

**TITLE 4: ECONOMIC RESOURCES**  
**DIVISION 7: INSURANCE**

**§ 7502. The Policy.**

(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.

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(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 and it has been determined that the insured cannot be personally served the summons and complaint and if by affidavit or otherwise the court is satisfied that with reasonable diligence, the defendant cannot be served. The action may be brought against the insurer alone, or against both the insured and insurer only if it has been determined that the insured cannot be personally served the summons and complaint and if by affidavit or otherwise the court is satisfied that with reasonable diligence, the defendant cannot be served, and that a cause of action arises against the party upon whom service is made, or he is a necessary and proper party to the action, the court may order that the insurer may be named in a direct action lawsuit.

(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.

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(j) *Implied Covenant of Good Faith and Fair Dealing.* It is recognized that, in every policy of insurance, there is an implied covenant of good faith and fair dealing that exists between the insurer and the insured, the breach of which can give rise to a cause of action for damages legally caused by such breach. However, the implied covenant of good faith and fair dealing does not, and shall not, exist between an insurer and any third party who is not an insured under the insurance agreement and there shall be no cause of action for breach of the insurance agreement, breach of the covenant of good faith and fair dealing or bad faith by any person or entity that is not an insured under the insurance agreement. A person who asserts a claim for damages against a person who is insured, or claims to be insured, under a policy of insurance is not, and shall not be considered, a third party beneficiary of such insurance policy. It is intended by this provision that there shall be no cause of action for third party bad faith.

**Source:** PL 3-107, § 25, modified; (e) amended by PL 14-39, § 2; (j) added by PL 14-70, § 3.

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

PL 14-39 took effect on October 26, 2004 and contained the following intent and purpose clause, in addition to severability and savings provisions:

Section 1. Intent and Purpose. It is in the best interest of the CNMI economy to encourage private investment in the CNMI. The existence of direct action statute allowing insurance companies to be sued directly in civil cases has a chilling impact on the operation of private insurance companies in the CNMI. While the original intent of a direct action statute was an attempt to make sure that injured persons were not left without a remedy if an insured was unable to be served, the impact has direct negative consequences on insurance companies operating in the CNMI. An amendment of direct action would not affect the applicability of the insurance policy nor the issues of liability. Moreover, the Federal Rules of Evidence which are generally applicable to the Commonwealth Superior Court, expressly prohibit the introduction of evidence that a person was or was not insured against liability in a civil action upon the issue whether the person acted negligently or otherwise wrongfully. In fact, the mention of insurance coverage to a jury in a typical tort case would be cause for a mistrial. The primary reason for this is that the knowledge of the presence or absence of liability insurance would induce juries to decide cases on improper grounds. Juries should rule only on the evidence of negligence or the wrongful act and not on whether there is an insurance company which would pay the liability. An amendment allowing only direct action against insurers only if and when the insured cannot be served would serve both the injured party and the insurance provider.

PL 14-70 was enacted on June 10, 2005 and contained the following findings, in addition to severability and savings provisions and other enactments:

Section 1. Findings. The Legislature generally retains broad control and regulatory power over the insurance industry in the CNMI and has within its control and power the ability to determine the extent to which causes of action may be asserted against insurers by third party claimants,

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as long as its action is rationally related to a legitimate Commonwealth interest. It is recognized that there is presently in the CNMI no case or statute setting forth whether a third party claimant may assert a cause of action for “bad faith” against an insurer, or whether a third party claimant has any right to assert a claim pursuant to 4 CMC § 7505(h) or 4 CMC § 5112. This has resulted in uncertainty within the area of civil liability, a lack of predictability amongst insurers, a lack of protection against unfounded claims against insurers, allegations, threats and claims of bad faith by third party claimants, unwarranted claims under the Insurance Act and the Consumer Protection Act, and costly litigation.

It is in the best interest of the CNMI economy to encourage private investment in the CNMI. This amendment is in part designed to dissuade insurers from discontinuing the provision of liability insurance in the Commonwealth, to reduce the significant rise in premiums, and to increase the types and amounts of coverage available for CNMI risks. The absence of a legal provision precluding third party claimants from asserting causes of action against insurers for bad faith has a chilling impact on the operation of private insurance companies in the CNMI. There has been a decrease in the types of coverage being made available in relation to certain CNMI risks and premiums for some types of coverage have risen so high that there are some types of coverage that are no longer available or affordable by individuals and businesses in the CNMI. Several insurers have commenced the process of completely ceasing to provide liability insurance and others have expressed an intention to do the same. The legislature finds that, without passage of this amendment, Commonwealth commerce would be in jeopardy of significant decline and there would be a significant risk of substantial negative impact on the people and infrastructure of the CNMI. The Legislature, therefore, finds that it is in the best interest of the people of the CNMI to preclude such claims.

The Legislature further finds that it is in the best interest of the CNMI to maintain the availability of liability insurance, to foster competition in the insurance market, to prevent drastic increases in premiums and reduce premiums for liability coverage, to encourage the widespread acquisition of liability insurance by individuals and businesses, to increase sources of compensation for victims of personal injuries, to preserve commercial and economic stability in the Commonwealth, and to preserve a legal environment of fairness to plaintiffs, defendants, and insurers.

It is, therefore, the intent of this bill to make appropriate amendments to the Commonwealth Insurance Act and Commonwealth Consumer Protection Act to implement the findings of this bill.