No. 1994-8

AN ACT

SB 701

Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as amended, "An act relating to insurance; establishing an insurance department; and amending, revising, and consolidating the law relating to the licensing, qualification, regulation, examination, suspension, and dissolution of insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and certain societies and orders, the examination and regulation of fire insurance rating bureaus, and the licensing and regulation of insurance agents and brokers; the service of legal process upon foreign insurance companies, associations or exchanges; providing penalties, and repealing existing laws," further providing for application of the act and for group policies, for computation of reserve liability and certain other reserves, for certain managers and agents and for the suspension of business.

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

Section 1. Section 103 of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, amended June 5, 1947 (P.L.439, No.200), is amended to read:

Section 103. Application of Act.—*(a)* The provisions of this act shall apply to all companies, associations, and exchanges transacting any class of insurance business, to rating organizations and to all insurance agents and insurance brokers. The provisions of this act, excepting sections two hundred and nineteen (219), three hundred and five (305), five hundred and one (501), five hundred and two (502), five hundred and four (504), five hundred and five (505), five hundred and six (506), five hundred and seven (507), five hundred and eight (508), five hundred and nine (509), five hundred and ten (510) and six hundred and seven (607) hereof, shall not apply to fraternal benefit societies, orders, or associations conducted not for profit, and having a lodge system with ritualistic form of work and representative form of government, or to beneficial or relief associations conducted not for profit formed by churches, societies, classes, firms, or corporations, with or without ritualistic form of work, the privilege of membership in which are confined to the members of such churches, societies, or classes, and to members and employes of such firms or corporations. The provisions of this act, excepting sections two hundred and thirteen (213), two hundred and fourteen (214), two hundred and sixteen (216), two hundred and nineteen (219), five hundred and one (501), five hundred and two (502), five hundred and three (503), five hundred and four (504), five hundred and five (505), five hundred and six (506), five hundred and seven (507), five hundred and eight (508), five hundred and nine (509), and five hundred and ten (510) hereof, shall not apply to domestic mutual fire insurance companies of this Commonwealth, incorporated under special acts of Assembly or under the act of May first,

one thousand eight hundred and seventy-six, with unlimited or limited liability to assessment for payment of expenses and of losses and loss adjustments, set forth in the policy contract or in the promissory notes attached to said policy.

(b) Nothing in this act shall apply to a religious publication, or its subscribers, that meet all of the following criteria:

(1) Is a nonprofit religious organization.

(2) Is limited to individuals who separately subscribe and who are members of the same denomination or religion, who have the approval of their pastor.

(3) Acts as an organizational clearinghouse for information between subscribers who have financial, physical or medical needs and subscribers who choose to assist with those needs, matching subscribers with a willingness to pay with subscribers with a present financial or medical need.

(4) Arranges for the payment of subscribers' financial or medical needs by payments directly from subscriber to subscriber.

(5) Suggests amounts to give that are voluntary among the subscribers, with no assumption of risk or promise to pay either among the subscribers or between the subscribers and the publication.

(6) Does not use any compensated agents, representatives or other persons to solicit or enroll subscribers.

(7) Does not make any direct or indirect representation that it is operating in a financially sound manner or that it has had a successful history of meeting subscribers' financial or medical needs.

(8) Provides a written monthly statement to all subscribers, listing the total dollar amount of qualified needs submitted for publication, as well as the amount actually published and assigned for payment.

(9) Does not use funds paid by subscribers for medical needs to cover administrative costs.

(10) Provides the following verbatim written disclaimer as a separate cover sheet for any and all documents distributed by or on behalf of the exempt entity, including applications, guidelines, promotional or informational materials and all periodic publications:

NOTICE

This publication is not an insurance company nor is it offered through an insurance company. This publication does not guarantee or promise that your medical bills will be published or assigned to others for payment. Whether anyone chooses to pay your medical bills will be totally voluntary. As such, this publication should never be considered a substitute for insurance. Whether you receive any payments for medical expenses and whether or not this publication continues to operate, you are always liable for any unpaid bills.

Section 2. Section 208(e) of the act, amended or added July 31, 1968 (P.L.763, No.239), July 9, 1976 (P.L.912, No.166) and July 9, 1992 (P.L.434,

No.91), is amended to read:

Section 208. Certificates of Authority To Do Business.—* * *

(e) The provisions of this section shall not apply to the following:

(1) Transactions regulated by the act of January 24, 1966 (1965 P.L.1509, No.531), entitled "An act relating to, regulating, taxing, supervising and controlling the placing of insurance on risks located in the Commonwealth of Pennsylvania with insurers not licensed to transact insurance business in Pennsylvania, permitting licensed insurers to afford coverage which may be placed with unlicensed insurers, providing fees and penalties, and repealing certain existing laws."

(2) Any life insurance or annuity company organized and operated, without profit to any shareholder or individual, exclusively for the purpose of aiding nonprofit educational or scientific institutions by issuing insurance and annuity contracts only to or for the benefit of such institutions and individuals engaged in the service of such institutions. Any insurance company as described in this clause is required to join the Life and Health Insurance Guaranty Association pursuant to the act of November 26, 1978 (P.L.1188, No.280), known as the "Life and Health Insurance Guaranty Association Act," and to join any successor association pursuant to any similar statute which replaces the "Life and Health Insurance Guaranty Association Act." The assessments for any company so required to join shall be the same as for member insurers, but these assessments shall not apply to annuity considerations. The "Life and Health Insurance Guaranty Association Act" shall not apply to annuity contracts issued by any insurance company as described in this clause.

(3) Contracts of reinsurance.

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

(5) *(i)* Transactions in this Commonwealth, except group credit life or group credit accident and health insurance transactions, involving group **[or blanket]** ***accident and health or life*** insurance policies or group annuity contracts where the group policy **[or contract is issued and delivered pursuant to the group or blanket insurance or group annuity laws of a jurisdiction in which the insurer is authorized to do an insurance business and in which the policyholder is domiciled or has its principal place of business or otherwise has a bona fide situs.]** ***is issued to:***

(A) An out-of-State trustee of a fund in another state, an organization in another state or a trust or trustee of a trust established or participated in by one or more organizations in another state, in which (state) the insurance supervisory official or agency of that state has determined that: the issuance of the group policy or certificate is not contrary to the best interests of the general public; the issuance of the group policy or

certificate would result in economies of acquisition or administration; the benefits are reasonable in relation to the premium charged; and, for group accident and health insurance, the coverage is in compliance with any mandated benefit act specifically providing for coverage on residents of this Commonwealth regardless of whether the group policy is used within or outside this Commonwealth.

(B) An out-of-State single employer.

(C) A trustee of a fund established by any person acting directly as an employer having its principal office located in a state other than this Commonwealth.

(D) An association or a trust or trustee of a trust established or participated in by one or more associations to insure association members, spouses or dependents of members, provided, however, that the association must be organized or domiciled in a state other than this Commonwealth, have a constitution and bylaws, be organized by other than an insurer, be maintained in good faith for purposes other than that of obtaining insurance, have been in active existence for at least two years, operate from offices other than the insurer's and be controlled by principals other than the insurer's.

(E) A union-negotiated out-of-State trust.

(F) Other groups as may be determined by the Insurance Commissioner at his discretion.

(ii) As used in this clause (5):

An "organization" means any of the following:

(A) Any bank, retailer or other issuer which:

(I) issues a credit card, charge card or payment card for the purchase of goods or services; and

(II) is issued a policy insuring holders of the card.

(B) Any bank, savings and loan association, credit union, mutual fund, money market fund, stock broker or other similar financial institution which:

(I) is regulated by Federal or state law; and

(II) is issued a policy insuring its depositors, account holders or members.

An "out-of-State single employer" means any person acting directly as an employer and has its principal office located in a state other than this Commonwealth.

An "out-of-State trustee" of a fund means a trustee of a fund established by an insurer for two or more employers or established by two or more persons acting directly as employers and the trustee has its principal office located in a state other than this Commonwealth.

A "union-negotiated out-of-State trust" means a trust established under a collective bargaining agreement and which is located in a state other than this Commonwealth.

[(5.1) Transactions in this Commonwealth, except group credit life or

group credit accident and health insurance transactions, involving a group or blanket insurance policy or group annuity contract not exempt under the provisions of clause (5) of this subsection, shall nonetheless be exempt from the provisions of this section if:

(i) they involve a group which conforms to one of the definitions of eligibility for group coverage contained in the laws of this Commonwealth; and,

(ii) the group policy or contract is lawfully issued without this Commonwealth in a jurisdiction in which the insurer is authorized to do an insurance business.]

It shall be the responsibility of the insurer claiming exemption under this subsection to demonstrate compliance with each of the above conditions.

(6) (i) Any insurance company or underwriter issuing contracts of insurance to industrial insureds, (ii) industrial insureds, or (iii) contracts of insurance issued to an industrial insured: Provided, That nothing herein shall relieve such industrial insured from the requirement of compliance with the applicable provisions of the act of January 24, 1966 (1965 P.L.1509, *No.531*), referred to above. For purposes of this section, an "industrial insured" is an insured (i) who procures the insurance of any risk or risks by use of the services of a full-time employe acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant, (ii) whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars ($25,000), and (iii) who has at least twenty-five full-time employes.

(7) Transactions in this Commonwealth involving a policy of insurance issued prior to the effective date of this act.

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

Section 3. Sections 213, 214 and 216 of the act are repealed.

Section 4. Section 301(c)(5) and (7) and (f) of the act, amended February 28, 1982 (P.L.108, No.38), are amended and the section is amended by adding a subsection to read:

Section 301. Computation of Reserve Liability.—* * *

(c) This subsection shall apply only to policies and contracts issued on or after the operative date of section four hundred and ten A (the Standard Nonforfeiture Law for Life Insurance) of an act, approved the seventeenth day of May, one thousand nine hundred and twenty-one (Pamphlet Laws, six hundred eighty-two), as amended, except as otherwise provided in subparagraph (B) of paragraph (1) and in paragraph (2) of this subsection for group annuity and pure endowment contracts issued prior to such operative date.

* * *

(5) *(A)* In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the methods set forth in paragraphs (3) and (4) of this subsection (c), and in section 303, and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(B) In no event shall the aggregate reserves for all policies, contracts and certificates be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection (g).

* * *

(7) Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the Insurance Commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided. ***However, for the purpose of this paragraph, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by subsection (g) shall not be deemed to be the adoption of a higher standard of valuation.***

* * *

[(f) The provisions of this section for the valuation of policies and for premium rates shall not apply to companies or associations transacting business on the mutual assessment plan.]

(g) (1) This subsection requiring a submission of an actuarial opinion of reserves shall take effect for annual statements for the year 1993.

(2) Every life insurance company and fraternal benefit society doing business in this Commonwealth shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies, contracts and certificates specified by the Insurance Commissioner by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this Commonwealth. The Insurance Commissioner by regulation shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

(3) Every life insurance company and fraternal benefit society, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by paragraph (2), an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies, contracts and certificates specified by the Insurance Commissioner by regulation, when considered in light of the assets held by the company or society with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the

policies, contracts and certificates, make adequate provision for the company or society's obligations under the policies, contracts and certificates, including, but not limited to, the benefits under and expenses associated with the policies, contracts and certificates. The Insurance Commissioner may provide by regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this paragraph.

(4) Each opinion required by paragraph (3) shall be governed by the following provisions:

(A) A memorandum, in form and substance acceptable to the Insurance Commissioner as specified by regulation, shall be prepared to support each actuarial opinion.

(B) If the insurance company or fraternal benefit society fails to provide a supporting memorandum at the request of the Insurance Commissioner within a period specified by regulation or the Insurance Commissioner determines that the supporting memorandum provided by the insurance company or fraternal benefit society fails to meet the standards prescribed by the regulation or is otherwise unacceptable to the Insurance Commissioner, the Insurance Commissioner may engage a qualified actuary at the expense of the company or society to review the opinion and the basis for the opinion and prepare a memorandum as is required by the Insurance Commissioner.

(5) Every opinion shall be governed by the following provisions:

(A) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1993.

(B) The opinion shall apply to all business in force, including individual and group health and accident insurance, in form and substance acceptable to the Insurance Commissioner as specified by regulation.

(C) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the Insurance Commissioner may by regulation prescribe.

(D) In the case of an opinion required to be submitted by a foreign or alien company or society, the Insurance Commissioner may accept the opinion filed by that company or society with the insurance supervisory official of another state if the Insurance Commissioner determines that the opinion reasonably meets the requirements applicable to a company or society domiciled in this Commonwealth.

(E) Except in cases of fraud or wilful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company or fraternal benefit society and the Insurance Commissioner, for any act, error, omission, decision or conduct with respect to the actuary's opinion.

(F) Disciplinary action by the Insurance Commissioner against the company, society or the qualified actuary shall be defined in regulation by

the Insurance Commissioner.

(G) Any memorandum in support of the opinion, and any other material provided by the company or society to the Insurance Commissioner in connection therewith, shall be kept confidential by the Insurance Commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulation promulgated hereunder, provided, however, that the memorandum or other material may otherwise be released by the Insurance Commissioner either with the written consent of the company or society or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the Insurance Commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company or society in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company or society to the news media, all portions of the confidential memorandum shall no longer be confidential.

(H) For the purposes of this subsection, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in such regulation.

Section 5. Section 311 of the act, amended December 18, 1992 (P.L.1496, No.177), is amended to read:

Section 311. Computation of Reserve Against Unpaid Losses in Casualty Insurance Other Than [**Non-Cancellable**] Health and Accident Insurance.—The Insurance Commissioner shall, in calculating the reserve against unpaid losses of any insurance company, other than life insurance companies, for losses other than under [**noncancellable**] health and accident insurance issued on and after January first, one thousand nine hundred fifty, set down, by careful estimate in each case, the loss likely to be incurred against every claim presented or that may be presented in pursuance of notice from the insured of the occurrence of an event that may result in a loss. The sum of the items so estimated shall be the total amount of the reserve.[**, except that, in credit insurance, fifty per centum of the premiums on all credit policies expiring in the months of October, November, and December of the current year, less the amount of losses paid on such policies, shall, in addition thereto, be charged in the loss reserve.**]

Section 6. The definition of "insolvency" in section 503 of the act, amended or added December 14, 1977 (P.L.280, No.92) and June 17, 1986 (P.L.254, No.67), is amended to read:

Section 503. 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:

* * *

"Insolvency" means:

(1) For an insurer issuing only assessable fire insurance policies; (i) the inability to pay any obligation within thirty days after it becomes payable, or (ii) if an assessment be made within thirty days after such date, the inability to pay such obligation thirty days following the date specified in the first assessment notice issued after the date of loss pursuant to section 808 of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921."

(2) For any other insurer the inability to pay its obligations when they are due, or whose admitted assets do not exceed its liabilities plus the greater of (i) any capital and surplus required by law for its organization, or (ii) its authorized and issued capital stock. For any insurer licensed to do business in the Commonwealth as of the effective date of this act which does not meet this standard, the term "insolvency" shall mean for a period not to exceed three years from the effective date of this act that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law.

[(3) **For the purposes of this paragraph in determining the financial condition of an insurer such assets shall be considered to be admitted as are owned by the insurer and which consist of: (i) cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company; (ii) investments, securities, properties and loans acquired or held in accordance with this act, and in connection therewith the following items: (A) interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest, (B) declared and unpaid dividends on stock and shares, unless such amount has otherwise been allowed as an asset, (C) interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon, (D) interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the commissioner a collectible asset, (E) interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal, but in no event shall interest accrued for a period in excess of twelve months be allowed as an asset, (F) rent due or accrued on real property if such rent is not in arrears for more than three months, and rent more than three months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral, (G) the unaccrued portion of taxes paid prior to the due date on real property; (iii) premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and**

accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy; (iv) the net amount of uncollected and deferred premiums and annuity ~~consideration~~ in the case of a life insurer; (v) premiums in the course of collection, other than for life insurance, not more than three months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States Government or by any of its instrumentalities; (vi) installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which such premiums apply; (vii) notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon; (viii) the full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under section 319 of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921"; (ix) amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty; (x) deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from a suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him; (xi) electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least ten thousand dollars ($10,000), which cost shall be amortized in full over a period not to exceed ten calendar years; (xii) all assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for use in this Commonwealth for the kinds of insurance to be reported upon therein; (xiii) other assets, not inconsistent with the provisions of this section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by him.

The following shall not be considered admitted assets in any determination of the financial condition of an insurer: (i) good will, trade names and other like intangible assets; (ii) advances (other than policy loans) to officers, directors, and controlling stockholders, whether secured or not, and advances to employees, agents and other persons on personal security only; (iii) stock of such insurer, owned by it, or any material equity therein or loans secured thereby, or any material proportionate interest in such stock acquired or held through the ownership by such insurer of an interest in another firm, corporation or business unit; (iv) furniture fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies (other than data processing and accounting systems authorized under Title 31, § 11.4, Pennsylvania Code), except in the case of title insurers such materials and plants as

the insurer is expressly authorized to invest in section 732(21) of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," and except, in the case of any insurer, such property which is acquired through foreclosure of chattel mortgages acquired pursuant to sections 406, 519, 604, and 732 of "The Insurance Company Law of 1921," or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office and similar purposes; (v) the amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this article.] ***In determining the financial condition of an insurer, the Insurance Commissioner shall consider assets to be admitted or nonadmitted as provided in section 320.1 of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921."***

For purposes of this article "liabilities" shall include but not be limited to reserves required by statute or by insurance department general regulations or specific requirements imposed by the commissioner upon a subject company at the time of admission or subsequent thereto, and any other capital and surplus requirements.

* * *

Section 7. Section 650 of the act, added December 22, 1965 (P.L.1172, No.463), is amended to read:

Section 650. Insurance Companies to Certify Names of Managers or Exclusive General Agents.—*(a)* Every domestic insurance company operating under a management contract or an exclusive general agency agreement entered into after the effective date of this act, shall certify to the Insurance Commissioner the name of the manager or exclusive general agent, within ten days from the effective date of said contract or agreement and within ten days after the renewal of the license of such manager or exclusive general agent. **[No certification is required for an agent or general agent whose authority is limited primarily to production of insurance business with limited underwriting authority. Manager or exclusive general agent shall include an individual, copartnership or corporation.]**

(b) Notwithstanding subsection (c), a person, firm, partnership, association or corporation subject to regulation as a managing general agent pursuant to Article VIII of this act shall not also be subject to licensing as a manager or exclusive general agent.

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

"Exclusive general agent" means a person, firm, partnership, association or corporation which has been granted sole authority to act directly or indirectly as an agent for an insurer with respect to a specific portion of the insurer's business or within a specific territory and which has the

authority to bind coverage on behalf of the insurer and, either separately or together with affiliates, subagents or brokers, directly or indirectly produces and underwrites in any one year an amount of gross direct written premium equal to or more than twenty-five per centum of the surplus as regards policyholders as reported in the last annual statement of the insurer.

"Manager" means a person, firm, partnership, association or corporation which negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer and does not act as an agent for such insurer.

Section 8. The definition of "managing general agent" or "MGA" in section 801 of the act, added December 18, 1992 (P.L.1496, No.177), is amended to read:

Section 801. Definitions.—The following words and phrases when used in this article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Managing general agent" or "MGA" means:

(1) Any person, firm, association or corporation who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and acts as an agent for such insurer whether known as a managing general agent[**, manager**] or other similar term who, with or without the authority either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five per centum of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following:

(i) adjusts or pays claims in excess of an amount determined by the Insurance Department; or

(ii) negotiates reinsurance on behalf of the insurer.

(2) Notwithstanding clause (1), the following persons shall not be considered as managing general agents for the purposes of this article:

(i) an employe of the insurer;

(ii) a United States manager of the United States branch of an alien insurer;

(iii) an underwriting manager which, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to Article XII of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," and whose compensation is not based on the volume of premiums written;

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney;

(v) any manager or exclusive general agent operating under any management contract or exclusive general agency agreement entered into

prior to December 22, 1965, and therefor not subject to licensing pursuant to section 651: Provided, however, That any such management contract or exclusive general agency agreement shall subject the manager or exclusive general agent and the insurer to Article XII of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921": And further provided, That any sale, assignment or transfer of any management contract or exclusive general agency agreement, whether said contract or agreement was entered into before or after December 22, 1965, shall make the purchaser, assignee or transferee subject to licensing under this article.

* * *

Section 9. Section 805(e) of the act, added December 18, 1992 (P.L.1496, No.177), is amended to read:

Section 805. Duties of Insurers.—* * *

(e) Within thirty days of entering into or termination of a contract with an MGA, the insurer shall provide written notification of such appointment or termination to the department. Notices of appointment of an MGA shall include a statement of duties which the **[applicant]** *MGA* is expected to perform on behalf of the insurer, the lines of insurance for which the **[applicant]** *MGA* is to be authorized to act and any other information the commissioner may request.

* * *

Section 10. This act shall take effect as follows:

(1) The amendment of section 208 of the act shall take effect in 90 days.

(2) The remainder of this act shall take effect immediately.

APPROVED—The 17th day of February, A.D. 1994.

ROBERT P. CASEY