

No. 1978-280

AN ACT

HB 668

Establishing the Pennsylvania Life and Health Insurance Guaranty Association; providing for the payment of covered claims under certain life, health and accident insurance, and annuity policies, the avoidance of excessive delay and the avoidance of financial loss to claimants or policyholders in the payment thereof as a result of the insolvency of insurers; assisting in the detection and prevention of insurer impairments and insolvencies; providing for the formulation and administration of a plan of operation; and conferring powers and imposing duties upon the Insurance Commissioner, the Pennsylvania Life and Health Insurance Guaranty Association and certain insurers.

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

Section 1. Short title.

This act shall be known and may be cited as the "Life and Health Insurance Guaranty Association Act."

Section 2. Purpose.

The purpose of this act is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health and accident insurance policies, annuity contracts, endorsements, riders and contracts supplemental thereto, including but not limited to settlement options, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment or insolvency of the insurer issuing such policies or contracts. To provide this protection an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages, the members of the association are subject to assessment to provide funds to carry out the purpose of this act, and the association is authorized to assist the commissioner in the detection and prevention of insurer impairments or insolvencies.

Section 3. Scope.

(a) This act shall apply to direct written individual and group life insurance policies, health and accident insurance policies, annuity contracts, endorsements, riders and contracts supplemental thereto, including but not limited to settlement options, issued by member insurers chartered or licensed to transact such insurance in this Commonwealth.

(b) This act shall not apply to:

(1) The part of a variable life insurance or variable annuity contract not guaranteed by an insurer.

(2) The part of any policy or contract under which the risk is borne by the policyholder.

(3) A policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

(4) A certificate, contract, or subscriber agreement issued by a hospital plan corporation or a nonprofit hospital plan as defined in 40 Pa.C.S. § 6301 (relating to application of chapter).

(5) A certificate, contract, or subscriber agreement issued by a professional health service corporation, a nonprofit dental service plan, a nonprofit optometric service plan, or a nonprofit professional health service plan, as defined in 40 Pa.C.S. § 6302 (relating to definitions).

(6) A certificate or contract issued by a fraternal benefit society pursuant to its underwriting powers as set forth in 40 Pa.C.S. § 6526 (relating to power to write insurance).

(7) A certificate, contract or subscriber agreement issued by an organization subject to the provisions of the act of December 29, 1972 (P.L.1701, No.364), known as the "Voluntary Nonprofit Health Service Act of 1972."

Section 4. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Account.” Any of the three accounts created by section 5.

“Association.” The Pennsylvania Life and Health Insurance Guaranty Association.

“Commissioner.” The Insurance Commissioner of the Commonwealth of Pennsylvania.

“Contractual obligation.” Any obligation under covered policies or contracts.

“Covered policy.” Any policy or contract within the scope of this act.

“Impaired insurer.” A member insurer deemed by the commissioner to be potentially unable to fulfill its contractual obligations but not an insolvent insurer.

“Insolvent insurer.” A member insurer which becomes insolvent and is placed under a final order of liquidation, rehabilitation or conservation by a court of competent jurisdiction of the insurer’s domiciliary state.

“Member insurer.” Any person licensed to transact in this Commonwealth any kind of insurance to which this act applies.

“Person.” Any individual, corporation, partnership, association or voluntary organization.

“Premiums.” Direct written gross insurance premiums and annuity considerations received on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such business, and experience rated refunds or credits paid or credited to policyholders on such business. Premiums do not include premiums and considerations on contracts between insurers and reinsurers.

“Resident.” Any person who resides in this Commonwealth at the time a member insurer is determined to be an impaired or insolvent insurer and to whom contractual obligations are owed.

Section 5. Creation of the association.

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

- (1) The life insurance account.
- (2) The health and accident insurance account.
- (3) The annuity account.

(b) Supplementary contracts shall be covered under the account in which the basic policy is covered for purposes of assessment.

(c) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this Commonwealth.

Section 6. Board of directors.

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

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

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

Section 7. Powers and duties of the association.

(a) Whenever a domestic insurer is an impaired insurer, the association may, subject to any conditions imposed by the association and approved in writing by the impaired insurer and the commissioner, other than those conditions which impair the contractual obligations of the impaired insurer:

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

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

(3) lend money to the impaired insurer.

(b) Whenever a domestic insurer is an insolvent insurer, the association shall, subject to the written approval of the commissioner:

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

(2) assure payment of the contractual obligations of the insolvent insurer; or

(3) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(c) Whenever a foreign or alien insurer is an insolvent insurer, the association shall, subject to the written approval of the commissioner:

(1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies of residents;

(2) assure payment of the contractual obligations of the insolvent insurer to residents; or

(3) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

This subsection shall not apply where the commissioner has determined that a foreign or alien member insurer's domiciliary jurisdiction or state of entry provides, by statute or regulation, protection for residents of this Commonwealth substantially similar to that provided by this act.

(d) In carrying out subsections (b) and (c), permanent policy liens, or contract liens may be imposed in connection with any guarantee, assumption or reinsurance agreement if the court:

(1) Finds that the amounts which can be assessed under this act are less than the amounts needed to assure full and prompt performance of the insolvent insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, to be in the public interest.

(2) Approves the specific policy liens or contract liens to be used. Before being obligated under subsections (b) and (c), the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans in addition to any contractual provisions for deferral of cash or policy loan values, and such temporary moratoriums and liens may be imposed if they are approved by the court.

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

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

(g) The association shall have standing to appear before any court in this Commonwealth with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this act. Such standing shall extend to all matters germane to the powers and duties of this association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.

(h) A person receiving benefits under this act shall be deemed to have assigned the rights under the covered policy to the association to the extent of the benefits received because of this act whether the benefits are

payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this act upon such person. The association shall be subrogated to these rights against the assets of any insolvent insurer. The subrogation rights of the association under this subsection shall have the same priority against the assets of the insolvent insurer as that possessed by the person entitled to receive benefits under this act.

(i) The association shall not be liable for any contractual obligations of insolvent insurers which are \$100 or less with respect to the total contractual obligations owing to any one person.

(j) The contractual obligations of the insolvent insurer for which the association becomes or may become liable shall be in excess of \$100 and shall be as great as but no greater than the contractual obligations of the insolvent insurer would have been in the absence of an insolvency unless such obligations are reduced as permitted by subsection (d), but the aggregate liability of the association on any one life shall not exceed \$100,000 with respect to the payment of cash values, or \$300,000 for all benefits. This dollar limitation shall include all benefits which become payable after the date of insolvency and all benefits that may be accrued and unpaid on the date of the insolvency.

(k) The association may:

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

(2) Sue or be sued, including taking any legal action necessary or proper for recovery of unpaid assessments under section 8.

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

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

(5) Negotiate and contract with any liquidator, rehabilitator, conservator or ancillary receiver to carry out the powers and duties of the association.

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

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

Section 8. Assessments.

(a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the

member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than 30 days after written notice to the member insurers and shall accrue interest at 8% per annum after the due date.

(b) There shall be three classes of assessments:

(1) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired or insolvent insurer and examinations conducted under the authority of section 11(e).

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 7, with regard to an impaired or insolvent domestic insurer.

(3) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 7 with regard to an insolvent foreign or alien insurer.

(c) (1) The amount of any class A assessment shall be determined by the board and may be made on a non-pro rata basis. Such assessment for costs and expenses other than for examinations shall not exceed \$50 per company in any one calendar year. The amount of any class B or C assessment shall be allocated for assessment purposes among the accounts in section 5(a) in the proportion that the premiums received by the impaired or insolvent insurer on the covered policies under each account for the last calendar year preceding the assessment in which the impaired or insolvent insurer received premiums bear to the premiums received by such insurer for such calendar year on all covered policies.

(2) Class B assessments for each account shall be made separately for each state in which the impaired or insolvent domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in such state by the impaired or insolvent insurer on covered policies under each account for the last calendar year preceding the assessment in which the impaired or insolvent insurer received premiums bear to such premiums received in all such states for such calendar year by the impaired or insolvent insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on covered policies under each account for the last calendar year preceding the assessment bear to such premiums received on business in each state for such calendar year preceding assessment by all assessed member insurers.

(3) Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this Commonwealth by each assessed member insurer on covered policies under each account for the last calendar year preceding the assessment bear to such premiums received on business in this Commonwealth for such calendar year preceding the assessment by all assessed member insurers.

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

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations, or would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(e) The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed 2% of such insurer's premiums on its policies covered by each account received in this Commonwealth during the calendar year preceding the assessment. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in such account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this act.

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

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

(h) The association shall issue to each insurer paying any assessment under this act a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by

the insurer in its financial statement as an asset, but in no event may it be shown as an asset on the insurer's financial statement to the extent that the insurer has offset an assessment against its premium tax liability to this Commonwealth.

Section 9. Plan of operation.

(a) (1) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(2) If the association fails to submit a suitable plan of operation within 180 days of the effective date of this act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

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

(c) The plan of operation shall:

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

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

(3) Establish regular places and times for meetings of the board of directors.

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

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

(6) Establish additional procedures for assessments.

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

(d) The plan of operation may provide that any or all powers and duties of the association, except those under section 7(k)(3) and section 8, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

Section 10. Powers and duties of the commissioner.**(a) The commissioner shall:**

(1) Provide the association with a statement of the premiums in the appropriate states for each member insurer when requested by the board of directors.

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

(3) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner shall be appointed conservator.

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

(c) An action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within 30 days of the action being appealed. A final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

Section 11. Prevention of insolvencies.**(a) It shall be the duty of the commissioner:**

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

(i) revocation of license;

(ii) suspension of license; or

(iii) makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the State, reinsure all or any part of its business, or an increase in capital, surplus, or any other account for the security of policyholders or creditors.

(2) To mail such notice to all commissioners within 30 days of the date on which the action was taken.

(3) To report to the board of directors when he has taken any of the actions set forth in paragraph (1) or has received a report from any other

commissioner indicating that any such action has been taken in another state. The report shall contain all significant details of the action taken or the report received from another commissioner.

(4) To report to the board of directors when he has reasonable cause to believe from any examination, whether completed or in process, a member company, which may be an impaired or insolvent insurer, notwithstanding the provisions of section 213 of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of one thousand nine hundred and twenty one."

(5) To furnish to the board of directors the early warning tests developed by the National Association of Insurance Commissioners. The board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the information contained therein shall be kept confidential by the board of directors until it is made public by the commissioner or other lawful authority.

(b) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his duties and responsibilities regarding the financial condition of member companies and companies seeking to transact insurance business in this Commonwealth.

(c) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any insurance company seeking to do business in this Commonwealth. Such reports and recommendations shall not be considered public documents.

(d) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information it has indicating a member insurer may be impaired or insolvent.

(e) The board of directors may, upon majority vote, request the commissioner to order an examination of any member insurer which the board in good faith believes may be impaired. The commissioner shall begin such examination within 30 days of the receipt of the request. The examination may be conducted as a national association of insurance commissioners' examination or by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated the same as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public. This shall not preclude the commissioner from complying with subsection (a). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner. It shall not be open to public inspection prior to the release of the examination report to the public.

(f) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(g) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing such information as it may have in its possession bearing on the history and causes of such insolvency. The board shall cooperate with the board of directors of guaranty associations in other states in preparing a report on the history and causes for insolvency of a particular insurer. It may adopt, by reference, a report prepared by other associations.

Section 12. Tax credits for assessments paid.

(a) A member insurer may offset against its premiums tax liability to this Commonwealth a proportionate part of the assessment described in section 8 to the extent of 20% of such proportionate part of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, the uncredited proportionate part of such assessment may be offset against the member insurer's premium tax liability for the year it ceases doing business.

(b) The proportionate part of an assessment which may be offset against a member company's premium tax liability to the Commonwealth shall be determined according to a fraction of which the denominator is the total premiums received by the company during the calendar year immediately preceding the year in which the assessment is paid and the numerator is that portion of the premiums received during such year on account of policies of life or health and accident insurance in which the premium rates are guaranteed during the continuance of the respective policies without a right exercisable by the company to increase said premium rates.

(c) Any sums acquired by refund, pursuant to section 8(f) from the association which have theretofore been written off by contributing insurers and offset against premium taxes as provided in this section and are not then needed for purposes of this act, shall be paid by the association to the commissioner and deposited by him with the State Treasurer for credit to the General Fund of this Commonwealth.

Section 13. Miscellaneous provisions.

(a) Nothing in this act shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 7. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of

competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under section 14.

(c) For the purpose of carrying out its obligations under this act, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to section 7(h). All assets of the impaired or insolvent insurer attributable to covered policies shall be used by the association to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this act. For purposes of this subsection, assets attributable to covered policies under any account, as used in this subsection shall be determined as being that proportion of the total assets of the impaired or insolvent insurer which the reserves that should have been established for policies under such account bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(d) (1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association for funds expended in carrying out its powers and duties under section 7, with respect to such insurer, have been fully recovered by the association.

(e) (1) If an order for liquidation or rehabilitation of an insurer domiciled in this State has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of paragraphs (2), (3) and (4).

(2) No such distribution shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, in accordance with the standards of Article III of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921."

(3) A person who was an affiliate controlling the insurer at the time the distributions were paid shall be liable to the extent of the distributions received by him. Whenever two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(5) If any person liable under paragraph (3) is insolvent, all the affiliates that controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

Section 14. Examination of the association; annual report.

The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

Section 15. Tax exemptions.

The association shall be exempt from the payment of all fees and taxes levied by this Commonwealth or any of its subdivisions, except taxes levied on real property.

Section 16. Immunity.

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives, for any action taken by them in the performance of their powers and duties under this act.

Section 17. Stay of proceedings: reopening default judgments.

All proceedings in which the insolvent insurer is a party in any court in this Commonwealth shall be stayed 90 days from the date the insolvency is determined by the Commonwealth Court to permit proper legal action by the association on any matters germane to its powers or duties. As to any judgment against an insolvent insurer in relation to a contractual obligation under any decision, order, verdict, or finding based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

Section 18. Prohibited advertisement of this act in sale of insurance.

(a) No person, including an insurer, agent or affiliate of an insurer shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement which uses the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this act. This section shall not apply to the Pennsylvania Life and Health Insurance Guaranty Association.

(b) Any person who violates the above prohibition may, after notice and hearing and upon order of the commissioner, be subject, at the discretion of the commissioner, to one or more of the following:

(1) a monetary penalty of not more than \$1,000 for each act or violation but not to exceed an aggregate penalty of \$10,000; or

(2) suspension or revocation of his license or certificate of authority.

Section 19. Timely filing of claims.

Notwithstanding any other provision of this act, contractual obligation shall not include a claim filed after the final date set by the court for the filing of claims against the liquidator of an insolvent insurer.

Section 20. Nonduplication of recovery.

A person having a claim or benefit payment which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured. A recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Section 21. Assessments not burdens or prohibitions.

Assessments made by insurance guaranty associations or similar entities pursuant to the laws of any other state shall not be considered burdens or prohibitions under section 212 of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of one thousand nine hundred and twenty one."

Section 22. Membership in the Pennsylvania Insurance Guaranty Association and exemption from assessments.

(a) Insurers shall participate in and remain a member insurer of the association as a condition of authority to write life insurance policies, health and accident insurance policies, or annuity contracts in this Commonwealth.

(b) A member insurer of the Pennsylvania Insurance Guaranty Association shall no longer be subject to assessment by the Pennsylvania Insurance Guaranty Association for covered claims, as defined in section 103 of the act of November 25, 1970 (P.L.716, No.232), known as "The Pennsylvania Insurance Guaranty Association Act," arising under health and accident policies, endorsements, riders, and contracts supplemental thereto written in this Commonwealth by any member insurer adjudicated insolvent on or after the effective date of this act by a court of competent jurisdiction of the insolvent insurer's domiciliary state.

(c) A member of the Pennsylvania Life and Health Insurance Guaranty Association who is also a member of the Pennsylvania Insurance Guaranty Association under the act of November 25, 1970 (P.L.716, No. 232), known as "The Pennsylvania Insurance Guaranty Association Act," solely because of health and accident policies written within this Commonwealth may, by written notice to the Pennsylvania Insurance Guaranty Association, withdraw as a member thereof and shall not be subject to any other assessments by the Pennsylvania Insurance Guaranty Association.

Section 23. Powers and duties of commissioner not limited.

The duties and powers of the commissioner as set forth in this act are in addition to and not in limitation of any other powers and duties of the commissioner prescribed by law.

Section 24. Constitutionality.

If any provision or clause of this act or the application thereof to any person or situation is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 25. Effective date.

This act shall take effect in 60 days.

APPROVED—The 26th day of November, A. D. 1978.

MILTON J. SHAPP