

No. 1997-40

AN ACT

HB 1055

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," providing for risk-based capital requirements; further providing for agents and brokers definitions, solicitation penalties, licenses, compensation penalties and rebates and inducements; providing for agents and brokers disclosures; further providing for general penalties and for institutional agents and brokers; and providing for insurance sales by financial institutions.

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

Section 1. The act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, is amended by adding an article to read:

ARTICLE V-A.
RISK-BASED CAPITAL REQUIREMENTS.

Section 501-A. 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:

"Adjusted RBC report" means an RBC report that has been recalculated by the Insurance Commissioner in accordance with section 502-A(c).

"Authorized control level event" means one or more of the following events:

(1) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC.

(2) The notification by the Insurance Commissioner to the insurer of an adjusted RBC report that indicates the event in paragraph (1).

(3) The failure of the insurer to respond, in a manner satisfactory to the Insurance Commissioner, to a corrective order, provided the insurer has not challenged the corrective order under section 510-A.

(4) If the insurer has challenged a corrective order under section 510-A and the Insurance Commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the Insurance Commissioner, to the

corrective order subsequent to rejection or modification by the Insurance Commissioner.

“Commissioner” means the Insurance Commissioner of the Commonwealth.

“Company action level event” means one or more of the following events:

(1) The filing of an RBC report by an insurer that indicates that:

(i) the insurer’s total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

(ii) if a life or health insurer, the insurer has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 2.5 and has a negative trend.

(2) The notification by the Insurance Commissioner to the insurer of an adjusted RBC report that indicates an event in paragraph (1).

“Corrective order” means an order issued by the Insurance Commissioner specifying corrective actions that the Insurance Commissioner has determined are required under section 507-A(b).

“Department” means the Insurance Department of the Commonwealth.

“Domestic insurer” means an insurer that is incorporated or organized under the laws of this Commonwealth.

“Foreign insurer” means an insurer that is licensed by the Insurance Department to do business in this Commonwealth and incorporated or organized under the laws of a jurisdiction other than this Commonwealth.

“Insurer” means life or health insurers and property or casualty insurers.

“Life or health insurer” means a stock or mutual insurance company, association or exchange licensed by the Insurance Department to transact life or accident and health insurance coverages or both.

“Mandatory control level event” means one or more of the following events:

(1) The filing of an RBC report which indicates that the insurer’s total adjusted capital is less than its mandatory control level RBC.

(2) Notification by the Insurance Commissioner to the insurer of an adjusted RBC report that indicates the event in paragraph (1).

“NAIC” means the National Association of Insurance Commissioners or successor organization.

“Negative trend” means, with respect to a life or health insurer, a decrease over a period of time, as determined in accordance with the Trend Test Calculation included in the RBC instructions.

“Property or casualty insurer” means a stock or mutual insurance company, association or exchange licensed by the Insurance Department to transact property or casualty insurance coverages or both.

“RBC” means risk-based capital.

“RBC instructions” means the RBC report, including RBC instructions and formula adopted by the NAIC as required by the Insurance Commissioner under section 320(a)(2) of the act of May 17, 1921 (P.L.682, No.284), known as “The Insurance Company Law of 1921.”

“RBC level” means an insurer’s company action level RBC, regulatory action level RBC, authorized control level RBC or mandatory control level RBC where:

(1) “Company action level RBC” means the product of 2.0 and the authorized control level RBC.

(2) “Regulatory action level RBC” means the product of 1.5 and the authorized control level RBC.

(3) “Authorized control level RBC” means the amount of an insurer’s authorized control level RBC calculated under the RBC formula in accordance with the RBC instructions.

(4) “Mandatory control level RBC” means the product of .70 and the authorized control level RBC.

“RBC plan” means a comprehensive financial plan containing the elements specified in section 506-A(a).

“RBC report” means the report required under sections 502-A and 503-A.

“Regulatory action level event” means one or more of the following events:

(1) The filing of an RBC report by the insurer that indicates that the insurer’s total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC.

(2) The notification by the Insurance Commissioner to an insurer of an adjusted RBC report that indicates the event in paragraph (1).

(3) The failure of the insurer to file an RBC report by the date required under this article unless the insurer has provided an explanation for the failure that is satisfactory to the Insurance Commissioner and has cured the failure within ten days after the date the report is required to be filed under this article.

(4) The failure of the insurer to submit an RBC plan or revised RBC plan to the Insurance Commissioner within the time period set forth in section 506-A(b) and (d).

(5) Notification by the Insurance Commissioner to the insurer that:

(i) the RBC plan or revised RBC plan submitted by the insurer is in the judgment of the Insurance Commissioner unsatisfactory; and

(ii) the notification constitutes a regulatory action level event with respect to the insurer.

(6) Notification by the Insurance Commissioner to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC

plan or revised RBC plan and the Insurance Commissioner has so stated in the notification.

“Revised RBC plan” means an RBC plan that has been rejected by the Insurance Commissioner and revised by the insurer, with or without the Insurance Commissioner’s recommendation.

“Total adjusted capital” means the sum of:

(1) an insurer’s statutory capital and surplus as determined in accordance with the statutory accounting applicable to its annual financial statements filed with the Insurance Department; and

(2) other items as the RBC instructions may provide.

Section 502-A. RBC Reports Required; Domestic Insurers.—(a) Every domestic insurer shall, on or prior to each March 1, prepare and submit to the commissioner and to the NAIC a report of its RBC levels as of the end of the calendar year just ended, in a form and containing the information required by the RBC instructions.

(b) In addition, every domestic insurer shall file its RBC report with the chief insurance regulatory official in any jurisdiction in which the insurer is authorized to do business if the chief insurance regulatory official of the jurisdiction has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

(1) the date instructed by the chief insurance regulatory official of the jurisdiction requesting the filing; or

(2) March 1 of the year following the end of the calendar year for which the report is requested.

(c) If a domestic insurer files an RBC report that, in the judgment of the commissioner, is inaccurate, the commissioner shall recalculate the RBC report to correct the inaccuracy and shall notify the insurer of the amount of the recalculation. The notice shall contain a statement of the reason for the recalculation. If, within thirty days after the notification from the commissioner, the insurer fails to prepare and submit to the commissioner and to the NAIC an adjusted RBC report to correct the inaccuracy in accordance with the commissioner’s notification, the commissioner may enter an order calling for an investigatory hearing with no less than twenty days’ notice to the insurer for purposes of obtaining additional documentation, data, information and testimony. Following the hearing, the commissioner shall issue a final order accepting the RBC report as filed or the adjusted RBC report as initially recalculated or with other corrections.

Section 503-A. RBC Requirements; Foreign Insurers.—(a) A foreign insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended no later than the later of:

(1) the date an RBC report would be required to be filed by a domestic insurer under this article; or

(2) fifteen days after the request is received by the foreign insurer.

(b) A foreign insurer shall, upon the written request of the commissioner, submit to the commissioner a copy of an RBC plan that is filed with the chief insurance regulatory official of any other jurisdiction, within fifteen days after receiving the request from the commissioner.

(c) In the event of a company action level event, regulatory action level event or authorized control level event with respect to a foreign insurer as determined under the RBC statute applicable in the jurisdiction of domicile of the insurer or, if no RBC statute is in force in that jurisdiction, under the provisions of this article, if the chief insurance regulatory official of the jurisdiction of domicile of the foreign insurer fails to require the foreign insurer to file an RBC plan in the manner specified under that state's RBC statute or, if no RBC statute is in force in that jurisdiction, under this article, the commissioner may require the foreign insurer to file an RBC plan with the commissioner. The failure of the foreign insurer to file an RBC plan with the commissioner under this section shall be grounds to order the insurer to cease and desist from writing new insurance business in this Commonwealth. The commissioner shall give written notice to the foreign insurer, stating specifically the nature of the grounds for the order and fixing a time and place, at least ten days thereafter, when a hearing before the commissioner regarding the matter shall be held.

(d) In the event of a mandatory control level event with respect to a foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the jurisdiction of domicile of the foreign insurer, the commissioner may make application to the Commonwealth Court under sections 553 and 554, and the occurrence of the mandatory control level event shall be considered adequate grounds for the application under sections 553(a) and 554(a).

Section 504-A. Calculation of RBC Relating to Life or Health Insurers.—*(a) A life or health insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions.*

(b) The formula shall take into account and may adjust for the covariance between the following risks determined in each case by applying the factors in the manner set forth in the RBC instructions:

(1) The risk with respect to the insurer's assets.

(2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations.

(3) The interest rate risk with respect to the insurer's business.

(4) All other business risks and other relevant risks as set forth in the RBC instructions.

Section 505-A. Calculation of RBC Relating to Property or Casualty Insurers.—*(a) A property or casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions.*

(b) The formula shall take into account and may adjust for the covariance between the following risks determined in each case by applying the factors in the manner set forth in the RBC instructions:

- (1) Asset risk.*
- (2) Credit risk.*
- (3) Underwriting risk.*
- (4) All other business risks and other relevant risks as are set forth in the RBC instructions.*

Section 506-A. Company Action Level Event.—(a) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that shall include, at a minimum, all of the following:

- (1) Identification of the conditions that contribute to the company action level event.*
- (2) Proposals of corrective actions that the insurer intends to take and that would be expected to result in the elimination of the company action level event.*
- (3) Projections of the insurer's financial results for the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and surplus. Projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense and benefit component.*
- (4) Identification of the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions.*
- (5) Identification of the quality of and problems associated with the insurer's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.*

(b) The RBC plan required under this section shall be submitted within forty-five days after the occurrence of the company action level event.

(c) Within sixty days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC plan shall be implemented or whether the RBC plan is in the judgment of the commissioner unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination and may set forth proposed revisions that will render the RBC plan satisfactory in the judgment of the commissioner.

(d) Upon notification from the commissioner of a determination that the RBC plan is unsatisfactory, the insurer shall prepare a revised RBC plan which may incorporate by reference any revisions proposed by the commissioner and, unless the commissioner has taken action under

subsection (e), shall submit the revised RBC plan to the commissioner within forty-five days after the notification from the commissioner.

(e) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may specify in the notification that the notification constitutes a regulatory action level event or take action as necessary to place the insurer under regulatory control under Article V.

(f) Every domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the chief insurance regulatory official in any jurisdiction in which the insurer is authorized to do business if:

(1) The jurisdiction has an RBC provision substantially similar to section 512-A(a) and (b).

(2) The chief insurance regulatory official of that jurisdiction has notified the insurer of his request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that jurisdiction no later than the later of:

(i) fifteen days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the jurisdiction; or

(ii) the date on which the RBC plan or revised RBC plan is filed under this section.

Section 507-A. Regulatory Action Level Event.—(a) In the event of a regulatory action level event, the commissioner:

(1) may require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(2) shall perform an examination under Article IX or analysis as the commissioner deems necessary of the assets, liabilities and operations of the insurer, including, if applicable, a review of its RBC plan or revised RBC plan; and

(3) subsequent to an examination or analysis performed under paragraph (2) shall issue an order specifying corrective actions as the commissioner shall determine are required.

(b) In determining corrective actions, the commissioner may take into account factors as the commissioner deems relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions.

(c) The RBC plan or revised RBC plan required under this section shall be submitted within forty-five days after the occurrence of the regulatory action level event.

(d) The commissioner may retain actuaries, investment experts, attorneys, appraisers, certified public accountants and other professionals and specialists as may be necessary in the judgment of the commissioner to review the insurer's RBC plan or revised RBC plan, examine or analyze

the assets, liabilities and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs and expenses relating to professionals and specialists retained under this section shall be charged to and paid by the affected insurer or other party as directed by the commissioner.

Section 508-A. Authorized Control Level Event.—*In the event of an authorized control level event with respect to an insurer, the commissioner shall:*

(1) Take such actions as are required under section 507-A regarding an insurer with respect to which a regulatory action level event has occurred.

(2) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take actions necessary to cause the insurer to be placed under regulatory control under Article V. In the event the commissioner takes action under Article V, the authorized control level event shall be deemed sufficient grounds for the commissioner to take that action.

Section 509-A. Mandatory Control Level Event.—*In the event of a mandatory control level event:*

(1) With respect to a life or health insurer, the commissioner shall take actions necessary to place the insurer under regulatory control under sections 512 through 563. The mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under section 514; however, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

(2) With respect to a property or casualty insurer, the commissioner shall take actions necessary to place the insurer under regulatory control under sections 512 through 563 or, in the case of an insurer that is writing no business, may allow the insurer to run off its existing business under the supervision of the commissioner. In either event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under section 514; however, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

Section 510-A. Hearings.—*(a) The insurer shall have the right to a confidential departmental hearing at which the insurer may challenge a determination or action by the commissioner upon one or more of the following events:*

(1) Issuance of a final order by the commissioner accepting an adjusted RBC report under section 502-A(c).

(2) Notification to an insurer by the commissioner of a corrective order with respect to the insurer.

(b) The insurer shall notify the commissioner of the insurer's request for a hearing under this section within five days after the action or notification by the commissioner under subsection (a). Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which date shall be no less than ten days nor more than thirty days after the date of the insurer's request.

Section 511-A. Notices.—(a) Notices by the commissioner to an insurer which may result in regulatory action under this article shall be effective upon dispatch if transmitted by certified mail or any other form of delivery that insures signature upon receipt.

(b) Notices by the commissioner to an insurer transmitted by a form of delivery other than that provided in subsection (a) shall be effective upon the insurer's receipt of the notice.

Section 512-A. Confidentiality; Prohibition on Announcements; Prohibition on Use in Ratemaking.—(a) RBC reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of an insurer performed under this article, and any corrective order issued by the commissioner pursuant to examination or analysis with respect to a domestic insurer or foreign insurer that are filed with the commissioner constitute information that may be damaging to the insurer if made available to its competitors and therefore shall be kept confidential by the commissioner.

(b) Information described in subsection (a) shall be given confidential treatment, may not be subject to subpoena by any Federal, state or other jurisdiction and may not be made public by the commissioner or any other person, except to insurance or other regulatory officials of this or other jurisdictions, without the prior written consent of the insurer to which the information pertains unless the commissioner determines to make the information public for purposes of actions taken by the commissioner under Article V.

(c) The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under the provisions of this article, the making, publishing, disseminating, circulating or placing before the public or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication or in the form of a notice, circular, pamphlet, letter or poster or over a radio or television station or in any other way an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC levels of an insurer or of a component derived in the calculation by an insurer, agent, broker or other person would be misleading and is prohibited, provided, however, that if a materially false statement with respect to the

comparison regarding an insurer's total adjusted capital to its RBC levels or an inappropriate comparison of any other amount to the insurer's RBC levels is published in a written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity or inappropriateness of the statement, the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false or inappropriate statement.

(d) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

Section 513-A. Exemptions.—(a) The following insurers are exempt from this article:

- (1) Monoline mortgage guaranty insurers.*
- (2) Financial guaranty insurers.*
- (3) Title insurers.*

(b) A domestic property or casualty insurer that meets all of the following conditions is exempt from this article unless the commissioner makes a specific finding that application of this article to the insurer is necessary for the commissioner to carry out statutory responsibilities:

- (1) Writes direct business only in this Commonwealth.*
- (2) Writes direct annual premiums of ten million dollars (\$10,000,000) or less or such higher amount as the commissioner may order in five-year intervals as necessary to reflect the impact of inflationary factors.*
- (3) Assumes no reinsurance in excess of five per centum of direct premium written except for assumed reinsurance of business directly written in this Commonwealth if the assuming insurer's total annual net written premium, direct plus assumed minus ceded, is ten million dollars (\$10,000,000) or less.*

Section 514-A. Supplemental Provisions; Rules.—(a) The provisions of this article are supplemental to any other provisions of the laws of this Commonwealth and shall not preclude or limit any other powers or duties of the commissioner under those laws, including, but not limited to, Article V and 31 Pa. Code Ch. 160 (relating to standards to define insurers deemed to be in hazardous financial condition).

(b) The commissioner may adopt regulations necessary for the implementation of this article.

Section 515-A. Additional Penalties.—An insurer that fails to file an RBC report or adjusted RBC report within the time required under this article shall, in addition to any other penalties provided by law, forfeit a

sum not to exceed two hundred dollars (\$200) for each day during which the insurer fails to file.

Section 2. The definition of "person" in section 601 of the act, amended June 11, 1992 (P.L.284, No.48), is amended and the section is amended by adding definitions to read:

Section 601. Certain Words Defined.—* * *

The term "customer information," as used in this article, means individually identifiable insurance-related information regarding a person that has been derived from a record of a financial institution related to its lending activities. Such information shall be limited to information concerning the terms and conditions of insurance coverage, insurance expirations, insurance claims or insurance history of an individual. The term does not include customer names, addresses or telephone numbers.

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The term "financial institution," as used in this article, means any Federal or State-chartered bank, bank and trust company, savings bank, savings and loan association, trust company or credit union.

The term "insurer," as used in this article, means any insurance company, association, exchange, health maintenance organization, preferred provider organization and professional health plan corporation.

* * *

The term "person." as used in this article, means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, *financial institution*, fraternal benefit society, beneficial association and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters and also means health care plans as defined in 40 Pa.C.S. Chs. 61 (relating to hospital plan corporations), 63 (relating to professional health services plan corporations), 65 (relating to fraternal benefit societies) and 67 (relating to beneficial societies) and the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act." For purposes of this article, health care plans, fraternal benefit societies and beneficial societies shall be deemed to be engaged in the business of insurance.

Section 3. Sections 609 and 622(a) of the act, amended or added June 11, 1992 (P.L.284, No.48), are amended to read:

Section 609. Penalty for Soliciting for Nonexistent Entity.—Any individual, and the officers, managers, agents, owners or representatives of and any corporation [or], partnership *or financial institution*, offering in this Commonwealth to sell, procure or obtain policies, certificates, agreements, binders or applications for insurance, surety or indemnity for or on behalf of any spurious, fictitious, nonexistent, dissolved, inactive, liquidated, liquidating or bankrupt insurance entity, society or order commits a misdemeanor of the third degree.

Section 622. Brokers' Licenses.—(a) The Insurance Department may issue to any individual or to any partnership [or], corporation *or financial*

institution a license to act as an insurance broker to negotiate contracts of insurance or reinsurance with any insurance entity or the appointed agents thereof authorized by law to transact business in this Commonwealth.

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Section 4. Section 634 of the act, amended December 30, 1974 (P.L.1047, No.343), is amended to read:

Section 634. Penalties for Paying or Receiving Commission or Compensation for Insuring Lives of Attorneys, Partners, Clerks, Servants, or Employes.—(a) It shall be unlawful for any person, copartnership, corporation, *financial institution*, insurance agent, broker, solicitor, or representative to pay or cause to be paid any commission or compensation whatsoever to any attorney, partner, clerk, servant, employe, or any other person, howsoever hired or employed by or with any insured or any beneficiary named in any policy of life insurance. It shall be unlawful for any attorney, partner, clerk, servant, employe, or any other person, howsoever hired or employed by or with any insured or any beneficiary named in any policy of life insurance, to receive, directly or indirectly, any commission, compensation, or other benefit because or by reason of any such life insurance being placed, sold, or solicited on the life or for the benefit of their respective clients, employers, or masters, or any of them. It shall be unlawful for any attorney, officer, clerk, servant, or employe of any corporation, partnership, association, *financial institution*, or individual to receive, directly or indirectly, any commission, compensation, or benefit because or by reason of any life insurance being placed, sold, or solicited on the life or for the benefit of any attorney, officer, clerk, servant, or employe of the same corporation, copartnership, association, *financial institution*, or individual, whether or not any such attorney, partner, officer, clerk, servant, or employe, or other person, hired or employed by or with the insured or of any beneficiary named in any policy of life insurance, is duly licensed by the proper authority in this Commonwealth to place, sell, or solicit life insurance.

(b) Every such attorney, partner, officer, clerk, servant, or employe or other person, hired or employed or continuing to be hired or employed in the relation aforesaid, within ninety days before or after the placing, selling, or soliciting of life insurance on the life or for the benefit of their respective clients, partners, officers, employes, masters, or person in the relation aforesaid, or any of them, shall be subject to the provisions of this section; and every person, copartnership, *financial institution*, or corporation participating in the payment or receipt of any compensation or benefit in violation of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be liable to a fine of not more than one thousand dollars, payable to the Commonwealth, and imprisonment of not less than thirty days nor more than six months, at the discretion of the court.

Section 5. Section 635 of the act is amended to read:

Section 635. Rebates and Inducements Prohibited.—(a) No insurance agent, solicitor or broker, personally or by any other party, shall offer.

promise, allow, give, set off, or pay, directly or indirectly, any rebate of, or part of, the premium payable on the policy or on any policy or agent's commission thereon, or earnings, profit, dividends, or other benefit founded, arising, accruing or to accrue thereon or therefrom, or any special advantage in date of policy or age of issue, or any paid employment or contract for services of any kind, or any other valuable consideration or inducement, to or for insurance on any risk in this Commonwealth, now or hereafter to be written, which is not specified in the policy contract of insurance; nor shall any such agent, solicitor, or broker, personally or otherwise, offer, promise, give, option, sell, or purchase any stocks, bonds, securities, or property, or any dividends or profits accruing or to accrue thereon, or other thing of value whatsoever, as inducement to insurance or in connection therewith. Nothing in this section shall be construed to prevent the taking of a bona fide obligation, with legal interest, in payment of any premium.

(b) No financial institution, nor any director, officer, employe, agent or broker thereof, may require the purchase of insurance from a financial institution or its affiliate or from a designated insurer, agent or broker as a condition of any loan or deposit transaction. Neither a financial institution nor any director, officer, employe, agent or broker thereof may reject a required policy solely because the policy was sold by a person who is not associated with the financial institution. No financial institution may impose any unreasonable requirement on any agent or broker not associated with that financial institution.

Section 6. The act is amended by adding a section to read:

Section 637.1. Disclosures and Acknowledgments.—(a) An agent or broker employed by or affiliated with a financial institution who solicits the sale of annuities or life insurance, except credit life insurance, on or from the premises of that financial institution shall provide the applicant with written disclosure at or prior to the time of application for life insurance or annuities from the financial institution that such life insurance or annuity is:

- (1) not a deposit;*
- (2) not insured by the Federal Deposit Insurance Corporation or any other agency or instrumentality of the Federal Government;*
- (3) not guaranteed by the financial institution or an affiliated insured depository institution; and*
- (4) subject to investment risk, including potential loss of principal, when appropriate.*

(b) Compliance by a financial institution with the disclosure requirements set forth in the "Interagency Statement on Retail Sales of Nondeposit Investment Products" issued February 15, 1994, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision shall satisfy the requirements of subsection (a).

(c) When a financial institution requires a customer to obtain insurance in connection with a loan and the insurance is available through the financial institution, the agent or broker of the financial institution shall inform the customer at or prior to the time of application that the purchase of the insurance from the financial institution is not a condition of the loan and will not affect current or future credit decisions. The agent or broker of the financial institution may inform the customer that insurance is available from the financial institution. The financial institution shall obtain a written statement or acknowledgment from the customer prior to the purchase of insurance stating that the customer has been advised that the customer is not required to purchase from the financial institution any insurance as a condition of receiving any loan.

(d) For marketing techniques that do not involve direct contact with the customer at the time of solicitation or application, the Insurance Commissioner shall promulgate rules and regulations providing for alternative disclosure methods under subsections (a) and (c).

Section 7. Section 639(a) and (c) of the act, amended June 11, 1992 (P.L.284, No.48) and December 12, 1994 (P.L.1035, No.141), are amended to read:

Section 639. Penalties Imposed by Insurance Department.—(a) Upon satisfactory evidence of the [violation of] *conduct violating* sections 602, 605, 606, **607**, 608, 609, 622 [and], **623**, 631 through 638, **646, 647, 648 and 649** by any agent of any insurance entity [or by any], insurance broker or *surplus lines licensee or* on satisfactory evidence of such conduct that would disqualify the agent or broker from initial issuance of a certificate of qualification under section 604 or 622, the department may pursue any one or more of the following courses of action regardless of whether the agent or broker was so authorized by the department:

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

(2) Impose a civil penalty of not more than [one thousand dollars (\$1,000.00)] *five thousand dollars (\$5,000.00)* for each [act] *action* in violation of any of the provisions listed in this subsection.

(3) *Issue an order to cease and desist.*

(4) *Impose such other conditions as the department may deem appropriate.*

* * *

(c) Any agent or solicitor of any entity or any insurance broker or any person, partnership, association or corporation violating the provisions of sections 633.1, 635, 636, 637 [and], 638, **646, 647, 648 and 649** of the act shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not more than [one thousand dollars (\$1,000.00)] *five thousand dollars (\$5,000.00)* for each and every violation or, at the discretion of the court, to imprisonment in the county jail of the court in which the offense is committed for a period of not more than six (6) months.

Section 8. Section 641 of the act, amended May 27, 1994 (P.L.257, No.41), is amended to read:

Section 641. [**Lending Institutions,**] Public Utilities [**and Holding Companies**] Not to be Licensed.—(a) As used in this section:

[(1) “Lending institution” means any institution that accepts deposits and lends money in the Commonwealth of Pennsylvania, including banks and savings and loan associations, but excluding insurance companies.]

(2) “Public utility” means a private employer subject to the jurisdiction of the Pennsylvania Public Utility Commission and engaged in the business of rendering electric, gas, water and steam heat services to the public in this Commonwealth: Provided, however, That the term “public utility” shall not include rural electrification cooperatives.

[(3) The terms “subsidiary” and “affiliate” shall be defined in the regulations promulgated by the Insurance Commissioner, except that “affiliate” shall not apply to an entity which owns an interest in another company or corporation where the ownership interest is not sufficient to permit exercise of effective control, and does not involve direct or indirect ownership or control of five per centum or more of the voting stock of such company or corporation. Nor shall it apply to an entity whose stock is owned by another, provided that the amount of stock owned by any one company or corporation does not permit effective control and does not exceed five per centum of the voting stock of the entity. The term “affiliate” shall, subject to the provisions to invest in stock contained in this subsection, include bank holding company, savings and loan holding company, and public utility holding company as hereinafter defined.

(4) “Bank holding company” shall mean and include the definition of such term in section two of an act of Congress entitled the “Bank Holding Company Act of 1956,” as amended: Provided, however, That if on or before the effective date of this act, a bank holding company has been granted an exemption by the Board of Governors of the Federal Reserve System pursuant to section 4(d) of the Bank Holding Company Act of 1956, as amended, such bank holding company shall not be held to be a bank holding company within the meaning of section 2 of the Bank Holding Company Act of 1956, as amended.

(5) “Credit life, health, and accident insurance” means insurance on the life and health of a borrower from a lending institution to secure the repayment of the amount borrowed, in accordance with regulations promulgated by the Insurance Commissioner.

(5.1) “Credit unemployment insurance” means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is unemployed as defined in the policy.

(6) "Title insurance" shall mean and include the definition of such term in section seven hundred and one of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921."

(7) A "savings and loan holding company" shall mean and include the definition of such term as defined in Title 12, United States Code, sections 1730a (a) (1) (D) (E) (F).]

(8) "Public utility holding company" shall mean and include the definition of such term as defined in Title 15, United States Code, sections 79b (a) (7), including electric, gas, water and steam heat services.

(9) "Deposits" shall mean and include the definition of such term as set forth in Title 12, United States Code, section 1813 (l), (1), (2), (3), (4), (5).]

(b) No [lending institution,] public utility[, bank holding company, savings and loan holding company] or any subsidiary or affiliate of [the foregoing] a *public utility*, or officer or employe thereof, may, directly or indirectly, be licensed or admitted as an insurer or be licensed to sell insurance in this State either as a broker or as an agent [except that a lending institution or bank holding company, subsidiary or affiliate of a lending institution. A financial institution may be licensed to sell credit life, health and accident insurance, as regulated under the act of September 2, 1961 (P.L.1232, No.540), known as the "Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance," to sell credit unemployment insurance, subject to subsection (b.1) and as regulated under the "Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance," and to sell and underwrite title insurance in accordance with regulations promulgated by the Insurance Commissioner].

[(b.1) (1) All credit unemployment insurance in connection with loans or other credit transactions shall be subject to the same provisions of the "Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance" as apply to credit life insurance and credit accident and health insurance.

(2) The total amount of benefits payable by credit unemployment insurance in the event of unemployment as defined in the policy shall not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness. The amount of each monthly payment shall not exceed the original indebtedness divided by the number of installments.

(3) The Insurance Commissioner shall set a loss ratio for credit unemployment insurance. The loss ratio shall be set and regulated in the same manner as the loss ratio is set and regulated for credit life and credit accident and health insurance.

(4) Credit unemployment insurance sold in connection with open-end credit must provide, in the event of the debtor's involuntary unemployment, monthly benefits at least equal to the debtor's minimum monthly payment calculated at the time of such unemployment, subject

to a maximum monthly indemnity as contained in the certificate of insurance.

(5) At the minimum, credit unemployment insurance benefits are payable upon the debtor meeting the eligibility requirements for unemployment compensation.

(6) The period during which credit unemployment insurance benefits are payable in the event of the debtor's involuntary unemployment shall continue at least until the earliest of the following:

(i) Return of the debtor to full-time work.

(ii) Satisfaction of the loan or other credit transaction.

(iii) In the case of open-end credit, payment of twelve consecutive monthly installments.

(7) Credit unemployment insurance shall not be required as a condition of the extension of credit.

(8) If a creditor offers credit unemployment insurance to any of its debtors, it must offer it under the same terms and conditions to all of its like debtors and under the same terms and conditions at all of its offices or locations in this Commonwealth.]

(c) The Insurance Commissioner is authorized to promulgate regulations in order to effectuate the purposes of this section, which are to help maintain the separation between [lending institutions and] public utilities and the insurance business and to minimize the possibilities of unfair competitive practices by [lending institutions and] public utilities against insurance companies, agents and brokers.

Section 9. Article VI of the act is amended by adding a subdivision to read:

(c.1) SALE OF INSURANCE BY FINANCIAL INSTITUTIONS.

Section 646. The Sale of Insurance by Financial Institutions.—(a) A financial institution may not be licensed or admitted as an insurer except to underwrite title insurance in accordance with regulations promulgated by the Insurance Commissioner.

(b) A financial institution, and any officer, employe or agent thereof, that sells insurance shall be licensed in accordance with the provisions of this act and regulations promulgated under this act.

Section 647. Physical Premises.—(a) The sale of annuities or insurance, except credit insurance, by financial institutions and agents and brokers thereof shall take place in a location that is distinct from the area where deposits are taken and loan applications are discussed and accepted. Signs or other means shall be used to distinguish the insurance or annuities sales area from the deposit taking and lending areas. The Insurance Commissioner shall exempt a financial institution from the requirements of this section if the number of staff or size of the facility would prevent compliance.

(b) Compliance by a financial institution with the setting and circumstances requirements set forth in the "Interagency Statement on

Retail Sales of Nondeposit Investment Products” issued February 15, 1994, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision shall satisfy the requirements of subsection (a).

Section 648. Customer Privacy.—(a) No financial institution shall use or share with a third party any customer information for the purpose of selling or soliciting the purchase of insurance or annuities unless the requirements of this section are met.

(b) The following notice to a loan customer shall be set forth in standard or larger type:

**USE OF INSURANCE INFORMATION RELATING
TO YOUR LOAN**

AS A CURRENT LOAN CUSTOMER, WE MAY HAVE INSURANCE COVERAGE INFORMATION THAT WAS OBTAINED AS PART OF YOUR LOAN PROCESS. UNDER PENNSYLVANIA LAW, YOU HAVE THE RIGHT TO DIRECT THAT WE NOT USE OR SHARE THIS INFORMATION IN THE MARKETING OF INSURANCE OR ANNUITIES. TO EXERCISE THIS RIGHT, YOU MUST SIGN AND RETURN THIS FORM WITHIN THIRTY (30) DAYS. IF YOU DO NOT SIGN AND RETURN THIS FORM TO US, WE MAY USE OR SHARE THIS INFORMATION IN THE MARKETING OF INSURANCE OR ANNUITIES.

.....
(Signature)

(c) The notice prescribed in subsection (b) shall be sent by first class mail and may be included in a solicitation for the purchase of insurance or annuities. This notice shall be addressed to the individual customer and shall include a postage prepaid response mechanism.

(d) If a loan customer has not responded to the notice prescribed in subsection (b), the financial institution shall send a second notice. The second notice shall meet the requirements set forth in subsections (b) and (c).

(e) For the purpose of complying with subsection (a), a financial institution may directly obtain written consent for the use of customer information from a current or prospective loan customer. The following notice, set forth in standard or larger type, shall be used for this purpose:

**USE OF INSURANCE INFORMATION RELATING
TO YOUR LOAN**

THE BORROWER HEREBY CONSENTS TO THE USE OR SHARING OF ANY INSURANCE COVERAGE INFORMATION OBTAINED AS PART OF THE LOAN PROCESS IN THE MARKETING OF INSURANCE OR ANNUITIES.

.....
(Signature)

Section 649. Credit, Life, Health and Accident Insurance and Credit Unemployment Insurance.—(a) A person who sells credit life, health and accident insurance and credit unemployment insurance shall do so in accordance with the act of September 2, 1961 (P.L.1232, No.540), known as the “Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance.”

(b) A person who sells credit personal property insurance shall do so in accordance with regulations of the department.

(c) All credit unemployment insurance sold in connection with loans or other credit transactions shall be subject to the same provisions of the “Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance” as apply to credit life insurance and credit accident and health insurance.

(d) Credit unemployment insurance shall also be subject to the following:

(1) The total amount of benefits payable by credit unemployment insurance in the event of unemployment as defined in the policy shall not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness. The amount of each monthly payment shall not exceed the original indebtedness divided by the number of installments.

(2) The Insurance Commissioner shall set a loss ratio for credit unemployment insurance. The loss ratio shall be set and regulated in the same manner as the loss ratio is set and regulated for credit life and credit accident and health insurance.

(3) Credit unemployment insurance sold in connection with open-end credit must provide, in the event of the debtor’s involuntary unemployment, monthly benefits at least equal to the debtor’s minimum monthly payment calculated at the time of such unemployment, subject to a maximum monthly indemnity as contained in the certificate of insurance.

(4) At the minimum, credit unemployment insurance benefits are payable upon the debtor meeting the eligibility requirements for unemployment compensation.

(5) The period during which credit unemployment insurance benefits are payable in the event of the debtor’s involuntary unemployment shall continue at least until the earliest of the following:

(i) Return of the debtor to full-time work.

(ii) Satisfaction of the loan or other credit transaction.

(iii) In the case of open-end credit, payment of twelve consecutive monthly installments.

(6) Credit unemployment insurance shall not be required as a condition of the extension of credit.

(7) If a creditor offers credit unemployment insurance to any of its debtors, it must offer it under the same terms and conditions to all of its

like debtors and under the same terms and conditions as all of its offices or locations in this Commonwealth.

Section 649.1. Federal Preemption.—Notwithstanding any law or regulation of this Commonwealth to the contrary, in the event of Federal preemption of any of the provisions of this act or any other law of this Commonwealth regarding the sale of insurance or annuities by federally chartered financial institutions, State-chartered financial institutions shall not be subject to those provisions or laws which were the subject of the Federal preemption.

Section 10. This act shall take effect immediately.

APPROVED—The 25th day of June, A.D. 1997.

THOMAS J. RIDGE