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**DIVISION 7  
INSURANCE § 7101**

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**CHAPTER 1.  
General Provisions. § 7101**

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**Short Title.**

**§ 7101.**

This division may be cited as the Commonwealth Insurance Act of 1983.

**Source:** PL 3-107, § 1.

**Commission Comment:** PL 3-107 took effect February 24, 1984.

**Compliance Required.**

**§ 7102.**

No person may transact a business of insurance in the Commonwealth without complying with the applicable provisions of this division.

**Source:** PL 3-107, § 2.

**Definitions.**

**§ 7103.**

(a) “Alien insurer” means an insurer formed under the laws of a nation other than the United States or a state as defined in this division.

(b) “Capital funds” means the excess of the assets of an insurer over its liabilities. Capital stock, if any, shall not be deemed to be a liability unless otherwise provided in this division.

(c) “Charter” means articles of incorporation of agreement, of association or other basic

constituent document of a corporation or business entity, or subscribers' agreement and power of attorney of a reciprocal insurer.

(d) "Classes of insurance" means, for purposes of this division:

- (1) Disability insurance; (including group disability insurance);
- (2) General casualty insurance;
- (3) Life insurance (including industrial and group life insurance);
- (4) Marine insurance;
- (5) Offshore surety insurance;
- (6) Property insurance;
- (7) Surety insurance;
- (8) Vehicle insurance; and
- (9) Such other classes as may be authorized by law.

(e) "Commissioner" means the Insurance Commissioner established by 4 CMC § 7104.

(f) "Department" means the Department of Commerce and Labor.

(g) "Disability insurance" means insurance against bodily injury, disablement, or death by accident, or accidental means, or the expense thereof; against disablement or expense resulting from sickness; and every insurance appertaining thereto. Disability insurance may be referred to as accident and sickness insurance.

(h) "Domestic insurer" means an insurer formed under the laws of the Commonwealth.

(i) "Foreign insurer" means an insurer formed under the laws of any state as defined in this division.

(j) "General casualty insurance" includes vehicle insurance as defined in subsection (t) of this section, disability insurance as defined in subsection (g) of this section, and, in addition, is insurance:

(1) Against legal liability for the death, injury, or disability of any human being, or from damage to property.

(2) Of medical, hospital, surgical, and funeral benefits to persons injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury, or disability of human beings.

(3) Of the obligation accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury to employees.

(4) Against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment, or from any attempt of any of the foregoing; also insurance against loss or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers or documents, resulting from any cause, except while in the mail.

(5) Upon personal effects of individuals, by an all-risk type of policy commonly known as the personal property floater.

(6) Against loss or damage to glass and its appurtenances resulting from any cause.

(7) Against any liability and loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus.

(8) Against loss of or damage to any property of the insured resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire.

(9) Against loss of or damage to any property caused by the breakage or leakage of

sprinklers, water pipes, and containers, or by water entering through leaks or openings in buildings.

(10) Against loss of or damage resulting from failure to debtors to pay their obligations to the insured (credit insurance).

(11) Against loss of or damage to any domesticated or wild animal resulting from any cause (livestock insurance).

(12) Against loss of or damage to any property of the insured resulting from collision of any other object with such property, but not including collision to or by vessels, craft, piers, or other instrumentalities of ocean or inland navigation (collision insurance).

(13) Against legal liability of the insured, and against loss, damage, or expense incident to a claim of such liability, and including any obligation of the insured to pay medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death or injury of any person, or arising out of injury to the economic interest of any person as the result of negligence in rendering expert, fiduciary, or professional service (malpractice insurance).

(14) Against any other kind of loss, damage, or liability, properly the subject of insurance and not within any other class of insurance as defined in this division, if such insurance is not contrary to law or public policy.

(k) "Insurance" means a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies. The following contracts are not insurance for the purposes of this division:

(1) A title insurance contract;

(2) A bond with respect to which no premium is charged or paid;

(3) A bond or contract or undertaking in the performance of which the surety has an interest other than that of surety;

(4) A plan or agreement between an employer and any employee or any employee's representative, individually or collectively, by the terms of which the employer or the parties to the plan or agreement agree to contribute to the cost of nonoccupational disability benefits, medical attention, treatment, or hospitalization for the employee or members of the employee's family unless the plan is underwritten by an insurer as defined in this division;

(5) A prepaid legal service plan other than plans in which either the group offering the plan or the person administering the plan is otherwise subject to this division.

(l) "Insurer" means every person engaged in the business of making contracts of insurance and includes reciprocal or interinsurance exchanges whether domestic, foreign or alien.

(m) "Life insurance" means insurance on human lives and insurance appertaining thereto or connected therewith. For the purposes of this division the transacting of life insurance includes the granting of annuities, except those private annuities defined in subsection (o) of this section, and endowment benefits.

(n) "Marine insurance" means insurance upon ocean and inland risks and transportation but not including any other casualty insurance as may be provided in the division.

(o) "Offshore surety insurance" means insurance by a domestic insurer guaranteeing the performance of private annuity contracts between persons who are not residents or citizens of the Commonwealth.

(p) "Surety insurance" includes the execution of all bonds, undertakings and contracts of

suretyship and guaranteeing of the performance of contracts other than insurance policies. It also includes fidelity insurance which is the guaranteeing of persons holding public or private trust.

(q) "Person" means any individual, company, insurer, association, organization, group, reciprocal or interinsurance exchanges, partnership, trust, corporation, or business or business entity.

(r) "Reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through a common attorney in fact to enter exchange agreements of indemnity among themselves.

(s) "State" means any state of the United States, the governments of Puerto Rico, American Samoa, Guam, the American Virgin Islands, the District of Columbia, and the political entities of the Trust Territory of the Pacific Islands or their successors, excluding the Commonwealth of the Northern Mariana Islands.

(t) "Vehicle insurance" means:

(1) Insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, and against any loss, expense or liability for loss or damage to persons or property resulting from or incident to ownership, maintenance, or use of any such vehicle or aircraft or animal.

(2) Insurance against accidental death or accidental injury to individuals including the named insured while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if such insurance is issued as part of insurance on the vehicle, aircraft, or draft or riding animal, shall be deemed to be vehicle insurance.

**Source:** PL 3-107, § 3; amended by PL 6-18, §§ 4, 5, 6.

**Commission Comment:** With respect to the reference to the "Department of Commerce and Labor," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

### **Insurance Commissioner Established.**

#### **§ 7104.**

The Insurance Commissioner of the Commonwealth shall be the Director of Banking until such time as the legislature, at the recommendation of the Insurance Commissioner pursuant to 4 CMC § 7112, creates a separate office or position. No bond shall be required of the Director of Banking in order to serve as Insurance Commissioner; however the commissioner may not act as broker, agent, solicitor, officer, employee or representative of any insurance business, nor have any financial interest therein except as a policy holder.

**Source:** PL 3-107, § 4.

### **Powers and Duties of Commissioner.**

#### **§ 7105.**

The Insurance Commissioner shall have the authority expressly conferred by this division and such other authority as may be reasonably implied from the provisions of this division. The powers and duties of the commissioner include:

(a) Administering and enforcing the provisions of this division;

(b) Promulgating such rules and regulations as may be necessary for effectuating any provision of this division;

(c) Conducting examinations and investigations to determine whether any person has violated any provision of this division or regulations promulgated pursuant to it and securing information useful in lawful administration of any such provisions or regulations;

(d) Issuing orders pursuant to 4 CMC § 7106.

**Source:** PL 3-107, § 5, modified.

**Commission Comment:** The commission deleted “Commission” and inserted “Commissioner” in the heading of this section, correcting a typographical error.

### **Administrative Orders and Notice.**

#### **§ 7106.**

The commissioner may issue such orders as may be necessary to carry out his powers and duties. Orders of the commissioner shall not be effective unless in writing signed by the commissioner or under his or her authority. Every order and notice issued by the commissioner shall:

(a) Contain a concise statement of the grounds upon which it is based;

(b) Designate the provisions of this division or particular regulation pursuant to which action is taken or proposed to be taken;

(c) State the effective date of the order or notice;

(d) Contain such other matters as may be required by law;

(e) Be served or delivered to the person ordered or notified by mailing it, postage prepaid and registered with return receipt requested addressed to the person at that person’s post office address or by personal service or delivery as provided in law for other service of process.

**Source:** PL 3-107, § 6.

### **Enforcement.**

#### **§ 7107.**

(a) The Insurance Commissioner may cause to be prosecuted an action in any court of competent jurisdiction to enforce any order made by the commissioner pursuant to any provision of this division.

(b) If the commissioner has cause to believe that any person has violated any penal provision of this division or of any other laws relating to insurance, the commissioner shall certify the facts of the violation to the Attorney General.

(c) If the commissioner has cause to believe that any person is violating or is about to violate any provision of this division or any order of the commissioner, the commissioner may bring an action in any court of competent jurisdiction to enjoin the person from continuing the violation or doing any act in furtherance thereof.

(d) The Attorney General shall prosecute or defend all proceedings brought pursuant to this division when requested by the commissioner.

**Source:** PL 3-107, § 7, modified.

**Commission Comment:** The commission inserted “Attorney General” in place of references to prosecuting attorneys.

### **Delegation.**

#### **§ 7108.**

Any power, duty, or function vested in the Insurance Commissioner by this division may be exercised, discharged, or performed by any employee of the Department of Commerce and Labor acting in the name and by the written delegated authority of the commissioner.

**Source:** PL 3-107, § 8.

**Commission Comment:** With respect to the reference to the “Department of Commerce and Labor,” see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

### **Records.**

#### **§ 7109.**

(a) The Insurance Commissioner shall preserve in permanent form, records of proceedings, hearings, investigations, and examinations, and shall file those records in the commissioner’s office or a government storage area.

(b) The records of the commissioner and insurance filings in his or her office shall be open to public inspection, except as otherwise provided by this division.

(c) Five years after conclusion of transactions to which they relate, the commissioner may destroy any correspondence, claim files, working papers of examinations of insurers, reports of examination by state insurance supervisory officials, void or obsolete filings relating to rates, foreign or alien insurer’s annual statements, valuation reports, license applications, cards, expired bonds, records of hearings, investigations, and any similar records, documents, or memoranda now or hereafter in the commissioner’s possession.

(d) Ten years after the year to which they relate, the commissioner may destroy any foreign or alien insurer’s tax reports, or similar records or reports now or hereafter in the commissioner’s possession.

**Source:** PL 3-107, § 9.

### **Copies and Certificates as Evidence.**

#### **§ 7110.**

(a) Copies of records or documents in his office certified to by the Insurance Commissioner shall be received as evidence in all courts in the same manner and to the same effect as if they were the originals.

(b) When required for evidence in court, the commissioner shall furnish his certificate as to the authority of an insurer or other licensee in the Commonwealth on any particular date, and the court shall receive the certificate in lieu of the commissioner’s testimony.

**Source:** PL 3-107, § 10.

### **Interstate Cooperation.**

#### **§ 7111.**

(a) The Insurance Commissioner shall to the extent the commissioner deems useful for the proper discharge of responsibilities under this division:

(1) Consult and cooperate with the public officials having supervision over insurance in the states;

(2) Share jointly with one or more states in the employment of actuaries, statisticians, and other insurance technicians, whose services or the products thereof are made available and are useful to the participating states and to the commissioner;

(3) Share jointly with any one or more states in establishing and maintaining offices and clerical facilities for purposes useful to the participating states and to the commissioner.

(b) All arrangements made jointly with any one or more states under subsections (a)(2) and (a)(3) of this section shall be in writing executed on behalf of the Commonwealth by the commissioner. Any such arrangement, as to participation of the Commonwealth, shall be subject to termination by the commissioner at any time upon reasonable notice, but not less than 30 days notice.

(c) For the purposes of this division, “National Association of Insurance Commissioners” means that voluntary organization of public officials having supervision of insurance in the respective states, districts, and territories of the United States, whatever other name the organization may hereafter adopt, and in the affairs of which each of the public officials is entitled to participate, subject to the constitution and bylaws of the organization.

**Source:** PL 3-107, § 11.

### **Annual Report.**

#### **§ 7112.**

(a) The commissioner, as early each calendar year as accurate preparation enables, shall make and publish a report which shall contain the information required in subsection (b) of this section. Copies of the annual report shall be given to the Governor, the Speaker of the House of Representatives and the President of the Senate. A notice of the report’s completion, and a short summary of the report shall be published in the Commonwealth Register. The report shall be made public and copies shall be furnished at cost upon request.

(b) The annual report shall contain:

(1) The condition of all insurers authorized to do business in the Commonwealth during the preceding year;

(2) Recommended legislative action;

(3) Current rules and regulations of the Insurance Commissioner;

(4) Such additional information and comments relative to insurance activities in the Commonwealth as the commissioner deems proper.

**Source:** PL 3-107, § 12.

### **Initial Implementation; Transition.**

#### **§ 7113.**

(a) During the period of two years from February 24, 1984, the commissioner shall be required only to give effect to such provisions of this division as may be necessary to adequately enable the commissioner to report to the legislature pursuant to subsection (b) of this section.

(b) No later than 15 months from February 24, 1984, the commissioner shall prepare a special report to the legislature which, in addition to the information required in 4 CMC § 7112, shall assess the administrative, personnel and budgetary needs of the commissioner to enable full effective enforcement and execution of this division.

(c) The special report shall address specific application of this division to the Commonwealth and recommend such amendments as the commissioner may deem appropriate to regulate:

- (1) Capital funds required for insurers;
- (2) Limits of risks for classes of insurance;
- (3) Requirements for organization of domestic insurers;
- (4) Insurance contract requirements for all classes of insurance;
- (5) Requirements for mergers, rehabilitation and liquidation; and
- (6) Insurance rates for certain classes of tariff insurance.

(d) Any person engaged in insurance business on February 24, 1984, shall comply with all provisions of this division no later than six months after the first commissioner is confirmed in office, unless, pursuant to this 4 CMC § 7113, the commissioner has waived the applicability and present enforceability of the provision.

Source: PL 3-107, § 13.

## **CHAPTER 2.**

### **Hearing Procedures. § 7201**

§ 7201. Examinations, Investigations, Hearings and Appeals.

#### **Examinations, Investigations, Hearings and Appeals.**

**§ 7201.**

(a) *Witnesses Subpoenaed.* The Insurance Commissioner, either on the commissioner's own behalf or on behalf of any interested party, may take depositions, and subpoena any witnesses or documentary evidence. The commissioner may administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject to any hearing or investigation. The subpoena shall have the same force and effect and shall be served in the same manner as if issued from the Commonwealth Trial Court.

(b) *Contempt Proceedings.* If any individual fails to obey the subpoena, or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation or the subject of the hearing, the commissioner shall file a written report and proof of service of the subpoena in the Commonwealth Trial Court. Thereupon the court shall cause the individual to be brought before it to show cause why the individual should not be held in contempt, and if so held, may punish the individual as if the failure or refusal related to a subpoena from or testimony in that court.

(c) *Examination of Insurers.*

(1) The Insurance Commissioner may examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer as often as the commissioner deems prudent. The commissioner shall examine each domestic insurer at least once in every three years. Examination of any alien insurer may be limited to its insurance transactions in the Commonwealth.

(2) The commissioner shall examine fully each insurer applying for authority to do business in the Commonwealth.

(3) In lieu of making his or her own examination, the commissioner may accept a full report of the last recent examination of a foreign or alien insurer certified to by the insurance supervisory official of the state, province, or country of domicile or the state of entry into the

Commonwealth. A certified copy of the annual report of the directors and statement of accounts approved by the British Board of Trade in London in accordance with the British Assurance Companies' Act may be acceptable to the commissioner in the absence of other British insurance supervisory officials' examination.

(d) *Examination of Agents, Managers, Promoters.* For the purpose of ascertaining its conditions, or compliance with the division, the Insurance Commissioner may as often as he or she deems advisable examine the insurance accounts, records, documents, and transactions of:

(1) Any insurance general agent, subagent, solicitor, or adjuster;

(2) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer, or a stock corporation to finance a domestic mutual insurer or the production of its business, or a corporation to be attorney-in-fact for a domestic reciprocal insurer.

(e) *Access to Records; Corrections.*

(1) Every person being examined, its officers, employees and representatives shall produce and make freely accessible to the Insurance Commissioner the accounts, records, documents, and files in that person's possession or control relating to the subject of the examination, and shall otherwise facilitate the examination.

(2) If the commissioner finds the accounts to be inadequate or improperly kept or posted, the commissioner may employ experts to rewrite, post, or balance them at the expense of the person being examined, if the person has failed to correct the accounting records after the commissioner has given the person written notice and a reasonable opportunity to do so.

(f) *Examination Reports.*

(1) The Insurance Commissioner shall make a full written report of each examination made by him.

(2) The report shall be certified by the commissioner or by the examiner in charge of the examination and shall be filed at the Department of Commerce and Labor.

(3) The commissioner shall furnish to the person examined a copy of the examination report within 90 days after the execution of the report by the examiner and not less than 20 days prior to the filing of the report for public inspection in the department. If the person requests in writing within the 20-day period, the commissioner shall hold a hearing to consider objections of the person to the reports as proposed, and shall not file the report until after the hearing and until after any modifications in the report deemed necessary by the commissioner have been made.

(4) The report, when filed for public inspection, shall be admissible in evidence in any action or proceeding brought by the commissioner against the person examined, or its officers, or agents, except, the commissioner or any examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the department.

(g) *Reports Withheld.* The Insurance Commissioner may withhold from public inspection any examination or investigation report for so long as the commissioner deems prudent.

(h) *Examination Expense.*

(1) Examinations of any insurer coming under this division made by the Insurance Commissioner, or his or her examiners and employees, shall, including fees, travel, and

expenses incurred as to witnesses, be at the expense of the insurer examined.

(2) The insurer examined, and liable therefor, shall pay to the commissioner's examiners upon presentation of itemized statement thereof, their actual travel expenses, their reasonable living expense allowance, and their per diem compensation at a reasonable rate approved by the commissioner, incurred on account of the examination. The commissioner or examiners shall not receive or accept any additional emolument on account of any examination.

(i) *Hearings.*

(1) The Insurance Commissioner shall hold a hearing if required by this division. The commissioner may hold other hearings as deemed necessary for purposes within the scope of this division.

(2) The hearing shall be held at a place designated by the commissioner and, at the commissioner's discretion, it may be open to the public.

(3) Application for a hearing made to the commissioner pursuant to this division shall be in writing, shall specify in what respects the person so applying was aggrieved and the grounds to be relied upon as a basis for the relief to be demanded at the hearing. The commissioner shall hold the hearing applied for within 30 days after receipt of the application unless postponed by mutual consent.

(j) *Stay of Action.*

(1) A demand for a hearing received by the Insurance Commissioner prior to the effective date of action taken or proposed to be taken by the commissioner shall stay the action pending the hearing, except as to action taken or proposed:

(A) Under an order on hearing;

(B) Under an order pursuant to an order on hearing; or

(C) Under an order to make good an impairment of the assets of an insurer.

(2) In any case where an automatic stay is not provided for, and if the commissioner after written request therefor fails to grant a stay, the person aggrieved may apply to the Commonwealth Trial Court for a stay of the commissioner's action.

(k) *Notice of Hearing.*

(1) The Insurance Commissioner shall, not less than 10 days in advance, give notice to each person to be affected by the hearing of the matters prescribed in subsection (j) of this section.

(2) If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the commissioner shall give such notice to all persons directly affected by the hearing.

(l) *Show Cause Notice.* If any person is entitled to a hearing by this division before any proposed action is taken, the notice of the proposed action may be in the form of a notice to show cause stating that the proposed action may be taken unless such person shows cause, at a hearing to be held as specified in the notice, why the proposed action should not be taken, and stating the basis of the proposed action.

(m) *Adjourned Hearing.* The Insurance Commissioner may adjourn any hearing from time to time and from place to place, without other notice of the adjourned hearing than its announcement at the hearing.

(n) *Nonattendance.* The validity of any hearing in accordance with the notice thereof shall

not be affected by failure of any person to attend or to remain in attendance.

(o) *Procedure.*

(1) The Insurance Commissioner shall preside at the hearing.

(2) A copy of the record of the proceedings shall be furnished any person affected by the hearing or any other person upon written request and at the expense of that person.

(3) Upon good cause shown, the commissioner may permit any person who has a valid interest in the proceeding to intervene, appear, and be heard at the hearing.

(4) Any person heard shall make full disclosure of facts pertinent to the subject of inquiry as requested by the commissioner or by any person affected by the hearing.

(p) *Order on Hearing.*

(1) Within 30 days after the termination of a hearing the Insurance Commissioner shall make an order and shall give copy of the order to each person to whom notice of the hearing was given or required to be given.

(2) The order shall contain:

(A) A concise statement of the action taken;

(B) The effective date of the action;

(C) A designation of the provisions of this division pursuant to which the action is taken;

(D) Such other matters as may be required by law.

(3) An order on hearing may confirm, modify, or nullify action taken under an existing order, or may constitute the taking of any new action coming within the scope of the notice of such hearing.

(q) *Appeal from Commissioner's Order.*

(1) Any person aggrieved on account of any official action or threatened action of the Insurance Commissioner, or of the commissioner's failure to act if such failure is deemed to constitute an act under this division, may demand a hearing thereon as provided in subsection (i) of this section. Any person aggrieved by any order of the commissioner, including any order refusing a hearing, may appeal to the Commonwealth Trial Court.

(2) The appeal must be taken within 30 days after the order complained of was given by the commissioner. If not so taken, the right to appeal from or restrain action under the order shall conclusively be deemed to have been waived.

(3) For the purpose of this section, "person aggrieved" shall include any person directly or indirectly injured or threatened with injury on account of any such order or action whether or not the person was a party to the proceedings, if any, out of which the order or action arises.

(r) *How Appeal Taken.* The appeal shall be taken by a petition for review. To the extent not inconsistent with provisions of this division, 1 CMC § 9112 shall govern the appeal.

(s) *Cost of Record on Appeal.* The cost of record on appeal may be included in the costs allowed by the court.

(t) *Stay of Action on Appeal.*

(1) The taking of an appeal shall not stay any action taken or proposed to be taken by the Insurance Commissioner under the order appealed from unless a stay is granted by the commissioner or the reviewing court.

(2) In granting a stay of action, the commissioner or the court shall consider whether

the stay would tend to injure the public interest, and may require of the person taking the appeal such security or other conditions as may be deemed proper.

(3) If the order appealed from is one suspending, revoking, or refusing to renew an agent's broker's, solicitor's, or adjuster's license, the appellant, by filing a bond with the Clerk of Court, subject to approval of the court, in the sum of \$1,000, conditioned to pay all costs that may be awarded against him, may, if filed prior to the effective date of the order, supersede the order appealed from until the final determination of the appeal.

(u) *Appeals from Trial Court.* An appeal from the decision of the trial court on the petition for review may be taken as in any civil action.

(v) *Administrative Procedure Act.* Unless specifically exempted by the provisions of this division, or unless otherwise inconsistent with this division, the provisions of the Administrative Procedure Act (1 CMC § 9101 et seq.) shall apply to rules, hearings, and appeals under this section.

**Source:** PL 3-107, § 14, modified.

**Commission Comment:** Section 4 of PL 6-25, the "Commonwealth Judicial Reorganization Act of 1989," provides that "[w]herever the term 'Commonwealth Trial Court' appears in the Commonwealth Code, it is henceforth to be interpreted and understood to refer to the Commonwealth Superior Court."

### **CHAPTER 3.**

#### **Insurers, Agents, Brokers and Others. § 7301**

- § 7301. General Requirements for Insurers.
- § 7302. Prohibited Acts.
- § 7303. General Agents, Subagents, Adjusters, and Solicitors Defined.
- § 7304. Surplus Line Broker or Agent.
- § 7305. Unauthorized Insurer (Uniform Unauthorized Insurers Act).
- § 7306. Domestic Insurers.
- § 7307. Foreign Insurers.
- § 7308. Alien Insurers.

#### **General Requirements for Insurers.**

#### **§ 7301.**

(a) *Must Have Authority.*

(1) No person may act as an insurer and no insurer may transact insurance in the Commonwealth other than as authorized by a certificate of authority granted to it by the Insurance Commissioner, except as to such transactions as are expressly otherwise provided for in this division.

(2) Every certificate of authority shall specify the name of the insurer, the location of its principal office, the name of and location of the principal office of its attorney in fact, if a reciprocal insurer, and the classes of insurance it is authorized to transact in the Commonwealth.

(3) The investigation and adjustment of claims in the Commonwealth arising under insurance contracts issued by an unauthorized insurer, except surplus line insurance, shall be deemed to constitute the transaction of insurance in the Commonwealth, unless the same are

isolated or nonrecurring transactions.

(b) *Qualifications for Authority.*

(1) To qualify for and hold a certificate of authority an insurer must:

(A) Be a stock, mutual, or reciprocal insurer of the same general type as may be required by law;

(B) Have capital funds as required by law based upon the type and domicile of the insurer and classes of insurance which the insurer is authorized to transact in its domicile;

(C) Transact or propose to transact in the Commonwealth insurance which are among those authorized by its charter, and only such insurance as meets the standards and requirements of this division;

(D) Have appointed a general agent who is qualified according to the standards set forth in 4 CMC § 7303(a);

(E) Have continuously, actively, and successfully transacted the business of insurance for at least five years immediately prior thereto, except that in the case of a reorganization (including a merger, corporate acquisition, or formation of a subsidiary) of a capital stock of mutual insurer, the five year period shall be computed from the date of the organization of the original or parent insurer or insurers, if substantially the same management continues; and

(F) Fully comply with and qualify according to the other provisions of this division or rules and regulations promulgated thereto.

(2) Any non-life alien or foreign insurer who has continuously, actively and successfully transacted the business of insurance for a period of at least one year prior to applying for a certificate of authority under 4 CMC § 7301(b) and (d) shall be exempted from the five year provision of 4 CMC § 7301(b)(1)(E), provided that said insurer furnish to the commissioner:

(i) Evidence of the good character, financial responsibility, business experience and ability of its incorporators, directors and officers to transact the business of insurance;

(ii) Upon completion of one year's operation of business and every year thereafter evidence that at least 40 percent of the company's employees working in the Commonwealth are U.S. citizens or persons of Northern Marianas descent as defined in N.M.I. Const. art. XII, § 4;

(iii) For each class of insurance for which a certificate of authority is sought such proof as the commissioner may from time to time require that the applicant insurer has, in the Commonwealth, unencumbered United States dollar bank funds or deposits of \$350,000 continuously available for payment of claims in the Commonwealth; and

(iv) Such proof as the commissioner may initially require that the company can and will reinsure at least 60 percent of its potential liability and such proof as the commissioner may from time to time require, until the company has held a certificate of authority from the Commonwealth for five years, that the company has reinsured at least 60 percent of its potential liability; and

(v) Provided, further, that to qualify for exemption from the five year provision of 4 CMC § 7301(b)(1)(E), the state or country of domicile of an alien or foreign insurer must offer reciprocal treatment to Commonwealth domestic insurers wishing to do

insurance business in the home jurisdiction of the alien or foreign insurer.

(3) Subsections (b)(1)(D) and (b)(1)(E) and (b)(2) of this section do not apply to domestic insurers.

(c) *Classes of Insurance Authorized.* An insurer which otherwise qualifies may be authorized to transact any one or more classes of insurance. A life insurer shall not transact any insurance in addition to life insurance except disability, personal injury liability, employer's liability, and workers' compensation insurance. A reciprocal insurer shall not transact life or disability insurance. An offshore surety insurer shall not transact any other class of insurance.

(d) *Application for Authority.* To apply for an original certificate of authority an insurer shall:

(1) File with the Insurance Commissioner its request therefor showing:

(A) Its name, home office location, type of insurer, organization date, and state or country of its domicile, and if a reciprocal, the name and location of principal office of its attorney in fact;

(B) The classes of insurance it proposes to transact;

(C) A copy of its annual statement as of December 31 last preceding;

(D) If a foreign insurer, or a domestic reciprocal insurer, an appointment of the commissioner as its attorney to receive service of legal process. If a foreign or alien insurer, the name and business address of its authorized resident agent upon whom process may be served in all cases.

(E) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its proper officer;

(F) If a foreign or alien insurer, a certificate from the public official of its state or country of domicile showing that it is duly organized and is authorized to transact the classes of insurance proposed to be transacted;

(G) If a domestic reciprocal insurer, the declaration required by subsection (d)(1)(E) of this section;

(H) Certificate of the proper official as to any deposit made or held as compliance with this division;

(I) Copy of report of the last examination made of the insurer certified by the insurance supervisory official of its state of domicile or entry into the United States;

(J) Certificate of appointment of general agent;

(K) Other documents or stipulations as the commissioner may reasonably require to evidence compliance with this division.

(3) Deposit with the commissioner any fees required by law.

(e) *Organization of Reciprocal Insurer.*

(1) Twelve or more persons domiciled in the Commonwealth may organize a domestic reciprocal insurer and in compliance with this section make application to the Insurance Commissioner for a certificate of authority to transact insurance.

(2) When applying for a certificate of authority, the original subscribers and the proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner a declaration setting forth:

(A) The name of the Insurer;

(B) The location of the insurer's principal office, which shall be the same as that

of the attorney and shall be maintained within the Commonwealth;

(C) The classes of insurance proposed to be transacted;

(D) The names and addresses of the original subscribers;

(E) The designation and appointment of the proposed attorney and a copy of the power of attorney;

(F) The names and addresses of the officers and directors of the attorney, if a corporation, or of its members, if a partnership;

(G) The powers of the subscribers' advisory committee and the names and terms of office of the members thereof;

(H) That all moneys paid to the reciprocal, after deducting therefrom any sum payable to the attorney, shall be held in the name of the insurer, and for the purpose specified in the subscribers' agreement;

(I) A copy of the subscriber's agreement;

(J) A statement that each of the original subscribers has in good faith applied for insurance of the classes proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 12 months at the rate theretofore filed with and approved by the commissioner; and

(K) A statement of the financial condition of the insurer, and a schedule of its assets.

(f) *Authority Issued.* If the Insurance Commissioner finds that an insurer has met the requirements for and is fully entitled thereto under this division, the commissioner shall issue to it a proper certificate of authority. If the commissioner does not so find, the authority shall be refused within 90 days of the time following filing by the insurer of its application.

(g) *Extension; Amendment.*

(1) When the Insurance Commissioner issues or extends a certificate of authority, the commissioner shall determine the date prior to which the certificate of authority must be extended and shall so notify the authority must be extended and shall so notify the insurer in writing. This date is called the extension date. The extension date shall be any date no less than one year and not more than three years after date of issue or extension of the certificate of authority. If the insurer qualifies therefor, its certificate of authority shall be extended, upon application and payment of any required fees.

(2) The commissioner shall amend a certificate of authority at any time in accordance with changes in the insurer's charter of insuring powers.

(h) *Refusal or Revocation; Mandatory Provisions.* The Insurance Commissioner shall refuse to extend or shall revoke or suspend an insurer's certificate of authority, in addition to any other grounds in this division, if the insurer:

(1) Is a foreign or alien insurer and no longer qualifies or meets the requirements for the authority.

(2) Is a domestic mutual or domestic reciprocal insurer, and fails to make good a deficiency of assets as required by the commissioner.

(3) Is a domestic stock insurer and has assets less in amount than its liabilities, including its capital stock as a liability, and has failed to make good such deficiency as required by the commissioner;

(4) Knowingly exceeds its charter powers or its certificate of authority.

(i) *Refusal, Suspension, Revocation; Discretionary Provision.* The Insurance Commissioner may after a hearing suspend, revoke, or refuse to extend an insurer's certificate of authority, in addition to any other grounds therefor in this division, if the insurer:

(1) Knowingly fails to comply with or violates any provision of this division other than those for violation of which refusal, suspension, or revocation of mandatory;

(2) Knowingly fails to comply with any proper order of the commissioner;

(3) Is found by the commissioner upon examination, or other valid evidence, to be in unsound condition or in such condition as to render its further proceedings in the Commonwealth financially hazardous to the public or to its policyholders in the Commonwealth;

(4) Refuses to remove or discharge a director or officer who has been convicted of any crime involving fraud or dishonesty;

(5) Usually compels claimants under policies either to accept less than the amount due them or to bring suit against it to secure full payment of the amount due;

(6) Is affiliated with and under the same general management, or interlocking directorate, or ownership as another insurer which transacts insurance other than reinsurance in the Commonwealth without having a certificate of authority, except as is permitted by this division;

(7) Refuses to be examined, or if its directors, officers, employees, or representatives refuse so submit to examination or give testimony concerning its affairs, or to produce its accounts, records, and files for examination by the commissioner when required by this division, or refuses to perform any legal obligation relative to the examination;

(8) Fails to pay any final judgement rendered against it upon any policy, bond, recognizance, or undertaking issued or guaranteed by it, within 60 days after the judgement became final or within 60 days after time for taking an appeal has expired or within 60 days after dismissal of an appeal before final determination, whichever date is the later.

(j) *Procedure Upon Revocation; Suspension of Certificate of Authority.* Upon revoking, suspending, or refusing to extend an insurer's authority to transact insurance, the Insurance Commissioner shall:

(1) Give notice to the insurer not less than 10 days in advance of the effective date of the revocation or suspension;

(2) Revoke or suspend all agents' authority to represent the insurer in the Commonwealth and give notice thereof to the agents;

(3) Give notice to the insurance supervisory official of each state in which the insurer is authorized to transact insurance.

(k) *Suspension Period.* Except as otherwise expressly provided in this division, the Insurance Commissioner may suspend an insurer's certificate of authority for a period not to exceed one year. The commissioner shall state in the order of suspension the period during which it will be effective.

(l) *Revival.* An insurer whose certificate of authority has been suspended, revoked, or refused may subsequently be authorized, if the grounds for the suspension, revocation, or refusal no longer exist and the insurer is otherwise fully qualified and the insurer has reimbursed the Insurance Commissioner for all reasonable and necessary expense incurred by virtue of the

suspension, revocation, or revival of the certificate of authority.

(m) *Power to Fine.* After hearing and in addition to or in lieu of the suspension, revocation or refusal to extend any certificate of authority, the Insurance Commissioner may levy a fine upon the insurer in an amount not less than \$500 and not more than \$25,000. The order levying the fine shall specify the period within which the fine shall be fully paid, and which period shall not be less than 30 nor more than 45 days from the date of the order. Upon failure to pay any such fine when due, the commissioner shall revoke the insurer's certificate of authority if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the Attorney General. Any fine so collected shall be deposited to the General Fund.

(n) *Insurer's Name.*

(1) Every insurer shall conduct its business in its own legal name.

(2) No insurer shall assume or use a name deceptively similar to that of any other authorized insurer, nor which tends to deceive or mislead as to the type of organization of the insurer.

(o) *Service of Legal Process.*

(1) Each authorized foreign or alien insurer shall appoint the Insurance Commissioner as its attorney to receive service of, and upon whom may be served, all legal process issued against it in the Commonwealth. Service upon the commissioner as attorney shall constitute service upon the insurer.

(2) With the appointment the insurer shall designate by a name and address the person to whom the commissioner shall forward legal process so served upon him. The insurer may change such person by filing a new designation. However, the insurer's last known principal office may be used by the commissioner in lieu of the designated person.

(3) The insurer shall file with the commissioner a resolution adopted by its board of directors or other governing board consenting that service of process upon the commissioner in any action or proceeding against the insurer brought or pending in the Commonwealth upon any cause of action arising in or growing out of business transactions in the Commonwealth, shall be valid service upon the insurer, and the consent shall be irrevocable, so long as a policy of insurance of such insurer shall remain in force in the Commonwealth, or any loss remains unpaid therein.

(4) The insurer shall also file the name and business address of its authorized resident agent upon whom process may be served in all cases. Until such time as the agent's authority is revoked by a notice in writing filed in the office of the commissioner, service may be had upon the insurer by personal service upon the agent. In case a corporation is designated as an agent, service of process may be had by serving the same upon the president, vice-president, secretary, treasurer, or any director thereof; and in case a partnership is designated as an agent, service of process may be had by serving the same upon any member thereof. Service may be had on either the authorized agent or the commissioner.

(p) *How Service on Commissioner is Made.*

(1) Triplicate copies of legal process against an insurer for whom the Insurance Commissioner is attorney shall be served upon the commissioner by a person competent to serve a summons. At the time of service the plaintiff shall pay five dollars, taxable as costs in the action. In the absence of the commissioner the process may be served upon the Director of Commerce and Labor.

(2) The commissioner shall send one of the copies of the process, by registered mail with return receipt requested, to the person designated for the purpose by the insurer in its most recent designation filed with the commissioner, or to the insurer at its last known principal office, if no such designation is on file, and return one copy to the plaintiff with his acknowledgment of service.

(3) The commissioner shall keep a record of the day and hour of service upon him of all such legal process. No proceedings shall be had against the insurer, and the insurer shall not be required to appear, plead, or answer until the expiration of 60 days after the date of service upon the commissioner.

**Source:** PL 3-107, § 15; amended by PL 6-18, §§ 2, 3, 7.

**Commission Comment:** With respect to the references to the “Director of Commerce and Labor,” see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

**Case Annotations:** *National Pacific Insurance, Inc. v. Pacific Basin Insurance, Inc.*, Civil Action No. 94-748 (Super. Ct. Mar 14, 1995).

### **Prohibited Acts.**

#### **§ 7302.**

(a) *Representation of Unauthorized Insurer.* Except as otherwise authorized, a person is not permitted to:

(1) Represent or assist an unauthorized insurer in procuring, placing, or maintaining any insurance upon or with relation to any subject of insurance resident, located, or to be performed in the Commonwealth;

(2) Represent or assist any person in procuring insurance of an unauthorized insurer upon or with relation to any such subject of insurance;

(3) Inspect or examine any risk or investigate or adjust any loss or collect or receive any premium on behalf of any such insurer or person.

(4) This section does not apply to:

(A) Reinsurance placed or procured;

(B) Lawfully procured surplus line insurance;

(C) Any transaction with respect to insurance delivered in any state where the insurer was legally qualified to transact insurance;

(D) Any transaction with respect to insurance delivered in the Commonwealth at a time when the insurer was authorized to transact insurance in the Commonwealth.

(b) *Advertising Prohibited.*

(1) No publication published in the Commonwealth, or radio or television broadcaster, or any other agency or means for the dissemination of information operated or located in the Commonwealth shall publish, broadcast, or otherwise disseminate within the Commonwealth advertising for or on behalf of any insurer not then authorized to transact insurance in the Commonwealth.

(2) This section does not apply to publications published in the Commonwealth principally for circulation in a state, wherein advertising by or on behalf of an unauthorized insurer is not directed expressly toward residents or subjects of insurance of the Commonwealth.

(c) *Validity of Contracts Illegally Effectuated.* A contract of insurance effectuated by an unauthorized insurer in violation of this division shall be voidable except at the instance of the insured.

(d) *Unfair Methods of Competition and Unfair or Deceptive Acts or Practices.* The following are considered as unfair methods of competition and deceptive acts or practices in the business of insurance and are prohibited.

(1) *Misrepresentation and False Advertising of Policy Contracts.*

(A) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon; or

(B) Making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies; or

(C) Making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates; or

(D) Making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce the policyholder to lapse, forfeit, or surrender his or her insurance; or

(E) Publishing or advertising the assets of any insurer without publishing or advertising with equal conspicuousness the liabilities of the insurer, both as shown by its last annual statement; or

(F) Publishing or advertising the capital of any insurer without stating specifically the amount of paid-in and subscribed capital.

(2) *False Information and Advertising Generally.* 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 any radio station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading.

(3) *Defamation.* Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement, or any pamphlet, circular, article, or literature which is false, or maliciously critical, or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) *Boycott, Coercion, and Intimidation.*

(A) Entering into any agreement to commit, or by any action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in reasonable restraint of, or monopoly in, the business of insurance;

(B) Entering into any agreement on the condition, agreement, or understanding that a policy will not be issued or renewed unless the prospective insured contracts for another class or an additional policy of the same class of insurance with the same

insurer.

(5) *False Financial Statements.*

(A) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivery to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive; or

(B) Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition, or into any of its affairs, or any public official to whom the insurer is required by law to report, or who has authority by law to examine into its condition, or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer.

(6) *Stock Operations and Advisory Board Contracts.* Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits, as an inducement to purchase insurance.

(7) *Unfair Discrimination.*

(A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance, or of life annuity, or in the dividends, or other benefits payable thereon, or in any other of the terms and conditions of such contract; or

(B) Making or permitting any unfair discrimination in favor of particular individuals or persons, or between insureds or subjects of insurance having substantially like insuring risks, and exposure factors, or expense elements, in the term or conditions of any insurance contract, or in the rate or amount of premium charge therefore, or in the benefits payable, or in any other rights or privileges accruing thereunder.

(8) *Rebates.* Except as otherwise expressly provided by law:

(A) Knowingly permitting, or offering to make, or making any contract of insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying, or allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or

(B) Giving, or selling, or purchasing, or offering to give, sell, or purchase as inducement to such insurance or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(9) Nothing in the subsections (d)(7) or (d)(8) of this section shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) In the case of any contract of life insurance or life annuity, paying bonuses

to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance; provided, that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders;

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance of policyholders who have continuously, for a specified period, made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;

(C) Readjustment of the rate of premium for a group insurance policy based on the loss of expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year; or

(D) In the case of any contract of insurance, the distribution of savings, earnings, or surplus equitably among a class of policyholders, all in the accordance with the division.

(e) *Desist Order for Defined or Prohibited Practices.*

(1) If, after a hearing thereon of which notice of the hearing and of the charges against him were given to the person, the Insurance Commissioner finds that any person has engaged or is engaging in any act or practice defined in, or prohibited under 4 CMC § 7302 in the Commonwealth, or that any person domiciled in or resident of the Commonwealth has engaged, or is engaging in any act or practice defined in or prohibited in any state, province, country, or district, the commissioner shall order the person to desist from the act or practice.

(2) The desist order shall become final upon expiration of the time allowed for appeals from the commissioner's orders, if no appeal is taken, or, in the event of such an appeal, upon final decision of the court, if the court affirms the commissioner's order or dismisses the appeal.

(3) In the event of such an appeal, to the extent that the commissioner's order is affirmed, the court shall issue its own order commanding obedience to the terms of the commissioner's order.

(4) No order of the commissioner pursuant to this section or order of court to enforce it shall in any way relieve or absolve any person affected by the order from any other liability, penalty, or forfeiture under law.

(f) *Curtailed of Undefined Practices.*

(1) If the Insurance Commissioner believes that any person domiciled in or resident of the Commonwealth is engaging in any state, province, country, or district, in any method of competition or in any act or practice in the conduct of such business, which is not defined in this division, but that the method of competition is unfair or that the act or practice is unfair or deceptive and that a proceeding by him in that respect would be in the public interest, he shall, after a hearing of which notice of the hearing and of the charges against him are given the person, make a written report of his findings of fact relative to the charges and serve a copy upon the person and any intervenor at the hearing.

(2) If the report charges a violation of 4 CMC § 7302(d), and if the method of competition, act, or practice has not been discontinued, the commissioner may, through the Attorney General, at any time after the service of the report, cause an action to be instituted

to enjoin and restrain the person from engaging in such method, act, or practice. In the action the court may grant a restraining order or injunction upon such terms as may be just; but the Commonwealth shall not be required to give security before the issuance of any such order or injunction. If a stenographic record of the proceedings in the hearing before the commissioner was made, a certified transcript thereof including all evidence taken and the report and findings shall be received in evidence in the action.

(3) If the commissioner's report made pursuant to subsection (f)(1) of this section or order on hearing made pursuant to subsection (e) of this section, does not charge a violation of subsection (d) of this section, then an intervenor in the proceedings may appeal therefrom within the time and in the manner provided in this division for appeals from the commissioner generally.

(g) *Unfair Claim Settlement Practices.*

(1) No insurer doing business in the Commonwealth shall engage in unfair claim settlement practices. Any of the following acts by an insurer, if committed without just cause and performed with such frequency as to indicate a general business practice, shall constitute unfair claim settlement practices:

(A) Misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;

(B) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

(C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its policies;

(D) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear; or

(E) Compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amount ultimately recovered in suits brought by them.

(2) Evidence as to numbers and types of complaints to the Insurance Commissioner against an insurer, and Insurance Commissioner's complaint experience with other insurers writing similar lines of insurance, shall be admissible in an administrative or judicial proceeding brought under this division; provided, no insurer shall be deemed in violation of this section solely by reason of the number and types of such complaints.

(3) If it is found, after notice and an opportunity to be heard, that an insurer has violated this section, each instance of noncompliance may be treated as a separate violation of this section for purpose of 4 CMC § 7509.

**Source:** PL 3-107, § 16, modified.

**Commission Comment:** In subsection (d)(5)(a), the commission inserted "to any person or placing before the public, or causing," correcting a clerical error.

### **General Agents, Subagents, Adjusters, and Solicitors Defined.**

#### **§ 7303.**

(a) *General Agent.*

(1) "General agent" means any person appointed under 4 CMC § 7301(b)(1)(D) and authorized by the insurer to perform any of the following acts in the Commonwealth:

- (A) Solicit applications for insurance;
  - (B) Effectuate and countersign insurance contracts;
  - (C) Collect premiums on insurance applied for or effectuated;
  - (D) Appoint subagents and solicitors;
  - (E) Any other lawful acts pursuant to this division.
- (2) A person may be a general agent for any number of insurers.
- (3) A domestic insurer may be appointed as a general agent.
- (4) A domestic insurer appointing subagents or solicitors is required to have one or more employees who have passed any general agent's examination required by law.
- (5) The individual who is in charge of a branch office maintained in the Commonwealth by a foreign or alien insurer is required to be a general agent.

(b) *Subagent.*

(1) "Subagent" means any person appointed in writing by a general agent, or by a domestic insurer upon compliance with subsection (a)(4) of this section, to perform the following acts in the Commonwealth:

- (A) Solicit applications for insurance;
- (B) If authorized to do so, effectuate and countersign insurance contracts;
- (C) Collect premiums on insurance so applied for or effectuated;
- (D) Any other lawful acts pursuant to this division.

(2) A subagent may be empowered to appoint solicitors.

(3) A person may be a subagent for any number of principals, except that a subagent may not be appointed with respect to more than one general agent or domestic insurer for life insurance.

(c) *Adjuster.*

(1) "Adjuster" means any individual who investigates for or reports to or adjusts for his or her principal relative to claims arising under insurance contracts on behalf solely of either the insurer or the insured.

(2) For the purposes of this division, the following individuals are not deemed to be an adjuster:

- (A) An attorney at law who adjusts insurance losses from time to time incidental to the practice of his profession;
- (B) An "average" adjuster;
- (C) A salaried employee of an insurer or of an adjusting corporation or association owned and controlled by insurers of a general agent or of a subagent; and
- (D) An individual who acts for a self-insurer or for an insured which administers its own group insurance contract.

(3) "Independent adjuster" means an adjuster representing the interests of the insurer.

(4) "Public adjuster" means an adjuster employed by and representing solely the financial interests of the insured named in the policy.

(d) *Solicitor.*

(1) "Solicitor" means an individual appointed in writing by a general agent or by a subagent or by a domestic insurer upon compliance with subsection (a)(4) of this section to perform the following acts in the Commonwealth:

- (A) Solicit applications for insurance;

- (B) Collect premiums in connection therewith;
- (C) Any other lawful acts pursuant to this division;

(2) A solicitor shall not have the power to countersign insurance contracts.

(3) An individual who is employed by such principal and devotes full-time to clerical work with incidental taking of insurance applications and receiving premiums in the office of the principal, is not deemed to be a solicitor if his or her compensation neither includes a commission on such business nor is related to the volume of such applications, insurance, or premiums.

(e) *Broker*. “Broker” means a person who, for compensation, and on behalf of another person, transacts insurance business other than as insurer, general agent, subagent, adjuster, or solicitor.

(f) *License*. It is unlawful for any person to do or perform any act in the Commonwealth as a general insurance agent, subagent, adjuster, solicitor, or broker, or hold himself or herself out as such, for any kind of insurance without holding a license then in force issued by the commissioner. Licenses and renewals shall be for one year terms. The fee for each type of license and renewal shall be pursuant to statute.

(g) *Administration of License*.

(1) The commissioner shall investigate the qualifications of any person applying for a license or renewal. For the purpose of this investigation, the commissioner shall require the applicant to file a statement, verified under oath, as follows:

(A) The name, age, business and residence address of the applicant, and if the applicant is a firm or corporation, the name and address of each person designated to act for it;

(B) The type of license applied for and a description of the type of business to be engaged in under such licenses, including the classes of insurance the applicant proposes to represent;

(C) The previous insurance experience of the applicant, if any, together with the names and addresses of all insurers or agents whom the applicant represented or was employed by;

(D) A statement that the principal use of the license is not to effect insurance on the applicant’s own life, property or risks, or on the life, property or risks of an employee or member of the applicant’s family;

(E) Such other information as the commissioner requires by regulations or specifically requests of the applicant.

(2) The statement of the applicant required by subsection (g)(1) of this section shall be accompanied by the following:

(A) If the applicant is for a general agent’s license, the request of the insurer that the applicant be licensed to represent the insurer as a general agent;

(B) If the applicant is for a subagent’s license, the request of either an insurer or general agent that the applicant be licensed to represent the insurer or general agent as a subagent;

(C) If the application is for a solicitor’s license, the request of either an insurer, general agent or a subagent that the applicant be licensed to represent the insurer, general agent or subagent as a solicitor.

(3) The commissioner may, for the reasons contained herein, refuse to issue or renew a license, or may suspend or revoke a license, for any of the following reasons:

(A) The person has wilfully violated any provision of this division;

(B) The person has intentionally made a material misstatement in his or her application;

(C) The person has been guilty of fraudulent or dishonest practices;

(D) The person has misappropriated or converted to his or her own use or illegally withheld monies held in a fiduciary capacity;

(E) The person has misrepresented the terms and conditions of policies;

(F) The person has been guilty of rebating;

(G) The person has conducted his or her business in such a manner as to cause injury to the public or to those with whom he or she is dealing;

(H) The person does not meet the necessary qualifications to act in that capacity.

A license may be suspended for not more than 60 days. A person whose license has been revoked is not eligible to apply for a new license for a period of three months. A refusal, suspension, or revocation under this section shall be by order of the commissioner, and the person adversely affected may request a hearing pursuant to 4 CMC § 7201. Notice of any refusal, suspension, or revocation of a license under this section shall be given to the insurer, general agent or subagent requesting that applicant be licensed.

(4) The paying or allowing of any commission or other valuable consideration on insurance transacted in the Commonwealth by an insurer or its agents to other admitted insurers or to licensed brokers, agents, or solicitors for solicitation of the business is lawful. If at the time of the solicitation and issuance of a policy of insurance which by its terms continues until canceled, a licensed person may lawfully receive commissions thereof, such person or his personal representative may continue to receive commissions thereon during the continuance in force or renewal of such policy without being licensed. It is unlawful for an insurance agent or insurance broker who is not duly licensed to transact business, to receive commissions from any insurers.

(5) It is unlawful for an insurer to pay any representative who is given discretion as to the settlement or adjustment of claims under any insurance, whether in direct negotiations or in supervision of the person negotiating, which in any way is contingent upon the settlement of each claim, except that this section shall not apply to marine insurance.

(6) No person, except a person otherwise licensed under this division, may make any adjustment under an insurance policy covering hazards described in 4 CMC § 7103, unless the person holds a license under 4 CMC § 7304 or is exempted therefrom.

(7) Any person violating any of the provisions of this section may be found guilty of a misdemeanor, and may, upon conviction, be subject to a fine of not more than \$1,000 if the person convicted is not a natural person; or if the person convicted is a natural person, a fine of not more than \$500, or imprisonment of not more than six months, or both such fine and imprisonment.

**Source:** PL 3-107, § 17.

## **Surplus Line Broker or Agent.**

### **§ 7304.**

(a) *Issuance of Licenses; Fee; Authority Conferred by License.* The Insurance Commissioner, upon receipt of an application in proper form and proof of payment of a license fee of \$100 may issue a surplus line license to any duly qualified and licensed insurance broker or agent of the Commonwealth. The license shall permit the broker or agent named therein to act as broker or agent in the Commonwealth for any foreign company or insurer (or any alien company or insurer approved by the commissioner) not authorized to transact business in the Commonwealth in securing, issuing or placing policies of insurance, contracts of indemnity or surety bonds on property located in, or undertakings to be carried out in the Commonwealth companies.

(b) *Execution and Delivery of Bond; Amount of Bond; Condition; Rights Conferred by License; Expiration Date.* Before receiving a license, the surplus line broker or agent shall execute and deliver to the commissioner a bond in the penal sum of \$2,000 in such form and with such sureties as the commissioner shall approve, conditioned that the broker or agent will fully comply with all requirements of this division. The license shall entitle the broker or agent to transact business for any or all unauthorized insurance companies or insurers as provided in this division, and shall be annually be renewable.

(c) *Affidavit as Prerequisite to Procurement of Insurance; Contents.* Before the person named in the license may procure, effect or issue any insurance policy or indemnity contract or surety bond, the person shall in every case execute and file with the commissioner an affidavit in acceptable form that the insured is unable to procure in any company or companies or insurers admitted to do business in the Commonwealth the amount or kind of insurance described in the affidavit at rates not less than the minimum rates on the property promulgated by an authorized rating bureau or other bureau or conference whose rates have been accepted by the Insurance Commissioner.

(d) *Limitation on Issuance; Endorsement on Policy; Filing of Power of Attorney; Validity of Power.* Surplus line insurance shall only be issued after the insured has procured insurance in companies admitted to do business in the Commonwealth to the full amount which the companies are willing to write on the property. Every policy issued under this section shall be endorsed "Issued in an unauthorized company, under agent's (or broker's) License No. \_\_\_\_\_," which endorsement shall be properly filled in and signed by the broker or agent. Before registering and delivering any such policy for an unauthorized insurance company or insurer, the broker or agent shall procure from the company or insurer a power of attorney empowering him as its attorney in fact to receive and accept on its behalf service of any and all writs, processes and summonses necessary to give complete jurisdiction of the company or insurer to any of the courts of the Commonwealth. The power of attorney shall be deemed to make the attorney the authorized agent of the company or insurer upon whom lawful service may be made of all writs, processes and summonses in any case, suit or proceeding in any court of the Commonwealth. The power of attorney shall be valid so long as the company or insurer has any liability existing in the Commonwealth on account of any outstanding policies or unpaid claims pending against it. The broker or agent shall file the power of attorney with the Insurance Commissioner promptly on its receipt.

(e) *Record of Business; Filing of Statements; Contents.* Every broker or agent shall keep a separate account of the business done under a surplus line license and on or before the first day of July in each year, shall file with the commissioner a statement for the calendar year preceding, giving the name of the insured to whom a policy or indemnity contract granting unauthorized insurance has been issued, the name and home office of each company issuing any policy or contract, the amount of the insurance, the premiums charged, the date and term of the policy, and the amount of premium returned on each policy canceled or not taken, with such other information and upon such form as required by the commissioner, and pay the commissioner an amount equal to taxes imposed by law on the premiums of like authorized insurance companies.

(f) *Status of Companies Issuing Insurance; Liability to Suit; Duty of Agent on Being Served with Process; Time for Answer; When Jurisdiction Deemed Acquired.* Every company, insurer or insurers making insurance under the provisions of this section shall be deemed and held to be doing business in the Commonwealth as an unlicensed concern, and may be sued upon any cause of action arising under any policy of insurance so issued and delivered by it. Any broker or agent being served with summons and complaint in any such case shall mail the summons and complaint, or true and complete copies thereof, by registered letter with proper postage affixed, properly addressed to the company sued. The company shall have 40 days within the date of the service of the summons and complaint upon the broker or agent in which to plead, answer or defend any such cause. Upon service of summons and complaint being had upon the broker or agent for the company, the court in which the action is begun shall be deemed to have fully acquired jurisdiction in personam of the defendant company so served.

(g) *Penalty for Failure to File Statement; Action for Recovery; Revocation of License; Conditions Prerequisite to Reissuance.* Every broker or agent who fails or refuses to make and file any required statement shall be liable for a fine of \$25 for each day of delinquency. The fine may be recovered in an action instituted by the commissioner in the name of the Commonwealth, the Attorney General representing him, in any court of competent jurisdiction. If any broker or agent shall:

- (1) Fail to make and file an annual statement; or
- (2) Refuse to allow the commissioner to inspect and examine the records of the business transacted pursuant to this section; or
- (3) Fail to keep records in the manner required by the commissioner; or
- (4) Refuse or neglect to immediately notify the insurance company for whom the broker or agent has placed, registered or delivered a policy, of the commencement of any action or proceeding in any court against the company;

the license of the broker or agent shall immediately be revoked by the commissioner, and no license shall be issued to the broker or agent within one year from the date of the revocation, nor until all fines are paid, and the commissioner is satisfied that full compliance with the provisions of this section will be had.

Source: PL 3-107, § 18.

#### **Unauthorized Insurer (Uniform Unauthorized Insurers Act).**

#### **§ 7305.**

(a) *Representing or Placing Insurance with Unauthorized Insurers Prohibited.* No person, corporation, association or partnership may act as agent for any insurer not authorized to transact insurance business in the Commonwealth, or negotiate for, or place, or aid in placing insurance

coverage in the Commonwealth for another with any such insurer.

(b) *Aiding Unauthorized Insurers.* No person, corporation, association or partnership shall aid any unauthorized insurer in adjusting insurance or in transacting insurance business in the Commonwealth, either by fixing rates, by adjusting or investigating losses, by inspecting or examining risks, by acting as attorney-in-fact or as attorney for service of process, or otherwise, except as may otherwise be provided in this division.

(c) *Representing or Aiding Insured in Effecting Insurance on Property or Risk in Unauthorized State.* No person, corporation, association or partnership may make, negotiate for or place, or aid in negotiating or placing any insurance contract in the Commonwealth for another who is an applicant for insurance covering any property or risk in a state with any insurer not authorized to transact insurance business in the state, wherein such property or risk or any part thereof is located.

(d) *Excepted Contracts and Activities.* The provisions of the foregoing subsections do not apply to contracts of reinsurance or to contracts of insurance covering risks of transportation and navigation, or to contracts of insurance made through authorized surplus line brokers or agents, nor do they apply to an insurer not authorized in the Commonwealth or its representatives, in investigating, adjusting losses or otherwise complying in the Commonwealth with the terms of its insurance contracts made in a state wherein the insurer was authorized and in which the property or risk was located or residing at the time of the execution of the contract.

(e) *Service of Process Upon Unauthorized Insurer.*

(1) The transacting of business in the Commonwealth by a foreign or alien insurer without a certificate of authority and the issuance or delivery by the foreign or alien insurer of a policy or contract of insurance to a citizen of the Commonwealth or to a resident thereof, or to a corporation authorized to do business therein, is equivalent to an appointment by the insurer to the commissioner to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding arising out of the policy or contract of insurance. The issuance or delivery of the policy or contract of insurance is a signification of its agreement that any such service or process is of the same legal force and validity as personal service of process in the Commonwealth upon it.

(2) Service of process shall be made by delivering and leaving with the commissioner or to some person in apparent charge of the commissioner's office two copies thereof and the payment to the commissioner of any fees prescribed by law. The commissioner shall mail by registered mail one of the copies of the process to the defendant at the defendant's last known principal place of business and shall keep a record of all processes so served upon him. The service of process is sufficient if notice of the service and a copy of the process are sent within ten days by registered mail by plaintiff's attorney to the defendant at the defendant's last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing compliance herewith, are filed with the Clerk of the Court in which the action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow. However, no plaintiff shall be entitled to a judgement by default, or a judgement with leave to prove damages, or a judgement *pro confesso* under this section until the expiration of 30 days from the date of the

filing of the affidavit of compliance.

(3) Service of process in any such action, suit or proceedings shall, in addition to the manner provided in subsection (b) of this section, be valid if:

(A) Served upon any person within the Commonwealth who, in the Commonwealth, on behalf of that insurer, is soliciting insurance, or making any contract of insurance or issuing or delivering any policies or written contracts of insurance, or collecting or receiving any premium for insurance; and

(B) A copy of the process is sent within 10 days thereafter by registered mail by the plaintiff's attorney to the defendant at the last known principal place of business of the defendant; and

(C) The defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed; and

(D) The affidavit of the plaintiff's attorney showing compliance herewith is filed with the Clerk of the Court in which the action is pending, on or before the date the defendant is required to appear, or with such further time as the court may follow.

(4) Nothing in this section contained shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law.

(f) *Institution of Action by Unauthorized Insurer.* No unauthorized insurer shall institute or file, or cause to be instituted or filed, any suit, action or proceeding in the Commonwealth to enforce any right, claim, or demand arising out of the transaction of business in the Commonwealth, until the insurer has obtained a certificate of authority to transact insurance business in the Commonwealth.

(g) *Defense of Action by Unauthorized Insurer.*

(1) Before any unauthorized insurer may file or cause to be filed any pleading in any action, suit, or proceeding instituted against it, the unauthorized insurer shall either:

(A) File with the Clerk of the Court in which the action, suit or, proceeding is pending, a bond with good and sufficient sureties to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgement which may be rendered in the action; or

(B) Procure a certificate of authority to transact the business of insurance in the Commonwealth.

(2) The court in any action, suit, or proceeding in which service is made in the manner provided in subsections (e)(2) or (e)(3) of this section, may order postponements as necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (g)(1) of this section, and to defend the action.

(3) Nothing in subsection (g)(1) of this section shall prevent an unauthorized insurer from filing a motion to quash a writ to set aside service made in the manner provided in subsection (e)(2) or (e)(3) of this section, on the ground either:

(A) That no policy or contract of insurance has been issued or delivered to a citizen or resident of the Commonwealth, or to a corporation authorized to do business herein; or

(B) That the insurer has not been transacting business in the Commonwealth;  
or

(C) That the person on whom service was made pursuant to subsection (e)(3) of this section, was not doing any of the acts therein enumerated.

(h) *Penalty.* Any person, corporation, association, or partnership violating any of the provisions of this section may be found guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not less than \$1,000 nor more than \$2,000, or imprisonment of not more than six months, or both such fine and imprisonment.

(i) *Uniformity of Interpretation.* This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those jurisdictions which enact it.

(j) *Short Title.* This section [4 CMC § 7305] may be cited as the Uniform Unauthorized Insurers Act.

**Source:** PL 3-107, § 19.

### **Domestic Insurers.**

#### **§ 7306.**

(a) *Scope of Section.* The provisions of this section apply only to domestic insurers; provided, that the domestic insurers are also subject to all other applicable provisions of this division from which they are not otherwise specifically excepted.

(b) *Organization.* It is unlawful for a domestic insurer to be formed, or to transact insurance in the Commonwealth unless it is incorporated under the laws of the Commonwealth and in conformance with the applicable provisions of this division and unless all of its voting shares of stock have a par value as certified in its articles of incorporation.

(c) *Application to Organize.* Any number of persons sufficient to organize a corporation in the Commonwealth may file an application with the commissioner for authority to organize as an insurance corporation. No person may organize an insurance corporation until written authority for that purpose has been obtained from the commissioner. The application shall be in duplicate and may contain the information required herein:

(1) The proposed location of its principal office, amount of paid-in capital, and corporate name which shall include the word “insurance”;

(2) The proposed articles of incorporation showing the classes of insurance business which it proposes to transact;

(3) Evidence of character, financial responsibility, business experience and ability of the proposed incorporators, directors and officers;

(4) All other information required to be filed with the articles of incorporation under the laws of the Commonwealth for the purpose of receiving a corporate charter, or by regulations of the commissioner, or specifically requested of the incorporator by the commissioner.

(d) *Issuance of Authority.* Upon receipt of the application in subsection (c) of this section, the commissioner shall review the application for compliance with applicable law. Within 45 days of receipt of the application, the commissioner shall issue an order granting or denying the application for organization and notify the applicant in writing of the reasons for the order. An applicant who also receives a denial may request a hearing under 4 CMC § 7201.

(e) *Incorporation.* Within 90 days after the date of the commissioner’s order granting the application to organize, the applicant shall file the articles of incorporation and pay fees required by Commonwealth law.

(f) *License Authority.* Notwithstanding any provision of this section, it is unlawful for any applicant to transact insurance until it has complied with 4 CMC § 7301.

(g) *Promotional Expense.* The commissioner shall not grant an application to organize any domestic insurer where the commissioner's examination shows that the expense of organization and promotion exceeds 10 percent of the total amount actually paid on its capital stock.

(h) *Capital: Other than Life Insurer.* Every domestic insurer shall have a minimum paid-in capital of \$25,000 which shall be sufficient for the transaction of any one class of insurance authorized under this division, except life insurance. For each additional class of insurance to be transacted, except life insurance, there shall be an additional paid-in capital of \$15,000, but any insurer having a paid-in capital of \$100,000 may transact any or all classes of insurance authorized, except life insurance. Paid-in capital required under this section must be paid in cash.

(i) *Capital: Increase and Decrease.*

(1) Any admitted domestic insurer may increase or decrease the amount of its capital after giving notice once a week for four consecutive weeks in a newspaper of general circulation in the Commonwealth of its intention, and by filing with the commissioner a copy of its advertisement together with a declaration under its corporate seal, signed by stockholders representing three-fourths of its capital, of their desire so to do.

(2) If any person objects to such increase or decrease within one week from the date of last publication and gives good cause therefor, the commissioner may order the insurer not to so increase or decrease its capital.

(3) If the insurer receives no such order from the commissioner within 10 days after last publication, it may proceed with the announced plan.

(j) *Merger; Consolidation.* A domestic insurer may merge or consolidate with another insurer, subject to the following conditions:

(1) The plan of merger or consolidation must be submitted to and be approved by the commissioner in advance of the merger and consolidation;

(2) The commissioner shall not approve any such plan unless the commissioner finds, after a hearing, that it is fair, equitable, consistent with law, and that no reasonable objection exists. If the commissioner fails to approve the plan, he shall state reasons for such failure in his order made on such hearing.

(k) *Life Insurer: Capital.* Every domestic insurer desiring to transact, or transacting, life insurance in the Commonwealth, shall have a minimum paid-in capital of \$100,000, exclusive of and in addition to the minimum paid-in capital required for other classes of insurance as provided in subsection (h) of this section. Paid-in capital required under this section must be paid in cash.

(l) *Life Insurer: Reserve.*

(1) Every domestic insurer authorized to transact, or transacting, life insurance shall provide, hold and maintain minimum reserves for each such life policy based upon Standard Ordinary Mortality Tables acceptable to the commissioner and interest at 3.5 percent per annum.

(2) The minimum reserves required by this section to be maintained shall be kept on deposit in any Commonwealth bank or banks, or such other financial institutions, located in the Commonwealth, as are approved for these purposes by the commissioner. The deposits shall at all times include lawful money of the United States or securities of the types allowable as investments for domestic insurers under subsection (p) of this section, or any combination of such money and securities.

(m) *Life Insurer: Policy.* Every life policy form used by a domestic insurer shall be approved

by the commissioner prior to such issuance as provided in 4 CMC § 7502(h); provided, that it shall contain in substance the following provisions:

(1) A provision that the insured, after three months' premiums have been paid, is entitled to a premium grace period of not less than 31 days during which period of grace the policy shall continue in full force; provided, that in case the policy becomes a claim during any period of grace, the amount of such premium due may be deducted from the amount payable under the claim;

(2) A provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years from date of issue, except for nonpayment of premium;

(3) A provision that the policy as issued shall constitute the entire contract between the parties; provided, that the insurer may make the application for the policy a part of the contract by endorsing it upon, or attaching it to, the policy;

(4) A provision that if the age of the insured has been misstated, the contract shall be valid but the amount payable under the policy shall be such as the premium would have purchased at the correct age in accordance with the table of premium rates of the insured;

(5) A provision that in the event of default of any premium payment after three full annual premiums shall have been paid on the policy, the net value of the policy, which net value shall be at least equal to its entire net reserve at the date of default less a surrender charge of not more than 2.5 percent of the face amount of the policy and less any indebtedness to the company on or secured by the policy, shall be applied as a single premium to the purchase of one of the following forms of insurance, unless the policy holder shall elect the cash surrender of the policy:

(A) Paid-up term insurance for such a period as the net value outlined above will purchase at the net single premium at the attained age of the insured at the time of the lapse;

(B) Paid-up insurance payable at the time and on the conditions named in the policy for such an amount as the net value outlined above will purchase at the net single premium at the attained age of the insured at the time of the lapse.

(6) A provision that in event of default of any premium payment after three full annual premiums shall have been paid, the policy may be surrendered to the insurer within 60 days after date of premium default for a cash value which shall be at least equal to the sum which would be otherwise available for the purchase of paid-up insurance as provided above if the insured so elects.

(n) *Life Insurer: Violation.* Any policy issued in violation of subsection (m) of this section shall nevertheless be held valid but shall be construed as provided in subsection (m) of this section, and when any provision in the policy conflicts with any provision of this section, or of any other statutory provision, the rights, duties and obligations of the insurer, the policy holder and the beneficiary shall be governed and interpreted in accordance with this division.

(o) *Supervision.*

(1) Every admitted domestic insurer shall, on or before April 1 of each year, file with the commissioner a financial statement, verified under oath, setting forth its financial condition, transactions and affairs as of the 31st day of December immediately preceding, in general form and context as approved by the National Association of Insurance

Commissioners, plus any additional information required by the commissioner.

(2) Every such insurer shall keep full and complete books, records, accounts, and vouchers and shall keep them at all times in such manner that its financial condition can be readily ascertained, its financial statement readily verified, and its compliance with this division seen.

(3) The commissioner may make a detailed examination into the affairs of any domestic insurer as often as the commissioner deems it expedient for the protection of the people of the Commonwealth, and shall make such detailed examination of every domestic insurer at least once in every three years. The cost of the examination shall be paid by the insurer examined.

(4) The commissioner shall make a full and true report of every examination made together with any conclusions and recommendations as may be reasonably warranted by the facts. The report shall be filed in the official permanent files of the commissioner and shall be admissible in evidence in any action or proceeding in the name of the government against the insurer.

(5) When the assets of any domestic insurer, computed at their actual fair value, are less than the aggregate amount of the insurer's liabilities and outstanding capital stock, the commissioner shall determine the amount of the impairment of capital and shall order the insurer to eliminate the impairment within the period he designates, not more than six months from the service of the order; the commissioner may by order prohibit the insurer from issuing any new policies while the impairment exists. If the amount of the impairment is equal to or more than 25 percent of the insurer's outstanding capital stock, or is such that the insurer does not have the minimum capital required by this division, the commissioner shall suspend the insurer's certificate of authority until the impairment is fully eliminated; and if the impairment is not fully eliminated within the period designated by the commissioner, the commissioner shall by order revoke the insurer's certificate and shall apply to the Commonwealth Superior Court for an order upon the insurer to show cause why its articles should not be revoked and a receiver appointed to liquidate its affairs.

(p) *Investments.* It is unlawful for any domestic insurer, except a domestic insurer authorized to transact offshore surety insurance, to invest any of its assets otherwise than is authorized by this section:

(1) Real estate as may be reasonably required for its home and branch offices; except that where title to real estate is, or has been, acquired under the conditions of any mortgage, or by purchase or set off on execution upon judgment for debts contracted in the course of business, or by other process in settlement for debts, the same may be held for a period not to exceed five years unless permission to hold for a longer period is granted in writing by the commissioner.

(2) Bonds or notes secured by first mortgages or deeds of trust upon improved real estate, which improvements may be, or include those to be, placed thereon by the proceeds of the bonds or notes, in a maximum amount not to exceed 20 percent of its assets; provided, that the value of the security shall, at the time of the investment, be at least 50 percent more than the principal of the obligations secured thereby, except when the mortgage loans are guaranteed or insured by the government of the United States or any agency thereof.

(3) Interest bearing bonds, notes or obligations of the Commonwealth, the United

States, or any political subdivision of the Commonwealth or the United States, or any incorporated city of the United States, of a population of not less than 50,000 inhabitants as shown by the next preceding federal census; provided, that there has been no default in the payment of either principal or interest on any of the general obligations of issuer for a period of 15 years next preceding the date of such investment.

(4) Stocks issued by any federal home loan bank of which such insurer may be eligible to become a member; bonds, debentures and notes issued by any federal home loan bank.

(5) Not more than 10 percent of any insurer's capital may be invested in or loaned upon the security of any one person, nor loaned upon the security of any one parcel of property.

(6) Loans upon the security of its own policies not making the loan.

(q) *Penalty.* Any person violating any of the provisions of this section may be found guilty of a misdemeanor, and shall, upon conviction, be subject to a fine of not more than \$1,000 if the person convicted is not a natural person; or if the person convicted is a natural person, a fine of not more than \$500, or imprisonment of not more than six months, or both such fine and imprisonment.

**Source:** PL 3-107, § 20, modified; amended by PL 6-18, § 8.

**Commission Comment:** In subsection (m)(6), the commission inserted "available for the purchase of paid up insurance as provided," correcting a clerical error.

### **Foreign Insurers.**

#### **§ 7307.**

(a) *Scope of Article.* The provisions of this section shall apply only to foreign insurers. Foreign insurers are also subject to all other provisions of this division from which they are not otherwise specifically excepted.

(b) *General Agent.* A foreign insurer shall not be granted a certificate of authority pursuant to 4 CMC § 7301 unless and until it has duly complied with the provisions of this section:

(1) Duly appoint a licensed resident general agent who shall have a power of attorney of the insurer which authorizes him to appoint subagents and solicitors for the insurer;

(2) File with the commissioner its consent that its resident general agent may accept service of process on its behalf for all cases, and that the service shall constitute personal service upon the insurer.

(c) *Examination.* Whenever any foreign insurer applies for admission, the commissioner may cause to be made by the insurance authority of the jurisdiction where such insurer is organized, an examination of its business and affairs, and that a report of the examination be made to him. At such other times as the commissioner shall deem necessary and proper, he may cause a like examination to be made. The cost of an examination shall be paid by the insurer examined.

(d) *Annual Financial Statement.* Every admitted foreign insurer shall, on or before April 1 of each year, file with the commissioner an annual financial statement, verified under oath, setting forth its financial condition, transactions and affairs as of the 31st day of December immediately preceding, in general form and context as approved by the National Association of Insurance Commissioners, plus any additional information required by the commissioner.

**Source:** PL 3-107, § 21.

## **Alien Insurers.**

### **§ 7308.**

(a) *Scope of Section.* The provisions of this section shall be applicable only to alien insurers. Alien insurers are also subject to all other provisions of this division from which they are not otherwise specifically excepted.

(b) *General Agent.* An alien insurer may not be granted a certificate unless and until it has complied with the provisions of this section:

(1) Duly appoint a licensed resident general agent who shall have the power of attorney of the insurer which authorizes him to appoint subagents and solicitors for the insurer;

(2) File with the commissioner its consent that its resident general agent is authorized to accept service of process on its behalf for all cases, and that such service shall constitute personal service upon the insurers;

(3) File with the commissioner a power of attorney authorizing the resident general agent to countersign all policies of the alien insurer effected on risks in the Commonwealth.

(c) *Deposit of Securities.*

(1) An alien insurer as a prerequisite to the transaction of any insurance in the Commonwealth shall furnish such proof as the commissioner may require that it has, in the Commonwealth, unencumbered United States dollar assets available for the payment of claims in the Commonwealth in a minimum amount equal to the paid-in capital required of domestic insurers by this division, or it shall make a deposit with the commissioner of securities, of a class or classes authorized for investment of the assets of domestic insurers, in an amount equal to the minimum amount of paid-in capital required of domestic insurers by this division.

(2) For the purpose of computing the amount of the deposit, the securities shall be valued by the commissioner at their current market value; the deposit shall always be in an amount that such value meets the above-stated minimum requirements.

(3) The deposit shall be continuously maintained so long as any obligation arising out of any insurance transacted by the alien insurer in the Commonwealth remains in existence for any purpose whatsoever.

(4) The deposit shall be for the benefit and security of all policyholders and creditors of the alien insurer in the Commonwealth. The commissioner shall be the trustee for such beneficiaries in the event of any default by the insurer in accordance with the terms of the policy.

(5) On receipt of such deposit, the commissioner shall issue the depositing insurer a receipt stating the items and amount of securities so deposited; the commissioner may provide for the deposit or safekeeping of such securities in any bank or banks or other financial institutions located in the Commonwealth as shall be approved for such purposes.

(d) *Annual Financial Statement.* Every admitted alien insurer shall, on or before April 1 of each year, file with the commissioner an annual financial statement, verified under oath, setting forth its financial conditions, transactions and affairs as of the 31st day of December immediately preceding, in general form and context as approved by the National Association of Insurance Commissioners, plus any additional information required by the commissioner.

(e) *Examination.* Whenever any alien insurer applies for admission, the commissioner may cause to be made by the proper authority of the jurisdiction where such insurer is organized, or if

authorized to transact insurance business in a United States jurisdiction other than the Commonwealth by the insurance authority of such other United States jurisdiction, an examination of its business and financial affairs and that a report of the examination be made to him. At such other times as the commissioner shall deem necessary and proper, he may cause a like examination to be made. The cost of the examination shall be paid by the insurer examined.

**Source:** PL 3-107, § 22.

## **CHAPTER 4.**

### **Uniform Insurers Liquidation Act. § 7401**

- § 7401. Short title.
- § 7402. Definitions.
- § 7403. Conduct of Delinquency Proceedings Against Insurers Domiciled in the Commonwealth.
- § 7404. Conduct of Delinquency Proceedings Against Insurers Not Domiciled in the Commonwealth.
- § 7405. Filing and Proving of Claims of Nonresidents Against Delinquent Insurers Domiciled in the Commonwealth.
- § 7406. Filing and Proving of Claims of Residents Against Delinquent Insurers Domiciled in Reciprocal States.
- § 7407. Priority of Preferred Claims.
- § 7408. Priority of Special Deposit Claims.
- § 7409. Priority of Secured Claims.
- § 7410. Attachment and Garnishment of Assets.
- § 7411. Right of Domiciliary Receiver to Sue in the Commonwealth.
- § 7412. Uniformity of Interpretation.

#### **Short title.**

#### **§ 7401.**

This chapter may be cited as the Uniform Insurers Liquidation Act.

**Source:** PL 3-107, § 23, modified.

**Commission Comment:** PL 3-107, § 23, the Uniform Insurers Liquidation Act, was originally codified entirely at 4 CMC § 7401. In the January 1997 revision, the commission divided the provisions of that section and recodified them as 4 CMC §§ 7401-7412.

The Uniform Insurers Liquidation Act was approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1939. PL 3-107, § 23 retained most of the language in the uniform act, which has been adopted (with variations) in several U.S. jurisdictions.

#### **Definitions.**

#### **§ 7402.**

For the purpose of this chapter:

- (a) “Ancillary state” means any state other than a domiciliary state;
- (b) “Court” means the Commonwealth Trial Court;
- (c) “Delinquency proceeding” means any proceeding commenced against an insurer for the

purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer;

(d) “Domiciliary state” means the state in which an insurer is incorporated or organized, or, in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become authorized to do business in such state, has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust, and assets held on deposit for the benefit of its policyholders and creditors in the United States; and any such insurer is deemed to be domiciled in such state;

(e) “Foreign country” means territory not in any state;

(f) “General assets” means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons, or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policy holders, or all policy holders, and creditors in the United States, shall be deemed general assets;

(g) “Insurer” means any person, firm, corporation, association, or aggregation of persons doing any insurance business subject to the insurance supervisory authority of the Insurance Commissioner of the Commonwealth or the equivalent insurance supervisory official of another state;

(h) “Preferred claim” means any claim with respect to which the law of a state or of the United States accords priority of payment from the general assets of the insurer;

(i) “Receiver” means receiver, liquidator, rehabilitator, or conservator, as the context may require;

(j) “Reciprocal state” means any state other than the Commonwealth, in which, in substance and effect, the provisions of this section are in force, including the provisions requiring that the Insurance Commissioner or an equivalent insurance supervisory official be the receiver of a delinquent insurer;

(k) “Secured claim” means any claim secured by mortgage, trust, deed, pledge, deposit as a security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which are more than four months prior to the commencement of delinquency proceedings in the state of the insurer’s domicile have become liens upon specific assets by reasons of judicial process;

(l) “Special deposit claim” means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets;

(m) “State” means any state of the United States, its territories and possessions, and the District of Columbia and for purposes of this chapter, includes the Commonwealth of the Northern Mariana Islands.

**Source:** PL 3-107, § 23, modified.

**Commission Comment:** The commission reordered, in alphabetical order, the terms defined in this section. See also the comment to 4 CMC § 7401.

Section 4 of PL 6-25, the “Commonwealth Judicial Reorganization Act of 1989,” provides that “[w]herever the term ‘Commonwealth Trial Court’ appears in the Commonwealth Code, it is henceforth to be interpreted and understood to refer to the Commonwealth Superior Court.”

**Conduct of Delinquency Proceedings Against Insurers Domiciled in the Commonwealth.**

**§ 7403.**

(a) Whenever, under the laws of the Commonwealth, a receiver is to be appointed in delinquency proceedings for an insurer domiciled in the Commonwealth, the court shall appoint a competent receiver who shall furnish proper bond in an amount determined by the court. The court shall direct the receiver to take possession of the assets of the insurer and to administer the assets under order of the court.

(b) The domiciliary receiver and any successors in office shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer wherever located, as of the date of entry of the order directing possession to be taken, and he or she shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are hereinafter prescribed for ancillary receivers appointed in the Commonwealth as to assets located in the Commonwealth. The filing or recording of the order directing possession to be taken, or a certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded, shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded. The domiciliary receiver shall be responsible on his official bond for the proper administration of all assets coming into his or her possession or control. The court may at any time require an additional bond from the domiciliary receiver or any deputies if deemed desirable for the protection of the assets.

(c) Upon taking possession of the assets of a delinquent insurer, the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer, or to take such steps as are authorized by the laws of the Commonwealth for the purpose of liquidating, rehabilitating, reorganizing, or conserving the affairs of the insurer. In connection with delinquency proceedings, the domiciliary receiver may, with the approval of the court, appoint one or more special deputy receivers to act for him and may employ such counsel, clerks, and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the delinquent insurer, and of conducting the delinquency proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limit of the duties imposed upon them, special deputies shall possess all the powers given to, and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to delinquency proceedings.

**Source:** PL 3-107, § 23, modified.

**Commission Comment:** See the comment to 4 CMC § 7401.

**Conduct of Delinquency Proceedings Against Insurers Not Domiciled in the**

**§ 7404.**

**Commonwealth.**

(a) Whenever under the laws of the Commonwealth an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in the Commonwealth, the commissioner shall file a petition requesting the appointment:

(1) If the commissioner finds that there are sufficient assets of the insurer located in the

Commonwealth to justify the appointment of an ancillary receiver; or

(2) If 10 or more persons resident in the Commonwealth, having claims against the insurer, file a petition with the commissioner requesting the appointment of an ancillary receiver.

(b) The domiciliary receiver of an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer located in the Commonwealth, and the domiciliary receiver shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this Commonwealth. The domiciliary receiver shall also be entitled to recover the other assets of the insurer located in the Commonwealth except that upon the appointment of an ancillary receiver in the Commonwealth, the ancillary receiver shall, during the ancillary receivership proceedings, have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in the Commonwealth and shall pay the necessary expenses of the proceedings. All remaining assets the ancillary receiver shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and his or her deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in the Commonwealth.

**Source:** PL 3-107, § 23, modified.

**Commission Comment:** See the comment to 4 CMC § 7401.

### **Filing and Proving of Claims of Nonresidents Against Delinquent Insurers**

#### **§ 7405.**

##### **Domiciled in the Commonwealth.**

(a) In a delinquency proceeding begun in the Commonwealth against an insurer domiciled in the Commonwealth, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(b) Controverted claims belonging to claimants residing in reciprocal states may either:

(1) Be proved in the Commonwealth as provided by law; or

(2) If ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his or her claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this Commonwealth, as provided in 4 CMC § 7406, the final allowance of such claim by the courts in the ancillary state shall be accepted in the Commonwealth as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

**Source:** PL 3-107, § 23, modified.

**Commission Comment:** See the comment to 4 CMC § 7401.

## **Filing and Proving of Claims of Residents Against Delinquent Insurers**

### **§ 7406.**

#### **Domiciled in Reciprocal States.**

(a) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within the Commonwealth may file claims either with the ancillary receiver, if any, appointed in this Commonwealth or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filings of claims in the domiciliary delinquency proceedings.

(b) Controverted claims belonging to claimants residing in the Commonwealth may either:

(1) Be proved in the domiciliary state as provided by the law of that state; or

(2) If ancillary proceedings have been commenced in the Commonwealth, be proved in those proceedings. In the event that any such claimant elects to prove his claim in the Commonwealth, the claimant shall file his or her claim with the ancillary receiver in the manner provided by the law of the Commonwealth for the proving of claims against insurers domiciled in the Commonwealth, and he shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service, at least 40 days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver, within 30 days after the giving of notice, shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of an intention to contest the claim, the domiciliary receiver shall be entitled to appear or to be represented in any proceedings in the Commonwealth involving the adjudication of the claim. The final allowance of the claim by the court shall be accepted as conclusive as to its priority, if any, against special deposits or other security located within the Commonwealth.

**Source:** PL 3-107, § 23, modified.

**Commission Comment:** See the comment to 4 CMC § 7401.

#### **Priority of Preferred Claims.**

### **§ 7407.**

(a) In a delinquency proceeding against an insurer domiciled in the Commonwealth, claims owing to residents of ancillary states shall be preferred claims, if like claims are preferred under the laws of the Commonwealth. All such claims, whether owing to residents or nonresidents, shall be given equal priority of payment from general assets regardless of where such assets are located.

(b) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of the Commonwealth shall be preferred, if like claims are preferred by the laws of that state.

**Source:** PL 3-107, § 23, modified.

**Commission Comment:** See the comment to 4 CMC § 7401.

#### **Priority of Special Deposit Claims.**

### **§ 7408.**

The owners of special deposit claims against an insurer for which a receiver is appointed in any state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such

deposit, so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentages paid from the special deposit.

**Source:** PL 3-107, § 23, modified.

**Commission Comment:** See the comment to 4 CMC § 7401.

### **Priority of Secured Claims.**

#### **§ 7409.**

The owner of a secured claim against an insurer for which a receiver has been appointed in any state may surrender his or her security and file a claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this section, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

**Source:** PL 3-107, § 23, modified.

**Commission Comment:** See the comment to 4 CMC § 7401.

### **Attachment and Garnishment of Assets.**

#### **§ 7410.**

During the pendency of delinquency proceedings in the Commonwealth or any reciprocal state, no action or proceeding in the nature of an attachment, garnishment, or execution shall be commenced or maintained in the courts of the Commonwealth against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceedings, or at any time thereafter, shall be void as against any rights arising in such delinquency proceeding.

**Source:** PL 3-107, § 23, modified.

**Commission Comment:** See the comment to 4 CMC § 7401.

### **Right of Domiciliary Receiver to Sue in the Commonwealth.**

#### **§ 7411.**

The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in the Commonwealth to recover any assets of such insurer to which the domiciliary receiver may be entitled under the laws of the Commonwealth.

**Source:** PL 3-107, § 23, modified.

**Commission Comment:** See the comment to 4 CMC § 7401.

### **Uniformity of Interpretation.**

#### **§ 7412.**

This chapter shall be so interpreted and construed as to effectuate its general purpose to make

uniform the law of those states that enact it.

**Source:** PL 3-107, § 23, modified.

**Commission Comment:** See the comment to 4 CMC § 7401.

## **CHAPTER 5.**

### **The Contract of Insurance. § 7501**

§ 7501. Parties, Events, and Interests.

§ 7502. The Policy.

§ 7503. Premiums.

§ 7504. Rates.

§ 7505. Loss.

§ 7506. Double Insurance.

§ 7507. Reinsurance.

§ 7508. Disposition of Funds.

§ 7509. General Penalties.

#### **Parties, Events, and Interests.**

#### **§ 7501.**

(a) *Capacity to Insure.* Any person capable of making a contract may be an insurer, subject to the restrictions imposed by this division.

(b) *Events Subject of Insurance.* Except as provided in this section, any contingent or unknown event, whether past or future, which may indemnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this division.

(c) *Insurable Interest.*

(1) Every interest in property, or any relation thereto, or any liability in respect thereto, of such a nature that a contemplated peril might directly indemnify the insured, is an insurable interest. A mere contingent or expectant interest in anything, not founded upon an actual right to or in the thing, nor upon any valid contract for it, is not insurable.

(2) Every person has an insurable interest in the life and health of:

(A) Himself;

(B) Any person upon whom he or she depends wholly or in part for education or support;

(C) Any person under a legal obligation to him or her for the payment of money or respecting property or services, of which death or illness might delay or prevent performance;

(D) Any person upon whose life any estate or interest vested in the person depends.

(3) If the insured has no insurable interest, the contract is void.

(d) *Insurable Interests: Measure.* Except in the case of property held by the insured as a carrier or depository, the measure of an insurable interest in property is the extent to which the insured might be indemnified by loss of, or injury to, the property.

(e) *Insurable Interest: Carrier or Depository.* A carrier or depository of any kind has an insurable interest in a thing held by him as such to the extent of its value.

(f) *Insurable Interests: Type of Existence.* An interest in property insured must exist when the insurance takes effect and when the loss occurs but need not exist in the meantime; an interest in the life or health of a person insured must exist when the insurance takes effect but need not exist thereafter or when the loss occurs.

(g) *Insurable Interests: Change.* Except in the cases herein specified, and in the cases of life and disability insurance, a change of interest in any part of a subject insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent until the interest in the subject and the interest in the insurance are vested in the same person.

(1) A change of interest in a subject insured after the occurrence of an injury which results in a loss does not affect the right of the insured to indemnity for the loss.

(2) A change of interest in one or more of several distinct subjects separately insured by one policy does not avoid the insurance as to the others.

(3) A change of interest by will or succession, on the death of the insured, does not avoid insurance, and his interest in the insurance passes to the person taking his interest in the subject matter insured.

(4) In the case of partners, joint owners, or owners in common, who are joint insured, a transfer of interest by one to another does not avoid insurance, even though it has been agreed that the insurance shall cease upon an alienation of the subject insured.

(h) *Insurable Interests: Transfer.* The mere transfer of subject matter insured does not transfer the insurance, but suspends it until the same person becomes the owner of both the insurance and the subject matter insured.

Source: PL 3-107, § 24.

### **The Policy.**

#### **§ 7502.**

(a) *Contents.* The written instrument in which a contract of insurance is set forth is the policy and it shall contain the information required herein:

(1) The parties between whom the contract is made;

(2) A description of the property, life or interest insured;

(3) The interest of the insured;

(4) The risk insured against;

(5) The period during which the insurance is to continue;

(6) Either a statement of the premium or, if the insurance is of a character where the exact premium is only determinable upon the termination of the contract, a statement of the basis and rates upon which the final premium is to be determined and paid.

(b) *Signature.* All policies issued on risks in the Commonwealth shall be signed and subscribed as provided in this section:

(1) If the insurer is an admitted domestic insurer, each policy shall be signed and subscribed by two major offices of the insurer designated in its articles of incorporation or in its bylaws to do so;

(2) If the insurer is an admitted foreign insurer, it shall be signed and subscribed by two of the major offices of the insurer authorized to do so and in all cases, it shall be countersigned by the insurer's authorized resident general agent, or shall have attached an

appropriate countersignature endorsement signed by the resident general agent;

(3) If the insurer is an admitted alien insurer, it shall be signed by its United States general manager or other person in charge of its United States business if it has such official, or if it does not, by two of the major officers of the insurer authorized to do so, and in all cases, it shall be countersigned by the insurer's authorized resident general agent, or shall have attached an appropriate countersignature endorsement signed by the resident general agent;

(4) Countersignature, by an authorized resident general agent of the insurer originating a contract of insurance participated in by other insurers as co-securities or co-indemnitors, shall satisfy all countersignature requirements in respect of the contract of insurance;

(5) The provisions of this section relating to countersignature by an insurer's authorized general agent do not apply to:

(A) Any contract of insurance covering the rolling stock of any railroad, or covering any vessel, aircraft, or motor carrier used in interstate or foreign commerce, or covering any liability or other risks incident to the ownership, maintenance or operation thereof;

(B) Any contract of reinsurance between any insurance companies or other insurers;

(C) Any contract of insurance covering any property in interstate or foreign commerce, or any liability or risks incident thereto.

(c) *Coverage.* When the name of the person intended to be insured is specified in a policy, it can be applied only to that person's own interest.

(d) *Subsequent Owner of Interest.* A policy may be so framed that it will inure to the benefit of whosoever, during the continuance of the risk, becomes the owner of the interest insured.

(e) *Liability Policy: Direct Action.* On any policy of liability insurance the injured person or his or her heirs or representatives shall have a right of direct action against the insurer within the terms and limits of the policy, whether or not the policy of insurance sued upon was written or delivered in the Commonwealth, and whether or not the policy contains a provision forbidding the direct action; provided, that the cause of action arose in the Commonwealth. The action may be brought against the insurer alone, or against both the insured and insurer.

(f) *Liability Policy: Insolvency or Bankruptcy.* No policy of liability insurance shall be issued or delivered in the Commonwealth, unless it contains provisions to the effect that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injuries sustained or loss occasioned during the term of the policy; and that in case execution against the insured is returned unsatisfied in any action brought by the injured person or his or her heirs, because of the insolvency or bankruptcy, an action may be maintained by the injured person or his or her heirs or representatives against the insurer within the terms and limits of the policy for the amount of the judgement not exceeding the amount of the policy.

(g) *Open or Valued.* A policy is either:

(1) An open policy which is one wherein the value of the subject matter is not agreed upon but it left to be ascertained in case of loss;

(2) A valued policy which is one containing on its face an expressed agreement that the thing insured shall be valued at a specified sum.

(h) *Form: Approval.* It is unlawful for an insurer to use a policy form in affecting insurance

without first obtaining the commissioner's approval as provided herein:

(1) The commissioner shall study each form for the purpose of guarding against any fraud, misrepresentation or other form of unfairness to the writings of the insured; if a form is approved, the commissioner shall endorse his approval on the face of both duplicates and transmit one to the insured and keep one on permanent file; if the commissioner shall disapprove a form, an order of disapproval stating therein the reasons and transmit a copy to the insurer;

(2) All policies and provisions therein shall be printed in a type of which the face is not smaller than ten-point.

(i) *Penalty.* Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction, be subject to a fine of not more than \$1,000 if the person convicted is not a natural person; or if the person convicted is a natural person, a fine of not more than \$500 or imprisonment of not more than six months, or both such fine and imprisonment.

**Source:** PL 3-107, § 25, modified.

**Commission Comment:** In subsection (b)(3), the commission inserted "offices of the insurer authorized to do so and in all," correcting a clerical error.

**Case Annotations:** *Ada v. Saipan Sanko*, Civil Action No. 92-674 (Super. Ct. Dec. 30, 1993); 4 N.M.I. 46--51; 4 N.M.I. 260--267.

### **Premiums.**

#### **§ 7503.**

(a) *Accrual of Premium.* The insurer is entitled to payment of the premium as soon as the subject matter insured is exposed to the peril insured against.

(b) *Right to Return of Premium.* Unless the insurance contract otherwise provides, a person insured is entitled to a return of premium after a policy is canceled or rescinded as provided herein:

(1) To the whole premium if no part of the person's interest in the thing insured is exposed to any of the perils insured against;

(2) Where the insurance is for a definite term, and the insured surrenders the policy, to such proportion of the premium as corresponds to the unexpired portion of the term after deducting from the whole premium any claim for loss or damage which has previously accrued;

(3) When the contract is void or voidable on account of the fraud or misrepresentation of the insurer;

(4) When the contract is void or voidable on account of facts of the existence of which the insured was ignorant without fault of the insured;

(5) When, by any default of the insured other than actual fraud, the insurer did not incur any liability under the policy.

(c) *Acknowledgment of Receipt of Premium.* An acknowledgment in a policy of receipt of the premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation in the policy that it shall not be binding until the premium is actually paid.

**Source:** PL 3-107, § 26.

**§ 7504. Rates.**

(a) *Approval.*

(1) All rates, rate schedules, rate plans, methods of computing rates, and changes thereto to be applied to any insurance transacted in the Commonwealth shall be filed in the office of the commissioner, before any rates may be charged, advertised, publicized, or otherwise represented;

(2) Rates for tariff lines of insurance including life insurance, motor vehicle insurance and worker's compensation must be approved by the commissioner before they may be charged, advertised, publicized or otherwise represented;

(3) It is unlawful for any insurer to use any rates in violation of the provisions of this section, or to alter, amend or otherwise change any rates without compliance with this section;

(4) When the commissioner's approval of rates is required, it shall be unlawful for any insurer to charge any rate for any insurance transacted in the Commonwealth other than the rate approved by the commissioner for the insurer for the risk and class of insurance.

(b) *Standards.* An insurer in making rates, and the commissioner in approving them, shall apply the standards described in this section:

(1) Rates shall not be excessive or inadequate, as herein provided, nor shall they be unfairly discriminatory;

(2) No rate may be excessive unless the rate is unreasonably high for the insurance provided, and a reasonable degree of competition does not exist in the Commonwealth with respect to the classification to which the rate is applicable;

(3) No rate may be held inadequate unless the rate is unreasonably low for the insurance provided, and the continued use of the rate endangers the solvency of the insurer;

(4) Consideration shall be given, to the extent applicable, to past and prospective loss experiences, to prevailing hazards, and to underwriting profits, contingencies, expenses and other normal business requirements and factors.

(c) *Rating Bureaus.* Insurers are authorized to become members or subscribers of rating bureaus, or advisory organizations of a like nature and may use the rates, rating systems, and underwriting rules and policy forms of the organizations; provided, the same are not excessive, inadequate, nor unfairly discriminatory, conform to the provisions of this division, and are approved by the commissioner.

(d) *Penalty.* Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction, be subject to a fine of not more than \$1,000 if the person convicted is not a natural person; or if the person convicted is a natural person, a fine of not more than \$500 or imprisonment of not more than six months, or both such fine and imprisonment.

Source: PL 3-107, § 27.

**Loss.**

**§ 7505.**

(a) *Peril Not Insured Against: Rescue Efforts.* An insurer is liable:

(1) Where the thing insured is rescued from a peril insured against and which would otherwise have caused a loss if in the course of the rescue, the thing is exposed to a peril not insured against, and which permanently deprives the insured of its possession, in whole or in part;

(2) If a loss is caused by efforts to rescue the thing insured from a peril insured against.

(b) *Willful Act of Insured: Negligence.* An insurer is not liable for a loss caused by the willful act of the insured; but the insurer is not exonerated by the negligence of the insured or of the insured's agents or others.

(c) *Notice of Loss.* Failure to give notice of loss covered by marine or fire insurance within any period provided for by the policy or otherwise does not exonerate the insurer if the notice is given within a reasonable time after the insured has or should have first-hand knowledge of the loss. In all other classes of insurance, the insured shall have at least 20 days after the event within which to give notice of loss. No requirement of notice within a lesser period is valid.

(d) *Preliminary Proof of Loss.* When preliminary proof of loss is required by a policy, the insured is not bound to give proof as would be necessary in a court of law, but it is sufficient for the insured to give the best evidence in his or her power at the time.

(e) *Waiver of Defects in Notice or Preliminary Proof.* All defects in a notice of loss, or in a preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to the insured, without unnecessary delay, as grounds of objection, are waived.

(f) *Waiver of Delay.* Delay in the presentation to an insurer of notice, or preliminary proof of loss, is waived if caused by an act of the insurer, or if the insurer omits to make objection promptly and specifically upon that ground.

(g) *Policy Requiring Proof by Third Person: Sufficiency of Compliance.* If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a person other than the insured beneficiary, there is sufficient compliance with the requirement if the insured or the beneficiary:

(1) Uses reasonable diligences to procure the certificate of testimony; and

(2) In case of refusal to give it to him, furnishes reasonable evidence to the insurer that the refusal was not induced by just grounds of disbelief in the facts necessary to be certified or testified.

(h) *Failure to Pay Loss: Recovery of Amount Due and Damages.* In all cases where loss occurs and the insurer liable therefor fails to pay the same within the time specified in the policy, after demand made therefor, the insurer shall be liable to pay the holder of the policy, in addition to the amount of the loss, 12 percent damages upon the amount of the loss, together with all reasonable attorney's fees for prosecution and collection of the loss; the attorney's fees to be taxed by the court where the same is heard on original action, by appeal or otherwise, and to be taxed as a part of the costs therein, and collected as other costs are or may be by law collected; and writs of attachment or garnishment filed or issued after proof of loss or death has been received by the insurer shall not defeat the provisions of this section; provided, the insurer desiring to pay the amount of the claim as shown in the proof of loss or death may pay the amount into the registry of the court after issuance of writs of attachment and garnishment, in which event there shall be no further liability on the part of the insurer.

(i) *Total Loss by Fire or Miscellaneous Insurance: Recovery of Full Amount.* A fire or miscellaneous insurance policy, in case of a total loss of any risk insured under the classes specified in this division, as valued or miscellaneous insurance shall be held and considered to be a liquidated demand against the insurer taking the risk for the full amount stated in the policy, or the amount upon which the insurer charges, collects or receives a premium; provided, that the provisions of this section shall not apply to personal property. In the event of a total loss or destruction of any personal property on which the amount of the appraisal or agreed loss is less

than the total amount insured thereon, the insurer shall return to the insured the unearned premium for the excess of insurance over the appraised or agreed loss, to be paid at the same time and in the same manner as the loss shall be paid; and the unearned premium shall be a just and legal claim against the insurer.

Source: PL 3-107, § 28.

### **Double Insurance.**

#### **§ 7506.**

(a) *Double Insurance.* Double insurance exists when the same person is insured by several insurers separately in respect to the same subject, interest and risk.

(b) *Double Insurance: Contribution.* In case of double insurance, the several insurers are liable to pay losses thereon as follows:

(1) *Fire Insurance.* In fire and miscellaneous insurance, each insurer shall contribute ratably without regard to the dates of the several policies.

(2) *Marine Insurance.* In marine insurance, the liability of the several insurers for a total loss, whether actual or constructive, where the policies are not simultaneous, is in the order of the dates of the several policies. No liability attaches to a second or other subsequent policy, except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear the same date, they are deemed to be simultaneous, and each insurer on simultaneous policies shall contribute ratably; the insolvency of any of the insurers does not affect the proportionate liability of the other insurers. All insurers on the same marine interest shall contribute ratably for a partial or average loss.

Source: PL 3-107, § 29.

### **Reinsurance.**

#### **§ 7507.**

(a) A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of the original insurance.

(b) No admitted insurer shall reinsure with any other insurer who has not been previously admitted in the Commonwealth, or who has not been approved by the commissioner as a reinsurer.

Source: PL 3-107, § 30.

### **Disposition of Funds.**

#### **§ 7508.**

All fees and costs collected pursuant to this division shall be payable to the Commonwealth Treasury and shall be credited to the General Fund.

Source: PL 3-107, § 31.

### **General Penalties.**

#### **§ 7509.**

Violation of any provision of this division for which a penalty is not otherwise provided shall be a misdemeanor punishable by a fine of not more than \$1,000 if the offender is other than an individual person, and by a fine of not more than \$500 or imprisonment for six months or both if the offender is an individual person.

Source: PL 3-107, § 32.