

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 237 Session of 2009

INTRODUCED BY CORMAN, BROWNE, STACK, EARLL, RAFFERTY, BAKER, FERLO, GORDNER, O'PAKE, WILLIAMS, WAUGH, M. WHITE AND WASHINGTON, FEBRUARY 19, 2009

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, FEBRUARY 8, 2010

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," IN GENERAL PROVISIONS RELATING TO
12 INSURANCE COMPANIES, further providing for annual and other
13 reports; and providing for suitability of annuity
14 transactions AND FOR THE REGULATION OF HEALTH INSURANCE
15 PRACTICES CONCERNING PARITY AND NONDISCRIMINATION; FURTHER
16 PROVIDING FOR DEFINITIONS, FOR ACTING FOR OR AIDING
17 NONADMITTED INSURERS, FOR REQUIREMENTS FOR ELIGIBLE SURPLUS
18 LINES INSURERS, FOR OTHER NONADMITTED INSURERS, FOR SURPLUS
19 LINES LICENSEE'S DUTY TO NOTIFY INSURED, FOR DECLARATIONS,
20 FOR SURPLUS LINES ADVISORY ORGANIZATIONS, FOR EVIDENCE OF
21 INSURANCE, FOR EFFECT OF PAYMENT TO SURPLUS LINES LICENSEE,
22 FOR LICENSING OF SURPLUS LINES LICENSEE, FOR SURPLUS LINES
23 LICENSEE'S ACCEPTANCE OF BUSINESS FROM BROKERS, FOR RECORDS
24 OF SURPLUS LINES LICENSEES, FOR MONTHLY REPORTS, FOR SURPLUS
25 LINES TAX, FOR TAX ON INDEPENDENTLY PROCURED INSURANCE, FOR
26 SUSPENSION, REVOCATION OR NONRENEWAL OF SURPLUS LINES
27 LICENSEE'S LICENSE AND FOR PENALTIES; PROVIDING FOR
28 COMPLIANCE; AND, IN CHILDREN'S HEALTH CARE, FURTHER PROVIDING
29 FOR EXPIRATION OF CERTAIN PROVISIONS.



30 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Section 320 of the act of May 17, 1921 (P.L.682,
3 No.284), known as The Insurance Company Law of 1921, amended
4 December 18, 1992 (P.L.1519, No.178) and February 17, 1994
5 (P.L.92, No.9), is amended to read:

6 Section 320. Annual and Other Reports; Penalties.--(a) (1)
7 Every stock and mutual insurance company, association, and
8 exchange, doing business in this Commonwealth, shall annually,
9 on or before the first day of March, file in the office of the
10 Insurance Commissioner and with the National Association of
11 Insurance Commissioners a statement which shall exhibit its
12 financial condition on the thirty-first day of December of the
13 previous year, and its business of that year and shall, within
14 thirty days after requested by the Insurance Commissioner, file
15 with the Insurance Commissioner and with the National
16 Association of Insurance Commissioners such additional statement
17 or statements concerning its affairs and financial condition as
18 the Insurance Commissioner may, in his discretion, require. The
19 Insurance Commissioner shall require each insurance company
20 association and exchange to report its financial condition on
21 the statement convention blanks, in such form as adopted by the
22 National Association of Insurance Commissioners and shall, upon
23 written request, furnish such blanks for their convenience; and
24 may make such changes, from time to time, in the form of the
25 same as shall seem best adapted to elicit from them a true
26 exhibit of their financial condition.

27 (2) Unless otherwise provided by law, regulation or order of
28 the Insurance Commissioner, each insurance company, association
29 and exchange shall adhere to the annual or quarterly statement
30 instructions and the accounting practices and procedures manuals

1 prescribed by the National Association of Insurance
2 Commissioners. The Insurance Commissioner may require each
3 insurance company, association and exchange to file in the
4 office of the Insurance Commissioner and with the National
5 Association of Insurance Commissioners financial statements on
6 diskettes or other electronic information storage devices
7 acceptable to the Insurance Commissioner.

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

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

25 (d) [All financial analysis ratios and examination synopses
26 concerning insurance companies that are submitted to the
27 Insurance Department by the National Association of Insurance
28 Commissioners' Insurance Regulatory Information System are
29 confidential and may not be disclosed by the Insurance
30 Department. Work products developed by Insurance Department

1 staff in conducting financial analyses of financial statements
2 filed pursuant to this section are confidential and shall not be
3 disclosed by the Insurance Department.](1) The following
4 documents, materials or information shall be confidential by law
5 and privileged and shall not be subject to subpoena, discovery,
6 the act of February 14, 2008 (P.L.6, No. 3), known as the
7 "Right-to-Know Law," or admissible in evidence in any private
8 civil action:

9 (i) All documents, materials or other information prepared
10 or provided by an insurance company, association or exchange
11 solely in support of the statement of actuarial opinion filed
12 under this section, including actuarial reports, work papers or
13 actuarial opinion summaries and any other material solely
14 prepared by the insurance company, association or exchange for
15 the purpose of providing it to the Insurance Department in
16 connection with actuarial reports, work papers or actuarial
17 opinion summaries.

18 (ii) All financial analysis ratios, analyst team reports and
19 other financial analytical results concerning insurance
20 companies, associations and exchanges that are provided to the
21 Insurance Department by the National Association of Insurance
22 Commissioners.

23 (iii) All additional work products, documents, materials or
24 information produced by, obtained by or provided to the
25 Insurance Department in the course of conducting financial
26 analyses of financial statements filed under this section.

27 (2) The protections established under paragraph (1)(i) and
28 (iii) shall also apply to the materials, drafts or copies
29 thereof when in possession of the insurance company, association
30 or exchange if the materials or drafts were prepared solely for

1 the purpose of submitting the materials to the Insurance
2 Department. Any documents, materials or information that are
3 provided to the Insurance Department under paragraph (1)(i) or
4 (iii) and that would otherwise be available from original
5 sources shall not be construed as immune from discovery from the
6 original source and use in any private civil action merely
7 because they were provided to the Insurance Department.

8 (3) Neither the Insurance Commissioner nor any individual or
9 person who receives documents, materials or information while
10 acting under the authority of the Insurance Commissioner shall
11 be permitted or required to testify in any private civil action
12 concerning any confidential documents, materials or information
13 covered under this section.

14 (4) No waiver of any applicable privilege or claim of
15 confidentiality in the documents, materials or information shall
16 occur as a result of disclosure to the Insurance Commissioner or
17 as a result of the Insurance Commissioner sharing information in
18 conformance with sections 201-A and 202-A of the act of May 17,
19 1921 (P.L. 789, No. 285), known as "The Insurance Department Act
20 of 1921."

21 (5) The Insurance Commissioner may use the documents,
22 materials or other information obtained or created under this
23 section in furtherance of any regulatory or legal action brought
24 as part of the Insurance Commissioner's official duties.

25 (e) (1) Any company, association, or exchange, which
26 neglects to make and file its annual statement, or other
27 statements that may be required, in the form or within the time
28 herein provided shall forfeit a sum not to exceed two hundred
29 dollars (\$200) for each day during which such neglect continues,
30 and, upon notice by the commissioner, its authority to do new

1 business shall cease while such default continues.

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

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

12 Section 2. The act is amended by adding ~~an article~~ ARTICLES ←
13 to read:

14 ARTICLE IV-B

15 SUITABILITY OF ANNUITY TRANSACTIONS

16 Section 401-B. Definitions.

17 The following words and phrases when used in this article
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Annuity." A fixed annuity or variable annuity that is
21 individually solicited, whether the product is classified as an
22 individual or group annuity.

23 "Commissioner." The Insurance Commissioner of the
24 Commonwealth.

25 "General agent." An insurance producer that provides
26 supervision on behalf of an insurer to an insurer's sales force
27 in a particular geographic region or territory.

28 "Independent agency." A producer entity that does not
29 exclusively represent one insurance company.

30 "Insurance producer." A person who sells, solicits or

1 negotiates contracts of insurance as defined in section 601-A of
2 the act of May 17, 1921 (P.L.789, No.285), known as The
3 Insurance Department Act of 1921.

4 "Insurer." A life insurance company licensed or required to
5 be licensed under section 202 or a fraternal benefit society as
6 defined in section 2403.

7 "Recommendation." Advice provided by an insurance producer,
8 or an insurer where no producer is involved, to an individual
9 consumer that results in a purchase or exchange of an annuity in
10 accordance with that advice.

11 Section 402-B. Applicability and scope.

12 (a) General rule.--This article shall apply to any
13 recommendation to purchase or exchange an annuity made to a
14 consumer by an insurance producer, or an insurer where no
15 producer is involved, that results in the purchase or exchange
16 recommended.

17 (b) Exclusions.--Unless otherwise specifically included,
18 this article shall not apply to recommendations involving the
19 following:

20 (1) Direct response solicitations where there is no
21 recommendation based on information collected from the
22 consumer pursuant to this article.

23 (2) Annuity contracts used to fund:

24 (i) An employee pension or welfare benefit plan that
25 is covered by the Employee Retirement Income Security Act
26 of 1974 (Public Law 93-406, 88 Stat. 829).

27 (ii) A plan described by sections 401(a) or (k),
28 403(b), 408(k) or (p) of the Internal Revenue Code of
29 1986 (Public Law 99-514, 26 U.S.C. §§ 401(a) or (k),
30 403(b), 408(k) or (p)), when the plan, for purposes of

1 the Employee Retirement Income Security Act of 1974, is
2 established or maintained by an employer.

3 (iii) A governmental or church plan defined in
4 section 414 of the Internal Revenue Code of 1986 or a
5 deferred compensation plan of a State or local government
6 or tax exempt organization under section 457 of the
7 Internal Revenue Code of 1986.

8 (iv) A nonqualified deferred compensation
9 arrangement established or maintained by an employer or
10 plan sponsor.

11 (v) Settlements of or assumptions of liabilities
12 associated with personal injury litigation or any dispute
13 or claim resolution process.

14 (vi) Formal prepaid funeral contracts.

15 Section 403-B. Duties of insurers and insurance producers.

16 (a) General duties.--In making a recommendation to a
17 consumer for the purchase of an annuity or the exchange of an
18 annuity that results in another insurance transaction or series
19 of insurance transactions, the insurance producer, or the
20 insurer where no insurance producer is involved, shall have
21 reasonable grounds for believing that the recommendation is
22 suitable for the consumer on the basis of the facts disclosed by
23 the consumer as to the consumer's investments and other
24 insurance products and as to the consumer's financial situation
25 and needs.

26 (b) Consumer information.--Prior to the execution of a
27 purchase or exchange of an annuity resulting from a
28 recommendation, an insurance producer, or an insurer where no
29 insurance producer is involved, shall make reasonable efforts to
30 obtain information concerning all of the following:

- 1 (1) The consumer's financial status.
2 (2) The consumer's tax status.
3 (3) The consumer's investment objectives.
4 (4) Other information used or considered to be
5 reasonable by the insurance producer, or the insurer where no
6 insurance producer is involved, in making recommendations to
7 the consumer.

8 (c) Obligation limits.--

9 (1) Neither an insurance producer nor an insurer where
10 no insurance producer is involved shall have any obligation
11 to a consumer under subsection (a) related to any
12 recommendation that is reasonable under all the circumstances
13 actually known to the insurer or insurance producer at the
14 time of the recommendation when a consumer:

15 (i) Refuses to provide relevant information
16 requested by the insurer or insurance producer.

17 (ii) Decides to enter into an insurance transaction
18 that is not based on a recommendation of the insurer or
19 insurance producer.

20 (iii) Fails to provide complete or accurate
21 information.

22 (d) Supervision of recommendations.--

23 (1) An insurer shall assure that a system to supervise
24 recommendations that is reasonably designed to achieve
25 compliance with this article is established and maintained by
26 complying with paragraphs (3) and (4), or shall establish and
27 maintain such a system that includes at least the following:

28 (i) Maintaining written procedures.

29 (ii) Conducting periodic reviews of its records that
30 are reasonably designed to assist in detecting and

1 preventing violations of this article.

2 (2) A general agent or independent agency shall adopt a
3 system established by an insurer to supervise recommendations
4 of its insurance producers that is reasonably designed to
5 achieve compliance with this article, or shall establish and
6 maintain a system that is reasonably designed to achieve
7 compliance with this article. The system must include at
8 least the following:

9 (i) Maintaining written procedures.

10 (ii) Conducting periodic reviews of records that are
11 reasonably designed to assist in detecting and preventing
12 violations of this article.

13 (3) An insurer may contract with a third party,
14 including a general agent or independent agency, to establish
15 and maintain a system of supervision as required by paragraph
16 (1) with respect to insurance producers under contract with
17 or employed by the third party.

18 (4) An insurer shall make reasonable inquiry to assure
19 that the third party contracting under paragraph (3) is
20 performing the functions required under paragraph (1) and
21 shall take such action as is reasonable under the
22 circumstances to enforce the contractual obligation to
23 perform the functions. An insurer may comply with its
24 obligation to make reasonable inquiry by doing both of the
25 following:

26 (i) The insurer annually obtains, electronically or
27 otherwise, a certification from a third party senior
28 manager who has responsibility for the delegated
29 functions that the manager has a reasonable basis to
30 represent, and does represent, that the third party is

1 performing the required functions.

2 (ii) The insurer, based on reasonable selection
3 criteria, periodically selects third parties contracting
4 under paragraph (3) for a review to determine whether the
5 third parties are performing the required functions. The
6 insurer shall perform procedures to conduct the review
7 that are reasonable under the circumstances.

8 (5) An insurer that contracts with a third party under
9 paragraph (3) and that complies with the requirements to
10 supervise under paragraph (4) shall have fulfilled its
11 responsibilities under paragraph (1).

12 (6) An insurer, general agent or independent agency is
13 not required to do either of the following:

14 (i) Review or provide for review of all insurance
15 producer-solicited transactions.

16 (ii) Include in its system of supervision an
17 insurance producer's recommendations to consumers of
18 products other than the annuities offered by the insurer,
19 general agent or independent agency.

20 (7) A general agent or independent agency contracting
21 with an insurer pursuant to paragraph (3) shall promptly,
22 when requested by the insurer pursuant to paragraph (4), give
23 a certification as described in paragraph (4) or give a clear
24 statement that it is unable to meet the certification
25 criteria.

26 (8) No person may provide a certification under
27 paragraph (4) (i) unless both the following conditions are
28 met:

29 (i) The person is a senior manager with
30 responsibility for the delegated functions.

1 (ii) The person has a reasonable basis for making
2 the certification.

3 (e) Compliance with other rules.--Compliance with the
4 Financial Industry Regulatory Authority Conduct Rules pertaining
5 to suitability shall satisfy the requirements under this section
6 for the recommendation of annuities registered under the
7 Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or
8 rules and regulations adopted under the Securities Act of 1933.
9 Nothing in this subsection shall limit the commissioner's
10 ability to enforce the provisions of this article.

11 (f) Internal audit and compliance procedures.--Nothing in
12 this article shall exempt an insurer from the internal audit and
13 compliance procedure requirements under section 405-A.

14 Section 404-B. Mitigation of responsibility.

15 (a) Corrective actions.--The commissioner may order:

16 (1) An insurer to take reasonably appropriate corrective
17 action for any consumer harmed by the insurer's or by its
18 insurance producer's violation of this article.

19 (2) An insurance producer to take reasonably appropriate
20 corrective action for any consumer harmed by the insurance
21 producer's violation of this article.

22 (3) A general agent or independent agency that employs
23 or contracts with an insurance producer to sell or solicit
24 the sale of annuities to consumers, to take reasonably
25 appropriate corrective action for any consumer harmed by the
26 insurance producer's violation of this article.

27 (b) Reduction of penalty.--Any applicable penalty permitted
28 under section 406-B may be reduced or eliminated if corrective
29 action for the consumer was taken promptly after a violation was
30 discovered.

1 Section 405-B. Recordkeeping.

2 An insurer, general agent, independent agency and insurance
3 producer shall maintain or be able to make available to the
4 commissioner records of the information collected from the
5 consumer and other information used in making the
6 recommendations that were the basis for insurance transactions
7 for five years after the insurance transaction is completed by
8 the insurer. An insurer is permitted but shall not be required
9 to maintain documentation on behalf of an insurance producer.

10 Section 406-B. Enforcement.

11 (a) Penalties and remedies.--Upon a determination by hearing
12 that this article has been violated, the commissioner may pursue
13 one or more of the following courses of action:

14 (1) Issue an order requiring the person in violation to
15 cease and desist from engaging in the violation.

16 (2) Suspend or revoke or refuse to issue or renew the
17 certificate or license of the person in violation.

18 (3) Impose a civil penalty of not more than \$5,000 for
19 each violation.

20 (4) Impose any other penalty or remedy deemed
21 appropriate by the commissioner, including restitution.

22 (b) Other remedies.--The enforcement remedies imposed under
23 this section are in addition to any other remedies or penalties
24 that may be imposed by any other applicable statute, including
25 the act of July 22, 1974 (P.L.589, No.205), known as the Unfair
26 Insurance Practices Act. Violations of this article are deemed
27 and defined by the commissioner to be an unfair method of
28 competition and an unfair or deceptive act or practice pursuant
29 to the Unfair Insurance Practices Act.

30 Section 407-B. Private cause of action.

1 Nothing in this article shall be construed to create or imply
2 a private cause of action for a violation of this article.

3 ARTICLE VI-B ←

4 HEALTH INSURANCE COVERAGE PARITY

5 AND NONDISCRIMINATION

6 SECTION 601-B. SHORT TITLE OF ARTICLE.

7 THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE HEALTH
8 INSURANCE COVERAGE PARITY AND NONDISCRIMINATION ACT.

9 SECTION 602-B. PURPOSE.

10 IT IS NECESSARY TO MAINTAIN THE COMMONWEALTH'S SOVEREIGNTY
11 OVER THE REGULATION OF HEALTH INSURANCE IN THIS COMMONWEALTH BY
12 IMPLEMENTING THE REQUIREMENTS OF THE PAUL WELLSTONE AND PETE
13 DOMENICI MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OF 2008
14 (PUBLIC LAW 110-343, 122 STAT. 3881), THE GENETIC INFORMATION
15 NONDISCRIMINATION ACT OF 2008 (PUBLIC LAW 110-233, 122 STAT.
16 881) AND MICHELLE'S LAW (PUBLIC LAW 110-381, 122 STAT. 4081),
17 COLLECTIVELY CONTAINED IN THE PUBLIC HEALTH SERVICE ACT (58
18 STAT. 682, 42 U.S.C. § 201 ET SEQ.). THE PROVISIONS OF THIS
19 ARTICLE ARE INTENDED TO MEET THESE REQUIREMENTS WHILE RETAINING
20 THE COMMONWEALTH'S AUTHORITY TO REGULATE HEALTH INSURANCE IN
21 THIS COMMONWEALTH, CONSISTENT WITH SECTIONS 2722 AND 2761 OF THE
22 PUBLIC HEALTH SERVICE ACT.

23 SECTION 603-B. DEFINITIONS.

24 (A) GENERAL RULE.--THE FOLLOWING WORDS AND PHRASES WHEN USED
25 IN THIS ARTICLE SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
26 SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

27 "COMMISSIONER." THE INSURANCE COMMISSIONER OF THE
28 COMMONWEALTH.

29 "DEPARTMENT." THE INSURANCE DEPARTMENT OF THE COMMONWEALTH.

30 "FEDERAL ACTS." THE FEDERAL LAWS KNOWN AS THE PAUL WELLSTONE

1 AND PETE DOMENICI MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT
2 OF 2008 (PUBLIC LAW 110-343, 122 STAT. 3881), THE GENETIC
3 INFORMATION NONDISCRIMINATION ACT OF 2008 (PUBLIC LAW 110-233,
4 122 STAT. 881) AND MICHELLE'S LAW (PUBLIC LAW 110-381, 122 STAT.
5 4081), COLLECTIVELY CONTAINED IN THE PUBLIC HEALTH SERVICE ACT
6 (58 STAT. 682, 42 U.S.C. § 201 ET SEQ.).

7 "FRATERNAL BENEFIT SOCIETY." AN ENTITY HOLDING A CURRENT
8 CERTIFICATE OF AUTHORITY UNDER ARTICLE XXIV.

9 "HEALTH MAINTENANCE ORGANIZATION." AN ENTITY HOLDING A
10 CURRENT CERTIFICATE OF AUTHORITY UNDER THE ACT OF DECEMBER 29,
11 1972 (P.L.1701, NO.364), KNOWN AS THE HEALTH MAINTENANCE
12 ORGANIZATION ACT.

13 "HOSPITAL PLAN CORPORATION." AN ENTITY HOLDING A CURRENT
14 CERTIFICATE OF AUTHORITY ORGANIZED AND OPERATED UNDER 40 PA.C.S.
15 CH. 61 (RELATING TO HOSPITAL PLAN CORPORATIONS).

16 "INSURER." A FOREIGN OR DOMESTIC INSURANCE COMPANY,
17 ASSOCIATION OR EXCHANGE, HEALTH MAINTENANCE ORGANIZATION,
18 HOSPITAL PLAN CORPORATION, PROFESSIONAL HEALTH SERVICES PLAN
19 CORPORATION, FRATERNAL BENEFIT SOCIETY OR RISK-ASSUMING
20 PREFERRED PROVIDER ORGANIZATION. THE TERM SHALL NOT INCLUDE A
21 GROUP HEALTH PLAN AS DEFINED IN SECTION 2791 OF THE PUBLIC
22 HEALTH SERVICE ACT (58 STAT. 682, 42 U.S.C. § 300GG-91).

23 "PREFERRED PROVIDER ORGANIZATION." AN ENTITY HOLDING A
24 CURRENT CERTIFICATE OF AUTHORITY UNDER SECTION 630.

25 "PROFESSIONAL HEALTH SERVICES PLAN CORPORATION." AN ENTITY
26 HOLDING A CURRENT CERTIFICATE OF AUTHORITY UNDER 40 PA.C.S. CH.
27 63 (RELATING TO PROFESSIONAL HEALTH SERVICES PLAN CORPORATIONS).
28 THIS TERM SHALL NOT INCLUDE DENTAL SERVICE CORPORATIONS OR
29 OPTOMETRIC SERVICE CORPORATIONS, AS THOSE TERMS ARE DEFINED
30 UNDER 40 PA.C.S. § 6302(A) (RELATING TO DEFINITIONS).

1 (B) FEDERAL LAW.--THE WORDS, TERMS AND DEFINITIONS FOUND IN
2 THE FEDERAL ACTS, INCLUDING THOSE IN SECTION 2791 OF THE PUBLIC
3 HEALTH SERVICE ACT (58 STAT. 682, 42 U.S.C. 300GG-91), ARE
4 ADOPTED FOR PURPOSES OF IMPLEMENTING THIS ARTICLE, EXCEPT AS
5 NOTED IN THIS SUBSECTION. THE TERM "HEALTH INSURANCE ISSUER"
6 UNDER SECTION 2791(B)(2) OF THE PUBLIC HEALTH SERVICE ACT SHALL
7 HAVE THE MEANING PROVIDED UNDER "INSURER" IN SUBSECTION (A).
8 SECTION 604-B. ADOPTION OF FEDERAL ACTS.

9 INSURERS SHALL COMPLY WITH THE FEDERAL ACTS, AS CONTAINED IN
10 SECTIONS 2701, 2702, 2705, 2707, 2721, 2753 AND 2754 OF THE
11 PUBLIC HEALTH SERVICE ACT (58 STAT. 682, 42 U.S.C. §§ 300GG,
12 300GG-1, 300GG-5, 300GG-7, 300GG-21, 300GG-53 AND 300GG-54).
13 SECTION 605-B. PENALTIES.

14 (A) GENERAL RULE.--UPON SATISFACTORY EVIDENCE OF A VIOLATION
15 OF THIS ARTICLE BY ANY INSURER OR OTHER PERSON, THE COMMISSIONER
16 MAY, IN THE COMMISSIONER'S DISCRETION, PURSUE ANY ONE OF THE
17 FOLLOWING COURSES OF ACTION:

18 (1) SUSPEND, REVOKE OR REFUSE TO RENEW THE LICENSE OF
19 THE OFFENDING PERSON.

20 (2) ENTER A CEASE AND DESIST ORDER.

21 (3) IMPOSE A CIVIL PENALTY OF NOT MORE THAN \$5,000 FOR
22 EACH ACTION IN VIOLATION OF THIS ARTICLE.

23 (4) IMPOSE A CIVIL PENALTY OF NOT MORE THAN \$10,000 FOR
24 EACH ACTION IN WILLFUL VIOLATION OF THIS ARTICLE.

25 (B) LIMITATION.--PENALTIES IMPOSED AGAINST A PERSON UNDER
26 THIS ARTICLE AND UNDER SECTION 5 OF THE ACT OF JUNE 25, 1997
27 (P.L.295, NO.29), KNOWN AS THE PENNSYLVANIA HEALTH CARE
28 INSURANCE PORTABILITY ACT, SHALL NOT EXCEED \$500,000 IN THE
29 AGGREGATE DURING A SINGLE CALENDAR YEAR.

30 SECTION 606-B. REGULATIONS.

1 THE DEPARTMENT MAY PROMULGATE SUCH REGULATIONS AS MAY BE
2 NECESSARY OR APPROPRIATE TO CARRY OUT THIS ARTICLE.

3 SECTION 3. SECTION 1602 OF THE ACT, AMENDED OR ADDED
4 DECEMBER 18, 1992 (P.L.1519, NO.178) AND JULY 10, 2002 (P.L.749,
5 NO.110), IS AMENDED TO READ:

6 SECTION 1602. DEFINITIONS.--AS USED IN THIS ARTICLE THE
7 FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO
8 THEM IN THIS SECTION:

9 "ADMITTED INSURER." AN INSURER LICENSED TO DO AN INSURANCE
10 BUSINESS IN THIS COMMONWEALTH.

11 "BUSINESS ENTITY." A CORPORATION, A PARTNERSHIP, A LIMITED
12 LIABILITY COMPANY, A LIMITED LIABILITY PARTNERSHIP, A BUSINESS
13 TRUST OR ANY OTHER ENTITY DOING BUSINESS OTHER THAN AS A NATURAL
14 PERSON.

15 "CAPITAL." THE TERM, AS USED IN THE FINANCIAL REQUIREMENTS
16 OF SECTION 1605, MEANS FUNDS PAID FOR STOCK OR OTHER EVIDENCE OF
17 OWNERSHIP.

18 "COMMISSIONER." THE INSURANCE COMMISSIONER OF THE
19 COMMONWEALTH.

20 "DEPARTMENT." THE INSURANCE DEPARTMENT OF THE COMMONWEALTH.

21 "ELIGIBLE SURPLUS LINES INSURER." A NONADMITTED INSURER WITH
22 WHICH A SURPLUS LINES LICENSEE MAY PLACE SURPLUS LINES INSURANCE
23 UNDER SECTION 1604.

24 "EXPORT." TO PLACE SURPLUS LINES INSURANCE WITH EITHER A
25 NONADMITTED INSURER OR AN ELIGIBLE SURPLUS LINES INSURER IN
26 ACCORDANCE WITH THIS ARTICLE.

27 "INDEPENDENTLY PROCURED INSURANCE." ANY INSURANCE WHICH A
28 RESIDENT OF THIS COMMONWEALTH DIRECTLY NEGOTIATES WITH AND
29 PURCHASES, CONTINUES OR RENEWS FROM A NONADMITTED INSURER
30 WITHOUT SECURING THE SERVICES OF AN INSURANCE [AGENT, BROKER]

1 PRODUCER OR SURPLUS LINES LICENSEE[, WHETHER THE AGENT OR BROKER
2 HOLDS A RESIDENT OR NONRESIDENT LICENSE ISSUED BY THE
3 DEPARTMENT].

4 "INSURANCE PRODUCER." A PERSON THAT IS LICENSED TO SELL,
5 SOLICIT OR NEGOTIATE CONTRACTS OF INSURANCE WITH ADMITTED
6 INSURERS.

7 "KIND OF INSURANCE." ONE OF THE TYPES OF INSURANCE REQUIRED
8 TO BE REPORTED IN THE ANNUAL STATEMENT WHICH MUST BE FILED WITH
9 THE DEPARTMENT BY ADMITTED INSURERS.

10 "NONADMITTED INSURER." AN INSURER NOT AUTHORIZED AND NOT
11 LICENSED TO DO AN INSURANCE BUSINESS IN THIS COMMONWEALTH. THE
12 TERM INCLUDES INSURANCE EXCHANGES AS AUTHORIZED UNDER THE LAWS
13 OF VARIOUS STATES.

14 "PERSON." A NATURAL PERSON OR BUSINESS ENTITY.

15 ["PRODUCING BROKER." THE BROKER DEALING DIRECTLY WITH THE
16 PARTY SEEKING INSURANCE.]

17 "PURCHASING GROUP." AN ENTITY FORMED TO PURCHASE LIABILITY
18 INSURANCE UNDER THE RISK RETENTION AMENDMENTS OF 1986 (PUBLIC
19 LAW 99-563, 100 STAT. 3170).

20 "RISK RETENTION GROUP." AN INSURER ORGANIZED TO DO BUSINESS
21 UNDER THE RISK RETENTION AMENDMENTS OF 1986 (PUBLIC LAW 99-563,
22 100 STAT. 3170).

23 "SURPLUS." THE TERM, AS USED IN THE FINANCIAL REQUIREMENTS
24 OF SECTION 1605, MEANS FUNDS OVER AND ABOVE LIABILITIES AND
25 CAPITAL OF THE COMPANY FOR THE PROTECTION OF ITS POLICYHOLDERS.

26 "SURPLUS LINES INSURANCE." ANY INSURANCE OF RISKS RESIDENT,
27 LOCATED OR TO BE PERFORMED IN THIS COMMONWEALTH, PERMITTED TO BE
28 PLACED THROUGH A SURPLUS LINES LICENSEE WITH A NONADMITTED
29 INSURER ELIGIBLE TO ACCEPT SUCH INSURANCE, OTHER THAN
30 REINSURANCE, WET MARINE AND TRANSPORTATION INSURANCE,

1 INDEPENDENTLY PROCURED INSURANCE, LIFE [AND HEALTH] INSURANCE
2 AND ANNUITIES AND COVERAGE OBTAINED FROM RISK RETENTION GROUPS
3 UNDER THE RISK RETENTION AMENDMENTS OF 1986 (PUBLIC LAW 99-563,
4 100 STAT. 3170).

5 "SURPLUS LINES LICENSEE." [AN INDIVIDUAL, PARTNERSHIP OR
6 CORPORATION] A PERSON LICENSED AS A SURPLUS LINES PRODUCER UNDER
7 SECTION 1615 TO PLACE SURPLUS LINES INSURANCE WITH NONADMITTED
8 INSURERS ELIGIBLE TO ACCEPT SUCH INSURANCE.

9 "WET MARINE AND TRANSPORTATION INSURANCE." ANY OF THE
10 FOLLOWING:

11 (1) INSURANCE UPON VESSELS, CRAFTS OR HULLS AND OF INTERESTS
12 THEREIN OR WITH RELATION THERETO.

13 (2) INSURANCE OF MARINE BUILDER'S RISKS, MARINE WAR RISKS
14 AND CONTRACTS OF MARINE PROTECTION AND INDEMNITY INSURANCE.

15 (3) INSURANCE OF FREIGHTS AND DISBURSEMENTS PERTAINING TO A
16 SUBJECT OF INSURANCE COMING WITHIN THIS DEFINITION.

17 (4) INSURANCE OF PERSONAL PROPERTY AND INTEREST THEREIN, IN
18 THE COURSE OF EXPORTATION FROM OR IMPORTATION INTO ANY COUNTRY,
19 OR IN THE COURSE OF TRANSPORTATION COASTWISE OR ON INLAND
20 WATERS, INCLUDING TRANSPORTATION BY LAND, WATER OR AIR FROM
21 POINT OF ORIGIN TO FINAL DESTINATION, IN CONNECTION WITH ANY AND
22 ALL RISKS OR PERILS OF NAVIGATION, TRANSIT OR TRANSPORTATION,
23 AND WHILE BEING PREPARED FOR AND WHILE AWAITING SHIPMENT, AND
24 DURING ANY DELAYS, TRANSSHIPMENT OR RESHIPMENT. INSURANCE OF
25 PERSONAL PROPERTY AND INTERESTS THEREIN SHALL NOT BE CONSIDERED
26 WET MARINE AND TRANSPORTATION INSURANCE IF:

27 (I) THE PROPERTY HAS BEEN TRANSPORTED SOLELY BY LAND;

28 (II) THE PROPERTY HAS REACHED ITS FINAL DESTINATION AS
29 SPECIFIED IN THE BILL OF LADING OR OTHER SHIPPING DOCUMENT; OR

30 (III) THE INSURED NO LONGER HAS AN INSURABLE INTEREST IN THE

1 PROPERTY.

2 (5) ANY INSURANCE ASSOCIATED WITH TRANSPORTATION OF PROPERTY
3 LISTED UNDER THIS DEFINITION.

4 "WRITING PRODUCER." THE INSURANCE PRODUCER WHICH BRINGS
5 ABOUT OR NEGOTIATES CONTRACTS OF INSURANCE DIRECTLY ON BEHALF OF
6 THE CONSUMER SEEKING INSURANCE.

7 SECTION 4. SECTION 1603 OF THE ACT, ADDED DECEMBER 18, 1992
8 (P.L.1519, NO.178), IS AMENDED TO READ:

9 SECTION 1603. ACTING FOR OR AIDING NONADMITTED INSURERS.--

10 (A) NO PERSON IN THIS COMMONWEALTH SHALL DIRECTLY OR INDIRECTLY
11 ACT AS [AGENT] A PRODUCER FOR, OR OTHERWISE REPRESENT OR AID ON
12 BEHALF OF ANOTHER, ANY NONADMITTED INSURER IN THE SOLICITATION,
13 NEGOTIATION, PROCUREMENT OR EFFECTUATION OF INSURANCE, OR
14 RENEWALS THEREOF, OR FORWARDING OF APPLICATIONS, OR DELIVERY OF
15 POLICIES OR CONTRACTS OR INSPECTION OF RISKS, OR FIXING OF
16 RATES, OR INVESTIGATION OR ADJUSTMENT OF CLAIMS OR LOSSES, OR
17 COLLECTION OR FORWARDING OF PREMIUMS, OR IN ANY OTHER MANNER
18 REPRESENT OR ASSIST SUCH INSURER IN THE TRANSACTION OF
19 INSURANCE.

20 (B) IF THE NONADMITTED INSURER IS NOT AN ELIGIBLE SURPLUS
21 LINES INSURER AND FAILS TO PAY A CLAIM OR LOSS WITHIN THE
22 PROVISIONS OF THE INSURANCE CONTRACT, A PERSON WHO ASSISTED OR
23 IN ANY MANNER AIDED, DIRECTLY OR INDIRECTLY, IN THE PROCUREMENT
24 OF THE INSURANCE CONTRACT SHALL BE LIABLE TO THE INSURED FOR THE
25 FULL AMOUNT PAYABLE UNDER THE PROVISIONS OF THE INSURANCE
26 CONTRACT.

27 (C) THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

28 (1) SURPLUS LINES INSURANCE IF IT IS EFFECTED AND WRITTEN
29 PURSUANT TO THIS ARTICLE.

30 (2) INSURANCE EFFECTED WITH A NONADMITTED INSURER PURSUANT

1 TO SECTIONS 1606 AND 1610.

2 (3) TRANSACTIONS FOR WHICH A CERTIFICATE OF AUTHORITY TO DO
3 BUSINESS IS NOT REQUIRED OF AN INSURER UNDER THE INSURANCE LAWS
4 OF THIS COMMONWEALTH.

5 (4) REINSURANCE.

6 (5) WET MARINE AND TRANSPORTATION INSURANCE.

7 (6) TRANSACTIONS SUBSEQUENT TO ISSUANCE OF A POLICY NOT
8 COVERING DOMESTIC RISKS AT TIME OF ISSUANCE AND LAWFULLY
9 SOLICITED, WRITTEN OR DELIVERED OUTSIDE OF THIS COMMONWEALTH.

10 (7) TRANSACTIONS INVOLVING RISK RETENTION GROUPS CHARTERED
11 AND LICENSED OUTSIDE OF THIS COMMONWEALTH.

12 SECTION 5. SECTION 1605 OF THE ACT, AMENDED JULY 10, 2002
13 (P.L.749, NO.110), IS AMENDED TO READ:

14 SECTION 1605. REQUIREMENTS FOR ELIGIBLE SURPLUS LINES
15 INSURERS.--(A) NO SURPLUS LINES LICENSEE SHALL PLACE ANY
16 COVERAGE WITH A NONADMITTED INSURER UNLESS, AT THE TIME OF
17 PLACEMENT, SUCH NONADMITTED INSURER:

18 (1) IS OF GOOD REPUTE AND FINANCIAL INTEGRITY.

19 (2) QUALIFIES UNDER ANY OF THE FOLLOWING SUBPARAGRAPHS:

20 (I) HAS POLICYHOLDER SURPLUS EQUAL TO OR GREATER THAN TWO
21 TIMES THE MINIMUM CAPITAL AND SURPLUS REQUIRED TO BE FULLY
22 LICENSED IN THIS COMMONWEALTH. TWO (2) YEARS FROM THE EFFECTIVE
23 DATE OF THIS ARTICLE IS GRANTED TO ALLOW THOSE NONADMITTED
24 INSURERS WHICH ARE ELIGIBLE SURPLUS LINES INSURERS ON THE
25 EFFECTIVE DATE OF THIS ARTICLE TO ACHIEVE THIS CAPITAL AND
26 SURPLUS REQUIREMENT. IF AN ALIEN INSURER, AS DEFINED BY THE ACT
27 OF DECEMBER 10, 1974 (P.L.804, NO.266), REFERRED TO AS THE ALIEN
28 INSURER DOMESTICATION LAW, IT SHALL MAINTAIN IN THE UNITED
29 STATES AN IRREVOCABLE TRUST FUND IN EITHER A NATIONAL BANK OR A
30 MEMBER OF THE FEDERAL RESERVE SYSTEM, IN AN AMOUNT NOT LESS THAN

1 THAT CURRENTLY REQUIRED BY THE NATIONAL ASSOCIATION OF INSURANCE
2 COMMISSIONERS' INTERNATIONAL INSURERS DEPARTMENT OR ITS
3 SUCCESSOR FOR THE PROTECTION OF ALL OF ITS POLICYHOLDERS IN THE
4 UNITED STATES, AND SUCH TRUST FUND CONSISTS OF CASH, SECURITIES,
5 LETTERS OF CREDIT OR INVESTMENTS OF SUBSTANTIALLY THE SAME
6 CHARACTER AND QUALITY AS THOSE WHICH ARE ELIGIBLE INVESTMENTS
7 FOR ADMITTED INSURERS AUTHORIZED TO WRITE LIKE KINDS OF
8 INSURANCE IN THIS COMMONWEALTH. SUCH TRUST FUND WILL BE IN
9 ADDITION TO THE CAPITAL AND SURPLUS REQUIRED IN THIS
10 SUBPARAGRAPH AND SHALL HAVE AN EXPIRATION DATE WHICH AT NO TIME
11 SHALL BE LESS THAN FIVE (5) YEARS.

12 (II) IS ANY LLOYD'S OR OTHER SIMILAR GROUP OF INSURERS WHICH
13 INCLUDES UNINCORPORATED INDIVIDUAL INSURERS THAT MAINTAINS A
14 TRUST FUND OF NOT LESS THAN FIFTY MILLION (\$50,000,000) DOLLARS
15 AS SECURITY TO THE FULL AMOUNT THEREOF FOR ALL POLICYHOLDERS AND
16 CREDITORS IN THE UNITED STATES OF EACH MEMBER OF THE GROUP. SUCH
17 TRUST FUNDS SHALL LIKEWISE COMPLY WITH THE TERMS AND CONDITIONS
18 ESTABLISHED IN SUBPARAGRAPH (I) FOR ALIEN INSURERS.

19 (III) IS AN INSURANCE EXCHANGE CREATED BY THE LAWS OF
20 INDIVIDUAL STATES THAT MAINTAINS CAPITAL AND SURPLUS OR THE
21 SUBSTANTIAL EQUIVALENT THEREOF OF NOT LESS THAN FIFTEEN MILLION
22 (\$15,000,000) DOLLARS IN THE AGGREGATE. FOR INSURANCE EXCHANGES
23 WHICH MAINTAIN FUNDS FOR THE PROTECTION OF ALL INSURANCE
24 EXCHANGE POLICYHOLDERS, EACH INDIVIDUAL SYNDICATE SHALL MAINTAIN
25 MINIMUM CAPITAL AND SURPLUS OR THE SUBSTANTIAL EQUIVALENT
26 THEREOF OF NOT LESS THAN ONE MILLION FIVE HUNDRED THOUSAND
27 (\$1,500,000) DOLLARS. IN THE EVENT THE INSURANCE EXCHANGE DOES
28 NOT MAINTAIN FUNDS FOR THE PROTECTION OF ALL INSURANCE EXCHANGE
29 POLICYHOLDERS, EACH INDIVIDUAL SYNDICATE SHALL MEET THE MINIMUM
30 CAPITAL AND SURPLUS REQUIREMENTS OF SUBPARAGRAPH (I).

1 (3) HAS PROVIDED TO THE DEPARTMENT A COPY OF ITS CURRENT
2 ANNUAL FINANCIAL STATEMENT CERTIFIED BY SUCH INSURER, SUCH
3 STATEMENT TO BE PROVIDED NO MORE THAN THIRTY (30) DAYS AFTER THE
4 DATE REQUIRED FOR FILING AN ANNUAL FINANCIAL STATEMENT IN ITS
5 DOMICILIARY JURISDICTION AND WHICH IS EITHER:

6 (I) CERTIFIED BY THE REGULATORY AUTHORITY IN THE DOMICILE OF
7 THE INSURER; OR

8 (II) CERTIFIED BY AN ACCOUNTING OR AUDITING FIRM LICENSED IN
9 THE JURISDICTION OF THE INSURER'S DOMICILE.

10 IN THE CASE OF AN INSURANCE EXCHANGE, THE STATEMENT MAY BE AN
11 AGGREGATE STATEMENT OF ALL UNDERWRITING SYNDICATES OPERATING
12 DURING THE PERIOD REPORTED.

13 (B) IN ADDITION TO MEETING THE REQUIREMENTS IN SUBSECTION
14 (A), A NONADMITTED INSURER SHALL BE AN ELIGIBLE SURPLUS LINES
15 INSURER IF IT APPEARS ON THE MOST RECENT LIST OF ELIGIBLE
16 SURPLUS LINES INSURERS PUBLISHED BY THE DEPARTMENT FROM TIME TO
17 TIME BUT AT LEAST [SEMIANNUALLY] ANNUALLY. NOTHING IN THIS
18 SECTION SHALL REQUIRE THE DEPARTMENT TO PLACE OR MAINTAIN THE
19 NAME OF ANY NONADMITTED INSURER ON THE LIST OF ELIGIBLE SURPLUS
20 LINES INSURERS.

21 SECTION 6. SECTION 1606 OF THE ACT, ADDED DECEMBER 18, 1992
22 (P.L.1519, NO.178), IS AMENDED TO READ:

23 SECTION 1606. OTHER NONADMITTED INSURERS.--ONLY THAT
24 PORTION, NOT TO EXCEED TWENTY-FIVE PER CENTUM (25%), OF ANY RISK
25 ELIGIBLE FOR EXPORT FOR WHICH THE FULL AMOUNT OF COVERAGE IS NOT
26 PROCURABLE FROM EITHER ADMITTED INSURERS OR ELIGIBLE SURPLUS
27 LINES INSURERS MAY BE PLACED WITH ANY OTHER NONADMITTED INSURER
28 WHICH DOES NOT APPEAR ON THE LIST OF ELIGIBLE SURPLUS LINES
29 INSURERS PUBLISHED BY THE DEPARTMENT PURSUANT TO SECTION 1605(B)
30 BUT NONETHELESS MEETS THE REQUIREMENTS SET FORTH IN SECTION

1 1605(A) AND ANY REGULATIONS OF THE DEPARTMENT. THE SURPLUS LINES
2 LICENSEE [SEEKING TO PROVIDE] PROVIDING COVERAGE THROUGH A
3 NONADMITTED INSURER WHICH IS NOT AN ELIGIBLE SURPLUS LINES
4 INSURER SHALL MAKE A FILING SPECIFYING THE AMOUNT AND PERCENTAGE
5 OF EACH RISK ALONG WITH A FULL EXPLANATION OF WHY THE RISK COULD
6 NOT BE PLACED WITH ADMITTED OR ELIGIBLE SURPLUS LINES INSURERS
7 AND NAMING THE NONADMITTED INSURER WITH WHICH PLACEMENT [IS
8 INTENDED] WAS MADE. AT THE TIME OF PRESENTING A QUOTATION TO THE
9 INSURED, THE SURPLUS LINES LICENSEE SHALL PRESENT TO THE INSURED
10 OR TO THE [PRODUCING BROKER] WRITING PRODUCER WRITTEN NOTICE
11 THAT A PORTION OF THE INSURANCE WILL BE PLACED WITH SUCH
12 NONADMITTED INSURER.

13 SECTION 7. SECTIONS 1608 AND 1609 OF THE ACT, AMENDED JULY
14 10, 2002 (P.L.749, NO.110), ARE AMENDED TO READ:

15 SECTION 1608. SURPLUS LINES LICENSEE'S DUTY TO NOTIFY
16 INSURED.--AT THE TIME OF PRESENTING A QUOTATION TO THE INSURED,
17 THE SURPLUS LINES LICENSEE SHALL PRESENT TO THE INSURED OR TO
18 THE [PRODUCING BROKER] WRITING PRODUCER WRITTEN NOTICE THAT THE
19 INSURANCE OR A PORTION THEREOF INVOLVES PLACEMENT WITH
20 NONADMITTED INSURERS. THE SURPLUS LINES LICENSEE SHALL, EITHER
21 DIRECTLY OR THROUGH THE [PRODUCING BROKER] WRITING PRODUCER,
22 GIVE NOTICE TO THE INSURED THAT:

23 (1) THE INSURER WITH WHICH THE LICENSEE PLACES THE INSURANCE
24 IS NOT LICENSED BY THE PENNSYLVANIA INSURANCE DEPARTMENT AND IS
25 SUBJECT TO ITS LIMITED REGULATION; AND

26 (2) IN THE EVENT OF THE INSOLVENCY OF AN ELIGIBLE SURPLUS
27 LINES INSURER, LOSSES WILL NOT BE PAID BY THE PENNSYLVANIA
28 PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION.

29 SECTION 1609. DECLARATIONS.--(A) IN THE CASE OF EACH
30 PLACEMENT OF INSURANCE IN ACCORDANCE WITH THIS ARTICLE:

1 (1) WITHIN THIRTY (30) DAYS AFTER THE SURPLUS LINES LICENSEE
2 HAS PLACED INSURANCE WITH AN ELIGIBLE SURPLUS LINES INSURER, THE
3 [PRODUCING BROKER] WRITING PRODUCER MUST EXECUTE AND FORWARD TO
4 THE SURPLUS LINES LICENSEE A WRITTEN STATEMENT, IN A FORM
5 PRESCRIBED BY THE DEPARTMENT, DECLARING THAT:

6 (I) A DILIGENT EFFORT TO PROCURE THE DESIRED COVERAGE FROM
7 ADMITTED INSURERS WAS MADE.

8 (II) THE INSURED WAS EXPRESSLY ADVISED IN WRITING PRIOR TO
9 PLACEMENT OF THE INSURANCE THAT:

10 (A) THE INSURER WITH WHOM THE INSURANCE IS TO BE PLACED IS
11 NOT ADMITTED TO TRANSACT BUSINESS IN THIS COMMONWEALTH AND IS
12 SUBJECT TO LIMITED REGULATION BY THE DEPARTMENT; AND

13 (B) IN THE EVENT OF THE INSOLVENCY OF THE INSURER, LOSSES
14 WILL NOT BE PAID BY THE PENNSYLVANIA PROPERTY AND CASUALTY
15 INSURANCE GUARANTY ASSOCIATION.

16 THIS WRITTEN DECLARATION SHALL BE OPEN TO PUBLIC INSPECTION.

17 (2) WITHIN FORTY-FIVE (45) DAYS AFTER INSURANCE HAS BEEN
18 PLACED IN AN ELIGIBLE SURPLUS LINES INSURER, THE SURPLUS LINES
19 LICENSEE SHALL FILE WITH THE DEPARTMENT A WRITTEN DECLARATION OF
20 HIS LACK OF KNOWLEDGE OF HOW THE COVERAGE COULD HAVE BEEN
21 PROCURED FROM ADMITTED INSURERS. THE SURPLUS LINES LICENSEE
22 SHALL SIMULTANEOUSLY FILE THE WRITTEN DECLARATION OF THE
23 [PRODUCING BROKER] WRITING PRODUCER, AS SET FORTH IN PARAGRAPH
24 (1).

25 (3) IN A PARTICULAR TRANSACTION WHERE THE [PRODUCING BROKER]
26 WRITING PRODUCER AND SURPLUS LINES LICENSEE ARE ONE IN THE SAME
27 ENTITY, [HE] THE WRITING PRODUCER OR SURPLUS LINES LICENSEE
28 SHALL EXECUTE BOTH DECLARATIONS.

29 (B) SUBSECTION (A) SHALL NOT APPLY TO ANY INSURANCE WHICH
30 HAS BEEN PLACED CONTINUOUSLY WITH AN ELIGIBLE SURPLUS LINES

1 INSURER FOR A PERIOD OF AT LEAST THREE (3) CONSECUTIVE YEARS
2 IMMEDIATELY PRECEDING THE CURRENT PLACEMENT. HOWEVER, WITHIN
3 FORTY-FIVE (45) DAYS AFTER INSURANCE HAS BEEN PLACED WITH AN
4 ELIGIBLE SURPLUS LINES INSURER, THE SURPLUS LINES LICENSEE SHALL
5 FILE WITH THE DEPARTMENT HIS WRITTEN DECLARATION ON A FORM
6 PRESCRIBED BY THE DEPARTMENT.

7 SECTION 8. SECTIONS 1611, 1612 AND 1614 OF THE ACT, ADDED
8 DECEMBER 18, 1992 (P.L.1519, NO.178), ARE AMENDED TO READ:

9 SECTION 1611. SURPLUS LINES ADVISORY ORGANIZATIONS.-- (A) A
10 SURPLUS LINES ADVISORY ORGANIZATION OF SURPLUS LINES LICENSEES
11 MAY BE FORMED TO:

12 (1) FACILITATE AND ENCOURAGE COMPLIANCE BY [ITS MEMBERS]
13 SURPLUS LINES LICENSEES WITH THE LAWS OF THIS COMMONWEALTH AND
14 THE RULES AND REGULATIONS OF THE DEPARTMENT RELATIVE TO SURPLUS
15 LINES INSURANCE.

16 (2) PROVIDE MEANS FOR THE EXAMINATION, WHICH SHALL REMAIN
17 CONFIDENTIAL, OF ALL SURPLUS LINES COVERAGES WRITTEN BY [ITS
18 MEMBERS] SURPLUS LINES LICENSEES TO DETERMINE WHETHER SUCH
19 COVERAGES COMPLY WITH SUCH LAWS AND REGULATIONS.

20 (3) COMMUNICATE WITH ORGANIZATIONS OF ADMITTED INSURERS WITH
21 RESPECT TO THE PROPER USE OF THE SURPLUS LINES MARKET.

22 (4) RECEIVE AND DISSEMINATE TO [ITS MEMBERS] SURPLUS LINES
23 LICENSEES INFORMATION RELATIVE TO SURPLUS LINES INSURANCE.

24 (B) THE FUNCTIONS OF THE ORGANIZATION SHALL IN NO WAY
25 SUPPLANT OR DELEGATE CURRENT REGULATORY AUTHORITY OF THE
26 DEPARTMENT TO ADMINISTER THE PROVISIONS OF THIS ARTICLE.

27 (C) [EACH SUCH] AN ADVISORY ORGANIZATION SHALL FILE WITH THE
28 DEPARTMENT FOR APPROVAL:

29 (1) A COPY OF ITS CONSTITUTION, ITS ARTICLES OF AGREEMENT OR
30 ASSOCIATION OR ITS CERTIFICATE OF INCORPORATION.

1 (2) A COPY OF ITS BYLAWS, RULES AND REGULATIONS GOVERNING
2 ITS ACTIVITIES.

3 [(3) A CURRENT LIST OF ITS MEMBERS.]

4 (4) THE NAME AND ADDRESS OF A RESIDENT OF THIS COMMONWEALTH
5 UPON WHOM NOTICES OR ORDERS OF THE DEPARTMENT OR PROCESSES
6 ISSUED AT ITS DIRECTION MAY BE SERVED.

7 (5) AN AGREEMENT THAT THE DEPARTMENT MAY EXAMINE SUCH
8 ADVISORY ORGANIZATION IN ACCORDANCE WITH THE PROVISIONS OF THIS
9 SECTION.

10 (D) THE DEPARTMENT [SHALL, AT LEAST ONCE EVERY FOUR (4)
11 YEARS] MAY, AS NECESSARY, MAKE OR CAUSE TO BE MADE AN
12 EXAMINATION OF EACH SUCH ADVISORY ORGANIZATION. THE REASONABLE
13 COST OF ANY SUCH EXAMINATION SHALL BE PAID BY THE ADVISORY
14 ORGANIZATION UPON PRESENTATION TO IT BY THE DEPARTMENT OF A
15 DETAILED ACCOUNT OF EACH COST. THE OFFICERS, DIRECTORS,
16 MANAGERS, AGENTS AND EMPLOYEES OF SUCH ADVISORY ORGANIZATION MAY
17 BE EXAMINED AT ANY TIME, UNDER OATH, AND SHALL EXHIBIT ALL
18 BOOKS, RECORDS, ACCOUNTS, DOCUMENTS OR AGREEMENTS GOVERNING ITS
19 METHOD OF OPERATION. THE DEPARTMENT SHALL FURNISH TWO COPIES OF
20 THE EXAMINATION REPORT TO THE ADVISORY ORGANIZATION EXAMINED AND
21 SHALL NOTIFY SUCH ORGANIZATION THAT IT MAY, WITHIN TWENTY (20)
22 DAYS THEREOF, REQUEST A HEARING ON THE REPORT OR ON ANY FACTS OR
23 RECOMMENDATIONS THEREIN. IF THE DEPARTMENT FINDS SUCH ADVISORY
24 ORGANIZATION OR ANY MEMBER THEREOF TO BE IN VIOLATION OF THIS
25 ARTICLE, IT MAY ISSUE A CEASE AND DESIST ORDER REQUIRING THE
26 DISCONTINUANCE OF SUCH VIOLATION AND MAY IMPOSE ANY OTHER
27 PENALTIES AS SET FORTH IN THIS ARTICLE.

28 (E) THE DEPARTMENT MAY CONTRACT WITH A SURPLUS LINES
29 ADVISORY ORGANIZATION TO RENDER ADVICE AND ASSISTANCE IN
30 CARRYING OUT THE PURPOSES OF THIS ARTICLE. THE SERVICES

1 PERFORMED BY THE ADVISORY ORGANIZATION PURSUANT TO SUCH CONTRACT
2 MAY BE FUNDED BY A STAMPING FEE ASSESSED ON EACH SURPLUS LINES
3 POLICYHOLDER WHOSE POLICY IS SUBMITTED TO THE ADVISORY
4 ORGANIZATION. THE STAMPING FEE SHALL BE ESTABLISHED BY THE BOARD
5 OF GOVERNORS OF THE ADVISORY ORGANIZATION, FROM TIME TO TIME,
6 AND SHALL BE SUBJECT TO APPROVAL BY THE DEPARTMENT.

7 (F) THE ADVISORY ORGANIZATION MAY SUBMIT REPORTS AND MAKE
8 RECOMMENDATIONS TO THE DEPARTMENT REGARDING THE FINANCIAL
9 CONDITION OF ANY ELIGIBLE SURPLUS LINES INSURER. THESE REPORTS
10 AND RECOMMENDATIONS SHALL NOT BE CONSIDERED TO BE PUBLIC
11 INFORMATION OR SUBJECT TO ANY FEDERAL OR STATE FREEDOM OF
12 INFORMATION LAW. THERE SHALL BE NO LIABILITY ON THE PART OF NOR
13 SHALL ANY CAUSE OF ACTION OF ANY NATURE BE SUSTAINED AGAINST
14 ELIGIBLE SURPLUS LINES INSURERS, THE ADVISORY ORGANIZATION OR
15 ITS MEMBERS, AGENTS, EMPLOYES, OFFICERS OR DIRECTORS OR THE
16 DEPARTMENT OR AUTHORIZED REPRESENTATIVES OF THE DEPARTMENT FOR
17 STATEMENTS AND ANY REPORTS OR RECOMMENDATIONS MADE BY THEM IN
18 GOOD FAITH UNDER THIS SECTION.

19 (G) BY ORDER OF THE DEPARTMENT, A SURPLUS LINES LICENSEE MAY
20 BE COMPELLED TO [JOIN AN ADVISORY ORGANIZATION] ATTEND
21 EDUCATIONAL SEMINARS AS A CONDITION OF CONTINUED LICENSURE UNDER
22 THIS ARTICLE.

23 SECTION 1612. EVIDENCE OF INSURANCE.--(A) UPON PLACING
24 SURPLUS LINES INSURANCE, THE SURPLUS LINES LICENSEE SHALL
25 DELIVER TO THE INSURED OR THE [PRODUCING BROKER] WRITING
26 PRODUCER THE CONTRACT OF INSURANCE. IF THE CONTRACT OF INSURANCE
27 IS NOT IMMEDIATELY AVAILABLE, A COVER NOTE, BINDER OR OTHER
28 EVIDENCE OF INSURANCE SHALL BE DELIVERED BY THE SURPLUS LINES
29 LICENSEE TO THE INSURED OR THE [PRODUCING BROKER] WRITING
30 PRODUCER AND SHALL, AT A MINIMUM, SHOW THE DESCRIPTION AND

1 LOCATION OF THE SUBJECT OF INSURANCE, COVERAGES, INCLUDING ANY
2 MATERIAL LIMITATIONS OTHER THAN THOSE IN STANDARD FORMS, THE
3 PREMIUM AND RATE CHARGED AND TAXES TO BE COLLECTED FROM THE
4 INSURED, THE NAME AND ADDRESS OF THE INSURED AND THE ELIGIBLE
5 SURPLUS LINES INSURER AND OTHER NONADMITTED INSURER INVOLVED
6 UNDER SECTION 1606 AND PROPORTION OF THE RISK ASSUMED BY EACH,
7 AND THE NAME OF THE SURPLUS LINES LICENSEE.

8 (B) NO SURPLUS LINES LICENSEE SHALL BIND OR PROVIDE EVIDENCE
9 OF INSURANCE UNLESS HE HAS AUTHORITY FROM THE ELIGIBLE SURPLUS
10 LINES INSURER OR OTHER NONADMITTED INSURER TO BIND THE RISK OR
11 HAS RECEIVED INFORMATION FROM THE INSURER IN THE REGULAR COURSE
12 OF BUSINESS THAT IT HAS ASSUMED THE RISK.

13 (C) IF, AFTER DELIVERY OF ANY SUCH EVIDENCE OF INSURANCE,
14 THERE IS ANY CHANGE IN THE IDENTITY OF THE ELIGIBLE SURPLUS
15 LINES INSURER, OR THE PROPORTION OF THE RISK ASSUMED BY ANY
16 NONADMITTED INSURER, OR ANY OTHER MATERIAL CHANGE IN COVERAGE AS
17 STATED IN THE SURPLUS LINES LICENSEE'S ORIGINAL EVIDENCE OF
18 INSURANCE, OR ANY OTHER MATERIAL CHANGE AS TO THE INSURANCE
19 COVERAGE SO EVIDENCED, THE SURPLUS LINES LICENSEE SHALL PROMPTLY
20 ISSUE AND DELIVER TO THE INSURED OR TO THE ORIGINAL [PRODUCING
21 BROKER] WRITING PRODUCER AN APPROPRIATE SUBSTITUTE FOR OR
22 ENDORSEMENT OF THE ORIGINAL DOCUMENT ACCURATELY SHOWING THE
23 CURRENT STATUS OF THE COVERAGE AND THE INSURER RESPONSIBLE
24 THEREUNDER.

25 (D) EVERY EVIDENCE OF INSURANCE NEGOTIATED, PLACED OR
26 PROCURED UNDER THE PROVISIONS OF THIS ARTICLE ISSUED BY THE
27 SURPLUS LINES LICENSEE SHALL BEAR THE NAME OF THE LICENSEE AND
28 THE FOLLOWING LEGEND IN 10-POINT TYPE: "THE INSURER WHICH HAS
29 ISSUED THIS INSURANCE IS NOT LICENSED BY THE PENNSYLVANIA
30 INSURANCE DEPARTMENT AND IS SUBJECT TO LIMITED REGULATION. THIS

1 INSURANCE IS NOT COVERED BY THE PENNSYLVANIA PROPERTY AND
2 CASUALTY INSURANCE GUARANTY ASSOCIATION."

3 SECTION 1614. EFFECT OF PAYMENT TO SURPLUS LINES LICENSEE.--
4 A PAYMENT OF PREMIUM TO THE [PRODUCING BROKER] WRITING PRODUCER
5 OR TO A SURPLUS LINES LICENSEE ACTING FOR A PERSON OTHER THAN
6 HIMSELF IN NEGOTIATING, CONTINUING OR REVIEWING ANY CONTRACT OF
7 INSURANCE UNDER THIS ARTICLE SHALL BE DEEMED TO BE PAYMENT TO
8 THE INSURER, WHATEVER CONDITIONS OR STIPULATIONS MAY BE INSERTED
9 IN THE CONTRACT NOTWITHSTANDING.

10 SECTION 9. SECTION 1615 OF THE ACT, AMENDED JULY 10, 2002
11 (P.L.749, NO.110), IS AMENDED TO READ:

12 SECTION 1615. LICENSING OF SURPLUS LINES LICENSEE.-- (A) NO
13 [AGENT OR BROKER] INSURANCE PRODUCER LICENSED BY THE DEPARTMENT
14 SHALL TRANSACT SURPLUS LINES INSURANCE WITH ANY NONADMITTED
15 INSURER UNLESS [SUCH AGENT OR BROKER] THE INSURANCE PRODUCER
16 POSSESSES A VALID SURPLUS LINES [AGENT'S] PRODUCER'S LICENSE
17 ISSUED BY THE DEPARTMENT.

18 (B) THE DEPARTMENT SHALL ISSUE A SURPLUS LINES [AGENT'S]
19 PRODUCER'S LICENSE TO ANY RESIDENT [OR NONRESIDENT] OF THIS
20 COMMONWEALTH OR TO A NONRESIDENT WHO IS A QUALIFIED HOLDER OF A
21 CURRENT PENNSYLVANIA PROPERTY AND CASUALTY [BROKER'S] INSURANCE
22 PRODUCER'S LICENSE, BUT ONLY WHEN THE [BROKER] INSURANCE
23 PRODUCER HAS COMPLIED WITH THE FOLLOWING:

24 (1) REMITTED THE SURPLUS LINES PRODUCER LICENSE FEE TO THE
25 DEPARTMENT.

26 (2) SUBMITTED A PROPERLY COMPLETED SURPLUS LINES PRODUCER
27 LICENSE APPLICATION ON A FORM SUPPLIED BY THE DEPARTMENT.

28 (3) PASSED A QUALIFYING EXAMINATION APPROVED BY THE
29 DEPARTMENT, EXCEPT THAT ALL HOLDERS OF A LICENSE PRIOR TO THE
30 EFFECTIVE DATE OF THIS ARTICLE SHALL BE DEEMED TO HAVE PASSED

1 SUCH AN EXAMINATION.

2 (C) [CORPORATIONS AND PARTNERSHIPS SHALL BE ELIGIBLE TO BE
3 RESIDENT OR NONRESIDENT SURPLUS LINES LICENSEES, UPON THE
4 FOLLOWING CONDITIONS:

5 (1) THE CORPORATION OR PARTNERSHIP LICENSEE SHALL LIST ALL
6 EMPLOYES, INCLUDING AT LEAST ONE ACTIVE OFFICER OR PARTNER, WHO
7 HAVE SATISFIED THE REQUIREMENTS OF THIS ARTICLE TO BECOME
8 SURPLUS LINES LICENSEES.

9 (2) ONLY THOSE EMPLOYES HOLDING A CERTIFICATE OF ELIGIBILITY
10 MAY TRANSACT SURPLUS LINES INSURANCE.] BUSINESS ENTITIES THAT
11 ARE LICENSED AS PENNSYLVANIA INSURANCE PRODUCERS SHALL BE
12 ELIGIBLE TO BE SURPLUS LINES LICENSEES, IF THE BUSINESS ENTITIES
13 DO ALL OF THE FOLLOWING:

14 (1) DESIGNATE ONE OR MORE OFFICERS OR PARTNERS LICENSED
15 UNDER THIS ARTICLE TO BE RESPONSIBLE FOR COMPLIANCE WITH ALL
16 REPORTING AND RECORDKEEPING REQUIRED BY THIS ARTICLE.

17 (2) PROVIDE TO THE DEPARTMENT A LIST OF ALL SURPLUS LINES
18 LICENSEES ASSOCIATED WITH AND PLACING SURPLUS LINES BUSINESS
19 THROUGH THE BUSINESS ENTITY. THE BUSINESS ENTITY SHALL PROVIDE
20 TO THE DEPARTMENT AN UPDATED LIST OF LICENSEES WITHIN FIVE (5)
21 BUSINESS DAYS OF A CHANGE IN ASSOCIATION OF ANY LICENSEE. THE
22 LIST SHALL BE AVAILABLE AT ALL TIMES FOR INSPECTION BY THE
23 DEPARTMENT.

24 (C.1) A NONRESIDENT PERSON WHOSE HOME STATE ISSUES SURPLUS
25 LINES LICENSES TO RESIDENTS OF PENNSYLVANIA ON THE SAME BASIS
26 AND WHO IS LICENSED IN PENNSYLVANIA AS A PROPERTY AND CASUALTY
27 PRODUCER MAY BE LICENSED AS A SURPLUS LINES PRODUCER IF THE
28 PERSON DOES ALL OF THE FOLLOWING:

29 (1) IS CURRENTLY LICENSED AS A SURPLUS LINES PRODUCER AND IS
30 IN GOOD STANDING IN ITS HOME STATE.

1 (2) HAS SUBMITTED A COMPLETE APPLICATION FOR A SURPLUS LINES
2 LICENSE AND HAS PAID THE REQUIRED FEES.

3 (3) HAS SUBMITTED OR TRANSMITTED TO THE DEPARTMENT THE
4 APPLICATION FOR A SURPLUS LINES LICENSE SUBMITTED IN ITS HOME
5 STATE OR A COMPLETED UNIFORM APPLICATION THAT COMPLIES WITH
6 SECTION 610-A OF THE ACT OF MAY 17, 1921 (P.L.789, NO.285),
7 KNOWN AS "THE INSURANCE DEPARTMENT ACT OF 1921."

8 (4) HAS COMPLIED WITH ALL OF THE PROVISIONS OF ARTICLE VI-A
9 OF "THE INSURANCE DEPARTMENT ACT OF 1921."

10 (D) EACH SURPLUS LINES LICENSE SHALL [EXPIRE ON THE LAST DAY
11 OF FEBRUARY OF EACH YEAR AND SHALL BE RENEWED BEFORE MARCH 1 OF
12 EACH YEAR UPON PAYMENT OF THE ANNUAL FEE, IN COMPLIANCE WITH
13 OTHER PROVISIONS OF THIS SECTION. ANY SURPLUS LINES LICENSEE WHO
14 FAILS TO APPLY FOR RENEWAL OF A LICENSE BEFORE EXPIRATION OF THE
15 CURRENT LICENSE SHALL PAY A PENALTY OF TWO TIMES THE LICENSE FEE
16 AND BE SUBJECT TO OTHER PENALTIES AS PROVIDED BY LAW BEFORE HIS
17 LICENSE WILL BE RENEWED.] BE:

18 (1) ISSUED AS FOLLOWS:

19 (I) ONLY IN THE NAME OF THE INDIVIDUAL APPLICANT OR BUSINESS
20 ENTITY. A LICENSEE DOING BUSINESS UNDER A FICTITIOUS NAME OTHER
21 THAN THE NAME APPEARING ON THE LICENSE SHALL BE REQUIRED TO
22 NOTIFY THE DEPARTMENT IN WRITING PRIOR TO USE OF THE FICTITIOUS
23 NAME FOR THE DEPARTMENT'S CONSENT TO USE OF THE NAME.

24 (II) IN PAPER OR ELECTRONIC FORM.

25 (III) FOR A PERIOD NOT TO EXCEED TWO (2) YEARS. THE
26 FOLLOWING SHALL APPLY:

27 (A) THE SURPLUS LINES LICENSE OF A NATURAL PERSON SHALL
28 EXPIRE ON THE LAST DAY OF THE BIRTH MONTH OF THE LICENSEE. THE
29 INITIAL LICENSE CYCLE MAY VARY TO COINCIDE WITH THE EXPIRATION
30 CYCLE OF THE BIRTH MONTH.

1 (B) THE SURPLUS LINES LICENSE OF A BUSINESS ENTITY SHALL
2 EXPIRE ON THE LAST DAY OF THE MONTH IN WHICH THE LICENSE WAS
3 ORIGINALLY ISSUED.

4 (2) NONTRANSFERABLE.

5 (E) A NONREFUNDABLE TWO HUNDRED DOLLAR (\$200) FEE SHALL
6 ACCOMPANY AN APPLICATION OR RENEWAL FOR A SURPLUS LINES LICENSE,
7 UNLESS MODIFIED BY THE DEPARTMENT BY REGULATION.

8 (F) THE FOLLOWING SHALL APPLY:

9 (1) A SURPLUS LINES LICENSEE THAT ALLOWS THE LICENSEE'S
10 LICENSE TO LAPSE BY FAILING TO TIMELY RENEW THE LICENSE OR BY
11 FAILING TO PAY THE FEE REQUIRED BY THIS ACT MAY, WITHIN ONE YEAR
12 OF THE LICENSE RENEWAL DATE, REQUEST THE DEPARTMENT TO REINSTATE
13 THE LICENSE. PERSONS REQUESTING REINSTATEMENT SHALL PAY A FEE OF
14 TWO TIMES THE FEE REQUIRED BY THIS ACT AND MAY BE SUBJECT TO
15 OTHER PENALTIES AS PROVIDED BY LAW BEFORE THE LICENSE WILL BE
16 RENEWED.

17 (2) PERSONS REQUESTING REINSTATEMENT OF A LAPSED LICENSE
18 SHALL SUBMIT A COMPLETED RENEWAL FORM AND THE FEE REQUIRED BY
19 THIS ACT.

20 (3) THE DEPARTMENT SHALL REINSTATE A LICENSE UNDER THIS
21 SUBSECTION RETROACTIVELY, WITH THE REINSTATEMENT EFFECTIVE ON
22 THE DATE THE LICENSE LAPSED, IF THE DEPARTMENT RECEIVES A
23 REQUEST FOR REINSTATEMENT TOGETHER WITH A COMPLETED RENEWAL
24 APPLICATION AND PAYMENT OF THE LAPSED LICENSE FEE WITHIN SIXTY
25 (60) DAYS AFTER THE LICENSE LAPSED.

26 (4) THE DEPARTMENT SHALL REINSTATE A LICENSE UNDER THIS
27 SUBSECTION PROSPECTIVELY, WITH REINSTATEMENT EFFECTIVE ON THE
28 DATE THAT THE LICENSE IS REINSTATED, IF THE DEPARTMENT RECEIVES
29 A REQUEST FOR REINSTATEMENT OF A LAPSED LICENSE MORE THAN SIXTY
30 (60) DAYS AFTER THE LICENSE LAPSED BUT WITHIN ONE YEAR AFTER THE

1 LICENSE LAPSED.

2 (5) IF A PERSON APPLIES FOR REINSTATEMENT MORE THAN ONE YEAR
3 AFTER THE LAPSE DATE, THE PERSON MUST REAPPLY FOR THE LICENSE
4 UNDER THIS ACT.

5 SECTION 10. SECTION 1616 OF THE ACT, ADDED DECEMBER 18, 1992
6 (P.L.1519, NO.178), IS AMENDED TO READ:

7 SECTION 1616. SURPLUS LINES LICENSEES MAY ACCEPT BUSINESS
8 FROM [BROKERS] INSURANCE PRODUCER.--A SURPLUS LINES LICENSEE MAY
9 ORIGINATE SURPLUS LINES INSURANCE OR ACCEPT SUCH INSURANCE FROM
10 [ANY BROKER] AN INSURANCE PRODUCER DULY LICENSED AS TO THE KIND
11 OR KINDS OF INSURANCE INVOLVED, AND THE SURPLUS LINES LICENSEE
12 MAY COMPENSATE [SUCH BROKER THEREFOR] THE INSURANCE PRODUCER.

13 SECTION 11. SECTION 1619 OF THE ACT, AMENDED JULY 10, 2002
14 (P.L.749, NO.110), IS AMENDED TO READ:

15 SECTION 1619. RECORDS OF SURPLUS LINES LICENSEE.--(A) EACH
16 SURPLUS LINES LICENSEE SHALL KEEP IN ITS OFFICE A FULL AND TRUE
17 RECORD OF EACH SURPLUS LINES INSURANCE CONTRACT PLACED BY OR
18 THROUGH IT, INCLUDING A COPY OF THE POLICY, CERTIFICATE, COVER
19 NOTE OR OTHER EVIDENCE OF INSURANCE, SHOWING SUCH OF THE
20 FOLLOWING ITEMS AS MAY BE APPLICABLE:

- 21 (1) AMOUNT OF THE INSURANCE AND PERILS INSURED.
- 22 (2) BRIEF DESCRIPTION OF THE RISK INSURED AND ITS LOCATION.
- 23 (3) GROSS PREMIUM CHARGED.
- 24 (4) ANY RETURN PREMIUM PAID.
- 25 (5) RATE OF PREMIUM CHARGED FOR EACH RISK INSURED.
- 26 (6) EFFECTIVE DATE AND TERMS OF THE CONTRACT.
- 27 (7) NAME AND ADDRESS OF THE INSURED.
- 28 (8) NAME AND ADDRESS OF THE ELIGIBLE SURPLUS LINES INSURER
29 AND ANY NONADMITTED INSURED INVOLVED PURSUANT TO SECTION 1606.
- 30 (9) AMOUNT OF TAX AND OTHER SUMS TO BE COLLECTED FROM THE

1 INSURED.

2 (10) IDENTITY OF THE [PRODUCING BROKER] WRITING PRODUCER,
3 ANY CONFIRMING CORRESPONDENCE FROM THE INSURER OR ITS
4 REPRESENTATIVE AND THE APPLICATION.

5 (11) A COPY OF THE WRITTEN NOTICE REQUIRED BY SECTION [1408]
6 1608.

7 (B) THE RECORD OF EACH CONTRACT SHALL BE KEPT OPEN AT ALL
8 REASONABLE TIMES TO EXAMINATION BY THE DEPARTMENT WITHOUT NOTICE
9 FOR A PERIOD OF NOT LESS THAN FIVE (5) YEARS FOLLOWING
10 TERMINATION OF THE CONTRACT.

11 (C) IF THE SURPLUS LINES LICENSEE IS A NATURAL PERSON WHO IS
12 ASSOCIATED WITH A BUSINESS ENTITY WHICH IS A VALID SURPLUS LINES
13 LICENSEE, THE BUSINESS ENTITY WITH WHICH THE LICENSEE IS
14 ASSOCIATED SHALL RETAIN THE RECORDS WHICH ARE REQUIRED BY THIS
15 SECTION TO BE KEPT BY EACH SURPLUS LINES LICENSEE.

16 SECTION 12. SECTIONS 1620, 1621 AND 1622 OF THE ACT, ADDED
17 DECEMBER 18, 1992 (P.L.1519, NO.178), ARE AMENDED TO READ:

18 SECTION 1620. MONTHLY REPORTS.--WITHIN THIRTY (30) DAYS
19 FOLLOWING THE END OF EACH MONTH, EACH SURPLUS LINES LICENSEE
20 SHALL FILE WITH THE DEPARTMENT, ON FORMS PRESCRIBED BY THE
21 DEPARTMENT, A VERIFIED REPORT [IN DUPLICATE] OF ALL SURPLUS
22 LINES INSURANCE TRANSACTED DURING THE PRECEDING MONTH.

23 SECTION 1621. SURPLUS LINES TAX.--(A) THERE IS HEREBY
24 LEVIED A TAX OF THREE PER CENTUM (3%) ON ALL PREMIUMS CHARGED
25 FOR INSURANCE WHICH IS PLACED WITH EITHER AN ELIGIBLE SURPLUS
26 LINES INSURER, OTHER THAN A RISK RETENTION GROUP, OR OTHER
27 NONADMITTED INSURER IN ACCORDANCE WITH THIS ARTICLE, SUCH TAXES
28 TO BE BASED ON THE GROSS PREMIUMS CHARGED LESS ANY RETURN
29 PREMIUMS. THIS TAX SHALL BE IN ADDITION TO THE FULL AMOUNT OF
30 THE GROSS PREMIUM CHARGED BY THE INSURER FOR THE INSURANCE. THE

1 TAX ON ANY UNEARNED PORTION OF THE PREMIUM SHALL BE RETURNED TO
2 THE INSURED.

3 (B) NEITHER THE SURPLUS LINES LICENSEE NOR THE [PRODUCING
4 BROKER] WRITING PRODUCER SHALL PAY DIRECTLY OR INDIRECTLY SUCH
5 TAX OR ANY PORTION THEREOF, EITHER AS AN INDUCEMENT TO THE
6 INSURED TO PURCHASE THE INSURANCE OR FOR ANY OTHER REASON.

7 (C) THE SURPLUS LINES LICENSEE SHALL COLLECT FROM THE
8 INSURED OR THE [PRODUCING BROKER] WRITING PRODUCER THE AMOUNT OF
9 THE TAX AT THE TIME OF DELIVERY OF THE INITIAL POLICY, COVER
10 NOTE OR OTHER EVIDENCE OF INSURANCE OR AT SUCH TIME THEREAFTER
11 AS IS REASONABLY CONSISTENT WITH NORMAL CREDIT TERMS CUSTOMARY
12 IN THE BUSINESS. EACH SURPLUS LINES LICENSEE SHALL, ON OR BEFORE
13 JANUARY 31 OF EACH YEAR, FILE WITH THE DEPARTMENT OF REVENUE A
14 REPORT OF ALL TRANSACTIONS INVOLVING THE PLACEMENT OF INSURANCE
15 WITH EITHER AN ELIGIBLE SURPLUS LINES INSURER OR OTHER
16 NONADMITTED INSURERS DURING THE PREVIOUS CALENDAR YEAR. THE
17 REPORT SHALL SET FORTH THE NAME OF THE INSURED, IDENTIFICATION
18 OF THE INSURER, THE TYPE OF INSURANCE, GROSS PREMIUMS CHARGED
19 LESS ANY RETURN PREMIUMS ALLOWED AND THE TAX DUE AS PROVIDED IN
20 THIS SECTION. THE REMITTANCE FOR THE TAXES DUE SHALL ACCOMPANY
21 THIS REPORT. SUCH REPORT SHALL BE MADE ON FORMS PRESCRIBED AND
22 FURNISHED BY THE DEPARTMENT OF REVENUE. A COPY OF THE REPORT
23 SHALL BE FILED WITH THE [COMMISSIONER] DEPARTMENT BY THE SURPLUS
24 LINES LICENSEE. A SURPLUS LINES LICENSEE THAT IS A BUSINESS
25 ENTITY LICENSEE WHICH FILES THE ANNUAL PREMIUM TAX RETURN WITH
26 THE DEPARTMENT OF REVENUE SHALL INCLUDE IN ITS RETURN THE
27 PREMIUM TAXES GENERATED DURING THE YEAR SUBJECT TO REPORTING BY
28 ALL LICENSEES ASSOCIATED WITH SAID BUSINESS ENTITY DURING THE
29 REPORTING PERIOD.

30 (D) IN THE EVENT THAT A PLACEMENT OF INSURANCE INVOLVES

1 SUBJECTS OF INSURANCE RESIDENT, LOCATED OR TO BE PERFORMED IN
2 ONE OR MORE STATES OTHER THAN THIS COMMONWEALTH, THEN THE
3 PREMIUM TAXES PROVIDED FOR IN THIS SECTION SHALL BE LEVIED ONLY
4 ON THAT PORTION OF THE PREMIUM REASONABLY ASCRIBABLE TO THAT
5 PORTION OF THE RISK SITUATED IN THIS COMMONWEALTH.

6 (E) WITH RESPECT TO INSURANCE PLACED WITH OR ISSUED BY A
7 RISK RETENTION GROUP WHICH IS AN ELIGIBLE SURPLUS LINES INSURER,
8 THERE IS HEREBY LEVIED A TAX OF TWO PER CENTUM (2%) ON ALL
9 PREMIUMS CHARGED FOR RISKS RESIDENT, LOCATED OR TO BE PERFORMED
10 IN THIS COMMONWEALTH. THE RISK RETENTION GROUP SHALL BE
11 RESPONSIBLE FOR THE PAYMENT OF THE TAXES LEVIED IN THIS ARTICLE
12 IN ACCORDANCE WITH PROCEDURES SET FORTH IN ARTICLE XV.

13 (F) THE SETTLEMENT AND RESETTLEMENT OF TAXES IMPOSED BY THIS
14 ARTICLE, INCLUDING THE GRANTING OF EXTENSIONS OF TIME TO FILE
15 REPORTS AND THE RIGHTS OF THE TAXPAYERS TO PRESENT AND PROSECUTE
16 A PETITION FOR RESETTLEMENT, A PETITION FOR REVIEW OR AN APPEAL
17 TO COURT OR TO FILE A PETITION FOR REFUND AND THE IMPOSITION OF
18 INTEREST AND PENALTIES, SHALL BE GOVERNED BY THE PROVISIONS OF
19 THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS THE "TAX REFORM
20 CODE OF 1971," AS APPROVED IN THE CASE OF CAPITAL STOCK AND
21 FRANCHISE TAXES.

22 SECTION 1622. TAX ON INDEPENDENTLY PROCURED INSURANCE.--THE
23 TAX PROVIDED BY SECTION 1621(A) IS IMPOSED UPON AN INSURED WHO
24 INDEPENDENTLY PROCURES INSURANCE ON A SUBJECT OF INSURANCE
25 RESIDENT, LOCATED OR TO BE PERFORMED IN THIS COMMONWEALTH FROM A
26 NONADMITTED INSURER OR CONTINUES OR RENEWS SUCH INDEPENDENTLY
27 PROCURED INSURANCE. THE INSURED SHALL, WITHIN THIRTY (30) DAYS
28 AFTER THE DATE WHEN SUCH INSURANCE WAS INDEPENDENTLY PROCURED,
29 CONTINUED OR RENEWED, REPORT SUCH TRANSACTION ON FORMS
30 PRESCRIBED BY THE DEPARTMENT OF REVENUE. THIS REPORT SHALL SET

1 FORTH THE INFORMATION REQUIRED OF SURPLUS LINES LICENSEES AS
2 REQUIRED IN SECTION 1621(C). THE TAX OF THREE PER CENTUM (3%)
3 SHALL BE PAID ON THE DATE THE REPORT IS DUE AS PROVIDED IN THIS
4 SECTION. IF THE INDEPENDENTLY PROCURED INSURANCE COVERS RISKS
5 RESIDENT, LOCATED OR TO BE PERFORMED IN ONE OR MORE STATES OTHER
6 THAN THIS COMMONWEALTH, THE PREMIUM TAXES SHALL BE PRORATED IN
7 ACCORDANCE WITH PROVISIONS IN SECTION 1621(D). A COPY OF SUCH
8 REPORT SHALL BE FILED WITH THE [COMMISSIONER] DEPARTMENT BY THE
9 INSURED.

10 SECTION 13. SECTION 1623 OF THE ACT, AMENDED JULY 10, 2002
11 (P.L.749, NO.110), IS AMENDED TO READ:

12 SECTION 1623. SUSPENSION, REVOCATION OR NONRENEWAL OF
13 SURPLUS LINES LICENSEE'S LICENSE.--THE DEPARTMENT MAY SUSPEND,
14 REVOKE OR REFUSE TO RENEW THE LICENSE OF A SURPLUS LINES
15 LICENSEE AFTER NOTICE AND A HEARING, AS PROVIDED UNDER THE
16 APPLICABLE PROVISION OF THE LAWS OF THIS COMMONWEALTH, UPON ANY
17 ONE OR MORE OF THE FOLLOWING GROUNDS:

18 (3) CLOSING OF THE SURPLUS LINES LICENSEE'S OFFICE FOR A
19 PERIOD OF MORE THAN THIRTY (30) BUSINESS DAYS, UNLESS PERMISSION
20 IS GRANTED BY THE DEPARTMENT.

21 (4) FAILURE TO MAKE AND FILE REQUIRED REPORTS.

22 (5) FAILURE TO TRANSMIT REQUIRED TAX ON SURPLUS LINES
23 PREMIUMS.

24 (7) FAILURE TO REMIT PREMIUMS DUE INSURERS OR RETURN
25 PREMIUMS DUE INSUREDS IN THE NORMAL COURSE OF BUSINESS AND
26 WITHIN REASONABLE TIME LIMITS.

27 (8) VIOLATION OF ANY PROVISION OF THIS ARTICLE.

28 (9) FOR ANY OTHER CAUSE FOR WHICH AN INSURANCE [AGENT'S OR
29 BROKER'S] PRODUCER'S LICENSE COULD BE DENIED, REVOKED OR
30 SUSPENDED OR REFUSED UPON RENEWAL.

1 SECTION 14. SECTION 1625 OF THE ACT, ADDED DECEMBER 18, 1992
2 (P.L.1519, NO.178), IS AMENDED TO READ:

3 SECTION 1625. PENALTIES.--(A) ANY SURPLUS LINES LICENSEE
4 WHO, IN THIS COMMONWEALTH, REPRESENTS OR AIDS A NONADMITTED
5 INSURER IN VIOLATION OF THIS ARTICLE COMMITS A MISDEMEANOR OF
6 THE THIRD DEGREE AND SHALL, UPON CONVICTION, BE SENTENCED TO PAY
7 A FINE OF NOT MORE THAN [ONE THOUSAND (\$1,000)] TWO THOUSAND
8 (\$2,000) DOLLARS.

9 (B) IN ADDITION TO ANY OTHER PENALTY PROVIDED FOR IN
10 SUBSECTION (A) OR OTHERWISE PROVIDED BY LAW, INCLUDING ANY
11 SUSPENSION, REVOCATION OR REFUSAL TO RENEW A LICENSE, ANY
12 PERSON[, FIRM, ASSOCIATION OR CORPORATION] VIOLATING ANY
13 PROVISION OF THIS ARTICLE SHALL BE LIABLE TO A CIVIL PENALTY NOT
14 EXCEEDING [ONE THOUSAND (\$1,000)] TWO THOUSAND (\$2,000) DOLLARS
15 FOR THE FIRST OFFENSE AND NOT EXCEEDING [TWO THOUSAND (\$2,000)]
16 FOUR THOUSAND (\$4,000) DOLLARS FOR EACH SUCCEEDING OFFENSE.

17 (C) THE PENALTIES IN THIS SECTION ARE NOT EXCLUSIVE
18 REMEDIES. PENALTIES MAY ALSO BE ASSESSED UNDER THE ACT OF JULY
19 22, 1974 (P.L.589, NO.205), KNOWN AS THE "UNFAIR INSURANCE
20 PRACTICES ACT," AND ANY OTHER APPLICABLE STATUTE.

21 SECTION 15. THE ACT IS AMENDED BY ADDING A SECTION TO READ:
22 SECTION 1626. COMPLIANCE.--NOTHING IN THIS ACT SHALL RELIEVE
23 A SURPLUS LINES LICENSEE INVOLVED IN ANY TRANSACTION FROM
24 COMPLIANCE WITH THIS ACT OR ITS PREDECESSOR ACTS.

25 SECTION 16. SECTION 2362 OF THE ACT, ADDED NOVEMBER 2, 2006
26 (P.L.1314, NO.136), IS AMENDED TO READ:

27 SECTION 2362. EXPIRATION.--THIS ARTICLE SHALL EXPIRE
28 DECEMBER 31, [2010] 2013.

29 SECTION 17. ALL ACTS AND PARTS OF ACTS ARE REPEALED INSOFAR
30 AS THEY ARE INCONSISTENT WITH THE ADDITION OF ARTICLE VI-B OF

1 THE ACT.

2 Section ~~3~~ 18. This act shall take effect as follows: ←

3 (1) The amendment OR ADDITION of section 320 AND ARTICLE ←
4 VI-B of the act shall take effect immediately.

5 (2) THE AMENDMENT OF SECTION 2362 OF THE ACT SHALL TAKE ←
6 EFFECT IN 60 DAYS.

7 ~~(2)~~ (3) This section shall take effect immediately. ←

8 ~~(3)~~ (4) The remainder of this act shall take effect in ←
9 180 days.