

**LEGISLATIVE REFERENCE BUREAU**

## AMENDMENTS TO HOUSE BILL NO. 1251

Sponsor: D.White

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1 Amend Bill, page 1, line 11, by inserting after "laws,"  
2 providing for minimum number of covered employees; further  
3 providing for duties of insurers and insurance producers, for  
4 investment and for group accident and sickness insurance;

5 Amend Bill, page 1, lines 17 through 21, by striking out all  
6 of said lines and inserting

7 Section 1. The act of May 17, 1921 (P.L.682, No.284), known  
8 as The Insurance Company Law of 1921, is amended by adding a  
9 section to read:

10 Section 354.6. Minimum Number of Covered Employes.--Any  
11 policy of group life insurance issued pursuant to section 2 of  
12 the act of May 11, 1949 (P.L.1210, No.367), referred to as the  
13 Group Life Insurance Policy Law, and any policy of group  
14 accident and health insurance issued pursuant to section 621.2  
15 shall cover at least two or more employes at the date of issue.

16 Section 2. Section 404.2(12) and (13) of the act, added June  
17 11, 1986 (P.L.226, No.64), are amended to read:

18 Section 404.2. Investment.--Subject to the provisions of  
19 sections 405.2 and 406.1, the assets of any life insurance  
20 company organized under the laws of this Commonwealth shall be  
21 invested in the following classes of investment, provided the  
22 value of which, as determined for annual statement purposes, but  
23 in no event in excess of cost, shall not exceed the specified  
24 percentage of such company's assets as of the thirty-first day  
25 of December next preceding the date of investment:

26 \* \* \*

27 [(12) Put options and call options. The investment practice  
28 of put options and call options issued under terms and  
29 conditions regulated by, or substantially similar to those terms  
30 and conditions required by, a national securities exchange  
31 registered under the Securities Exchange Act of 1934 (48 Stat.  
32 881, 15 U.S.C. § 78a et seq.), as amended, or any board of trade  
33 designated as a contract market by the Commodity Futures Trading  
34 Commission (CFTC) under the Commodity Exchange Act (49 Stat.  
35 1491, 7 U.S.C. § 1 et seq.), as amended, is authorized on the  
36 following conditions:

1 (i) A company shall not sell a call option on either:  
2 (A) securities it does not own; or  
3 (B) in an amount greater than securities which it presently  
4 owns: Provided, however, That in the case of financial futures  
5 contracts and stock or bond index contracts where it is not  
6 feasible to own the underlying security, a company may sell a  
7 call option only in connection with a hedging transaction;  
8 (ii) A company shall not sell a put option unless its  
9 obligations under such put option are fully secured by a deposit  
10 by the company with a bank or other custodian of cash or cash  
11 equivalents;  
12 (iii) A company shall not purchase as opening transactions  
13 under this clause (12) more than ten per centum (10%) of the  
14 excess of its capital and surplus over the minimum requirements  
15 of a new stock or mutual company to qualify for a certificate of  
16 authority to write the kind of insurance which the company is  
17 authorized to write; and  
18 (iv) The Insurance Commissioner may promulgate reasonable  
19 rules and regulations for transactions under this clause (12),  
20 to include, but not be limited to, rules and regulations which  
21 impose financial solvency standards, valuation standards and  
22 reporting requirements.  
23 (13) The investment practice of financial futures contracts  
24 issued under terms and conditions regulated by a Federal  
25 regulatory agency is authorized on the following conditions:  
26 (i) A company shall not enter into financial futures  
27 contracts except as a hedging transaction as that term is  
28 defined in a rule or regulation promulgated pursuant to this  
29 act;  
30 (ii) A company shall not have initial or maintenance margin  
31 outstanding under this section of more than ten per centum (10%)  
32 of the excess of its capital and surplus over the minimum  
33 requirements of a new stock or mutual company to qualify for a  
34 certificate of authority to write the kind of insurance which  
35 the company is authorized to write; and  
36 (iii) The Insurance Commissioner may promulgate reasonable  
37 rules and regulations for transactions under this clause (13),  
38 to include, but not be limited to, rules and regulations which  
39 impose financial solvency standards, valuation standards and  
40 reporting requirements.]  
41 (12) Derivative transactions. An insurer may, directly or  
42 indirectly through an investment subsidiary, engage in  
43 derivative transactions under this section under the conditions  
44 set forth in this section.  
45 (i) General conditions:  
46 (A) An insurer may use derivative instruments under this  
47 section to engage in hedging transactions and certain income  
48 generation transactions, as these terms may be further defined  
49 in regulations promulgated by the Insurance Commissioner.  
50 (B) An insurer shall be able to demonstrate to the Insurance  
51 Commissioner the intended hedging characteristics and the

1 ongoing effectiveness of the derivative transaction or  
2 combination of the transactions through cash flow testing or  
3 other appropriate analyses.

4 (ii) Limitations on hedging transactions. An insurer may  
5 enter into hedging transactions under this section if, as a  
6 result of and after giving effect to the transaction:

7 (A) the aggregate statement value of options, caps, floors  
8 and warrants not attached to another financial instrument  
9 purchased and used in hedging transactions does not exceed seven  
10 and one-half per centum (7.5%) of its admitted assets;

11 (B) the aggregate statement value of options, caps and  
12 floors written in hedging transactions does not exceed three per  
13 centum (3%) of its admitted assets; and

14 (C) the aggregate potential exposure of collars, swaps,  
15 forwards and futures used in hedging transactions does not  
16 exceed six and one-half per centum (6.5%) of its admitted  
17 assets.

18 (iii) Limitations on income generation transactions. An  
19 insurer may enter into the following types of income generation  
20 transactions only if, as a result of, and after giving effect to  
21 the transactions, the aggregate statement value of the fixed  
22 income assets that are subject to call or that generate the cash  
23 flows for payments under the caps or floors, plus the face value  
24 of fixed income securities underlying a derivative instrument  
25 subject to call, plus the amount of the purchase obligations  
26 under the puts, does not exceed ten per centum (10%) of its  
27 admitted assets:

28 (A) sales of covered call options on noncallable fixed  
29 income securities, callable fixed income securities if the  
30 option expires by its terms prior to the end of the noncallable  
31 period or derivative instruments based on fixed income  
32 securities;

33 (B) sales of covered call options on equity securities, if  
34 the insurer holds in its portfolio, or can immediately acquire  
35 through the exercise of options, warrants or conversion rights  
36 already owned, the equity securities subject to call during the  
37 complete term of the call option sold;

38 (C) sales of covered puts on investments that the insurer is  
39 permitted to acquire under this section, if the insurer has  
40 escrowed or entered into a custodian agreement segregating cash  
41 or cash equivalents with a market value equal to the amount of  
42 its purchase obligations under the put during the complete term  
43 of the put options sold; or

44 (D) sales of covered caps or floors, if the insurer holds in  
45 its portfolio the investments generating the cash flow to make  
46 the required payments under the caps or floors during the  
47 complete term that the cap or floor is outstanding.

48 (iv) Counterparty exposure. An insurer shall include all  
49 counterparty exposure amounts in determining compliance with the  
50 limitations of clause (13).

51 (v) Additional transactions. Additional transactions may be

1 approved involving the use of derivative instruments in excess  
2 of the limits of subclause (ii) or for other risk management  
3 purposes under regulations promulgated by the Insurance  
4 Commissioner, but replication transactions shall not be  
5 permitted for other than risk management purposes.

6 (vi) Definitions:

7 (A) "Call option" means an agreement giving a right to buy  
8 or receive an interest based on the actual or expected price,  
9 level, performance or value of one or more underlying interests.

10 (B) "Cap" means an agreement obligating a seller to make  
11 payments to a buyer, with each payment based on the amount by  
12 which a reference price or level or the performance or value of  
13 one or more underlying interests exceeds a predetermined number,  
14 sometimes called the "strike rate" or "strike price."

15 (C) "Collar" means an agreement to receive payments as the  
16 buyer of an option, cap or floor and to make payments as the  
17 seller of a different option, cap or floor.

18 (D) "Counterparty exposure amount" means:

19 (I) The net amount of credit risk attributable to a  
20 derivative instrument entered into with a business entity other  
21 than an over-the-counter derivative instrument. The amount of  
22 credit risk equals:

23 (a) the market value of the over-the-counter derivative  
24 instrument if the liquidation of the derivative instrument would  
25 result in a final cash payment to the insurer; or

26 (b) zero if the liquidation of the derivative instrument  
27 would not result in a final cash payment to the insurer.

28 (II) If over-the-counter derivative instruments are entered  
29 into under a written master agreement that provides for netting  
30 of payments owed by the respective parties, and the domiciliary  
31 jurisdiction of the counterparty is either within the United  
32 States or, if not within the United States, within a foreign  
33 jurisdiction listed in the Purposes and Procedures of the  
34 Securities Valuation Office of the National Association of  
35 Insurance Commissioners as eligible for netting, the amount of  
36 credit risk shall be the greater of zero or the net sum of:

37 (a) the market value of the over-the-counter derivative  
38 instruments entered into under the agreement, the liquidation of  
39 which would result in a final cash payment to the insurer; and

40 (b) the market value of the over-the-counter derivative  
41 instruments entered into under the agreement, the liquidation of  
42 which would result in a final cash payment by the insurer to the  
43 business entity.

44 (III) For open transactions, market value shall be  
45 determined at the end of the most recent quarter of the  
46 insurer's fiscal year and shall be reduced by the market value  
47 of acceptable collateral held by the insurer or placed in escrow  
48 by one or both parties.

49 (E) "Covered" means that an insurer owns or can immediately  
50 acquire, through the exercise of options, warrants or conversion  
51 rights already owned, the underlying interest in order to

1 fulfill or secure its obligations under a call option, cap or  
2 floor it has written, or has set aside under a custodial or  
3 escrow agreement cash or cash equivalents with a market value  
4 equal to the amount required to fulfill its obligations under a  
5 put option it has written, in an income generation transaction.

6 (F) "Derivative instrument" means an agreement, option,  
7 instrument or a series or combination of agreements, options or  
8 instruments:

9 (I) to make or take delivery of, or assume or relinquish, a  
10 specified amount of one or more underlying interests, or to make  
11 a cash settlement in lieu thereof; or

12 (II) that has a price, performance, value or cash flow based  
13 primarily upon the actual or expected price, level, performance,  
14 value or cash flow of one or more underlying interests.

15 (G) "Derivative transaction" means a transaction involving  
16 the use of one or more derivative instruments.

17 (H) "Floor" means an agreement obligating a seller to make  
18 payments to a buyer in which each payment is based on the amount  
19 that a predetermined number, sometimes called the "floor rate"  
20 or "floor price," exceeds a reference price, level, performance  
21 or value of one or more underlying interests.

22 (I) "Forward" means an agreement, other than a future, to  
23 make or take delivery of, or effect a cash settlement based on  
24 the actual or expected price, level, performance or value of,  
25 one or more underlying interests.

26 (J) "Future" means an agreement, traded on a qualified  
27 exchange or qualified foreign exchange, to make or take delivery  
28 of, or effect a cash settlement based on the actual or expected  
29 price, level, performance or value of, one or more underlying  
30 interests.

31 (K) "Hedging transaction" means a derivative transaction  
32 that is entered into and maintained to reduce:

33 (I) the risk of a change in the value, yield, price, cash  
34 flow or quantity of assets or liabilities that the insurer has  
35 acquired or incurred or anticipates acquiring or incurring; or

36 (II) the currency exchange rate risk or the degree of  
37 exposure as to assets or liabilities that an insurer has  
38 acquired or incurred or anticipates acquiring or incurring.

39 (L) "Income generation transaction" means a derivative  
40 transaction involving the writing of covered call options,  
41 covered put options, covered caps or covered floors that is  
42 intended to generate income or enhance return.

43 (M) "Investment subsidiary" means a subsidiary of an insurer  
44 engaged or organized to engage exclusively in the ownership and  
45 management of assets authorized as investments for the insurer  
46 if the subsidiary agrees to limit its investment in any asset so  
47 that its investment will not cause the amount of the total  
48 investment of the insurer to exceed any of the investment  
49 limitations or violate any other provision applicable to the  
50 insurer. As used in this definition, the total investment of the  
51 insurer shall include:

1 (I) direct investment by the insurer in an asset; and  
2 (II) the insurer's proportionate share of an investment in  
3 an asset by an investment subsidiary of the insurer, which shall  
4 be calculated by multiplying the amount of the subsidiary's  
5 investment by the percentage of the insurer's ownership interest  
6 in the subsidiary.

7 (N) "Option" means an agreement giving a right to buy or  
8 receive, sell or deliver, enter into, extend or terminate or  
9 effect a cash settlement based on the actual or expected price,  
10 level, performance or value of one or more underlying interests.

11 (O) "Over-the-counter derivative instrument" means a  
12 derivative instrument entered into through a qualified exchange,  
13 qualified foreign exchange or cleared through a qualified  
14 clearinghouse.

15 (P) "Put option" means an agreement giving a right to sell  
16 or deliver an interest based on the actual or expected price,  
17 level, performance or value of one or more underlying interests.

18 (Q) "Replication transaction" means a derivative transaction  
19 that is intended to replicate the performance of one or more  
20 assets that an insurer is authorized to acquire under this  
21 article. A derivative transaction that is entered into as a  
22 hedging transaction shall not be considered a replication  
23 transaction.

24 (R) "Swap" means an agreement to exchange or to net payments  
25 at one or more times based on the actual or expected price,  
26 level, performance or value of one or more underlying interests.

27 (S) "Warrant" means an instrument that gives the holder the  
28 right to purchase an underlying financial instrument at a given  
29 price and time or at a series of prices and times outlined in  
30 the warrant agreement. Warrants may be issued alone or in  
31 connection with the sale of other securities, for example, as  
32 part of a merger or recapitalization agreement, or to facilitate  
33 divestiture of the securities of another business entity.

34 (13) General three per centum (3%) diversification.

35 (i) Except as otherwise specified in this section, an  
36 insurer shall not acquire, directly or indirectly through an  
37 investment subsidiary, an investment under this section if, as a  
38 result of and after giving effect to the investment, the insurer  
39 would hold more than three per centum (3%) of its admitted  
40 assets in investments of all kinds issued, assumed, accepted,  
41 insured or guaranteed by a single person, or five per centum  
42 (5%) of its admitted assets in investment in the voting  
43 securities of a depository institution or any company that  
44 controls the institution.

45 (ii) The three per centum (3%) limitation under subclause  
46 (i) shall not apply to the aggregate amounts insured by a single  
47 financial guaranty insurer with the highest generic rating  
48 issued by a nationally recognized statistical rating  
49 organization.

50 (iii) Asset-backed securities shall not be subject to the  
51 limitations of subclause (i), but an insurer shall not acquire

1 an asset-backed security if, as a result of an after giving  
2 effect to the investment, the aggregate amount of asset-backed  
3 securities secured by or evidencing an interest in a single  
4 asset or single pool of assets held by a trust or other business  
5 entity then held by the insurer would exceed three per centum  
6 (3%) of its admitted assets.

7 \* \* \*

8 Section 3. Section 403-B(e) of the act, added March 22, 2010  
9 (P.L.147, No.14), is amended to read:

10 Section 403-B. Duties of insurers and insurance producers.

11 \* \* \*

12 (e) Compliance with other rules.--[Compliance with the  
13 Financial Industry Regulatory Authority Conduct Rules pertaining  
14 to suitability shall satisfy the requirements under this section  
15 for the recommendation of annuities registered under the  
16 Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or  
17 rules and regulations adopted under the Securities Act of 1933.]  
18 Sales made by an insurance producer subject to and in compliance  
19 with the Financial Industry Regulatory Authority Conduct Rules  
20 pertaining to suitability shall satisfy the requirements under  
21 this section for the recommendation of annuities. Nothing in  
22 this subsection shall limit the commissioner's ability to  
23 enforce the provisions of this article.

24 \* \* \*

25 Section 4. Section 621.2(a)(1) of the act, amended February  
26 17, 1994 (P.L.92, No.9), is amended to read:

27 Section 621.2. Group Accident and Sickness Insurance.--(a)  
28 Group accident and sickness insurance is hereby declared to be  
29 that form of accident and sickness insurance covering groups of  
30 persons defined in this section with or without one or more  
31 members of their families or one or more of their dependents, or  
32 covering one or more members of the families or one or more  
33 dependents of such groups or persons and issued upon the  
34 following basis:

35 (1) Under a policy issued to an employer or trustees of a  
36 fund established by an employer, who shall be deemed the  
37 policyholder insuring at least [ten] two employes of such  
38 employer for the benefit of persons other than the employer. The  
39 term "employes," as used herein, shall be deemed to include the  
40 officers, managers and employes of the employer, the individual  
41 proprietor or partner, if the employer is an individual  
42 proprietor or partnership, the officers, managers and employes  
43 of subsidiary or affiliated corporations, the individual  
44 proprietors, partners and employes of individuals and firms, if  
45 the business of the employer and such individual or firm is  
46 under common control through stock ownership, contract or  
47 otherwise. The term "employes," as used herein, may include  
48 retired employes. A policy issued to insure employes of a public  
49 body may provide that the term "employes" shall include elected  
50 or appointed officials.

51 \* \* \*

1 Section 5. The definition of "long-term care insurance" in  
2 section 1103 of the act, amended July 17, 2007 (P.L.134, No.40),  
3 is amended and the section is amended by adding definitions to  
4 read:

5 Amend Bill, page 3, line 11, by striking out "2" and  
6 inserting

7 6

8 Amend Bill, page 15, by inserting between lines 21 and 22

9 Section 7. Repeals are as follows:

10 (1) The General Assembly declares that the repeal under  
11 paragraph (2) is necessary to effectuate the addition of  
12 section 354.6 of the act.

13 (2) Section 2(3) of the act of May 11, 1949 (P.L.1210,  
14 No.367), referred to as the Group Life Insurance Policy Law,  
15 is repealed.

16 Amend Bill, page 15, line 22, by striking out "3" and  
17 inserting

18 8

19 Amend Bill, page 15, line 25, by striking out all of said  
20 line and inserting

21 Section 9. This act shall take effect as follows:

22 (1) The amendment of section 403-B(e) of the act shall  
23 take effect September 24, 2010.

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