

APPROVED—The 31st day of July, A. D., 1968.

RAYMOND P. SHAFER.

No. 239

AN ACT

SB 1640

Amending the act of May 17, 1921 (P. L. 789), 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 regulating the issuance of certificates of authority to insurance companies, associations, and exchanges of other states and foreign governments; defining what constitutes the doing of an insurance business within the Commonwealth; empowering the Insurance Commissioner, with the approval of the Attorney General, to seek to enjoin the doing of an insurance business within the Commonwealth under certain circumstances; and providing for service of process upon certain insurance companies, associations and exchanges of other states and foreign governments.

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

Section 1. Sections 208 and 209, act of May 17, 1921 (P. L. 789), known as "The Insurance Department Act of one thousand nine hundred and twenty-one," are amended to read:

Section 208. Certificates of Authority To Do Business.—[The Insurance Commissioner shall issue certificates of authority to insurance companies, associations, and exchanges of other States and foreign governments. He] (a) No insurance company, association, or exchange of another state or foreign government shall do an insurance business within this Commonwealth without first having obtained a certificate of authority from the Insurance Commissioner authorizing such company, association or exchange to do such business. Before granting such a certificate of authority to an insurance company, association or exchange, the commissioner shall be satisfied, by such examination as he may make or by such evidence as he may require

or demand, that such company, association, or exchange conforms to the requirements of this act and of the laws of this Commonwealth prerequisite to its issue. After such issue the holder shall continue to comply with the requirements as to its business set forth in this act and in the laws of this Commonwealth. The commissioner may renew the certificate of authority of any mutual assessment life or accident association, which is now lawfully doing business in this Commonwealth, beginning on the first day of April of each year, and continuing in force for one year unless sooner revoked by him or surrendered by the licensee. Any certificates issued after April first shall expire on the thirty-first day of March succeeding. [Before granting certificates of authority to an insurance company, association, or exchange to issue policies or make contracts of insurance, he shall be satisfied, by such examination as he may make or by such evidence as he may require or demand, that such company, association, or exchange is qualified under the laws of this Commonwealth to transact business herein.]

(b) Any of the following acts constitute the doing of an insurance business within this Commonwealth, whether effected by mail or otherwise:

(1) the issuance or delivery of contracts of insurance to persons resident in this Commonwealth, or

(2) the solicitation of applications for such contracts, or other negotiations preliminary to execution of such contracts, or

(3) the collection of premiums, membership fees, assessments or other consideration for such contracts, or

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

(c) Whenever the commissioner believes, from evidence satisfactory to him, that any insurance company, association, or exchange is doing an insurance business within this Commonwealth in violation of any provision of this act or any order or requirement of the commissioner issued or promulgated pursuant to authority expressly granted the commissioner by any provision of this act or by law, or is about to violate any such provision, order, or requirement, the commissioner may, after approval by the Attorney General, bring an action in the

Court of Common Pleas of Dauphin County against such company, association, or exchange to enjoin such company, association, or exchange from continuing such violation or engaging therein or doing any act in furtherance thereof. In such action an order or judgment may be entered awarding such preliminary or final injunction as is proper. This remedy is in addition to any other remedy provided by this act or by law.

(d) (1) The performance by an insurance company, association, or exchange of another state or foreign government of any act which constitutes the doing of an insurance business within this Commonwealth is equivalent to and shall constitute an appointment by such company, association or exchange of the Secretary of the Commonwealth and his successor or successors in office as its true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of the Insurance Commissioner against it arising out of a violation of this section, and the performance of any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this Commonwealth upon such company, association, or exchange.

(2) Such service of process shall be made by delivering to and leaving with the Secretary of the Commonwealth or his deputy two copies thereof. The Secretary of the Commonwealth shall forthwith mail, by registered or certified mail, one of the copies of such process to such company, association or exchange at its last known principal place of business and shall keep record of all process so served upon him. Such service of process is sufficient, provided that (i) notice of such service upon the Secretary of the Commonwealth and a copy of the process are sent within ten days thereafter, by registered or certified mail, by or on behalf of the Insurance Commissioner to such company, association or exchange at its last known principal place of business, and (ii) the receipt of such company, as-

sociation or exchange or the receipt issued by the post office with which the letter is registered or certified, showing the name of the sender of the letter and the name and address of the company, association or exchange to whom the letter is addressed, and the affidavit of or on behalf of the commissioner showing a compliance herewith, are filed with the prothonotary or clerk of the court in which such action, suit or proceeding is pending on or before the date such company, association or exchange is required to appear or within such further time as the court may allow.

(3) Service of process in any ¹such action, suit or proceeding shall, in addition to the manner provided in clause (2) of subsection (d) of this section, be valid if served upon any person within this Commonwealth, who in this Commonwealth on behalf of such company, association or exchange is—

(i) soliciting insurance, or

(ii) making, issuing or delivering any contract of insurance, or

(iii) collecting or receiving any premium, membership fee, assessment, or other consideration for insurance:

Provided, That (i) notice of such service and a copy of such process is sent within ten days after such service, by registered or certified mail, by or on behalf of the Insurance Commissioner to such company, association ² or exchange at its last known principal place of business, and (ii) the receipt of such company, association or exchange or the receipt issued by the post office with which the letter is registered or certified, showing the name of the sender of the letter and the name and address of the company, association or exchange to whom the letter is addressed, and the affidavit of or on behalf of the commissioner showing a compliance herewith, are filed with the prothonotary or clerk of the court in which such action, suit or proceeding is pending on or before the date such company, asso-

¹ "such" not in original.

² "or" not in original.

ciation or exchange is required to appear or within such further time as the court may allow.

(4) Before any company, association or exchange of another state or foreign government shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it under this section, such company, association or exchange shall, if the court in its discretion shall require, deposit with the prothonotary of the court in which such action, suit or proceeding is pending, cash or securities, or file with such prothonotary or clerk a bond with good and sufficient sureties to be approved by the court. Said deposit or bond shall be in such amount as the court in its sole discretion, after taking into account the financial condition of such company, association or exchange and such other factors as the court considers pertinent, may deem sufficient to secure the payment of any final judgment which may be rendered in such action, suit or proceeding.

(5) The court in any action, suit or proceeding in which service is made in the manner provided herein may, in its discretion, order such postponement as may be necessary to afford such company, association or exchange reasonable opportunity to comply with clause (4) of this subsection and to defend such action, suit or proceeding.

(6) No judgment by default or otherwise shall be entered in any action, suit or proceeding under this section until the expiration of thirty days from the date of the filing of the affidavit of compliance as set forth in clauses (2) or (3) of this subsection.

(7) Nothing contained in this section shall limit or abridge the right to serve any process, notice or demand upon any company, association or exchange of another state or foreign government in any manner now or hereafter permitted by law.

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

(1) Transactions regulated by the act of January 24, 1966 (P. L. 1509), entitled "An act relating to, regulating, taxing, supervising and controlling the placing of insurance on risks located in the Com-

monwealth 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) Life insurance or annuities provided to educational or scientific institutions organized and operated without profit to any private shareholder or individual for the benefit of such institutions and individuals engaged in the service of such institutions.

(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) Transactions in this Commonwealth involving group or blanket insurance or group annuities where the master policy of such group was lawfully issued and delivered in a state in which the company was authorized to do an insurance business.

(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 (P. L. 1509), 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 209. Penalty for Acting Without Certificate of Authority.—Any insurance company, association, or exchange doing an insurance business within this Commonwealth without a certificate of authority as required by this act shall [forfeit and pay to the Commonwealth the sum of five hundred dollars for each month, or fraction thereof, in which such illegal business was transacted] be required to pay a penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000) for each offense, to be recovered on behalf of the Commonwealth.

Any person negotiating or soliciting any policy of insurance or suretyship in this Commonwealth, collecting or forwarding premiums or delivering policies for any company, association, or exchange to which a certificate of authority has not been granted, shall be deemed to be the agent of the company, association, or exchange, in any legal proceedings brought against it.

Section 2. This act shall take effect immediately.

APPROVED—The 31st day of July, A. D. 1968.

RAYMOND P. SHAFER.

No. 240

AN ACT

SB 320

Relating to Commonwealth documents; providing for the printing and distribution of administrative regulations; regulating the adoption, publication, codification and effectiveness of regulations, statements of policy, and certain other Commonwealth documents; creating the Joint Committee on Documents and prescribing its powers and duties; providing penalties, and making appropriations and repeals.