maintain or operate a nonprofit hospital plan in this
21 Commonwealth.

22 SUBCHAPTER C

23 REGULATION

24 Sec.

25 7521. Eligible hospitals.

26 7522. Action as agent under Federal and other programs.

27 7523. Investment of funds.

28 7524. Rates and contracts.

29 7525. Reports and examinations.

30 7526. Solicitors and agents.

1 7527. Dissolution or liquidation.

2 § 7521. Eligible hospitals.

3 Any hospital plan corporation may enter into contracts for
4 the rendering of hospitalization to any of its subscribers only
5 with hospitals operated by the Commonwealth, or by political
6 subdivisions, or by corporations organized under the law of this
7 Commonwealth for hospital purposes or with hospitals approved by
8 the Department of Public Welfare.

9 § 7522. Action as agent under Federal and other programs.

10 (a) General rule.--Any hospital plan corporation may, with
11 the approval of the department, act as a carrier under section
12 1842 of the Social Security Act (Public Law 89-97, 42 U.S.C. §
13 1395u) with power to perform all the services which may be
14 required of such a subcarrier. The corporation may perform
15 administrative services similar or related to:

16 (1) those which may be required of an agency or
17 organization thereunder in connection with a Federal, state
18 or local governmental health care program; and

19 (2) those which may be required of such an agency or
20 organization in connection with or associated with
21 nongovernmental organizations, individuals, groups and
22 agencies in the health care field.

23 (b) Legislative amendment of stated purposes--The stated
24 purposes of all existing hospital plan corporations are amended
25 so as to include the performance of the activities authorized by
26 subsection (a).

27 § 7523. Investment of funds.

28 Any statute to the contrary notwithstanding, the assets of
29 any hospital plan corporation shall be invested in compliance
30 with the requirements of Chapter 53 (relating to life insurance)

1 for the investment of the assets of life insurance companies.

2 § 7524. Rates and contracts.

3 (a) General rule.--The rates charged to subscribers by
4 hospital plan corporations, all rates of payments to hospitals
5 made by the corporations pursuant to the contracts provided for
6 in this chapter, all acquisition costs in connection with the
7 solicitation of subscribers to the hospital plans, the reserves
8 to be maintained by the corporations, the certificates issued by
9 the corporations representing their agreements with subscribers
10 and all contracts entered into by the corporation with any
11 hospital shall at all times be subject to the prior approval of
12 the department.

13 (b) Procedure.--Every application for approval under
14 subsection (a) shall be made to the department in writing and
15 shall be subject to the provisions of section 7511(c) through
16 (f) (relating to certification of hospital plan corporations),
17 except that the department may substitute the publication in the
18 Pennsylvania Bulletin of notice of reasonable opportunity to
19 submit written comments for the publication of opportunity for a
20 hearing in any case where the right to an oral hearing is not
21 conferred by the Constitution of the United States or the
22 Constitution of Pennsylvania. Within 60 days after the filing of
23 the application, the department shall approve or refuse it.

24 (c) Maintenance of contractual relationships.--

25 (1) Declaration of necessity.--The General Assembly
26 finds that many subscribers to nonprofit hospital plans make
27 payments over long periods of time prior to becoming entitled
28 to benefits under the plan and that it is important in the
29 public interest that the reasonable expectations of
30 subscribers as to coverage should be fulfilled if possible.

1 It is declared to be essential for the maintenance of the
2 health of the residents of this Commonwealth that subscribers
3 to nonprofit hospital plans be assured receipt of the
4 hospitalization and related health benefits prepaid by them
5 through payment of the rates approved under this chapter and
6 charged by a hospital plan corporation and that, to
7 accomplish this essential purpose, termination of contracts
8 between hospital plan corporations and hospitals entered into
9 pursuant to section 7521 (relating to eligible hospitals) and
10 this section shall be subject to prior approval by the
11 department under this subsection.

12 (2) Notification period.--A contract between a hospital
13 plan corporation and any hospital providing for the rendering
14 of hospitalization to subscribers to the hospital plan shall
15 not be terminated unless the party seeking termination gives
16 90 days' advance written notice to the other party to the
17 contract and to the department of the proposed termination.

18 (3) Hearing period.--Whenever a termination subject to
19 paragraph (2) involves contracts with hospitals having more
20 than 5% of the beds in the area served by a hospital plan
21 corporation, the department shall hold public hearings on at
22 least 15 days' notice for the purpose of investigating the
23 reasons for the termination. Pending completion of the
24 investigation by the department, termination of the hospital
25 contracts shall be suspended for a period not to exceed six
26 months from the expiration of the period provided for in
27 paragraph (2). All terms and conditions of the contract
28 between the hospital plan corporation and the hospital or
29 hospitals shall continue in effect during the investigation
30 by the department. Based on the record made during the

1 hearings, the department shall make specific findings as to
2 the facts of the dispute and shall either approve termination
3 of the contracts or recommend such terms for continuation of
4 the contract as are in the public interest, based upon the
5 facts, the right of a hospital to be paid its costs for
6 hospitalization services to subscribers and the need of
7 subscribers for efficient, reliable hospitalization at a
8 reasonable cost.

9 (4) Negotiation period.--If the department recommends
10 terms for continuation of the contract, the hospital plan
11 corporation and the hospitals involved shall renew their
12 negotiations in order to determine whether a new agreement
13 can be reached substantially on the basis of the terms for
14 continuation recommended by the department. Pending these
15 negotiations, the termination of the hospital contracts shall
16 be suspended for a further period not to exceed 90 days from
17 the date of the decision of the department. If the hospital
18 plan corporation and the hospitals are unable to consummate a
19 new contract within the further period of 90 days, they shall
20 so advise the department. The department shall then approve
21 termination of the contracts effective at the end of a
22 further period of 30 days and shall prescribe the form and
23 extent of notice which the hospital plan corporation shall
24 use in advising its subscribers that hospitalization in the
25 hospitals involved is not covered by a contract between the
26 hospital plan corporation and the hospitals.

27 (5) Retroactivity.--Upon the settlement of any dispute
28 between a hospital plan corporation and any hospital pursuant
29 to paragraphs (2) and (4), the terms and conditions of any
30 new contract shall be retroactive to the date of expiration

1 of the contract previously in effect between the parties.

2 § 7525. Reports and examinations.

3 (a) Annual report.--On or before March 1 of each year, every
4 hospital plan corporation shall file with the department a
5 statement, verified by at least two of the principal officers of
6 the corporation, showing its condition at the end of the
7 preceding calendar year. The statement shall be in such form and
8 shall contain such matters as the department prescribes.

9 (b) Examination.--Every hospital plan corporation shall be
10 subject to examination not less frequently than every three
11 years by the department which shall have convenient access to
12 all documents that relate to the business of the corporation,
13 and the power to examine under oath the officers, agents and
14 employees of the corporation and the subscribers to its
15 nonprofit hospital plan in relation to the affairs, transactions
16 and financial condition of the corporation. These examinations
17 shall be made at such times as the department believes
18 necessary.

19 § 7526. Solicitors and agents.

20 Solicitors and agents for every hospital plan corporation
21 shall meet the prerequisites provided by law for agents of
22 insurance companies.

23 § 7527. Dissolution or liquidation.

24 A hospital plan corporation shall not be dissolved under the
25 provisions of Title 15 (relating to corporations and
26 unincorporated associations) or under any other provision of law
27 except with the prior approval of the department. Articles of
28 dissolution for a hospital plan corporation filed in the
29 Department of State, whether pursuant to a decree of court
30 liquidating the corporation or otherwise, shall not be effective

1 unless and until approved by the department. Any dissolution or
2 liquidation of a hospital plan corporation shall be under the
3 supervision of the department, which shall have all powers with
4 respect thereto granted to it under Chapter 39 (relating to
5 suspension of business and dissolution).

6 CHAPTER 77

7 PROFESSIONAL HEALTH SERVICES PLAN CORPORATIONS

8 Subchapter

9 A. Preliminary Provisions

10 B. Certification

11 C. Regulation Generally

12 SUBCHAPTER A

13 PRELIMINARY PROVISIONS

14 Sec.

15 7701. Applicability of chapter.

16 7702. Definitions.

17 7703. Purpose of chapter.

18 7704. Penalties.

19 7705. Enforcement.

20 § 7701. Applicability of chapter.

21 (a) General rule.--This chapter applies to every person
22 engaged in the business of maintaining and operating a nonprofit
23 health service plan and to every person who violates this
24 chapter.

25 (b) Exceptions.--Notwithstanding subsection (a), this
26 chapter does not apply to:

27 (1) Any hospital plan corporation as defined in section
28 7501 (relating to definitions).

29 (2) Any fraternal benefit society subject to regulation
30 under Chapter 45 (relating to Fraternal Benefit Society

1 Code).

2 § 7702. Definitions.

3 (a) General rule.--The following words and phrases when used
4 in this chapter shall have the meanings given to them in this
5 section unless the context clearly indicates otherwise:

6 "Ancillary health services." The general and usual services
7 rendered and care administered by ancillary health service
8 providers.

9 "Ancillary health service providers." Persons holding a
10 permit to operate a clinical laboratory under the act of
11 September 26, 1951 (P.L.1539, No.389), known as The Clinical
12 Laboratory Act.

13 "Chiropractic services." The general and usual services
14 rendered and care administered by a chiropractor.

15 "Chiropractor." An individual licensed under the laws of
16 this Commonwealth to practice chiropractic, as defined in the
17 act of December 16, 1986 (P.L.1646, No.188), known as the
18 Chiropractic Practice Act.

19 "Dental service corporation." A corporation not-for-profit
20 engaged in the business of maintaining and operating a nonprofit
21 dental service plan.

22 "Dental services." The general and usual services rendered
23 and care administered by a dentist.

24 "General medical service corporation." A corporation not-
25 for-profit engaged in the business of maintaining and operating
26 a nonprofit professional health service plan.

27 "Health service doctor." A dentist, physician, optometrist,
28 osteopath, osteopathic surgeon, chiropractor or physical
29 therapist.

30 "Low income." Low income as set forth in section 7725

1 (relating to eligibility determination).

2 "Medical services." The general and usual services rendered
3 and care administered by a physician.

4 "Nonprofit dental service plan." A plan whereby for
5 prepayment, periodical or lump-sum payment dental services only
6 may be provided to persons of low income or over-income and
7 their dependents.

8 "Nonprofit optometric service plan." A plan whereby for
9 prepayment, periodical or lump-sum payment optometric services
10 only may be provided to persons of low income and over-income
11 and their dependents.

12 "Nonprofit professional health service plan." A plan whereby
13 for prepayment, periodical or lump-sum payment professional
14 health services may be provided to persons of low income or
15 over-income and their dependents. The term does not include a
16 plan which is primarily a nonprofit dental service plan or a
17 nonprofit optometric service plan.

18 "Optometric service corporation." A corporation not-for-
19 profit engaged in the business of maintaining and operating a
20 nonprofit optometric service plan.

21 "Optometric services." The general and usual services
22 rendered and care administered by an optometrist.

23 "Osteopathic services." The general and usual services
24 rendered and care administered by an osteopath or osteopathic
25 surgeon.

26 "Over-income." Over-income as set forth in section 7725
27 (relating to eligibility determination).

28 "Person with dependents." Any person who furnishes other
29 persons with their chief support, whether or not such dependent
30 person is related to or living with him.

1 "Physical therapist." An individual licensed to practice
2 physical therapy, as defined in the act of October 10, 1975
3 (P.L.383, No.110), known as the Physical Therapy Practice Act.

4 "Physical therapy services." The general and usual services
5 rendered and care administered by a physical therapist.

6 "Physician." An individual licensed under the laws of this
7 Commonwealth to practice medicine and surgery, as defined in act
8 of December 20, 1985 (P.L.457, No.112), known as the Medical
9 Practice Act of 1985.

10 "Podiatrist." An individual licensed under the laws of this
11 Commonwealth to practice podiatric medicine, as defined in the
12 act of March 2, 1956 (1955 P.L.1206, No.375), known as the
13 Podiatry Practice Act.

14 "Podiatry services." The general and usual services rendered
15 and care administered by a podiatrist.

16 "Professional health service corporation." A dental service
17 corporation, a general medical service corporation or an
18 optometric service corporation.

19 "Professional health services." Dental services, medical
20 services, optometric services, osteopathic services, podiatry
21 services, chiropractic services, physical therapy services or
22 any one or more of them.

23 "Subscribers of low income." Persons of low income who
24 subscribe to a nonprofit professional health service plan, a
25 nonprofit dental service plan or a nonprofit optometric service
26 plan.

27 "Subscribers of over-income." Persons of over-income who
28 subscribe to a nonprofit professional health service plan, a
29 nonprofit dental service plan or a nonprofit optometric service
30 plan.

1 (b) Rule of construction.--The definitions specified in
2 subsection (a) are for the purpose of this chapter only and not
3 for the purpose of defining dental practice, medical practice,
4 optometric practice, osteopathic practice, podiatry practice,
5 chiropractic practice or physical therapy practice as such.

6 § 7703. Purpose of chapter.

7 (a) Declaration of necessity.--The General Assembly declares
8 that adequate professional health services are essential for the
9 maintenance of the physical and mental health of the residents
10 of this Commonwealth and that it is necessary that provision be
11 made for adequate professional health services to persons of low
12 income who are unable to provide these services for themselves
13 or their dependents without depriving themselves or their
14 dependents of such necessities of life as food, clothing and
15 shelter.

16 (b) Construction of chapter.--The purpose and intent of this
17 chapter is to authorize qualified persons to provide adequate
18 professional health services for residents of this Commonwealth
19 who are unable to provide these services for themselves or their
20 dependents at their own cost without depriving themselves or
21 their dependents of such necessities of life as food, clothing
22 and shelter and to provide persons of over-income with the
23 limited professional health services benefits set forth in this
24 chapter.

25 § 7704. Penalties.

26 (a) Offenses.--Any person who:

27 (1) violates this chapter or any regulation or order
28 of the Department of Health or the department made
29 pursuant thereto;

30 (2) hinders or prevents the Department of Health or

1 the department in the discharge of any duty imposed on it
2 by this chapter;

3 (3) fraudulently procures or attempts to procure any
4 benefit from any professional health service corporation
5 holding a certificate of authority under this chapter; or

6 (4) willfully makes any false statement in any
7 proceeding or report under this chapter;

8 commits a misdemeanor of the third degree.

9 (b) Persons liable.--Any act or default by any corporation,
10 association or common law trust, in violation of any provision
11 of this chapter or any regulation or order of the Department of
12 Health or the department made pursuant thereto, shall be deemed
13 to be the act or default of the officers or directors who
14 participated in authorizing or effecting the act or default or
15 who knowingly permitted it.

16 § 7705. Enforcement.

17 When necessary to effect the purposes of this chapter, in
18 addition to all other remedies in law or equity, the Department
19 of Health or the department, or both, may commence an action in
20 mandamus or for an injunction to prevent any violation of this
21 chapter or the continuance of any such violation, or to enforce
22 compliance with this chapter.

23 SUBCHAPTER B

24 CERTIFICATION

25 Sec.

26 7711. Certification of professional health service
27 corporations.

28 7712. Initial reserves.

29 7713. Incorporators.

30 7714. Exemptions for professional health service

1 corporations.

2 7715. Uncertificated plans.

3 § 7711. Certification of professional health service
4 corporations.

5 (a) General rule.--A corporation not-for-profit incorporated
6 for the purpose of establishing, maintaining and operating a
7 nonprofit professional health service plan, nonprofit dental
8 service plan or nonprofit optometric service plan shall not
9 commence business until it has received from the department a
10 certificate of authority authorizing the corporation to
11 establish, maintain and operate such a plan.

12 (b) Exemptions.--Subsection (a) does not apply to any
13 nonprofit corporation incorporated with the approval of the
14 department under the former sections 219 (relating to special
15 procedures for incorporation of certain nonprofit corporations)
16 or 220 (relating to procedure for incorporation of special
17 nonprofit dental service corporations) of the act of May 5, 1933
18 (P.L.289, No.105), known as the Nonprofit Corporation Law. For
19 the purposes of this chapter, such a corporation shall be deemed
20 to be a holder of a certificate of authority issued under this
21 section as:

22 (1) An optometric service corporation, if incorporated
23 under the former section 219 of the Nonprofit Corporation Law
24 for the primary purpose of providing a nonprofit optometric
25 service plan.

26 (2) A general medical service corporation, if
27 incorporated under the former section 219 of the Nonprofit
28 Corporation Law for any other purpose.

29 (3) A dental service corporation, if incorporated under
30 the former section 220 of the Nonprofit Corporation Law.

1 (c) Form of application.--Every application for a
2 certificate of authority under this section shall be made to the
3 department in writing and shall be in such form and contain such
4 information as the regulations of the Department of Health and
5 the department may require. The department shall forward the
6 application to the Department of Health for action thereon and
7 the Department of Health shall thereafter report to the
8 department.

9 (d) Standards for issuance of certificate.--A certificate of
10 authority shall be issued by order of the department only if and
11 when the Department of Health and the department severally find
12 and determine that the application complies with the provisions
13 of this chapter and the regulations of the Department of Health
14 and the department thereunder.

15 (e) Procedure.--The proceedings before the Department of
16 Health and the department shall be subject to the provisions of
17 section 7511(e) (relating to certification of hospital plan
18 corporations), except that the responsibilities of the
19 department shall also be performed by the Department of Health.
20 The Department of Health and the department shall each make a
21 thorough investigation of the applicant and the area in and the
22 plan under which it proposes to operate.

23 (f) Judicial review.--The final orders of the Department of
24 Health and the department upon an application for a certificate
25 of authority under this section shall be deemed to be a single
26 order for the purposes of judicial review and to have been
27 issued on the date the department issues its final order after
28 having considered the final action of the Department of Health
29 upon the application. The order, and all other orders of the
30 Department of Health or the department, shall be subject to

1 judicial review as provided by law.

2 § 7712. Initial reserves.

3 A professional health service corporation shall not receive a
4 certificate of authority under this chapter unless it has set up
5 a minimum reserve of \$25,000 for the exclusive purpose of
6 meeting the contractual obligations of its subscribers. All or
7 any part of the \$25,000 may be in the form of borrowed money to
8 be repaid in whole or in part from surplus. Money borrowed to
9 satisfy the requirements of this section may be repaid only when
10 authorized by two-thirds of the board of directors of the
11 corporation in office and by the department.

12 § 7713. Incorporators.

13 A certificate of authority shall not be issued to a
14 professional health service corporation unless all of its
15 incorporators are residents of this Commonwealth and citizens of
16 the United States.

17 § 7714. Exemptions for professional health service
18 corporations.

19 (a) General insurance law.--A professional health service
20 corporation shall be subject to regulation and supervision by
21 the Department of Health and the department under this chapter.
22 Except as otherwise expressly provided in this title, a
23 professional health service corporation holding a certificate of
24 authority under this chapter is not subject to any other
25 provision of this title or other law of this Commonwealth
26 relating to the business of insurance. No statute hereafter
27 enacted relating to the business of insurance shall apply to
28 such a corporation unless the statute specifically refers and
29 applies to such a corporation.

30 (b) Taxation.--Every professional health service corporation

1 holding a certificate of authority under this chapter shall be
2 deemed a charitable and benevolent institution, and all its
3 income, funds, investments and property are exempt from all
4 taxation by the Commonwealth or its political subdivisions.

5 § 7715. Uncertificated plans.

6 (a) General rule.--A person, other than a professional
7 health service corporation holding a certificate of authority
8 under this chapter relating to the plan being maintained or
9 operated by the corporation, shall not establish, maintain or
10 operate in this Commonwealth a nonprofit dental service plan, a
11 nonprofit optometric service plan or a nonprofit professional
12 health service plan.

13 (b) Exemptions.--Subsection (a) does not prohibit any person
14 from furnishing professional health services for the prevention
15 of disease among his employees or from furnishing any of such
16 services as required under the act of June 2, 1915 (P.L.736,
17 No.338), known as The Pennsylvania Workmen's Compensation Act,
18 and related statutes, when the employee is not charged for such
19 service.

20 SUBCHAPTER C

21 REGULATION GENERALLY

22 Sec.

23 7721. Required reserves.

24 7722. Scope of service.

25 7723. Action as agent under Federal and other programs.

26 7724. Health service doctors.

27 7725. Eligibility determination.

28 7726. Authorized contract provisions.

29 7727. Subscriptions provided by government agencies.

30 7728. Board of directors.

- 1 7729. Rates and contracts.
- 2 7730. Investment of funds.
- 3 7731. Reports and examinations.
- 4 7732. Regulation by Department of Health.
- 5 7733. Dental service agents.
- 6 7734. Dissolution or liquidation.
- 7 7735. Ancillary health services.
- 8 § 7721. Required reserves.

9 A professional health service corporation shall at all times
10 while engaged in business maintain reserves, in such form and
11 amount as the department may determine, to insure its
12 subscribers against loss through the failure of the corporation
13 to provide the services agreed to in its contracts.

14 § 7722. Scope of service.

15 (a) Territory of service.--The certificate of authority of a
16 professional health service corporation shall define the limits
17 of the area in which it may operate. If the corporation is
18 deemed to be a holder of a certificate of authority under
19 section 7711(b) (relating to certification of professional
20 health service corporations), the articles of incorporation of
21 the corporation on February 13, 1973, regardless of any
22 subsequent amendment to those articles, shall be deemed to be
23 its initial certificate of authority for the purposes of this
24 section.

25 (b) Classes and kinds of services.--The certificate of
26 authority, bylaws or resolutions of the board of directors of a
27 professional health service corporation may limit the
28 professional health services that will be provided for its
29 subscribers, and may divide such professional health services as
30 it elects to provide into classes or kinds. The corporation may

1 enter into contracts with its subscribers or groups of
2 subscribers to secure professional health services of any kind
3 or class so delimited. A general medical services corporation
4 shall make available to its subscribers or groups of
5 subscribers, upon request of any individual for his individual
6 subscriptions or any group for its group subscriptions,
7 contracts which provide coverage for professional health
8 services with appropriate premiums.

9 (c) Services provided only by licensed persons.--A
10 professional health service corporation shall not provide
11 professional health services for its subscribers otherwise than
12 through health service doctors duly licensed to practice in
13 their respective fields under the law of this Commonwealth.

14 (d) Services provided only to domiciliaries.--A professional
15 health service corporation shall provide professional health
16 services only to persons domiciled in this Commonwealth. If a
17 subscriber, regularly domiciled in this Commonwealth and
18 entitled to professional health services, or any of his
19 dependents so entitled, employs professional health services
20 while absent from this Commonwealth, a professional health
21 service corporation to which he is a subscriber may, if
22 satisfied that the services were necessary and were such as the
23 subscriber would have been entitled to under similar
24 circumstances in this Commonwealth, pay to the persons who
25 rendered the services the fees and charges which would have been
26 payable if the services had been rendered in this Commonwealth.
27 A professional health service corporation organized under the
28 law of, and operating near the boundaries of, this Commonwealth
29 may, with the consent of the proper officers of and as
30 authorized by the law of the adjacent state, provide

1 professional health services therein; all operations of the
2 corporation, whether in or outside this Commonwealth, shall be
3 subject to this chapter.

4 (e) Liability of corporation limited.--All professional
5 health services provided by or on behalf of a professional
6 health service corporation shall be in accordance with the best
7 professional health service practice in the community at the
8 time, but the corporation providing such services shall not be
9 liable for injuries resulting from negligence, misfeasance,
10 malfeasance, nonfeasance or malpractice on the part of any
11 officer or employee or on the part of any health service doctor
12 in the course of rendering professional health services to
13 subscribers, and the corporation may so provide in its contracts
14 with subscribers.

15 (f) Legislative amendment of stated purposes.--The stated
16 purposes of all existing general medical service corporations
17 are amended so as to include the furnishing of osteopathic,
18 dental, optometric, podiatry, chiropractic and physical therapy
19 services through osteopaths, dentists, optometrists, podiatrists
20 and chiropractors and physical therapists, respectively.

21 § 7723. Action as agent under Federal and other programs.

22 (a) General rule.--Any professional health service
23 corporation may, with the approval of the department, act as a
24 carrier under section 1842 of the Social Security Act (Public
25 Law 89-97, 42 U.S.C. § 1395u) with power to perform all the
26 services which may be required of such a carrier. The
27 corporation may perform administrative services similar or
28 related to:

29 (1) Those which may be required of an agency or
30 organization thereunder in connection with a Federal, state

1 or local governmental health care program.

2 (2) Those which may be required of such an agency or
3 organization in connection with or associated with
4 nongovernmental organizations, individuals, groups and
5 agencies in the health care field.

6 (b) Legislative amendment of stated purposes.--The stated
7 purposes of all existing professional health service
8 corporations are amended so as to include the performance of the
9 activities authorized by subsection (a).

10 § 7724. Health service doctors.

11 (a) Admission to plan.--Every health service doctor
12 practicing within the area covered by any professional health
13 service corporation may, upon complying with such requirements
14 as the corporation may prescribe with the approval of the
15 Department of Health, register with the corporation for such
16 general or special professional health services as he may be
17 licensed to practice within that area, but the corporation may,
18 with the approval of the Department of Health, refuse to place
19 the name of any health service doctor on its register. Any
20 professional health service corporation may, with the approval
21 of the Department of Health, remove from its register the name
22 of any health service doctor after due notice and opportunity
23 for hearing for cause satisfactory to the corporation.

24 (b) Freedom from control.--Subject to section 7722(e)
25 (relating to scope of service), a professional health service
26 corporation shall impose no restrictions on the health service
27 doctors who administer to its subscribers as to methods of
28 diagnosis or treatment. The relation between a subscriber, or
29 any of his dependents, and the health service doctor shall be
30 identical with the relation that ordinarily exists in the

1 community between a health service doctor and his patient.
2 Subject to the provisions of subsection (a), a person shall not
3 be permitted to interfere with the choice or selection by a
4 patient of his health service doctor after that choice or
5 selection has been made by a competent adult.

6 (c) Disputes.--All matters, disputes or controversies
7 relating to the professional health services rendered by the
8 health service doctors, or any questions involving professional
9 ethics, shall be considered and determined only by health
10 service doctors as selected in a manner prescribed in the bylaws
11 of the professional health service corporation.

12 § 7725. Eligibility determination.

13 (a) Income standards.--

14 (1) Every professional health service corporation shall
15 from time to time, by action of its members, fix the
16 standards for persons of low income eligible for benefits
17 under this chapter. These standards shall afford due
18 consideration to the marital status and to the number of
19 dependents of the applicant or subscriber and shall be
20 consistent with section 7703(a) (relating to purpose of
21 chapter). These standards shall be subject to the approval of
22 the department.

23 (2) All persons not meeting the standards for persons of
24 low income as thus fixed are persons of over-income.

25 (b) Determination of income status.--

26 (1) The professional health service corporation shall
27 determine whether an applicant for subscription is in receipt
28 of a low income or over-income. After the application has
29 been approved, the subscriber shall be deemed to be of low
30 income or over-income until his status has been redetermined

1 by the corporation, which redetermination may be made at any
2 time.

3 (2) The professional health service corporation, in
4 determining the income status of any applicant or subscriber,
5 may, through its officers and agents, examine under oath any
6 applicant or subscriber claiming a low income status and any
7 other person consenting thereto who is believed to have
8 material knowledge concerning the income status of the
9 applicant or subscriber. The determination of the corporation
10 shall be final.

11 (c) Effect of status.--Every person of low income and every
12 person of over-income, residing in the area served by a
13 professional health service corporation, may obtain, upon
14 complying with requirements adopted by that corporation and the
15 payment of such initiation and other fees as are authorized by
16 the department, the services of any health service doctor
17 registered with the corporation, under such terms and conditions
18 as are customary in professional health services in the
19 community, but only within the limits of services for which the
20 health service doctors are registered. A professional health
21 service corporation may for cause refuse to enter into
22 contractual relations with an applicant and may, for cause,
23 after due notice and opportunity for hearing, rescind any
24 contract that it has entered into with any subscriber and refund
25 any unearned portion of any fees paid. The corporation may, on
26 default in payment of the agreed dues, fees, payments or any
27 charges by subscriber or someone on his behalf, discontinue
28 coverage without notice and opportunity for hearing, after
29 having notified a subscriber of his default, and having allowed
30 him two days to procure such coverages. Any payment made by the

1 corporation to health service doctors for services rendered to
2 subscribers of over-income shall be a payment only to the extent
3 agreed upon between the corporation and the health service
4 doctors on account of any greater sum which may be due the
5 health service doctors for rendering those services.

6 (d) Prohibited contracts.--A contract by or on behalf of any
7 professional health service corporation shall not provide for
8 any periodic payment or any other payment by that corporation to
9 a subscriber unless the payment is related to the value of the
10 service provided to the subscriber on account of illness or
11 injury. Such payments shall not be related to the payment of any
12 such benefit by any other entity.

13 § 7726. Authorized contract provisions.

14 A professional health service corporation may, as a condition
15 precedent to entering into a contract with an applicant or group
16 of applicants for professional health service, require any of
17 the following:

18 (1) A physical examination of the applicant and of each
19 of his dependents, if any, and proof of his or their
20 substantial freedom from any disease or condition requiring
21 immediate professional health service or likely to require it
22 within the next 12 months, before a contract becomes
23 effective.

24 (2) A waiting period after a contract is entered into
25 and before the subscriber is entitled to professional health
26 service.

27 (3) An agreement that the subscriber or someone on his
28 behalf shall pay the stated fee or fees for professional
29 health services in the case of any given illness or injury or
30 other condition requiring professional health service, before

1 becoming entitled to treatment under the terms of the
2 contract.

3 (4) An agreement that, as a condition precedent to
4 payment by the corporation for professional health services
5 performed for the subscriber, the subscriber or someone on
6 his behalf will submit to the corporation such information as
7 is reasonably necessary to enable it to determine the amount
8 of the payment, which information shall be submitted in the
9 form and verified in the manner prescribed by the
10 corporation.

11 (5) An agreement that any rights of the subscriber to
12 receive services or payments under his contract with the
13 corporation are personal to the subscriber and may not be
14 assigned.

15 § 7727. Subscriptions provided by government agencies.

16 Every government agency which is charged by law with the duty
17 of providing professional health services for persons unable to
18 provide it at their own expense, or to procure it through
19 persons to whose support and assistance they are by law
20 entitled, may provide such services if it is in the public
21 interest so to do, through a subscription or subscriptions, paid
22 for from any lawfully available public funds, with any
23 professional health service corporation on behalf of any person
24 entitled to such a benefit.

25 § 7728. Board of directors.

26 (a) General rule.--The business of every professional health
27 service corporation, except a general medical service
28 corporation, shall be managed by a board of directors of at
29 least nine persons, all of whom shall be residents of this
30 Commonwealth.

1 (b) General medical service corporation.--

2 (1) A general medical service corporation shall be
3 managed by a board of not less than 21, nor more than 36
4 members, all of whom shall be residents of this Commonwealth.

5 (2) Not less than 50% of the board shall be subscribers
6 who have coverage under a contract issued by the corporation,
7 who are generally representative of broad segments of
8 subscribers covered under contracts issued by the corporation
9 and whose background and experience indicate that they are
10 qualified to act in the interests of the subscribers. A board
11 member shall not be counted toward satisfying this paragraph
12 if the member or the member's spouse derives substantial
13 income from the delivery or administration of health care.

14 (3) The bylaws of every general medical service
15 corporation shall provide appropriate procedures for the
16 nomination and election or appointment of the directors of
17 the corporation and the nomination and election or
18 appointment of committees of the board in such a manner that
19 the interests of the subscribers of the corporation will be
20 justly and reasonably represented.

21 (4) All directors of the corporation shall be members of
22 the corporation.

23 (5) A health service doctor, who provides professional
24 health services for the corporation's subscribers, may be a
25 director but shall not be counted among the directors who
26 represent subscribers.

27 (6) Every general medical service corporation shall
28 submit its bylaws for review by the Department of Health and
29 the department. Whenever a general medical service
30 corporation changes its bylaws, the change shall be submitted

1 within 30 days to the Department of Health and the department
2 for their review to determine whether the changes meet the
3 standards of this section.

4 (7) If the Department of Health or the department finds,
5 after notice to the corporation and hearing, that a general
6 medical service corporation has not met the requirements of
7 this section, the Department of Health or the department
8 shall notify the corporation of the findings and order the
9 corporation, in specific terms, to meet the requirements of
10 this section. The findings and order shall be subject to
11 judicial review as provided by law.

12 § 7729. Rates and contracts.

13 (a) General rule.--All rates charged subscribers or groups
14 of subscribers by any professional health service corporation,
15 and the form and content of all contracts between the
16 corporation and its subscribers or groups of subscribers, all
17 methods and rates of payment by the corporation to health
18 service doctors serving its subscribers, all acquisition costs
19 in procuring subscribers, the reserves to be maintained by the
20 corporation and all contracts entered into by the corporation
21 and extending over a period of more than one year or calling for
22 the expenditure by the corporation of any amount in excess of
23 20% of its reserves shall be approved by the department before
24 they become effective.

25 (b) Procedure.--Every application for such approval shall be
26 made to the department in writing and shall be subject to
27 section 7511(c) through (f) (relating to certification of
28 hospital plan corporations), except that the department may
29 substitute publication in the Pennsylvania Bulletin of notice of
30 reasonable opportunity to submit written comments for

1 publication of opportunity for hearing in any case where the
2 right to an oral hearing is not conferred by the Constitution of
3 the United States or the Constitution of Pennsylvania. Within 60
4 days after the filing of the application, the department shall
5 approve or refuse the application.

6 § 7730. Investment of funds.

7 Any statute to the contrary notwithstanding, the assets of
8 any professional health service corporation shall be invested in
9 compliance with the requirements of Chapter 53 (relating to life
10 insurance) for the investment of the assets of life insurance
11 companies.

12 § 7731. Reports and examinations.

13 (a) Annual reports.--Every professional health service
14 corporation shall, on or before March 1 of each year, file with
15 the department a statement, verified by at least two of the
16 principal officers of the corporation, summarizing its financial
17 activities during the preceding calendar year and showing its
18 financial condition at the end of that year. The statement shall
19 be in such form and shall contain such matters as the department
20 prescribes.

21 (b) Examinations and special reports.--Every professional
22 health service corporation shall be subject to examination not
23 less frequently than once in every three years by the
24 department. The department shall have convenient access to all
25 documents that relate to the business of the corporation and the
26 power to examine the officers, agents, employees and subscribers
27 for the professional health services of the corporation, all
28 health service doctors registered with the corporation and all
29 other persons having a substantial part in the business of the
30 corporation, in relation to its financial affairs and financial

1 condition. This examination shall be made at such times as the
2 department believes necessary. The department may at any time,
3 without making this examination, call on the corporation for a
4 written report, authenticated by at least two of its principal
5 officers, concerning the financial affairs and condition of the
6 corporation.

7 § 7732. Regulation by Department of Health.

8 (a) Annual reports.--Every professional health service
9 corporation shall, on or before March 1 of each year, file with
10 the Department of Health a report of its activities, other than
11 its financial activities, during the preceding calendar year.
12 The report shall be verified by at least two of the principal
13 officers of the corporation. The report shall be in such form
14 and shall contain such matters as the Department of Health
15 prescribes. The Department of Health may inquire into the
16 activities of every professional health service corporation and
17 determine whether the corporation is providing adequate
18 professional health services to its subscribers in accordance
19 with the best professional health service practice in the
20 community.

21 (b) Examination and special reports.--The Department of
22 Health shall have convenient access to all documents that relate
23 to the business of the corporation, other than financial, and
24 the power to examine the officers, agents, employees and
25 subscribers for the professional health services of the
26 corporation, all health service doctors registered with the
27 corporation and all other persons having a substantial part in
28 the business of the corporation, other than financial. This
29 examination shall be made at such times as the Department of
30 Health believes necessary. The Department of Health may, at any

1 time, without making this examination, call on the corporation
2 for a written report, authenticated by at least two of its
3 principal officers, concerning the affairs of the corporation
4 other than its financial affairs.

5 (c) Extension or improvement of service pursuant to order.--

6 If the Department of Health finds that a professional health
7 service corporation does not provide adequate professional
8 health services to its subscribers in accordance with the best
9 professional health service practice in the community, the
10 Department of Health may notify the corporation of its findings
11 and order the corporation, in specific terms, to extend or
12 improve the professional health services furnished by the
13 corporation. This order shall be entered after notice and
14 opportunity for hearing and shall be subject to judicial review
15 as provided by law.

16 § 7733. Dental service agents.

17 Any dental service corporation may select any person to act
18 as its agent in the performance of any of its functions.

19 § 7734. Dissolution or liquidation.

20 A professional health service corporation shall not be
21 dissolved under Title 15 (relating to corporations and
22 unincorporated associations) or under any other provision of
23 law, except with the prior approval of the department. Articles
24 of dissolution for a professional health service corporation
25 filed in the Department of State, whether pursuant to a decree
26 of court liquidating the corporation or otherwise, shall not be
27 effective unless and until approved by the department. Any
28 dissolution or liquidation of a professional health service
29 corporation shall be under the supervision of the department,
30 which shall have all powers with respect thereto granted to it

1 under Chapter 39 (relating to suspension of business and
2 dissolution).

3 § 7735. Ancillary health services.

4 Notwithstanding anything in this chapter to the contrary, a
5 professional health service corporation may provide ancillary
6 health services through ancillary health service providers. An
7 ancillary health service provider may register with a
8 professional health service corporation as a participating
9 provider and continue as such upon complying with the
10 requirements adopted by the corporation with the approval of the
11 Department of Health.

12 CHAPTER 79

13 SURETY COMPANIES

14 Sec.

15 7901. Corporate sureties.

16 7902. Conditions for doing business.

17 7903. Certificates of authority.

18 7904. Annual statements.

19 7905. Power to execute obligations.

20 7906. Liability of companies.

21 7907. Guaranteed arrest bond certificates.

22 § 7901. Corporate sureties.

23 (a) Scope of surety authorization.--Every company authorized
24 to act as a surety under this chapter shall be authorized to
25 guarantee the fidelity of persons holding places of public or
26 private trust, to guarantee the performance of contracts other
27 than insurance policies and to execute bonds and undertakings
28 required or permitted by law.

29 (b) Acceptance of sureties.--Any head of a department, court
30 or other officer who is required to approve the sufficiency of

1 any bond or undertaking shall approve the company as sole surety
2 of the bond or undertaking if the company has filed, in the
3 office of the prothonotary of the county in which the bond or
4 undertaking is to be approved, a certificate issued by the
5 department under section 7903 (relating to certificates of
6 authority) authorizing it to do business as a surety company,
7 unless the certificate has been revoked by the department. This
8 certificate shall be conclusive proof of the solvency, credit
9 and sufficiency of the company for all purposes and of its
10 qualifications to be accepted as sole surety.

11 § 7902. Conditions for doing business.

12 (a) General requirements.--In order to become authorized to
13 do business as a surety, the corporation shall do the following:

14 (1) Comply with all provisions of this title applicable
15 to it.

16 (2) If a foreign or alien entity, be authorized to act
17 as a surety in the state or country where it is incorporated.

18 (3) Be authorized to act as a surety under its corporate
19 charter or act of incorporation.

20 (4) Have at least \$100,000 invested in securities
21 created by Federal law, or by or under the law of the state
22 or country wherein it is incorporated, or in other safe,
23 marketable and interest-bearing securities, the value of
24 which shall be at or above par and deposited with or held by
25 the department or the corresponding department of the state
26 or country in which it is authorized to transact business, in
27 trust for the benefit of the holders of the obligations of
28 the company.

29 (5) Have available assets exceeding its liabilities,
30 which liabilities shall include its capital stock, its

1 outstanding debts and a premium reserve equal to 50% of the
2 annual premium on all outstanding risks in force.

3 (6) File with the department before transacting business
4 in this Commonwealth under this chapter a certified copy of
5 its charter or act of incorporation and a written application
6 to be authorized to do business under this chapter.

7 (7) File with the department a statement, signed and
8 sworn to by its president or one of its vice presidents and
9 its secretary, or one of its assistant secretaries, stating:

10 (i) The amount of its paid-up cash capital.

11 (ii) Each specific item of investment.

12 (iii) The amount of premium on existing bonds upon
13 which it is surety.

14 (iv) The amount of liability for unearned portion
15 thereof, estimated at 50% of the annual premium on all
16 outstanding premiums for one year or less, and pro rata
17 for terms of more than one year.

18 (v) The amount of its outstanding debts of all
19 kinds.

20 (b) Risk limitations.--A surety company authorized to do
21 business in this Commonwealth shall not expose itself to any
22 loss or hazard on any one fidelity or surety risk in an amount
23 exceeding 10% of its capital and surplus unless it is protected
24 in excess of that amount by one of the following:

25 (1) Reinsurance in a corporation authorized to transact
26 the fidelity or surety business in this Commonwealth, in such
27 a form as to enable the obligee or beneficiary to maintain an
28 action thereon against the company reinsured jointly with the
29 reinsurer, and, upon recovering judgment against the
30 reinsured, to have recovery against the reinsurer for payment

1 to the extent in which it may be liable under the reinsurance
2 and in discharge thereof.

3 (2) The co-suretyship of such a corporation similarly
4 authorized.

5 (3) A deposit with it, in pledge or conveyance to it in
6 trust, for its protection, of property.

7 (4) A conveyance or mortgage for its protection.

8 (5) In case a suretyship obligation was made on account
9 of a fiduciary holding property in a trust capacity, a
10 deposit or other disposition of a portion of the property
11 held in trust that no future sale, mortgage, pledge or other
12 disposition can be made thereof without the consent of the
13 corporation, except by order of court.

14 (c) Exceptions.--Notwithstanding this section, the following
15 provisions apply:

16 (1) A surety corporation may execute transportation or
17 warehousing bonds for United States internal revenue taxes to
18 an amount equal to 50% of its capital and surplus.

19 (2) When the penalty of the suretyship obligation
20 exceeds the amount of a judgment described therein as
21 appealed from and thereby secured, or exceeds the amount of
22 the subject matter in controversy or of the estate in the
23 hands of the fiduciary for the performance of whose duties it
24 is conditioned, the bond may be executed if the amount so
25 secured is not in excess of such limitation.

26 (3) When the penalty of the suretyship obligation
27 executed for the performance of a contract exceeds the
28 contract price, the latter shall be taken as the basis for
29 estimating the limit of risk within the meaning of this
30 section.

1 (d) Guarantee of deposits in financial institutions.--
2 Notwithstanding anything to the contrary in this section, no
3 surety corporation shall execute suretyship obligations
4 guaranteeing the deposits of any single financial institution in
5 an aggregate amount in excess of 10% of the capital and surplus
6 of such corporate surety, unless it is protected in excess of
7 that amount by credits in accordance with subsection (b)(1),
8 (2), (3) or (4).

9 (e) Civil penalties.--Upon proof of the violation of this
10 section by any entity or its members, officers, directors or
11 attorney-in-fact, the department may take any one or more of the
12 following courses of action:

13 (1) Revoke the certificate of authority of the entity.

14 (2) Refuse, for a period of not to exceed one year
15 thereafter, to issue a new license to the entity.

16 (3) Impose a fine of not more than \$1,000 for each
17 violation.

18 (f) Criminal penalties.--Any company, or the officers,
19 directors, members or attorney-in-fact of any entity, or any
20 other person violating this section, commits a summary offense.

21 § 7903. Certificates of authority.

22 If the department is satisfied that the company applying for
23 authorization to do business under this chapter has in all
24 respects complied with and is qualified under this chapter, the
25 department shall issue to the company, and to each of its agents
26 in this Commonwealth, the certificate of the department that it
27 is authorized to become and be accepted as sole surety under
28 section 7901 (relating to corporate sureties).

29 § 7904. Annual statements.

30 Every surety company shall by January 31 of each year file

1 the following with the department, verified as the department
2 shall require:

3 (1) A statement including the information required under
4 section 7902(a)(6) (relating to conditions for doing
5 business).

6 (2) A certificate from the officer with whom the deposit
7 required under section 7902(a)(4) is made, describing the
8 securities so deposited and the manner in which they are held
9 by him, and stating that he is satisfied that such securities
10 have a value of at least \$100,000.

11 (3) A statement including such other information
12 concerning the condition and credit of the company as the
13 department requires.

14 § 7905. Power to execute obligations.

15 Any company authorized to do business in this Commonwealth
16 under this chapter is authorized to execute any bond,
17 recognizance or other obligation which is required by law or by
18 the charter, ordinances, rules or regulations of any
19 municipality, board, body or public officer to be given with a
20 surety, and the execution by the company of any such bond,
21 recognizance or obligation shall be a full and complete
22 compliance with that requirement.

23 § 7906. Liability of companies.

24 A surety company having signed a bond, undertaking or
25 obligation shall not be permitted to deny its corporate power to
26 execute such instruments or incur such liability in any
27 proceeding to enforce liability against it thereunder.

28 § 7907. Guaranteed arrest bond certificates.

29 (a) Authority.--Any domestic or foreign insurance company
30 which is authorized to transact surety business under this

1 chapter may, in any year, become surety upon compliance with
2 subsection (b), in an amount not exceeding \$200 with respect to
3 each of the guaranteed arrest bond certificates issued in the
4 year by an automobile club or association or by a company
5 authorized to write automobile liability insurance in this
6 Commonwealth.

7 (b) Application.--Any company wishing to become authorized
8 to transact business under this section shall file an
9 application with the department, in the form prescribed by it,
10 which shall state the following:

11 (1) The names and addresses of the automobile clubs,
12 automobile associations or insurance company or companies
13 with respect to the guaranteed arrest bond certificates of
14 which the surety company undertakes to be surety.

15 (2) The unqualified obligation of the surety company to
16 pay the fine or forfeiture, in an amount not exceeding \$200,
17 of any one person who, after posting a guaranteed arrest bond
18 certificate with respect to which the surety company has
19 undertaken to be surety, fails to make the appearance for
20 which the guaranteed arrest bond certificate was posted.

21 (c) Use of certificates.--Any guaranteed arrest bond
22 certificate with respect to which a surety company has become a
23 surety or a guaranteed arrest bond certificate issued by a
24 properly authorized insurance company shall, when posted by the
25 person whose signature appears thereon, be accepted in lieu of
26 cash bail in an amount not exceeding \$200 as a bail bond to
27 guarantee the timely appearance of the person in any court or
28 before any district justice in this Commonwealth when the person
29 is arrested or formally charged for any violation of Title 75
30 (relating to vehicles) or an ordinance of a local authority

1 pertaining to vehicles, except for misdemeanors or felonies as
2 defined in Title 75. Any guaranteed arrest bond certificate
3 posted as bail bond in court shall be subject to the forfeiture
4 and enforcement provisions of law applicable to a bail bond.

5 (d) Definition.--As used in this section the term
6 "guaranteed arrest bond certificate" means any printed card or
7 other certificate issued by an automobile club, association or
8 insurance company to any of its members or insureds, signed by
9 the member or insured and containing a printed statement that
10 the automobile club, association or insurance company and a
11 surety company or an insurance company authorized to transact
12 both automobile liability insurance and surety business,
13 guarantee the appearance of the person whose signature appears
14 on the card or certificate and that they will, in the event of
15 the failure of the person to appear in court or before a
16 district justice in this Commonwealth, pay any fine or
17 forfeiture imposed on the person in an amount not exceeding
18 \$200, when the person is arrested or formally charged for any
19 violation Title 75 or any ordinance of local authority
20 pertaining to vehicles except as provided in this section.

21 CHAPTER 81

22 PROPERTY AND CASUALTY INSURANCE

23 GUARANTY ASSOCIATION

24 Subchapter

- 25 A. General Provisions
- 26 B. Pennsylvania Insurance Guaranty Association
- 27 C. Assessments
- 28 D. Powers and Duties of Department
- 29 E. Recovery Procedure

30 SUBCHAPTER A

1 GENERAL PROVISIONS

2 Sec.

3 8101. Short title of chapter.

4 8102. Purposes of chapter.

5 8103. Definitions.

6 8104. Immunity.

7 8105. References to association in advertising.

8 § 8101. Short title of chapter.

9 This chapter shall be known and may be cited as the Property
10 and Casualty Insurance Guaranty Association Act.

11 § 8102. Purposes of chapter.

12 The purposes of this chapter are to:

13 (1) Provide a means for the payment of covered claims
14 under certain property and casualty insurance policies, to
15 avoid excessive delay in the payment of such claims and to
16 avoid financial loss to claimants or policyholders as a
17 result of the insolvency of an insurer.

18 (2) Assist in the detection and prevention of insurer
19 insolvencies.

20 (3) Provide for the formulation and administration by
21 Pennsylvania Insurance Guaranty Association of a plan of
22 operation necessary to effectuate the purposes of this
23 chapter.

24 § 8103. Definitions.

25 The following words and phrases when used in this chapter
26 shall have the meanings given to them in this section unless the
27 context clearly indicates otherwise:

28 "Account." Any account provided for under section 8121(a)
29 (relating to assessments).

30 "Association." The Pennsylvania Insurance Guaranty

1 Association established under this chapter.

2 "Covered claim." An unpaid claim, including a claim for
3 unearned premiums, which arises under a property and casualty
4 insurance policy of an insolvent insurer and arises from an
5 insured event which results in loss or liability relating to a
6 resident of this Commonwealth or to property permanently
7 situated in this Commonwealth. The term does not include any
8 amount due any insurer, reinsurer, insurance pool or
9 underwriting association, as a subrogation recovery or otherwise
10 or any amount in excess of the applicable limits of the policy.

11 "Insolvent insurer." An insurer determined to be insolvent
12 or in such condition that its further transaction of business
13 will be hazardous to its policyholders, its creditors or the
14 public, by a court of the insurer's domiciliary state.

15 "Insurer" or "member insurer." Any insurance entity
16 authorized to write and engaged in writing within this
17 Commonwealth, on a direct basis, property and casualty insurance
18 policies.

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

26 "Property and casualty insurance policy." Any contract,
27 including any endorsement, rider, written or oral, binder, cover
28 note, certificate or other instrument of insurance attached or
29 relating thereto, without regard to the nature of the form of
30 the same, which provides any of the coverages enumerated in

1 section 3302 (relating to authorized classes of insurance),
2 except the following:

3 (1) Life insurance and annuities.

4 (2) Health and accident insurance.

5 (3) Title insurance.

6 (4) Credit insurance on accounts receivable.

7 (5) Mortgage guaranty insurance.

8 (6) Surety insurance.

9 (7) Ocean marine insurance.

10 (8) Workmen's compensation insurance.

11 § 8104. Immunity.

12 A cause of action of any nature shall not arise against any
13 member insurer, the association or its agents or employees, the
14 board of directors, the department or any representatives of the
15 department for any action taken by any of them in the
16 performance of their respective powers and duties under this
17 chapter.

18 § 8105. References to association in advertising.

19 A member insurer shall not, directly or indirectly, make,
20 publish or place before the public in a newspaper or other
21 publication, or in the form of a notice, circular, pamphlet,
22 letter or poster, or over any radio or television station or in
23 any other way, an advertisement or statement of any sort
24 containing any reference to the coverage of association.

25 SUBCHAPTER B

26 PENNSYLVANIA INSURANCE GUARANTY ASSOCIATION

27 Sec.

28 8111. Pennsylvania Insurance Guaranty Association.

29 8112. Plan of operation.

30 8113. Examination of association.

1 8114. Annual and other statements.

2 8115. Limitation on taxability of association.

3 § 8111. Pennsylvania Insurance Guaranty Association.

4 (a) Membership.--Every insurer shall participate in the
5 Pennsylvania Insurance Guaranty Association as a condition of
6 its authority to write property and casualty insurance policies
7 in this Commonwealth.

8 (b) Powers and duties.--

9 (1) The association shall do the following:

10 (i) Make payment to the extent of the covered claims
11 of an insolvent insurer existing prior to the
12 determination of the insurer's insolvency, and covered
13 claims arising within 30 days after the determination of
14 insolvency, or before the policy expiration date if less
15 than 30 days after the determination, or before the
16 insured replaces the policy or causes its cancellation,
17 if he does so within 30 days of the determination. The
18 obligation under this subparagraph shall include only
19 that amount of each covered claim which is in excess of
20 \$100 and is less than \$300,000. The association shall not
21 be obligated on a covered claim in an amount in excess of
22 the obligation of the insolvent insurer under the policy
23 under which the claim arises.

24 (ii) Act as the insurer to the extent of its
25 obligation on the covered claims and to this extent it
26 shall have all rights, duties and obligations of the
27 insolvent insurer as if that insurer had not become
28 insolvent.

29 (iii) Assess member insurers in accordance with
30 Subchapter C (relating to assessments) the amounts

1 necessary to pay the obligations of the association under
2 subparagraph (i), the expenses of handling covered
3 claims, the cost of examinations under section 8113
4 (relating to examination of association) or 8131(a)(3)
5 (relating to powers and duties of department) and other
6 expenses authorized by this chapter.

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

15 (v) Give such notice as the department may direct
16 under section 8131(b)(1).

17 (vi) Handle claims through its employees or through
18 any of its member insurers agreeing to do so or through
19 other persons designated with the prior approval of the
20 department as servicing facilities.

21 (vii) Reimburse each servicing facility for
22 obligations of the association paid by the facility and
23 for expenses incurred by the facility while handling
24 claims on behalf of the association.

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

30 (ix) Within 90 days of the conclusion of any insurer

1 insolvency in which the association was obligated to pay
2 covered claims, prepare a report on the history and
3 causes of such insolvency, based on the information
4 available to the association, and submit such report to
5 the department.

6 (2) The association may do the following:

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

9 (ii) Borrow funds necessary to effect the purposes
10 of this chapter in accordance with the plan of operation
11 under section 8112 (relating to plan of operation).

12 (iii) Sue or be sued.

13 (iv) Negotiate and become, with the prior approval
14 of the department, a party to such contracts as are
15 necessary to carry out the purposes of this chapter.

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

21 (vi) Make reports and recommendations to the
22 department upon any matter germane to the solvency,
23 liquidation, rehabilitation or conservation of any member
24 insurer. These reports and recommendations shall not be
25 public documents.

26 (vii) Make recommendations to the department for the
27 detection and prevention of insurer insolvencies.

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

30 (c) Board of directors.--The association shall be governed

1 by a board of seven directors, serving terms as established in
2 the plan of operation. The members of the board shall be
3 selected by the member insurers subject to the approval of the
4 department. Any vacancy on the board shall be filled for the
5 remaining period of the term in the same manner as the initial
6 selections. If a vacancy remains unfilled for more than 15 days,
7 the department may appoint the directors necessary to constitute
8 a full board. In approving selections for the board, the
9 department shall consider among other things whether all member
10 insurers are fairly represented. Members of the board may be
11 reimbursed from the assets of the association for reasonable
12 expenses incurred by them as members.

13 § 8112. Plan of operation.

14 (a) Contents of plan.--The association shall operate
15 pursuant to the plan of operations approved by the department
16 under the former section 201(c) (relating to The Pennsylvania
17 Insurance Guaranty Association) of the act of November 25, 1970
18 (P.L.716, No.232), known as The Pennsylvania Insurance Guaranty
19 Association Act, as the plan may be amended under the former
20 section 202(c) of that act (relating to plan of operation) or
21 under subsection (c) of this section. The plan of operation
22 shall establish fair, reasonable and equitable procedures for
23 the performance of the powers and duties of the association
24 under section 8111(b) (relating to Pennsylvania Insurance
25 Guaranty Association), including, but not limited to:

26 (1) Procedures for handling assets of the association.

27 (2) Procedures by which claims may be filed with the
28 association and the specification of acceptable forms of
29 proof of covered claims.

30 (3) Procedures for records to be kept of all financial

1 transactions of the association.

2 (b) Delegation.--The plan of operation may provide that any
3 or all powers and duties of the association, except those under
4 section 8111(b)(1)(iii) and (2)(ii) may be delegated to a
5 corporation, association or other organization which performs or
6 will perform functions similar to those of the association, in
7 two or more states. The corporation, association or organization
8 shall be reimbursed on the same basis as would a servicing
9 facility and shall be compensated for the performance of any
10 other functions delegated to it by the association. A delegation
11 under this subsection shall take effect only upon the approval
12 of both the board of directors and the department, and may be
13 made only to a corporation, association or organization which
14 extends protection not substantially less favorable and
15 effective than that provided by this chapter.

16 (c) Amendment.--The plan of operation may be amended by the
17 association, subject to prior approval by the department or, at
18 the direction of the department, the association shall amend the
19 plan of operation.

20 § 8113. Examination of association.

21 The operations of the association shall be subject to the
22 supervision and regulation of the department, which may examine
23 these operations at any time. In connection therewith, the
24 department shall have the powers granted it under section 512
25 (relating to powers with regard to examinations), and the
26 expenses of the examination shall be borne and paid as provided
27 therein.

28 § 8114. Annual and other statements.

29 The association shall file with the department, not later
30 than March 30 of each year, a statement which shall contain

1 information with respect to its condition, operations and
2 affairs during the preceding year. The statement shall contain
3 such matters and information as are prescribed by the department
4 and shall be in the form approved by it. The department may at
5 any time require the association to furnish it with additional
6 information with respect to the association's condition,
7 operations and affairs or any matter connected therewith which
8 the department considers to be material and which will assist
9 the department in evaluating its operation.

10 § 8115. Limitation on taxability of association.

11 The association shall be exempt from the payment of all fees
12 and all taxes levied or assessed by the Commonwealth or any of
13 its political subdivisions except taxes upon the real or
14 personal property of the association.

15 SUBCHAPTER C

16 ASSESSMENTS

17 Sec.

18 8121. Assessments.

19 8122. Refunds.

20 8123. Recognition of assessments in rates.

21 8124. Assessments of other states.

22 § 8121. Assessments.

23 (a) Accounts.--For the purposes of assessment, the
24 association shall maintain two accounts: an automobile or motor
25 vehicle insurance account and an account for all other insurance
26 to which this chapter applies. Subsequent to an insurer having
27 been determined to be an insolvent insurer, the association
28 shall allocate between the two accounts and assess member
29 insurers separately for each account such amounts as are
30 necessary for the purpose of paying the obligations of the

1 association under section 8111(b)(1)(i) (relating to
2 Pennsylvania Insurance Guaranty Association) and the expenses of
3 handling covered claims of the insolvent insurer. The
4 association shall also assess member insurers for the expenses
5 of examinations under sections 8113 (relating to examination of
6 association) and 8131(a)(3) (relating to powers and duties of
7 department) and for any other expenses authorized by this
8 chapter.

9 (b) Amount.--The assessments of each member insurer shall be
10 in the proportion that the net direct written premiums of the
11 member insurer for the preceding calendar year on the kinds of
12 insurance to which the account pertains bears to the aggregate
13 net direct written premiums of all member insurers for the
14 preceding calendar year on those kinds of insurance. A member
15 insurer may not be assessed in any year on an account an amount
16 greater than 2% of insurer's net direct written premiums for the
17 preceding calendar year on the kinds of insurance to which the
18 account pertains.

19 (c) Time of notification.--Each member insurer shall be
20 notified of any assessment not later than 30 days before it is
21 due.

22 (d) Insufficient accounts.--If the maximum assessments of
23 all member insurers on an account, together with the other
24 assets in the account, do not provide in any one year an amount
25 sufficient to meet all obligations of the association under that
26 account, the funds available shall be prorated among such
27 obligations and the unpaid portions of the same shall be paid as
28 soon thereafter as funds become available.

29 (e) Exemption of insurer.--The association may, in whole or
30 in part, exempt from assessment any member insurer or defer the

1 assessment of any member insurer, if the assessment would cause
2 the insurer's financial statement to reflect amounts of capital
3 or surplus less than the minimum amounts required for a
4 certificate of authority by any jurisdiction in which the
5 insurer is authorized to transact insurance.

6 § 8122. Refunds.

7 The association may refund to its member insurers in
8 proportion to the contribution of each to an account of the
9 association that amount by which the assets of the account at
10 the end of any calendar year exceed its estimated liabilities
11 for the coming year.

12 § 8123. Recognition of assessments in rates.

13 The rates and premiums charged by a member insurer for
14 policies to which this chapter applies shall appropriately
15 reflect assessments paid to the association by the insurer less
16 any amounts returned to the insurer by the association.

17 § 8124. Assessments of other states.

18 Assessments made by insurance guaranty associations or
19 similar entities pursuant to the laws of any other state shall
20 not be considered burdens or prohibitions under section 510
21 (relating to additional restrictions of other states).

22 SUBCHAPTER D

23 POWERS AND DUTIES OF DEPARTMENT

24 Sec.

25 8131. Powers and duties of department.

26 § 8131. Powers and duties of department.

27 (a) Duties.--The department shall do the following:

28 (1) Notify the association of the existence of an
29 insolvent insurer not later than three days after the
30 department receives notice of the determination of the

1 insolvency.

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

5 (3) Begin an examination of a member insurer within 30
6 days of receipt of a request by the association for the
7 examination under section 8111(b)(2)(v) (relating to
8 Pennsylvania Insurance Guaranty Association). The expenses of
9 such an examination shall be paid by the association.

10 (b) Powers.--The department may do the following:

11 (1) Require that the association notify the insureds of
12 the insolvent insurer and any other interested parties of the
13 determination of insolvency and of their rights under this
14 chapter. This notification shall be by mail at their last
15 known address and by publication in such newspapers of
16 general circulation as the department shall specify.

17 (2) After notice and hearing, suspend or revoke the
18 certificate of authority to transact insurance in this
19 Commonwealth of any member insurer or levy a penalty payable
20 to the Commonwealth upon any such insurer which fails to pay
21 an assessment when due and after demand having been made or
22 otherwise fails to comply with the plan of operation. The
23 penalty levied for failure to pay an assessment when due
24 shall be not less than \$100 a month nor more than 5% of such
25 unpaid assessment a month. The penalty for otherwise failing
26 to comply with the plan of operation shall be not less than
27 \$100 nor more than \$1,000 a month for each month that the
28 insurer continues, after notice having been given, to fail to
29 comply with the plan of operation.

30 (3) Revoke the approval of any servicing facility

1 designated pursuant to section 8111(b)(1)(vi) if it finds
2 that claims are not being handled satisfactorily.

3 (c) Other law.--The powers and duties of the department
4 under this chapter are in addition to and not in limitation of
5 any other powers and duties of the department prescribed by law.

6 SUBCHAPTER E

7 RECOVERY PROCEDURE

8 Sec.

9 8141. Notice of claims.

10 8142. Effect of paid claims.

11 8143. Duplication of recovery.

12 8144. Proceedings involving insolvent insurers.

13 § 8141. Notice of claims.

14 Notice of claims to the receiver or liquidator of the
15 insolvent insurer shall be deemed notice to the association or
16 its agent. A list of these claims shall be periodically
17 submitted to the association or similar organization in another
18 state by the receiver or liquidator.

19 § 8142. Effect of paid claims.

20 (a) Assignment.--Any person recovering from the association
21 under this chapter shall be deemed to have assigned his rights
22 under the policy to the association to the extent of his
23 recovery from the association. Every insured or claimant seeking
24 the protection of this chapter shall cooperate with the
25 association to the same extent as the person would have been
26 required to cooperate with the insolvent insurer by the policy
27 under which the claim arises. The association shall have no
28 cause of action against the insured of the insolvent insurer for
29 any sums it has paid out except such causes of action as the
30 insolvent insurer would have had if the sums had been paid by

1 the insolvent insurer. In the case of an insolvent insurer
2 operating on a plan with assessment liability, payments of
3 claims by the association shall not operate to reduce the
4 liability of insureds to the receiver or liquidator for unpaid
5 assessments.

6 (b) Priority of claims.--The receiver or liquidator of an
7 insolvent insurer shall be bound by settlements of covered
8 claims by the association or a similar organization in another
9 state. The court having jurisdiction shall grant such claims
10 priority equal to that which the claimant would have been
11 entitled in the absence of this chapter against the assets of
12 the insolvent insurer. The expenses of the association or
13 similar organization in another state in handling claims shall
14 be accorded the same priority as the expenses of the receiver or
15 liquidator.

16 (c) Statements of claims.--The association shall
17 periodically file with the receiver or liquidator of the
18 insolvent insurer statements of the covered claims paid by the
19 association and estimates of anticipated claims on the
20 association which shall preserve the rights of the association
21 against the assets of the insolvent insurer.

22 § 8143. Duplication of recovery.

23 (a) Other insurer.--Any person having a claim against an
24 insurer under an insurance policy, other than a policy of an
25 insolvent insurer which is also a covered claim, shall first be
26 required to exhaust his rights under the policy of the insurer
27 who is not insolvent. Any amount payable on a covered claim
28 under this chapter shall be reduced by the amount of any
29 recovery under such insurance policy.

30 (b) Other guaranty association.--Any person having a claim

1 which may be recovered under more than one insurance guaranty
2 association or its equivalent shall seek recovery first from the
3 association of the insured's place of residence, except that if
4 it is a first party claim for damage to property with a
5 permanent location, he shall seek recovery first from the
6 association of the location of the property. Any recovery under
7 this chapter shall be reduced by the amount of recovery from any
8 other insurance guaranty association or its equivalent.

9 § 8144. Proceedings involving insolvent insurers.

10 (a) Stay of proceedings.--All proceedings in which the
11 insolvent insurer is a party or is obligated to defend a party
12 in any court shall be stayed for 90 days from the date the
13 insolvency is determined to permit proper defense by the
14 association of all pending causes of action.

15 (b) Reopening of default judgments.--As to any covered
16 claims arising from a judgment under any decision, verdict or
17 finding based on the default of the insolvent insurer or its
18 failure to defend an insured, the association either on its own
19 behalf or on behalf of the insured may apply to have the
20 judgment, order, decision, verdict or finding set aside by the
21 court that made it and shall be permitted to defend against the
22 claim on the merits.

23 CHAPTER 83

24 LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

25 Subchapter

- 26 A. General Provisions
- 27 B. Organization of Association
- 28 C. Assessments
- 29 D. Powers and Duties of Department
- 30 E. Impaired and Insolvent Insurers

1 SUBCHAPTER A

2 GENERAL PROVISIONS

3 Sec.

4 8301. Short title of chapter.

5 8302. Purpose of chapter.

6 8303. Applicability.

7 8304. Definitions.

8 8305. Immunity.

9 8306. Prohibited advertisement.

10 § 8301. Short title of chapter.

11 This chapter shall be known and may be cited as the Life and
12 Health Insurance Guaranty Association Act.

13 § 8302. Purpose of chapter.

14 The purpose of this chapter is to protect policyowners,
15 insureds, beneficiaries, annuitants, payees and assignees of
16 life insurance policies, health and accident insurance policies,
17 annuity contracts, endorsements, riders and contracts
18 supplemental thereto, including, but not limited to, settlement
19 options, subject to certain limitations, against failure in the
20 performance of contractual obligations due to the impairment or
21 insolvency of the insurer issuing the policies or contracts. To
22 provide this protection an association of insurers is created to
23 enable the guaranty of payment of benefits and of continuation
24 of coverages, the members of the association are subject to
25 assessment to provide funds to carry out the purpose of this
26 chapter, and the association is authorized to assist the
27 department in the detection and prevention of insurer
28 impairments or insolvencies.

29 § 8303. Applicability.

30 (a) Inclusions.--This chapter applies to direct written

1 individual and group life insurance policies, health and
2 accident insurance policies, annuity contracts, endorsements,
3 riders and contracts supplemental thereto, including, but not
4 limited to, settlement options, issued by member insurers
5 authorized to transact such insurance.

6 (b) Exclusions.--This chapter does not apply to the
7 following:

8 (1) The part of a variable life insurance or variable
9 annuity contract not guaranteed by an insurer.

10 (2) The part of any policy or contract under which the
11 risk is borne by the policyholder.

12 (3) A policy or contract or part thereof assumed by the
13 impaired or insolvent insurer under a contract of
14 reinsurance, other than reinsurance for which assumption
15 certificates have been issued.

16 (4) A certificate or contract issued by a fraternal
17 benefit society pursuant to its underwriting powers.

18 (5) A certificate, contract or subscriber agreement
19 issued by a health maintenance organization under Chapter 73
20 (relating to health maintenance organizations).

21 (6) A certificate, contract or subscriber agreement
22 issued by a hospital plan corporation or a nonprofit hospital
23 plan as defined in section 7501 (relating to definitions).

24 (7) A certificate, contract or subscriber agreement
25 issued by a professional health service corporation, a
26 nonprofit dental service plan, a nonprofit optometric service
27 plan or a nonprofit professional health service plan, as
28 defined in section 7702 (relating to definitions).

29 § 8304. Definitions.

30 The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Account." Any of the three accounts created under section
4 8311(b) (relating to Pennsylvania Life and Health Insurance
5 Guaranty Association).

6 "Association." The Pennsylvania Life and Health Insurance
7 Guaranty Association.

8 "Contractual obligation." Any obligation under covered
9 policies or contracts.

10 "Covered policy." Any policy or contract within the scope of
11 this chapter.

12 "Impaired insurer." A member insurer deemed by the
13 department to be potentially unable to fulfill its contractual
14 obligations but not an insolvent insurer.

15 "Insolvent insurer." A member insurer which becomes
16 insolvent and is placed under a final order of liquidation,
17 rehabilitation or conservation by a court of competent
18 jurisdiction of the insurer's domiciliary state.

19 "Member insurer." Any person licensed to transact in this
20 Commonwealth any kind of insurance to which this chapter
21 applies.

22 "Premiums." Direct written gross insurance premiums and
23 annuity considerations received on covered policies, less return
24 premiums and considerations thereon and dividends paid or
25 credited to policyholders on such business, and experience rated
26 refunds or credits paid or credited to policyholders on such
27 business. The term does not include premiums and considerations
28 on contracts between insurers and reinsurers.

29 "Resident." Any person who resides in this Commonwealth at
30 the time a member insurer is determined to be an impaired or

1 insolvent insurer and to whom contractual obligations are owed.

2 § 8305. Immunity.

3 A cause of action of any nature shall not arise against any
4 member insurer or its agents or employees, the association or
5 its agents or employees, members of the board of directors or
6 the department, or any representatives of the department for any
7 action taken by them in the performance of their powers and
8 duties under this chapter.

9 § 8306. Prohibited advertisement.

10 (a) Prohibition.--A person, including an insurer, agent or
11 affiliate of an insurer, shall not directly or indirectly make,
12 publish, disseminate, circulate or place before the public in
13 any newspaper, magazine or other publication, or in the form of
14 a notice, circular, pamphlet, letter or poster, or over any
15 radio station or television station, or in any other way, any
16 advertisement, announcement or statement which uses the
17 existence of the association for the purpose of sales,
18 solicitation or inducement to purchase any form of insurance
19 covered by this chapter. This section does not apply to the
20 association itself.

21 (b) Penalties.--Any person who violates subsection (a) may
22 be subject, after notice and hearing and upon order of the
23 department, to one or more of the following:

24 (1) A monetary penalty of not more than \$1,000 for each
25 violation, but not to exceed an aggregate penalty of \$10,000.

26 (2) Suspension or revocation of his license or
27 certificate of authority.

28

SUBCHAPTER B

29

ORGANIZATION OF ASSOCIATION

30 Sec.

1 8311. Pennsylvania Life and Health Insurance Guaranty
2 Association.

3 8312. Board of directors.

4 8313. Powers and duties of association.

5 8314. Plan of operation.

6 8315. Tax exemption.

7 § 8311. Pennsylvania Life and Health Insurance Guaranty
8 Association.

9 (a) General rule.--There shall be a nonprofit,
10 unincorporated association to be known as the Pennsylvania Life
11 and Health Insurance Guaranty Association. All member insurers
12 shall be and remain members of the association as a condition of
13 their authority to transact any kind of insurance in this
14 Commonwealth to which this chapter applies. The association
15 shall perform its functions under a plan of operation and shall
16 exercise its powers through a board of directors. The
17 association shall be subject to examination and regulation by
18 the department and shall be subject to this title.

19 (b) Accounts.--For the purposes of administration and
20 assessment, the association shall maintain the following three
21 accounts:

22 (1) The life insurance account.

23 (2) The health and accident insurance account.

24 (3) The annuity account.

25 Supplementary contracts shall be covered under the account in
26 which the basic policy is covered for purposes of assessment.

27 (c) Records of association.--Records shall be kept of all
28 negotiations and meetings in which the association or its
29 representatives are involved to discuss the activities of the
30 association in carrying out its powers and duties under section

1 8313 (relating to powers and duties of association). Records of
2 such negotiations or meetings shall be made public only upon the
3 termination of a liquidation, rehabilitation or conservation
4 proceeding involving the impaired or insolvent insurer, upon the
5 termination of the impairment or insolvency of the insurer or
6 upon the order of a court. This subsection does not limit the
7 duty of the association to render a report of its activities
8 under section 8313(i).

9 § 8312. Board of directors.

10 (a) Composition.--The board of directors of the association
11 shall consist of not less than five nor more than nine member
12 insurers serving terms as established in the plan of operation.
13 The members of the board shall be selected by member insurers,
14 subject to the approval of the commissioner. Vacancies on the
15 board shall be filled for the remaining period of the term by a
16 majority vote of the remaining board members, subject to the
17 approval of the commissioner. In approving selections to the
18 board, the commissioner shall consider, among other things,
19 whether all member insurers are fairly represented.

20 (b) Reimbursement.--Members of the board may be reimbursed
21 from the assets of the association for reasonable expenses
22 incurred by them as members. They shall not otherwise be
23 compensated by the association for their services.

24 § 8313. Powers and duties of association.

25 (a) Domestic impaired insurer.--In the case of a domestic
26 impaired insurer, the association may, subject to any conditions
27 imposed by the association and approved in writing by the
28 impaired insurer and the department, other than those conditions
29 which impair the contractual obligations of the impaired
30 insurer:

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

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

8 (3) lend money to the impaired insurer.

9 (b) Insolvent insurers.--In the case of an insolvent
10 insurer, the association shall, subject to the written approval
11 of the department:

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

15 (2) assure payment of the contractual obligations of the
16 insolvent insurer; or

17 (3) provide such moneys, pledges, notes, guarantees or
18 other means as are reasonably necessary to discharge such
19 duties.

20 This subsection does not apply where the department has
21 determined that a foreign or alien member insurer's domiciliary
22 jurisdiction or state of entry provides, by statute or
23 regulation, protection for residents of this Commonwealth
24 substantially similar to that provided by this chapter.

25 (c) Liens.--In carrying out subsection (b), permanent policy
26 liens or contract liens may be imposed in connection with any
27 guarantee, assumption or reinsurance agreement if the court does
28 either of the following:

29 (1) Finds that the amounts which can be assessed under
30 this chapter are less than the amounts needed to assure full

1 and prompt performance of the insolvent insurer's contractual
2 obligations, or that the economic or financial conditions as
3 they affect member insurers are sufficiently adverse to
4 render in the public interest the imposition of policy or
5 contract liens.

6 (2) Approves the specific policy or contract liens to be
7 used.

8 Before being obligated under subsection (b), the association may
9 request that the court approve the imposition of temporary
10 moratoriums or liens on payments of cash values and policy loans
11 in addition to any contractual provisions for deferral of cash
12 or policy loan values.

13 (d) Delay by association.--If the association fails to act
14 under subsection (b) within a reasonable period of time, the
15 department shall have the powers and duties of the association
16 under this chapter with respect to insolvent insurers.

17 (e) Assistance to department.--The association may render
18 assistance and advice to the department, upon its request,
19 concerning rehabilitation, payment of claims, continuance of
20 coverage or the performance of other contractual obligations of
21 any impaired or insolvent insurer.

22 (f) Standing.--The association shall have standing to appear
23 before any court in this Commonwealth with jurisdiction over an
24 impaired or insolvent insurer concerning which the association
25 is or may become obligated under this chapter. Such standing
26 shall extend to all matters germane to the powers and duties of
27 the association, including, but not limited to, proposals for
28 reinsuring or guaranteeing the covered policies of the impaired
29 or insolvent insurer and the determination of the covered
30 policies and contractual obligations.

1 (g) Liability.--The association shall not be liable for any
2 contractual obligations of insolvent insurers which are \$100 or
3 less with respect to the total contractual obligations owing to
4 any one person. The contractual obligations of the insolvent
5 insurer for which the association becomes or may become liable
6 shall otherwise be as great as but no greater than the
7 contractual obligations of the insolvent insurer would have been
8 in the absence of an insolvency unless such obligations are
9 reduced as permitted by subsection (c). However, the aggregate
10 liability of the association on any one life shall not exceed
11 \$100,000 with respect to the payment of cash values, or \$300,000
12 for all benefits; this limitation includes all benefits which
13 become payable after the date of the insolvency and all benefits
14 that may be accrued and unpaid on the date of the insolvency.

15 (h) General powers.--The association may do the following:

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

18 (2) Sue or be sued, including taking any legal action
19 necessary or proper for recovery of unpaid assessments under
20 section 8321 (relating to assessments).

21 (3) Borrow money to effect the purposes of this chapter.
22 Notes or other evidence of indebtedness of the association
23 not in default shall be legal investments for domestic
24 insurers and may be carried as admitted assets.

25 (4) Employ or retain such persons as are necessary to
26 handle the financial transactions of the association, and
27 perform such other functions as become necessary or proper
28 under this chapter.

29 (5) Negotiate and contract with any liquidator,
30 rehabilitator, conservator or ancillary receiver to carry out

1 the powers and duties of the association.

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

4 (7) Exercise, for the purposes of this chapter and to
5 the extent approved by the department, the powers of a
6 domestic life or health and accident insurer, but the
7 association may not issue insurance policies or annuity
8 contracts other than those issued to perform the contractual
9 obligations of the impaired or insolvent insurer.

10 (i) Annual report.--The board of directors shall submit to
11 the department, not later than May 1 of each year, a financial
12 report for the preceding calendar year in a form approved by the
13 department and a report of its activities during the preceding
14 calendar year.

15 § 8314. Plan of operation.

16 (a) General rule.--The association shall operate pursuant to
17 the plan of operation approved by the department under the
18 former section 9(a) (relating to plan of operation) of the act
19 of November 26, 1978 (P.L.1188, No.280), known as the Life and
20 Health Insurance Guaranty Association Act, as the plan may be
21 amended under that act or this section. Amendments to the plan
22 may be proposed by the board of directors of the association and
23 shall become effective upon approval in writing by the
24 department. The plan shall be designed so as to assure the fair,
25 reasonable and equitable administration of the association.

26 (b) Effect of plan.--All member insurers shall comply with
27 the plan of operation.

28 (c) Contents.--The plan of operation shall do the following:

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

1 (2) Establish the amount and method of reimbursing
2 members of the board of directors.

3 (3) Establish regular places and times for meetings of
4 the board of directors.

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

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

11 (6) Establish additional procedures for assessments.

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

15 (d) Delegation.--The plan of operation may provide that any
16 or all powers and duties of the association, except those under
17 sections 8313(h)(3) (relating to powers and duties of
18 association) and 8321 (relating to assessments), are delegated
19 to a corporation, association or other organization which
20 performs or will perform functions similar to those of this
21 association in two or more states. The corporation, association
22 or organization shall be reimbursed for any payments made on
23 behalf of the association and shall be paid for its performance
24 of any function of the association. A delegation under this
25 subsection shall take effect only with the approval of both the
26 board of directors and the department, and may be made only to a
27 corporation, association or organization which extends
28 protection not substantially less favorable and effective than
29 that provided by this chapter.

30 § 8315. Tax exemption.

1 The association shall be exempt from the payment of all fees
2 and taxes levied by the Commonwealth or any of its subdivisions,
3 except taxes levied on real property.

4 SUBCHAPTER C

5 ASSESSMENTS

6 Sec.

7 8321. Assessments.

8 8322. Tax credits for assessments paid.

9 8323. Assessments of other states.

10 8324. Relation to Pennsylvania Insurance Guaranty Association.

11 § 8321. Assessments.

12 (a) Power to assess.--For the purpose of providing the funds
13 necessary to carry out the powers and duties of the association,
14 the board of directors shall assess the member insurers,
15 separately for each account, at such time and for such amounts
16 as the board finds necessary. Assessments shall be due not less
17 than 30 days after written notice to the member insurers and
18 shall accrue interest at 8% a year after the due date.

19 (b) Classes.--There shall be the following classes of
20 assessments:

21 (1) Class A assessments shall be made for the purpose of
22 meeting administrative costs and other general expenses not
23 related to a particular impaired or insolvent insurer and
24 examinations conducted under the authority of section
25 8341(b)(3) (relating to prevention of insolvencies).

26 (2) Class B assessments shall be made to the extent
27 necessary to carry out the powers and duties of the
28 association under section 8313 (relating to powers and duties
29 of association) with regard to an impaired or insolvent
30 domestic insurer.

1 (3) Class C assessments shall be made to the extent
2 necessary to carry out the powers and duties of the
3 association under section 8313 with regard to an insolvent
4 foreign or alien insurer.

5 (c) Amount of assessments.--

6 (1) The amount of any Class A assessment shall be
7 determined by the board and may be made on a basis other than
8 pro rata. These assessments for costs and expenses other than
9 for examinations shall not exceed \$50 per company in any one
10 calendar year. The amount of any Class B or C assessment
11 shall be allocated for assessment purposes among the accounts
12 under section 8311(b) (relating to Pennsylvania Life and
13 Health Insurance Guaranty Association) in the proportion that
14 the premiums received by the impaired or insolvent insurer on
15 the covered policies under each account for the last calendar
16 year preceding the assessment in which the impaired or
17 insolvent insurer received premiums bear to the premiums
18 received by the insurer for that calendar year on all covered
19 policies.

20 (2) Class B assessments for each account shall be made
21 separately for each state in which the impaired or insolvent
22 domestic insurer was authorized to transact insurance at any
23 time, in the proportion that the premiums received on
24 business in that state by the impaired or insolvent insurer
25 on covered policies under each account for the last calendar
26 year preceding the assessment in which the impaired or
27 insolvent insurer received premiums bear to such premiums
28 received in all such states for that calendar year by the
29 impaired or insolvent insurer. The assessments against member
30 insurers shall be in the proportion that the premiums

1 received on business in each such state by each assessed
2 member insurer on covered policies under each account for the
3 last calendar year preceding the assessment bear to such
4 premiums received on business in each state for that calendar
5 year by all assessed member insurers.

6 (3) Class C assessments against member insurers for each
7 account shall be in the proportion that the premiums received
8 on business in this Commonwealth by each assessed member
9 insurer on covered policies under each account for the last
10 calendar year preceding the assessment bear to such premiums
11 received on business in this Commonwealth for that calendar
12 year by all assessed member insurers.

13 (4) Assessments for funds to meet the requirements of
14 the association with respect to an impaired or insolvent
15 insurer shall not be made until necessary to implement the
16 purposes of this chapter. Classification of assessments under
17 subsection (b) and computation of assessments under this
18 paragraph shall be made with a reasonable degree of accuracy,
19 recognizing that exact determinations may not always be
20 possible.

21 (d) Abatement and deferral.--The association may abate or
22 defer, in whole or in part, the assessment of a member insurer
23 if, in the opinion of the board, payment of the assessment would
24 endanger the ability of the insurer to fulfill its contractual
25 obligations, or would cause the insurer's financial statement to
26 reflect amounts of capital or surplus less than the minimum
27 amounts required for a certificate of authority by any
28 jurisdiction in which the insurer is authorized to transact
29 insurance. If an assessment against an insurer is abated or
30 deferred in whole or in part, the amount by which the assessment

1 is abated or deferred may be assessed against the other member
2 insurers in a manner consistent with the basis for assessments
3 set forth in this section.

4 (e) Limitation on amount.--The total of all assessments upon
5 a member insurer for each account shall not in any one calendar
6 year exceed 2% of the insurer's premiums on its policies covered
7 by each account received in this Commonwealth during the
8 calendar year preceding the assessment. If the maximum
9 assessment, together with the other assets of the association in
10 any account, does not provide in any one year in the account an
11 amount sufficient to carry out the responsibilities of the
12 association, the necessary additional funds shall be assessed as
13 soon thereafter as permitted by this chapter.

14 (f) Refunds.--The board may, by an equitable method
15 established in the plan of operation, refund to member insurers,
16 in proportion to the contribution of each insurer to that
17 account, the amount by which the assets of the account exceed
18 the amount necessary to carry out during the coming year the
19 obligations of the association with regard to that account,
20 including assets accruing from net realized gains and income
21 from investments. A reasonable amount may be retained in any
22 account to provide funds for the continuing expenses of the
23 association and for future losses if refunds are impractical.

24 (g) Insurer estimates.--In determining its premium rates and
25 policyowner dividends as to any kind of insurance within the
26 scope of this chapter, any member insurer may consider the
27 amount reasonably necessary to meet its assessment obligations
28 under this chapter.

29 (h) Assessment of insureds.--This chapter does not reduce
30 the liability for unpaid assessments of the insureds of an

1 impaired or insolvent insurer operating under a plan with
2 assessment liability.

3 (i) Certificate of contribution.--The association shall
4 issue to each insurer paying any assessment under this chapter a
5 certificate of contribution, in a form prescribed by the
6 department, for the amount of the assessment so paid. All
7 outstanding certificates shall be of equal priority without
8 reference to amounts or dates of issue. A certificate of
9 contribution may be shown by the insurer in its financial
10 statement as an asset, but may not be shown as an asset on the
11 insurer's financial statement to the extent that the insurer has
12 offset an assessment against its premium tax liability to the
13 Commonwealth.

14 § 8322. Tax credits for assessments paid.

15 (a) General rule.--A member insurer may offset against its
16 premium tax liability to the Commonwealth a proportionate part
17 of the assessment described in section 8321 (relating to
18 assessments) to the extent of 20% of the proportionate part of
19 the assessment for each of the five calendar years following the
20 year in which the assessment was paid. If a member insurer
21 ceases doing business, the uncredited proportionate part of the
22 assessment may be offset against the insurer's premium tax
23 liability for the year it ceases doing business.

24 (b) Proportionate part.--The proportionate part of an
25 assessment which may be offset against the premium tax liability
26 under subsection (a) shall be determined according to a fraction
27 of which the denominator is the total premiums received by the
28 company during the calendar year immediately preceding the year
29 in which the assessment is paid and the numerator is that
30 portion of the premiums received during such year on account of

1 policies of life or health and accident insurance in which the
2 premium rates are guaranteed during the continuance of the
3 respective policies without a right exercisable by the company
4 to increase those premium rates.

5 (c) Refunded amounts.--Any sums acquired by refund, pursuant
6 to section 8321(f), from the association which have theretofore
7 been written off by contributing insurers and offset against
8 premium taxes as provided in this section and are not then
9 needed for purposes of this chapter, shall be paid by the
10 association to the department and deposited by him with the
11 State Treasurer for credit to the General Fund of the
12 Commonwealth.

13 § 8323. Assessments of other states.

14 Assessments made by insurance guaranty associations or
15 similar entities pursuant to the laws of any other state shall
16 not be considered burdens or prohibitions under section 510
17 (relating to additional restrictions of other states).

18 § 8324. Relation to Pennsylvania Insurance Guaranty
19 Association.

20 A member insurer of the Pennsylvania Insurance Guaranty
21 Association shall not be subject to assessment by the
22 Pennsylvania Insurance Guaranty Association for covered claims,
23 as defined in section 8103 (relating to definitions) arising
24 under health and accident policies, endorsements, riders and
25 contracts supplemental thereto written in this Commonwealth by
26 any member insurer adjudicated insolvent on or after January 25,
27 1979, by a court of the insolvent insurer's domiciliary state. A
28 member of the Pennsylvania Life and Health Insurance Guaranty
29 Association who is also a member of the Pennsylvania Insurance
30 Guaranty Association under Chapter 81 (relating to Property and

1 Casualty Insurance Guaranty Association), solely because of
2 health and accident policies written in this Commonwealth may,
3 by written notice to the Pennsylvania Insurance Guaranty
4 Association, withdraw as a member thereof and shall not be
5 subject to any other assessments by the Pennsylvania Insurance
6 Guaranty Association.

7 SUBCHAPTER D

8 POWERS AND DUTIES OF DEPARTMENT

9 Sec.

10 8331. Powers and duties of department.

11 § 8331. Powers and duties of department.

12 (a) General powers.--The department shall do the following:

13 (1) Provide the association with a statement of the
14 premiums in the appropriate states for each member insurer
15 when requested by the board of directors.

16 (2) When an impairment is declared and the amount of the
17 impairment is determined, serve a demand upon the impaired
18 insurer to make good the impairment within a reasonable time.
19 Notice to the impaired insurer shall constitute notice to its
20 shareholders, if any. The failure of the insurer to comply
21 promptly with this demand shall not excuse the association
22 from the performance of its powers and duties under this
23 chapter.

24 (3) In any liquidation or rehabilitation proceeding
25 involving a domestic insurer, be appointed as the liquidator
26 or rehabilitator. If a foreign or alien member insurer is
27 subject to a liquidation proceeding in its domiciliary
28 jurisdiction or state of entry, the department shall be
29 appointed conservator.

30 (b) Sanctions.--The department may suspend or revoke, after

1 notice and hearing, the certificate of authority to transact
2 insurance in this Commonwealth of any member insurer which fails
3 to pay an assessment when due or fails to comply with the plan
4 of operation, or may levy a penalty on any member insurer which
5 fails to pay an assessment when due. The penalty shall be at
6 least \$100 a month, but otherwise shall not exceed 5% of the
7 unpaid assessment a month.

8 (c) Appeals.--An action of the board of directors or the
9 association may be appealed to the department by any member
10 insurer if the appeal is taken within 30 days of the action. A
11 final action or order of the department shall be subject to
12 judicial review under Title 2 (relating to administrative law
13 and procedure).

14 (d) Other law.--The duties and powers of the department as
15 set forth in this chapter are in addition to and not in
16 limitation of any other powers and duties of the department
17 prescribed by law.

18 SUBCHAPTER E

19 IMPAIRED AND INSOLVENT INSURERS

20 Sec.

21 8341. Prevention of insolvencies.

22 8342. Affairs of impaired and insolvent insurers.

23 8343. Proceedings involving insolvent insurers.

24 8344. Timely filing of claims.

25 8345. Duplication of recovery.

26 § 8341. Prevention of insolvencies.

27 (a) Duties of department.--The department shall do the
28 following:

29 (1) Notify the commissioners or departments of all of
30 the other states when it takes any of the following actions

1 against a member insurer based specifically in consideration
2 of the financial solvency of the insurer:

3 (i) Revocation of license.

4 (ii) Suspension of license.

5 (iii) Making of any formal order that the company
6 restrict its premium writing, obtain additional
7 contributions to surplus, withdraw from this
8 Commonwealth, reinsure all or any part of its business or
9 increase its capital surplus or any other account for the
10 security of policyholders or creditors.

11 (2) Mail such notice to all commissioners or departments
12 within 30 days of the date on which the action was taken.

13 (3) Report to the board of directors when it has taken
14 any of the actions set forth in paragraph (1) or has received
15 a report from the commissioner or department of another state
16 indicating that any such action has been taken in another
17 state. The report shall contain all significant details of
18 the action taken or report received from the commissioner or
19 department of another state.

20 (4) Report to the board of directors when it has
21 reasonable cause to believe from any examination, whether
22 completed or in process, that a member company may be an
23 impaired or insolvent insurer, notwithstanding section 511
24 (relating to examination of companies).

25 (5) Furnish to the board of directors the early warning
26 tests developed by the National Association of Insurance
27 Commissioners.

28 The board may use the information contained therein in carrying
29 out its duties under this section. The report and the
30 information contained therein shall be kept confidential by the

1 board of directors until it is made public by the department or
2 other lawful authority.

3 (b) Board of directors.--The department may seek the advice
4 and recommendations of the board of directors concerning any
5 matter affecting its duties regarding the financial condition of
6 member companies and companies seeking to transact insurance
7 business in this Commonwealth. The board of directors may do the
8 following, upon majority vote:

9 (1) Make reports and recommendations to the department
10 upon any matter germane to the solvency, liquidation,
11 rehabilitation or conservation of any member insurer or
12 germane to the solvency of any insurance company seeking to
13 do business in this Commonwealth. These reports and
14 recommendations shall not be considered public documents.

15 (2) Notify the department of any information it has
16 indicating a member insurer may be impaired or insolvent.

17 (3) Request the department to order an examination of
18 any member insurer which the board in good faith believes may
19 be impaired. The department shall begin such examination
20 within 30 days of the receipt of the request. The examination
21 may be conducted as a National Association of Insurance
22 Commissioners examination or by such persons as the
23 department designates. The cost of the examination shall be
24 paid by the association, and the examination report shall be
25 treated the same as are other examination reports. The
26 examination report shall not be released to the board of
27 directors prior to its release to the public; however, this
28 requirement does not preclude the department from complying
29 with subsection (a). The department shall notify the board of
30 directors when the examination is completed. The request for

1 an examination shall be kept on file by the department and
2 shall not be open to public inspection prior to the release
3 of the examination report to the public.

4 (4) Make recommendations to the department for the
5 detection and prevention of insurer insolvencies.

6 (c) Reports on insolvency.--The board of directors shall, at
7 the conclusion of any insurer insolvency in which the
8 association was obligated to pay covered claims, prepare a
9 report to the department containing such information as it may
10 possess bearing on the history and causes of the insolvency. The
11 board shall cooperate with the board of directors of guaranty
12 associations in other states in preparing a report on the
13 history and causes for insolvency of a particular insurer. It
14 may adopt, by reference, a report prepared by other
15 associations.

16 § 8342. Affairs of impaired and insolvent insurers.

17 (a) Assignment and subrogation.--A person receiving benefits
18 under this chapter shall be deemed to have assigned the rights
19 under the covered policy to the association to the extent of the
20 benefits received because of this chapter, whether the benefits
21 are payments of contractual obligations or continuation of
22 coverage. The association may require an assignment to it of
23 these rights by any payee, policy or contract owner,
24 beneficiary, insured or annuitant as a condition precedent to
25 the receipt of any rights or benefits conferred by this chapter.
26 The association shall be subrogated to these rights against the
27 assets of any insolvent insurer. The subrogation rights of the
28 association under this subsection shall have the same priority
29 against the assets of the insolvent insurer as that possessed by
30 the person entitled to receive benefits under this chapter.

1 (b) Rights of association as creditor.--For the purpose of
2 carrying out its obligations under this chapter, the association
3 shall be deemed to be a creditor of the impaired or insolvent
4 insurer to the extent of assets attributable to covered policies
5 reduced by any amounts to which the association is entitled as
6 subrogee pursuant to subsection (a). All assets of the insurer
7 attributable to covered policies shall be used by the
8 association to continue all covered policies and pay all
9 contractual obligations of the insurer as required by this
10 chapter. For the purposes of this subsection, assets
11 attributable to covered policies under any account, as used in
12 this subsection, shall be determined as being that proportion of
13 the total assets of the insurer which the reserves that should
14 have been established for policies under such account bear to
15 the reserves that should have been established for all policies
16 of insurance written by the insurer.

17 (c) Distribution of insurer's assets.--Prior to the
18 termination of any liquidation, rehabilitation or conservation
19 proceeding, the court may take into consideration the
20 contributions of the respective parties, including the
21 association, the shareholders and policyowners of the insolvent
22 insurer and any other party with a bona fide interest, in making
23 an equitable distribution of the ownership rights of the
24 insurer. In such a determination, consideration shall be given
25 to the welfare of the policyholders of the continuing or
26 successor insurer.

27 (d) Distribution to stockholders.--A distribution to
28 stockholders, if any, of an impaired or insolvent insurer shall
29 not be made until and unless the total amount of valid claims of
30 the association for funds expended in carrying out its powers

1 and duties under section 8313 (relating to powers and duties of
2 association) with respect to the insurer has been fully
3 recovered by the association.

4 (e) Recovery against affiliates.--If an order for
5 liquidation or rehabilitation of a domestic insurer has been
6 entered, the receiver appointed under the order may recover on
7 behalf of the insurer, from any affiliate that controlled it,
8 the amount of distributions, other than stock dividends paid by
9 the insurer on its capital stock, made at any time during the
10 five years preceding the petition for liquidation or
11 rehabilitation subject to the following provisions:

12 (1) The distribution shall not be recoverable if the
13 insurer shows that when paid the distribution was lawful and
14 reasonable in accordance with Chapter 35 (relating to
15 corporate operations).

16 (2) A person who was an affiliate controlling the
17 insurer at the time the distributions were paid shall be
18 liable to the extent of the distributions received by him;
19 whenever two persons are liable with respect to the same
20 distributions, they shall be jointly and severally liable. If
21 any person so liable is insolvent, all the affiliates that
22 controlled it at the time the distribution was paid shall be
23 jointly and severally liable for any resulting deficiency in
24 the amount recovered from the insolvent affiliate.

25 (3) The maximum amount recoverable under this subsection
26 shall be the amount needed in excess of all other available
27 assets of the insolvent insurer to pay the contractual
28 obligations of the insolvent insurer.

29 § 8343. Proceedings involving insolvent insurers.

30 (a) Stay of proceedings.--All proceedings in which the

1 insolvent insurer is a party in any court shall be stayed 90
2 days from the date the insolvency is determined by the
3 Commonwealth Court to permit proper legal action by the
4 association on any matters germane to its powers or duties.

5 (b) Reopening default judgments.--As to any judgment against
6 an insolvent insurer in relation to a contractual obligation
7 under any decision, order, verdict or finding based on default,
8 the association may apply to have the judgment set aside by the
9 same court that made it and shall be permitted to defend against
10 the suit on the merits.

11 § 8344. Timely filing of claims.

12 Notwithstanding any other provision of this chapter, any
13 claim filed after the final date set by the court for the filing
14 of claims against the liquidator of an insolvent insurer shall
15 not be deemed a contractual obligation.

16 § 8345. Duplication of recovery.

17 A person having a claim or benefit payment which may be
18 recovered under more than one insurance guaranty association or
19 its equivalent shall seek recovery first from the association of
20 the place of residence of the insured. A recovery under this
21 chapter shall be reduced by the amount of recovery from any
22 other insurance guaranty association or its equivalent.

23 CHAPTER 85

24 INSURANCE PREMIUM FINANCE COMPANIES

25 Subchapter

- 26 A. General Provisions
- 27 B. Licensure
- 28 C. Regulation

29 SUBCHAPTER A

30 GENERAL PROVISIONS

1 Sec.

2 8501. Short title of chapter.

3 8502. Definitions.

4 § 8501. Short title of chapter.

5 This chapter shall be known and may be cited as the Insurance
6 Premium Finance Company Act.

7 § 8502. Definitions.

8 The following words and phrases when used in this chapter
9 shall have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Insurance premium finance agreement" or "agreement." An
12 agreement by which an insured or prospective insured promises to
13 pay to an insurance premium finance company the amount advanced
14 or to be advanced under the agreement to an insurer or to an
15 insurance agent or broker in payment of premiums and related
16 loss prevention services of an insurance contract together with
17 interest and a service charge pursuant to this chapter.

18 "Insurance premium finance company." A person engaged in the
19 business of entering into insurance premium finance agreements.

20 "Licensee." An insurance premium finance company holding a
21 license issued under this chapter.

22 "Person." Includes a common law trust, joint-stock company
23 or any other group of individuals however organized.

24 SUBCHAPTER B

25 LICENSURE

26 Sec.

27 8511. Licensure requirement.

28 8512. Issuance and renewal of license.

29 8513. Revocation or suspension of license.

30 § 8511. Licensure requirement.

1 (a) General rule.--A person shall not engage in the business
2 of an insurance premium finance company in this Commonwealth
3 without first being so licensed by the department. Any
4 solicitation or communication, verbal or written, offering an
5 insurance premium finance agreement and originating outside this
6 Commonwealth but forwarded to and received in this Commonwealth
7 by a resident of this Commonwealth shall be deemed to be doing
8 business in this Commonwealth.

9 (b) Fee.--The annual license fee shall be \$200. Licenses may
10 be renewed from year to year as of July 1 of each year upon
11 payment of the fee of \$200. The fee for the license shall be
12 paid to the department.

13 (c) Disclosure by applicant.--The department may at any time
14 require the applicant to disclose the identity of all
15 stockholders, partners, officers and employees and may refuse to
16 issue or renew a license in the name of any firm, partnership or
17 corporation if it is not satisfied that any officer, employee,
18 stockholder or partner thereof who may materially influence the
19 applicant's conduct meets the standards of this chapter.

20 (d) Exemptions.--The following persons engaged in business
21 otherwise subject to licensure under subsection (a) shall not be
22 required to obtain a license under this section and shall be
23 exempt from this chapter:

24 (1) Banks, bank and trust companies, savings banks,
25 savings and loan associations or credit unions which are
26 chartered by the Federal Government or the Commonwealth.

27 (2) Consumer discount companies licensed by the
28 Commonwealth under the act of April 8, 1937 (P.L.262, No.66),
29 known as the Consumer Discount Company Act.

30 (3) Authorized insurance entities which engage in the

1 financing of their own sales.

2 (4) Secondary mortgage loan companies licensed by the
3 Commonwealth under the act of December 12, 1980 (P.L.1179,
4 No.219), known as the Secondary Mortgage Loan Act.

5 (5) Sales finance companies licensed under the act of
6 June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle
7 Sales Finance Act.

8 (6) Holders of retail installment contracts or
9 installment accounts executed, incurred or entered into by a
10 retail buyer pursuant to the act of October 28, 1966 (1st Sp.
11 Sess., P.L.55, No.7), known as the Goods and Services
12 Installment Sales Act.

13 (7) Home improvement contractors or financing agencies
14 extending credit pursuant to the act of August 14, 1963
15 (P.L.1082, No.464), known as the Home Improvement Finance
16 Act.

17 § 8512. Issuance and renewal of license.

18 (a) Procedure.--Upon the filing of an application in a form
19 to be specified by the department and the payment of the license
20 fee, the department shall make an investigation of each
21 applicant and shall issue a license if the applicant is
22 qualified in accordance with this chapter. The applicant shall
23 provide the requested information in writing and under oath on
24 such forms or in such other manner as the department shall
25 prescribe. If the department does not find the applicant to be
26 qualified, it shall, within 60 days after it has received the
27 application, at the request of the applicant, give the applicant
28 a full hearing.

29 (b) Requirements.--Before the department shall issue or
30 renew a license, it shall be satisfied that:

1 (1) the applicant is competent, reputable and
2 trustworthy and intends to act in good faith in the business
3 to be licensed;

4 (2) the individuals, officers, members or other
5 individuals connected with or doing business for the
6 applicant have such experience, training or education as to
7 be qualified in the business to be licensed; and

8 (3) if a corporation, the applicant is a corporation
9 incorporated under the law of this Commonwealth or is a
10 foreign corporation authorized to transact business in this
11 Commonwealth.

12 (c) Net worth.--Before the department issues or renews any
13 license under this chapter, it shall ascertain that the
14 applicant has and maintains a net worth of at least \$50,000 as
15 shall be certified on the application.

16 § 8513. Revocation or suspension of license.

17 (a) General rule.--The department may revoke or suspend the
18 license of any insurance premium finance company if after
19 investigation it appears to the department that:

20 (1) any license issued to the company was obtained by
21 fraud;

22 (2) there was any misrepresentation in the application
23 for the license;

24 (3) the holder of the license has otherwise been shown
25 to be untrustworthy or incompetent to act as an insurance
26 premium finance company; or

27 (4) the company has violated this chapter.

28 (b) Procedure.--Before the department revokes, suspends or
29 refuses to renew the license of any insurance premium finance
30 company, the aggrieved person shall be entitled to a hearing

1 under 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and
2 procedure of Commonwealth agencies). In lieu of revoking or
3 suspending the license for any of the causes enumerated in this
4 section, after hearing, the department may subject the company
5 to a civil penalty of not more than \$1,000 for each violation of
6 this chapter when it finds that the public interest would not be
7 harmed by the continued operation of the company. The penalty
8 shall be paid by the company to the department.

9 (c) Hearing.--If the department refuses to issue to any
10 person a license as an insurance premium finance company, or it
11 revokes, suspends or refuses to renew the license of any
12 insurance premium finance company, or it imposes a penalty on
13 the company, after a hearing as provided under subsection (b),
14 the applicant or licensee may appeal from the refusal to issue a
15 license or from the adjudication under 2 Pa.C.S. Ch. 7 Subch. A
16 (relating to judicial review of Commonwealth agency action).

17 (d) Companies subject to Chapter 15.--In addition to any
18 other law that may be applicable, insurance premium finance
19 companies are subject to Chapter 15 (relating to unfair
20 insurance practices).

21 SUBCHAPTER C

22 REGULATION

23 Sec.

24 8521. Books and records of licensee.

25 8522. Form of agreement.

26 8523. Limitations on interest and other charges.

27 8524. Delinquency and cancellation charges.

28 8525. Cancellation of insurance contract upon default.

29 8526. Return of premiums.

30 8527. Secured transactions.

1 8528. Penalties for violation.

2 § 8521. Books and records of licensee.

3 (a) Examination by department.--Every licensee shall
4 maintain and make available all books, records, accounts and
5 other files of its premium finance transactions, and these
6 records shall be made available for examination and
7 investigation by the department or its representative. The
8 department may at any time during regular business hours examine
9 the records at any location at which the records are maintained.

10 (b) Preservation of records.--Every licensee shall preserve
11 all books, records, accounts and other files of the insurance
12 premium finance transactions, including cards used in any card
13 system, for at least three years after making the final entry in
14 respect to any insurance premium finance agreement. The
15 preservation of records in photographic form shall constitute
16 compliance with this requirement.

17 § 8522. Form of agreement.

18 (a) Contents.--An insurance premium finance agreement shall:

19 (1) Be dated and signed by or on behalf of the insured,
20 and the printed portion shall be in at least eight-point
21 type.

22 (2) Be dated and signed by the agent or broker, if any,
23 executing the agreement.

24 (3) Contain the name and principal place of business of
25 the insurance agent negotiating the related insurance
26 contract, the name and residence or the place of business of
27 the insured as specified by him, the name and place of
28 business of the insurance premium finance company to which
29 payments are to be made, a brief description of the insurance
30 contracts involved and the amount of the premium therefor.

1 (4) Comply with all applicable standards set forth in
2 the Federal Truth in Lending Act (Public Law 90-321, 15
3 U.S.C. § 1601 et seq.).

4 (b) Approval of form.--The agreement shall be in a form
5 which has been submitted to the department for review and
6 approved for use. The department shall approve or disapprove a
7 form within 30 days from the date of its submission. If the
8 department fails to act within this time period, the form, as
9 submitted, shall be deemed approved.

10 (c) Agreement period.--The agreement shall be for a period
11 of time no longer than the term of the policy, but not to exceed
12 three years.

13 (d) Prohibited terms.--An agreement shall not contain any of
14 the following terms:

15 (1) A provision that, in the absence of default of the
16 insured, the insurance premium finance company holding the
17 agreement may, arbitrarily and without reasonable cause,
18 accelerate the maturity of any part or all of the amount
19 owing thereunder.

20 (2) A power or attorney to confess judgment in this
21 Commonwealth.

22 (3) A waiver by the insured of any right of action
23 against the insurance premium finance company, any holder of
24 the agreement or any person acting on behalf of either for
25 any violation of this chapter or other wrongful act committed
26 in the enforcement of the contract or agreement.

27 (4) A provision that the seller or holder of the
28 contract or any person acting on his behalf is given
29 authority to take a mortgage or other security against
30 residential real estate of the buyer or any other obligee to

1 the contract.

2 § 8523. Limitations on interest and other charges.

3 (a) General rule.--An insurance premium finance company
4 shall not charge, contract for, receive or collect an interest
5 charge other than as permitted by this chapter.

6 (b) Calculation of interest.--The interest is to be computed
7 on the balance of the premiums due, after subtracting the down
8 payment made by the insured in accordance with the insurance
9 premium finance agreement, from the effective date of the
10 insurance coverage, for which the premiums are being advanced to
11 and including the date when the final installment of the
12 agreement is payable.

13 (c) Limits on interest.--The interest shall not exceed the
14 interest rate as permitted for a retail installment sales
15 contract under the act of October 28, 1966 (1st Sp.Sess.,
16 P.L.55, No.7), known as the Goods and Services Installment Sales
17 Act, plus an additional service charge of \$10 per insurance
18 premium finance agreement, which need not be refunded upon
19 cancellation or prepayment. If the insurance policy whose
20 premiums are being financed is for other than personal, family
21 or household purposes, then the interest shall be at the rate
22 agreed to by the parties and stated in the insurance premium
23 finance agreement. The interest permitted by this subsection
24 anticipates repayment in consecutive monthly installments equal
25 in amount for a period of one year. For repayment in greater or
26 lesser periods or in unequal, irregular or other than monthly
27 installments, the interest may be computed at an equivalent
28 effective rate having due regard for the installments as
29 scheduled.

30 (d) Refunds.--Notwithstanding the provisions of the

1 insurance premium finance agreement, any insured may prepay the
2 obligation in full at any time. In that event, he shall receive
3 a refund credit, which refund credit shall be computed pursuant
4 to the actuarial method. As used in this subsection the term
5 "actuarial method" means the method of allocating payments made
6 on a debt between the amount financed and the finance charge
7 pursuant to which a payment if applied first to the accumulated
8 finance charge and any remainder is subtracted from the unpaid
9 balance of the amount financed. If the amount of the refund
10 credit is less than \$1, no refund need be made.

11 § 8524. Delinquency and cancellation charges.

12 An insurance premium finance agreement may provide for the
13 payment by the insured of a delinquency charge of \$1 to a
14 maximum of 5% of the delinquent installment on any installment
15 which is in default for a period of five days or more.

16 § 8525. Cancellation of insurance contract upon default.

17 (a) Procedure.--When an insurance premium finance agreement
18 contains a power of attorney enabling the insurance premium
19 finance company to cancel any insurance contract listed in the
20 agreement, the insurance contract shall not be canceled by the
21 insurance premium finance company unless the cancellation is
22 effected in accordance with this section.

23 (b) Written notice.--Not less than 15 days' written notice
24 shall be mailed to the insured, at his last known address as
25 shown on the records of the insurance premium finance company,
26 of the intent of the insurance premium finance company to cancel
27 the insurance contract or contracts unless the default is cured
28 within the 15-day period.

29 (c) Curing default.--If, after giving the prescribed notice,
30 the default is not cured within the 15-day period, the insurance

1 premium finance company may cancel the insurance contract by
2 mailing a notice of cancellation to the insurer. The insurance
3 contract shall be canceled as if the notice of cancellation had
4 been submitted by the insured himself but without requiring the
5 return of the insurance contract. The insurance premium finance
6 company shall also mail a notice of cancellation to the insured
7 at his last known address as shown on the records of the
8 company.

9 (d) Legal restrictions.--All statutory, regulatory and
10 contractual restrictions providing that the insurance contract
11 may not be canceled unless notice is given to a governmental
12 agency, mortgagee or other third party shall apply when
13 cancellation is effected under this section. The insurer shall
14 determine the effective date of cancellation, taking into
15 consideration the number of days notice required to complete the
16 cancellation. The insurer shall not be required to send the
17 insured any notice of cancellation when the insurance policy is
18 canceled by an insurance premium finance company under this
19 section.

20 § 8526. Return of premiums.

21 Whenever a financed insurance contract is canceled, the
22 insurer shall return whatever gross unearned premiums are due
23 under the insurance contract to the insurance premium finance
24 company for the account of the insured as soon as reasonably
25 possible, and not more than 60 days after the effective date of
26 cancellation. If the crediting of return premiums to the account
27 of the insured results in a surplus over the amount due from the
28 insured, the insurance premium finance company shall refund the
29 excess to the insured within ten days of receipt of the returned
30 premium from the insurer, but no refund shall be required if the

1 excess is less than \$1.

2 § 8527. Secured transactions.

3 A filing of the insurance premium finance agreement shall not
4 be necessary to perfect the validity of the agreement as a
5 secured transaction as against creditors, subsequent purchasers,
6 pledgees, encumbrancers, successors or assigns.

7 § 8528. Penalties for violations.

8 (a) Violation of chapter.--Any insurance premium finance
9 company or insurer, agent or broker who willfully and knowingly
10 violates this chapter commits a misdemeanor of the third degree.

11 (b) Unlicensed business.--Any person who engages in the
12 business of entering into insurance premium finance agreements
13 without having a license under this chapter commits a
14 misdemeanor of the third degree.

15 Section 3. (a) The following acts and parts of acts are
16 repealed:

17 Act of March 4, 1850 (P.L.126, No.110), entitled "An act to
18 supply lost policies of insurance."

19 Act of July 7, 1869 (P.L.1279, No.1260), entitled "An act to
20 authorize the Hartford Steam Boiler Inspection and Insurance
21 Company to give certificates of inspection in and for the city
22 of Philadelphia."

23 Section 28 of the act of April 29, 1874 (P.L.73, No.32),
24 known as the General Corporation Law.

25 Section 7 of the act of June 10, 1881 (P.L.99, No.107),
26 entitled "A supplement to an act, entitled 'An act to provide
27 revenue by taxation,' approved the seventh of June, one thousand
28 eight hundred and seventy-nine."

29 Act of June 25, 1885 (P.L.181, No.149), entitled "An act to
30 authorize certain corporations to become sole surety for the

1 faithful performance of any trust or duty, and to authorize
2 certain officers to approve the same."

3 Act of March 11, 1891 (P.L.5, No.3), entitled "An act to
4 regulate the issue of policies of insurance and certificates of
5 inspection, made by steam boiler insurance companies, in all
6 cities of the first class."

7 Act of May 3, 1915 (P.L.217, No.122), entitled "An act
8 prohibiting any city, county, or municipality from imposing or
9 collecting any license fee upon insurance companies or their
10 agents, or insurance brokers, licensed to transact business by
11 the Insurance Commissioner."

12 Act of May 17, 1919 (P.L.208, No.129), entitled "An act
13 prohibiting, under certain conditions, the commutation,
14 encumbrance, or assignment of the proceeds of life insurance and
15 annuity policies and the income arising therefrom by persons
16 entitled thereto; prohibiting the attachment of such proceeds
17 and income; and authorizing life insurance companies to hold
18 such proceeds as part of the general corporate funds."

19 Act of April 20, 1921 (P.L.175, No.103), entitled "An act to
20 permit any corporation with capital stock and transacting the
21 business of life insurance on the mutual plan or any life
22 insurance corporation having capital stock incorporated under
23 the provisions of any general or special law of this
24 Commonwealth, to acquire its capital stock for the benefit of
25 its policy-holders, and to convert such corporation into a
26 mutual life insurance corporation, and to provide a method
27 therefor."

28 Act of May 5, 1921 (P.L.350, No.170), entitled "An act making
29 it unlawful to give or offer money to secure proxies for use at
30 meetings of insurance companies."

1 Except for Article VI-A, the act of May 17, 1921 (P.L.682,
2 No.284), known as The Insurance Company Law of 1921.

3 Act of May 17, 1921 (P.L.789, No.285), known as The Insurance
4 Department Act of one thousand nine hundred and twenty-one.

5 Act of May 25, 1921 (P.L.1124, No.419), entitled "An act
6 permitting certain domestic mutual fire insurance companies to
7 issue cash premium policies without assessment liability; and
8 providing for the distribution and escheat of the surplus of
9 certain domestic mutual fire insurance companies in event of
10 dissolution."

11 Act of May 12, 1925 (P.L.618, No.331), entitled "An act
12 increasing the powers of certain stock health and accident
13 insurance companies."

14 Act of April 26, 1929 (P.L.794, No.341), entitled "An act
15 relating to mutual fire insurance companies incorporated under
16 any general or special law of the Commonwealth of Pennsylvania;
17 empowering any such company to regulate the number of, and the
18 manner of nominating directors, managers, or trustees thereof;
19 and providing a method for fixing the time of annual meetings of
20 members of any such company."

21 Act of April 26, 1929 (P.L.834, No.362), entitled "An act
22 requiring all title insurance companies to create and maintain a
23 reserve; fixing the amount thereof, and regulating the same."

24 Act of June 12, 1931 (P.L.566, No.197), entitled "An act
25 providing for the purchase of reinsurance for the benefit of
26 holders of outstanding policies, issued by any company
27 authorized to insure titles, of which possession may be taken by
28 the Secretary of Banking; and providing further for the use for
29 that purpose of reserve funds accumulated by such companies to
30 protect such policyholders; providing also for the form of such

1 reinsurance and defining the extent of the liability thereunder,
2 and also for suits at law to recover thereon."

3 Act of June 12, 1931 (P.L.574, No.199), entitled "An act
4 prohibiting certain persons, corporations, associations and
5 companies from engaging in the business of soliciting and
6 accepting premiums or dues and selling policies or contracts
7 guaranteeing to owners of motor vehicles the services of
8 attorneys or providing for the towing of motor vehicles, or to
9 hold themselves out to the public as authorized to engage in
10 insurance business, or in the kind of business usually
11 transacted by insurance companies, associations or exchanges,
12 although transacted under some other name or description, unless
13 such corporations, associations and companies are incorporated
14 or organized as insurance companies, associations or exchanges,
15 and registered and licensed by the Insurance Department; and
16 providing penalties."

17 Act of June 22, 1931 (P.L.622, No.211), entitled "An act to
18 prevent fraudulent procedure in obtaining licenses or
19 certificates from the Insurance Department, or altering licenses
20 or certificates issued by the Insurance Department; and
21 providing penalties."

22 Act of June 22, 1931 (P.L.844, No.274), entitled, as amended,
23 "An act authorizing the Commonwealth of Pennsylvania, or any
24 department or division thereof, and counties, cities, boroughs,
25 incorporated towns, townships, school districts, vocational
26 school districts and institution districts to make contracts of
27 life, health, hospitalization, medical services, and accident
28 policies for the benefit of employes thereof, and contracts for
29 pensions for such employes; and providing for the payment of the
30 cost thereof."

1 Act of May 24, 1933 (P.L.987, No.213), entitled "An act
2 relating to policies of indemnity insurance; requiring such
3 policies to contain provisions covering cases of insolvency and
4 bankruptcy of the insured, and to permit injured persons, or
5 their personal representatives, to maintain suits against the
6 insurer in such cases."

7 Act of May 31, 1933 (P.L.1094, No.269), entitled "An act to
8 further amend section three hundred twenty-one of the act,
9 approved the seventeenth day of May, one thousand nine hundred
10 and twenty-one (Pamphlet Laws, six hundred eighty-two), entitled
11 "An act relating to insurance; amending, revising, and
12 consolidating the law providing for the incorporation of
13 insurance companies, and the regulation, supervision, and
14 protection of home and foreign insurance companies, Lloyds
15 associations, reciprocal and inter-insurance exchanges, and fire
16 insurance rating bureaus, and the regulation and supervision of
17 insurance carried by such companies, associations, and
18 exchanges, including insurance carried by the State Workmen's
19 Insurance Fund; providing penalties; and repealing existing
20 laws," by further defining deductions in case of reinsurance."

21 Act of July 12, 1935 (P.L.969, No.312), entitled, as amended,
22 "An act providing for the valuation of bonds and other evidences
23 of debt held by domestic and foreign stock and mutual insurance
24 companies, associations and exchanges authorized to do business
25 in this State."

26 Act of May 21, 1937 (P.L.774, No.210), entitled "An act
27 relating to statements made in negotiations for annuity or pure
28 endowment contracts and policies or certificates of life,
29 endowment, accident or health insurance."

30 Act of June 4, 1937 (P.L.1643, No.342), entitled "An act

1 relating to certain existing beneficial societies; conferring
2 certain rights, powers and duties upon them, their officers and
3 members; authorizing the payment of benefits by them in the
4 event of sickness, accident, disability or death; regulating
5 such societies and corporations; and limiting the amount for
6 which they may issue membership certificates or policies;
7 providing for reserves; imposing penalties; and repealing
8 certain existing laws and parts of law."

9 Act of June 24, 1939 (P.L.685, No.319), entitled "An act
10 designating certain life insurance companies as limited life
11 insurance companies, and further describing the powers thereof."

12 Act of May 16, 1945 (P.L.587, No.242), entitled "An act to
13 authorize domestic stock and mutual insurance companies, other
14 than life, to transact outside of the United States, its
15 territories and possessions, any and all forms of insurance or
16 reinsurance, other than life insurance or annuities; authorizing
17 such companies to accept any and all kinds of reinsurance, other
18 than life insurance or annuities; providing for the maintenance
19 in either case of a minimum policyholders' surplus, and for
20 reserves as required by the act, approved the seventeenth day of
21 May, one thousand nine hundred and twenty-one (Pamphlet Laws,
22 seven hundred eighty-nine)."

23 Act of May 22, 1945 (P.L.828, No.332), entitled "An act to
24 enable domestic stock and mutual insurance companies to comply
25 with the taxing statutes, and to relieve officers, directors and
26 trustees of domestic stock and mutual insurance companies of
27 personal liability by reason of the payment or determination not
28 to contest payment of any license, excise, privilege, premium,
29 occupation, or other fee, or tax, imposed by any State or
30 political subdivision thereof."

1 Act of June 11, 1947 (P.L.538, No.246), known as The Casualty
2 and Surety Rate Regulatory Act.

3 Act of June 11, 1947 (P.L.551, No.247), known as The Fire,
4 Marine and Inland Marine Rate Regulatory Act.

5 Act of May 9, 1949 (P.L.1025, No.298), entitled "An act
6 requiring companies and organizations subject to the provisions
7 of the act of June 11, 1947 (Pamphlet Laws 538), or the act of
8 June 11, 1947 (Pamphlet Laws 551), or section 654 of the act of
9 May 17, 1921 (Pamphlet Laws 682), to maintain uniform
10 classifications of accounts and records; make uniform reports;
11 providing for appeals to the Court of Common Pleas of Dauphin
12 County; and prescribing penalties."

13 Act of May 11, 1949 (P.L.1210, No.367), entitled "An act
14 relating to group life insurance; describing permitted policies
15 and restrictions thereon, the premium basis thereof and rights
16 thereunder; limiting the amount of such insurance; prescribing
17 standard policy provisions; and requiring notice of conversion
18 privileges."

19 Act of June 28, 1951 (P.L.941, No.184), entitled "An act
20 authorizing certain existing beneficial or protective societies,
21 heretofore incorporated, to reincorporate, or to merge and
22 reincorporate, as limited life insurance companies, for the
23 purpose of making insurance upon the health of individuals and
24 against personal injury and disablement and death, including
25 endowment insurance; regulating such corporations, and limiting
26 the amounts for which such corporations may issue policies."

27 Act of July 19, 1951 (P.L.1074, No.231), entitled "An act
28 requiring certain officers of the Commonwealth of Pennsylvania
29 and its departments, boards, commissions and agencies, and of
30 the political subdivisions thereof, to deduct from the salaries,

1 wages or other compensation payable by them to any elected or
2 appointed officers or employes, the premiums or other charges
3 due from such persons under various contracts of group
4 insurance, when written authorization to make such deductions is
5 given by any such persons; and requiring the deductions so made
6 to be paid directly to the association or corporation furnishing
7 such group insurance."

8 Act of December 30, 1959 (P.L.2095, No.774), entitled "An act
9 authorizing the recapitalization of limited life insurance
10 companies and limiting the amounts for which such companies may
11 issue policies."

12 Act of September 2, 1961 (P.L.1232, No.540), known as the
13 Model Act for the Regulation of Credit Life Insurance and Credit
14 Accident Health Insurance.

15 Act of August 14, 1963 (P.L.909, No.433), entitled "An act
16 requiring, with limitations, that insurance policies insuring
17 against loss occurring in connection with motor vehicles provide
18 protection against certain uninsured motorists."

19 Act of August 14, 1963 (P.L.910, No.434), entitled "An act
20 authorizing certain domestic stock insurance companies to issue
21 stock having a par value of not less than one dollar per share,
22 and validating certain stock which any such corporation may
23 heretofore have been authorized to issue or issued."

24 Act of December 27, 1965 (P.L.1247, No.506), entitled "An act
25 relating to the reimbursement or payments for providing and
26 furnishing optometric services in contracts, certificates and
27 policies by various insurance and other companies, and limiting
28 the provisions in relation thereto."

29 Act of January 24, 1966 (1965 P.L.1509, No.531), entitled "An
30 act relating to, regulating, taxing, supervising and controlling

1 the placing of insurance on risks located in the Commonwealth of
2 Pennsylvania with insurers not licensed to transact insurance
3 business in Pennsylvania, permitting licensed insurers to afford
4 coverage which may be placed with unlicensed insurers, providing
5 fees and penalties, and repealing certain existing laws."

6 Act of April 17, 1968 (P.L.95, No.45), entitled "An act
7 making unlawful the borrowing or rental of securities by
8 insurance companies and affiliated companies or individuals, and
9 providing penalties."

10 Act of June 5, 1968 (P.L.140, No.78), entitled "An act
11 regulating the writing, cancellation of or refusal to renew
12 policies of automobile insurance; and imposing powers and duties
13 on the Insurance Commissioner therefor."

14 Act of July 31, 1968 (P.L.738, No.233), known as The
15 Pennsylvania Fair Plan Act.

16 Act of July 31, 1968 (P.L.941, No.288), entitled "An act
17 providing for reporting to the Insurance Commissioner by
18 domestic insurance companies, associations, or exchanges, of
19 certain conveyances of interests in the assets of such
20 companies, associations, or exchanges."

21 Act of November 25, 1970 (P.L.716, No.232), known as The
22 Pennsylvania Insurance Guaranty Association Act.

23 Act of December 10, 1970 (P.L.884, No.279), entitled "An act
24 providing a procedure for the conversion of a mutual insurance
25 company, other than a mutual life insurance company, or a
26 company which operates exclusively on the basis of perpetual
27 policies, into a stock insurance company, and requiring the
28 filing of information with the Insurance Commissioner and
29 approval by the Insurance Commissioner prior to any such
30 conversion."

1 Act of August 12, 1971 (P.L.313, No.78), entitled "An act
2 providing for elimination of discriminatory provisions relating
3 to compensation for services and treatment under sickness and
4 accident insurance contracts and providing for nondiscriminatory
5 reimbursement of sickness and bodily injury claims thereunder."

6 Act of December 29, 1972 (P.L.1701, No.364), known as the
7 Health Maintenance Organization Act.

8 Act of December 29, 1972 (P.L.1713, No.367), known as the
9 Motor Vehicle Physical Damage Appraiser Act.

10 Act of July 22, 1974 (P.L.589, No.205), known as the Unfair
11 Insurance Practices Act.

12 Act of December 10, 1974 (P.L.804, No.266), entitled "An act
13 relating to the domestication of alien insurers transacting
14 business in the Commonwealth of Pennsylvania through transfer of
15 all the business, assets and liabilities in the United States of
16 the alien insurer to a wholly owned stock insurance company
17 incorporated under the laws of the Commonwealth of Pennsylvania;
18 regulating the terms and conditions of such domestication and
19 the steps to be taken and the acts to be performed for the
20 adoption, approval and execution thereof; providing for the
21 transfer of deposits and trustee assets and providing for the
22 maintenance of deposits."

23 Act of August 1, 1975 (P.L.157, No.81), entitled "An act
24 providing for the health and welfare of newborn children and
25 their parents by regulating certain health insurance coverage
26 for newborn children."

27 Act of October 15, 1975 (P.L.390, No.111), known as the
28 Health Care Services Malpractice Act.

29 Act of May 18, 1976 (P.L.123, No.54), known as the Individual
30 Accident and Sickness Insurance Minimum Standards Act.

1 Act of July 29, 1977 (P.L.105, No.38), known as the Fraternal
2 Benefit Society Code.

3 Act of April 18, 1978 (P.L.33, No.16), entitled "An act
4 providing reimbursement to insured by insurance company for
5 services performed by a psychologist."

6 Act of September 22, 1978 (P.L.763, No.143), entitled "An act
7 establishing certain procedures relating to the termination of
8 insurance agency contracts or accounts and providing penalties."

9 Act of November 26, 1978 (P.L.1188, No.280) known as the Life
10 and Health Insurance Guaranty Association Act.

11 Act of July 2, 1980 (P.L.340, No.85), known as the Arson
12 Reporting Immunity Act.

13 Act of December 12, 1980 (P.L.1177, No.218), known as the
14 Insurance Consultation Services Exemption Act.

15 Act of December 23, 1981 (P.L.583, No.168), entitled, as
16 amended, "An act providing for reimbursement by insurance
17 companies and others for facilities used by or for services
18 performed by licensed certified nurse midwives."

19 Act of December 7, 1982 (P.L.815, No.228), known as the Anti-
20 Arson Application Law.

21 Act of December 15, 1982 (P.L.1291, No.292), known as the
22 Medicare Supplement Insurance Act.

23 Act of December 20, 1983 (P.L.260, No.72), entitled "An act
24 providing for the licensing and regulating of public adjusters
25 and public adjuster solicitors."

26 Act of June 18, 1984 (P.L.391, No.82), known as the
27 Continuing-Care Provider Registration and Disclosure Act.

28 Act of December 19, 1984 (P.L.1182, No.224), known as the
29 Insurance Premium Finance Company Act.

30 Act of December 19, 1985 (P.L.343, No.97), entitled "An act

1 providing for the insurability of downhill ski area operators
2 for punitive damages for unintentional tortious conduct."

3 Act of July 3, 1986 (P.L.396, No.86), entitled "An act
4 requiring notice of rate increases, policy cancellations and
5 nonrenewals by property and casualty insurers."

6 Act of December 19, 1986 (P.L.1737, No.209), known as the
7 Insurance Payment to Registered Nurse Law.

8 (b) The act of June 30, 1923 (P.L.984, No.404), entitled "An
9 act for the encouragement of unincorporated cooperative
10 associations of agricultural and industrial workers; providing
11 that membership therein, and interest in the funds and property
12 thereof, may be made nontransferable; and imposing penalties
13 upon persons making or accepting unlawful assignment, transfer,
14 or pledge of such membership or interest," is repealed insofar
15 as it relates to associations for mutual benefit insurance.

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

18 Section 4. This act shall take effect in 180 days.