

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2391 Session of 2012

INTRODUCED BY MICOZZIE, DeLUCA, SONNEY, GRELL, KILLION, KOTIK, MATZIE, HARRIS, D. COSTA, FABRIZIO, PASHINSKI, M. SMITH, CALTAGIRONE AND WATERS, MAY 21, 2012

REFERRED TO COMMITTEE ON INSURANCE, MAY 21, 2012

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
 2 act relating to insurance; amending, revising, and
 3 consolidating the law providing for the incorporation of
 4 insurance companies, and the regulation, supervision, and
 5 protection of home and foreign insurance companies, Lloyds
 6 associations, reciprocal and inter-insurance exchanges, and
 7 fire insurance rating bureaus, and the regulation and
 8 supervision of insurance carried by such companies,
 9 associations, and exchanges, including insurance carried by
 10 the State Workmen's Insurance Fund; providing penalties; and
 11 repealing existing laws," further providing for definitions,
 12 for acquisition of control of or merger or consolidation with
 13 domestic insurer, for acquisitions involving insurers not
 14 otherwise covered, for registration of insurers, for
 15 standards and management of an insurer within a holding
 16 company system and for examination; providing for supervisory
 17 colleges and for group-wide supervision for international
 18 insurance groups; further providing for confidential
 19 treatment, for rules and regulations, for injunctions and
 20 certain prohibitions and for sanctions.

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

23 Section 1. The definitions of "control" and "NAIC" in
 24 section 1401 of the act of May 17, 1921 (P.L.682, No.284), known
 25 as The Insurance Company Law of 1921, added December 18, 1992
 26 (P.L.1519, No.178), are amended and the section is amended by

1 adding definitions to read:

2 Section 1401. Definitions.--As used in this article, and for
3 the purposes of this article only, the following words and
4 phrases shall have the meanings given to them in this section:

5 * * *

6 "Company action level event." As defined in section 501-A or
7 501-B of the act of May 17, 1921 (P.L.789, No.285), known as
8 "The Insurance Department Act of 1921."

9 "Control," "controlling," "controlled by" and "under common
10 control with." The possession, direct or indirect, of the power
11 to direct or cause the direction of the management and policies
12 of a person, whether through the ownership of voting securities,
13 by contract other than a commercial contract for goods or
14 nonmanagement services or otherwise, unless the power is the
15 result of an official position with or corporate office held by
16 the person. Control shall be presumed to exist if any person,
17 directly or indirectly, owns, controls, holds with the power to
18 vote or holds proxies representing ten per centum (10%) or more
19 of the [voting securities of any other person] votes that all
20 shareholders would be entitled to cast in the election of
21 directors. This presumption may be rebutted by a showing that
22 control does not exist in fact. The Insurance Department may
23 determine, after furnishing all persons in interest notice and
24 opportunity to be heard and making specific findings of fact to
25 support such determination, that control exists in fact,
26 notwithstanding the absence of a presumption to that effect or
27 that another person has control.

28 * * *

29 "Enterprise risk." An activity, circumstance, event or
30 series of events involving one or more affiliates of an insurer

1 that, if not remedied promptly, would likely have a material
2 adverse effect on the financial condition or liquidity of an
3 insurer or its insurance holding company system, including, but
4 not limited to, anything that would:

5 (1) trigger a company action level event for the insurer or

6 (2) cause the insurer to be deemed to be in hazardous
7 financial condition under:

8 (i) Article V of the act of May 17, 1921 (P.L.789, No.285),
9 known as "The Insurance Department Act of 1921."

10 (ii) 31 Pa. Code Ch. 160 (relating to standards to define
11 insurers deemed to be in hazardous financial condition).

12 "IAIS." The International Association of Insurance
13 Supervisors or successor organization.

14 * * *

15 "NAIC." The National Association of Insurance Commissioners
16 or successor organization.

17 * * *

18 "SEC." The Securities and Exchange Commission of the United
19 States.

20 * * *

21 Section 2. Section 1402(a)(2), (b)(12), (f)(3), (h) and (j)
22 of the act, amended July 9, 2008 (P.L.885, No.62), are amended
23 and subsections (a), (b) and (f) are amended by adding
24 paragraphs to read:

25 Section 1402. Acquisition of Control of or Merger or
26 Consolidation with Domestic Insurer.--(a) * * *

27 (2) [For purposes of this section, a "domestic insurer"
28 shall include any person controlling a domestic insurer unless
29 such person as determined by the department is either directly
30 or through its affiliates primarily engaged in business other

1 than the business of insurance. Such person shall, however, file
2 a preacquisition notification with the department containing the
3 information set forth in section 1403(c)(2) thirty (30) days
4 prior to the proposed effective date of the acquisition. Failure
5 to file is subject to section 1403(e)(3). For purposes of this
6 section, "person" shall not include any securities broker
7 holding, in the usual and customary manner, less than twenty per
8 centum (20%) of the voting securities of an insurance company or
9 of any person which controls an insurance company.] For purposes
10 of this section:

11 (i) "Domestic insurer" includes a person controlling a
12 domestic insurer unless the department determines that the
13 person is primarily engaged in business other than the business
14 of insurance either directly or through its affiliates.

15 (ii) "Person" does not include a securities broker who
16 holds, in the usual and customary manner, less than twenty per
17 centum (20%) of the voting securities of an insurer or of a
18 person that controls an insurer.

19 (3) A controlling person of a domestic insurer seeking to
20 divest its controlling interest in the insurer in any manner
21 shall file with the department, with a copy to the insurer, a
22 notice of the proposed divestiture at least thirty (30) days
23 prior to the cessation of control except that notice under this
24 paragraph is not required if a statement is filed under
25 paragraph (1). The notice must contain information sufficient
26 for the department to determine if the proposed divestiture
27 requires filing and approval under paragraph (1). Information
28 obtained by or disclosed to the department under this paragraph
29 shall be given confidential treatment as provided under section
30 1407.

1 (4) The acquiring person for transactions subject to this
2 section must file a preacquisition notification as required
3 under section 1403(c) or be subject to a penalty as provided
4 under section 1403(e) (3).

5 (5) A person seeking to rebut the presumption of control
6 under this article shall file with the department, with a copy
7 to the insurer, a rebuttal filing containing information
8 sufficient for the department to determine whether control
9 exists in fact. The filing is not effective unless the
10 department finds that control does not exist or accepts a
11 disclaimer of control. Information obtained by or disclosed to
12 the department under this subsection must be given confidential
13 treatment as provided under section 1407.

14 (b) The statement to be filed with the department under this
15 section shall be made under oath or affirmation and shall
16 contain the following information:

17 * * *

18 (11.1) An agreement by the person required to file the
19 statement referred to in subsection (a) that it will provide the
20 annual enterprise risk report specified in section 1404(k.1) as
21 long as control exists.

22 (11.2) An acknowledgment by the person required to file the
23 statement referred to in subsection (a) that the person and the
24 subsidiaries within its control in the insurance holding company
25 system will provide information to the commissioner upon request
26 as necessary to evaluate enterprise risk to the insurer.

27 (12) Such additional information as the department may by
28 [rule or] regulation prescribe as necessary or appropriate for
29 the protection of policyholders of the insurer or in the public
30 interest.

1 * * *

2 (f) * * *

3 (2.1) If the proposed acquisition of control requires the
4 approval of more than one chief insurance regulatory official,
5 the public hearing under paragraph (2) may be held on a
6 consolidated basis upon request of the person filing the
7 statement under subsection (a). He shall file the statement
8 under subsection (a) with the NAIC within five (5) days of
9 making the request for a public hearing. A chief insurance
10 regulatory official may opt out of a consolidated hearing, and
11 shall provide notice to the applicant of the decision to opt out
12 within ten (10) days of the receipt of the statement under
13 subsection (a). A hearing conducted on a consolidated basis must
14 be public and held in the United States before the chief
15 insurance regulatory officials of the states in which the
16 insurers are domiciled. The chief insurance regulatory officials
17 shall hear and receive evidence. A chief insurance regulatory
18 official may attend the hearing in person or participate using
19 telecommunication.

20 (3) The department may retain at the acquiring [person's]
21 party's expense any attorneys, actuaries, accountants and other
22 experts not otherwise a part of the department's staff as may be
23 reasonably necessary to assist the department in reviewing the
24 proposed acquisition of control.

25 * * *

26 (h) The following shall constitute a violation of this
27 section:

28 (1) the failure to file any statement, amendment or other
29 material required to be filed pursuant to subsection (a) or (b);

30 (2) the effectuation or any attempt to effectuate an

1 acquisition of control of or divestiture of or merger or
2 consolidation with a domestic insurer unless the department has
3 given its approval thereto; or

4 (3) a violation of section 819-A.

5 * * *

6 (j) [As used in this section, the term "annual statement"
7 shall mean the annual report of the financial condition required
8 to be filed under 40 Pa.C.S. § 6331 (relating to reports and
9 examinations)] (Reserved).

10 Section 3. Section 1403(b)(2)(ii) and (vii) of the act,
11 amended July 9, 2008 (P.L.885, No.62), are amended to read:

12 Section 1403. Acquisitions Involving Insurers not Otherwise
13 Covered.--* * *

14 (b) * * *

15 (2) This section shall not apply to any of the following:

16 * * *

17 (ii) A purchase of securities solely for investment purposes
18 so long as such securities are not used by voting or otherwise
19 to cause or attempt to cause the substantial lessening of
20 competition in any insurance market in this Commonwealth. If a
21 purchase of securities results in a presumption of control as
22 described in the definition of "control" in section 1401, it is
23 not solely for investment purposes unless the [insurance
24 department of the insurer's state of] chief insurance regulatory
25 official in the jurisdiction of the insurer's domicile accepts a
26 disclaimer of control or affirmatively finds that control does
27 not exist and such disclaimer action or affirmative finding is
28 communicated by the domiciliary insurance [department to the
29 Insurance Department of the Commonwealth] regulator to the
30 department.

1 * * *

2 (vii) An acquisition of an insurer whose domiciliary
3 insurance [department] regulator affirmatively finds that such
4 insurer is in failing condition; there is a lack of feasible
5 alternative to improving such condition; the public benefits of
6 improving such insurer's condition through the acquisition
7 exceed the public benefits that would arise from not lessening
8 competition; and such findings are communicated by the
9 domiciliary insurance [department to the Insurance Department of
10 the Commonwealth] regulator to the department.

11 * * *

12 Section 4. Section 1404(a)(2), (b) introductory paragraph,
13 (d), (j), (k), and (l) of the act, added December 18, 1992
14 (P.L.1519, No.178), are amended, subsection (b) is amended by
15 adding paragraphs and the section is amended by adding a
16 subsection to read:

17 Section 1404. Registration of Insurers.--(a) * * *

18 (2) Any insurer which is subject to registration under this
19 section shall register within fifteen (15) days after it becomes
20 subject to registration, and annually thereafter by the thirty-
21 first day of March of each year for the previous calendar year,
22 unless the department for good cause shown extends the time for
23 registration, and then within such extended time. The department
24 may require any insurer authorized to do business in this
25 Commonwealth which is a member of [a] an insurance holding
26 company system and which is not subject to registration under
27 this section to furnish a copy of the registration statement,
28 the summary specified in subsection (c) or other information
29 filed by such insurance company with the insurance regulatory
30 authority of its domiciliary jurisdiction.

1 (b) Every insurer subject to registration shall file the
2 registration statement with the department on a form and in a
3 format prescribed by the NAIC, which shall contain all of the
4 following current information:

5 * * *

6 (4.1) If requested by the department, the insurer shall
7 include financial statements of an insurance holding company
8 system, including its affiliates. Financial statements may
9 include, but are not limited to:

10 (i) annual audited financial statements filed with the SEC
11 under the Securities Exchange Act of 1933 (48 Stat. 74, 15
12 U.S.C. § 77a et seq.); or

13 (ii) the Securities Exchange Act of 1934 (48 Stat. 881, 15
14 U.S.C. § 78a et seq.).

15 An insurer required to file financial statements under this
16 paragraph may satisfy the request by providing the department
17 with the most recent parent corporation financial statements
18 filed with the SEC.

19 (4.2) Statements that the insurer's board of directors
20 oversees corporate governance and internal controls and that the
21 insurer's officers or senior management have approved,
22 implemented and continue to maintain and monitor corporate
23 governance and internal control procedures.

24 * * *

25 (6) Other necessary or appropriate information as required
26 by the department by regulation.

27 * * *

28 (d) No information need be disclosed on the registration
29 statement filed pursuant to subsection (b) if such information
30 is not material for the purposes of this section. Unless the

1 department by [rule,] regulation or order provides otherwise,
2 sales, purchases, exchanges, loans or extensions of credit,
3 investments or guarantees involving one-half of one per centum
4 (0.5%) or less of an insurer's admitted assets as of the thirty-
5 first day of December next preceding shall not be deemed
6 material for purposes of this section.

7 * * *

8 (j) The provisions of this section shall not apply to any
9 insurer, information or transaction if and to the extent that
10 the department by [rule,] regulation or order shall exempt the
11 same from the provisions of this section.

12 (k) Any person may file with the department a disclaimer of
13 affiliation with any authorized insurer or such a disclaimer may
14 be filed by such insurer or any member of an insurance holding
15 company system. The disclaimer shall fully disclose all material
16 relationships and bases for affiliation between such person and
17 such insurer as well as the basis for disclaiming such
18 affiliation. [After a disclaimer has been filed, the insurer
19 shall be relieved of any duty to register or report under this
20 section which may arise out of the insurer's relationship with
21 such person unless and until the department disallows such a
22 disclaimer. The department shall disallow such a disclaimer only
23 after furnishing all parties in interest with notice and
24 opportunity to be heard and after making specific findings of
25 fact to support such disallowance] A disclaimer of affiliation
26 is deemed granted unless the department notifies the filing
27 party the disclaimer is disallowed within thirty (30) days
28 following receipt of a complete disclaimer. In the event of
29 disallowance, the disclaiming party may request an
30 administrative hearing under the provisions of 2 Pa.C.S.

1 (relating to administrative law and procedure), which must be
2 granted. If the commissioner approves the disclaimer or if the
3 disclaimer is deemed approved, the disclaiming party is relieved
4 of the duty to register under this section.

5 (k.1) The ultimate controlling person of every insurer
6 subject to registration shall also file an annual enterprise
7 risk report. The report must, to the best of the ultimate
8 controlling person's knowledge and belief, identify the material
9 risks within the insurance holding company system that could
10 pose enterprise risk to the insurer. The report must be filed
11 with the lead state regulator of the insurance holding company
12 system as determined by the procedures within the Financial
13 Analysis Handbook adopted by the NAIC. Beginning in 2014 and
14 every year thereafter, the report shall be filed by March 31 for
15 the previous calendar year.

16 (l) The failure to file a registration statement [or], any
17 summary of the registration statement [thereto] or enterprise
18 risk report required by this section within the time specified
19 for such filing shall be a violation of this section.

20 Section 5. Section 1405(a)(1), (2) and (3), (b)(1) and (c)
21 (5) of the act, amended February 17, 1994 (P.L.92, No.9),
22 December 20, 2000 (P.L.967, No.132) and July 9, 2008 (P.L.885,
23 No.62), are amended and subsection (a) is amended by adding a
24 paragraph to read:

25 Section 1405. Standards and Management of an Insurer within
26 [a] an Insurance Holding Company System.--(a) (1) Transactions
27 within [a] an insurance holding company system to which an
28 insurer subject to registration is a party shall be subject to
29 all of the following standards:

30 (i) The terms shall be fair and reasonable.

1 (ii) Charges or fees for services performed shall be
2 reasonable.

3 (iii) Expenses incurred and payment received shall be
4 allocated to the insurer in conformity with customary insurance
5 accounting practices consistently applied and all cost-sharing
6 or expense allocation arrangements must be formalized in writing
7 and authorized by the board of directors of the domestic
8 insurer.

9 (iv) The books, accounts and records of each party to all
10 such transactions shall be so maintained as to clearly and
11 accurately disclose the nature and details of the transactions,
12 including such accounting information as is necessary to support
13 the reasonableness of the charges or fees to the respective
14 parties.

15 (v) The insurer's surplus as regards policyholders after any
16 material transaction with an affiliate and after any dividends
17 or distributions to shareholder affiliates shall be reasonable
18 in relation to the insurer's outstanding liabilities and
19 adequate to its financial needs.

20 (2) The following transactions involving a domestic insurer
21 and any person in its insurance holding company system,
22 including an amendment or modification of affiliate agreements
23 previously filed under this section that are subject to
24 materiality standards contained in subparagraphs (i), (ii),
25 (iii), (iv) and (v), may not be entered into unless the insurer
26 has notified the department in writing of its intention to enter
27 into such transaction at least thirty (30) days prior thereto or
28 such shorter period as the department may permit and the
29 department has not disapproved it within such period:

30 (i) Sales, purchases, exchanges, loans or extensions of

1 credit, guarantees, investments, pledges of assets or assets to
2 be received by the domestic insurer as contributions to its
3 surplus, provided that, as of the thirty-first day of December
4 next preceding, such transactions are equal to or exceed the
5 lesser of [five per centum (5%)] three per centum (3%) of the
6 insurer's admitted assets or twenty-five per centum (25%) of
7 surplus as regards policyholders.

8 (ii) Loans or extensions of credit to any person who is not
9 an affiliate, where the insurer makes such loans or extensions
10 of credit with the agreement or understanding that the proceeds
11 of such transactions, in whole or in substantial part, are to be
12 used to make loans or extensions of credit to, to purchase
13 assets of or to make investments in any affiliate of the insurer
14 making such loans or extensions of credit provided that, as of
15 the thirty-first day of December next preceding, such
16 transactions are equal to or exceed the lesser of [five per
17 centum (5%)] three per centum (3%) of the insurer's admitted
18 assets or twenty-five per centum (25%) of surplus as regards
19 policyholders.

20 (iii) Reinsurance agreements or modifications thereto [where
21 either], including:

22 (A) [the reinsurance premium] agreements where the
23 reinsurance premium or the projected reinsurance premium in any
24 of the next three twelve-month periods equals or exceeds five
25 per centum (5%) of the insurer's surplus as regards
26 policyholders as of the thirty-first day of December next
27 preceding; [or]

28 (B) agreements where the change in the insurer's liabilities
29 or any transfer of assets required to fund the transaction in
30 any of the next three twelve-month periods equals or exceeds

1 twenty-five per centum (25%) of the insurer's surplus as regards
2 policyholders as of the thirty-first day of December next
3 preceding, including those agreements which may require as
4 consideration the transfer of assets from an insurer to a
5 nonaffiliate, if an agreement or understanding exists between
6 the insurer and nonaffiliate that any portion of such assets
7 will be transferred to one or more affiliates of the insurer.
8 Nothing in this paragraph shall affect or limit the requirements
9 and applicability of section 3 of the act of July 31, 1968
10 (P.L.941, No.288), entitled "An act providing for reporting to
11 the Insurance Commissioner by domestic insurance companies,
12 associations, or exchanges, of certain conveyances of interests
13 in the assets of such companies, associations, or exchanges[.]";

14 or

15 (C) reinsurance pooling agreements.

16 (iv) Any material transactions, specified by regulation,
17 which the department determines may adversely affect the
18 interests of the insurer's policyholders.

19 (v) Management agreements, service contracts, tax allocation
20 agreements, guarantees and cost-sharing arrangements.

21 The notice for amendments or modifications must include the
22 reasons for the change and the financial impact on the domestic
23 insurer.

24 Nothing in this paragraph shall be deemed to authorize or permit
25 any transactions which, in the case of an insurer not a member
26 of the same holding company system, would be otherwise contrary
27 to law.

28 (2.1) Within thirty (30) days after termination of an
29 agreement previously filed in accordance with paragraph (2), a
30 domestic insurer shall provide notice of the termination to the

1 department.

2 (3) A domestic insurer may not enter into transactions which
3 are part of a plan or series of like transactions with persons
4 within the insurance holding company system if the purpose of
5 those separate transactions is to avoid the statutory threshold
6 amount and thus avoid the review that would occur otherwise. If
7 the department determines that such separate transactions were
8 entered into over any twelve-month period for such purpose, it
9 may exercise its authority under section 1410.

10 * * *

11 (b) (1) No domestic insurer shall pay any extraordinary
12 dividend to its [stockholders] shareholders until:

13 (i) thirty (30) days after the commissioner has received
14 written notice from the insurer of the declaration of the
15 dividend and has not within such period disapproved the payment;
16 or

17 (ii) the commissioner shall have approved the payment within
18 such thirty-day period.

19 * * *

20 (c) * * *

21 (5) The provisions of paragraphs (3), (4) and (4.1) shall
22 not apply to a domestic insurer if the person controlling such
23 insurer is an insurer [or another business entity], an attorney
24 in fact for a reciprocal exchange, a mutual insurance holding
25 company or a publicly held corporation having a board of
26 directors and committees thereof which already meet the
27 requirements of paragraphs (3), (4) and (4.1).

28 * * *

29 Section 6. Section 1406 of the act, added December 18, 1992
30 (P.L.1519, No.178), is amended to read:

1 Section 1406. Examination.--(a) Subject to the limitation
2 contained in this section and in addition to the powers which
3 the department has under law relating to the examination of
4 insurers, the department shall also have the power to [order any
5 insurer registered under section 1404 to produce such records,
6 books or other information papers in the possession of the
7 insurer or its affiliates as are reasonably necessary to
8 ascertain the financial condition of such insurer or to
9 determine compliance with this article. In the event an insurer
10 fails to comply with such order, the department shall have the
11 power to examine affiliates to obtain this information.] examine
12 an insurer registered under section 1404 and its affiliates to
13 ascertain the financial condition of the insurer, including the
14 enterprise risk to the insurer by:

15 (1) the ultimate controlling person;

16 (2) an entity or combination of entities within the
17 insurance holding company system; or

18 (3) the insurance holding company system on a consolidated
19 basis.

20 (a.1) The department may order an insurer registered under
21 section 1404 to produce records, books or other information
22 papers in the possession of the insurer or its affiliates as are
23 reasonably necessary to ascertain the financial condition of the
24 insurer or to determine compliance with this article.

25 (a.2) To ascertain the financial condition of the insurer,
26 including the enterprise risk to the insurer by:

27 (1) the ultimate controlling person;

28 (2) an entity or combination of entities within the
29 insurance holding company system; or

30 (3) the insurance holding company system on a consolidated

1 basis,
2 the department may order an insurer registered under section
3 1404 to produce information not in the possession of the insurer
4 if the insurer can obtain access to the information under a
5 contractual relationship, a statutory obligation or other
6 method. If the insurer may not obtain the information requested
7 by the department, the insurer shall provide the department a
8 detailed explanation of the reason the insurer may not obtain
9 the information and the identity of the holder of information.
10 If the insurer fails to comply with this subsection or the
11 department determines that the detailed explanation is without
12 merit, the department may suspend or revoke the insurer's
13 license or require the insurer to pay an administrative penalty
14 of one thousand dollars (\$1,000) per day until the information
15 is produced. The proceeding for suspension, revocation or
16 imposition of a penalty shall be conducted pursuant to 2 Pa.C.S.
17 (relating to administrative law and procedure).

18 (b) The department may retain at the registered insurer's
19 expense such attorneys, actuaries, accountants and other experts
20 not otherwise a part of the department's staff as shall be
21 reasonably necessary to assist in the conduct of the examination
22 under [subsection (a)] subsections (a), (a.1) and (a.2). Any
23 persons so retained shall be under the direction and control of
24 the [commissioner] department and shall act in a purely advisory
25 capacity.

26 (c) Each registered insurer producing for examination
27 records, books and papers pursuant to [subsection (a)]
28 subsections (a), (a.1) and (a.2) shall be liable for and shall
29 pay the expense of such examination as provided for in Article
30 IX of the act of May 17, 1921 (P.L.789, No.285), known as "The

1 Insurance Department Act of one thousand nine hundred and
2 twenty-one."

3 (d) If the insurer fails to comply with an order issued
4 under this section, the department has the power to examine the
5 insurer's affiliates to obtain the information necessary to
6 determine an insurer's compliance with this section. The
7 department also has the power to:

8 (1) issue subpoenas;

9 (2) administer oaths; and

10 (3) examine under oath any person as to any matter pertinent
11 to determining compliance with this section.

12 Upon the failure or refusal of a person to obey a subpoena, the
13 department may petition a court of competent jurisdiction and,
14 upon proper showing, the court may enter an order compelling the
15 witness to appear and testify or produce documentary evidence.
16 Failure to obey the court order shall be punishable as contempt
17 of court. When subpoenaed, a person shall attend as a witness at
18 the place specified in the subpoena. Witnesses shall be paid the
19 same fees and mileage as are paid to witnesses in the courts of
20 this Commonwealth. Fees, mileage and expense necessarily
21 incurred in securing the attendance and testimony of witnesses
22 shall be itemized, charged against and paid by the person being
23 examined.

24 Section 7. The act is amended by adding sections to read:

25 Section 1406.1. Supervisory Colleges.--(a) A supervisory
26 college may be convened as a temporary or permanent forum for
27 communication and cooperation between the regulators charged
28 with the supervision of the insurer or its affiliates.

29 (b) The department may participate in a supervisory college
30 with other regulators charged with supervision of the insurer or

1 its affiliates, including international, Federal and other state
2 regulatory agencies, for any of the following reasons:

3 (1) To assess the enterprise risk, business strategy, legal,
4 regulatory and financial position, risk exposure, risk
5 management and governance processes of the insurer or its
6 affiliates.

7 (2) As part of the examination of individual insurers in
8 accordance with section 1406.

9 (c) The department shall have the power to participate in a
10 supervisory college for a domestic insurer, registered under
11 section 1404, that is part of an insurance holding company
12 system with international operations in order to determine
13 compliance by the insurer with this article.

14 (d) The powers of the department regarding supervisory
15 colleges include, but are not limited to, the following:

16 (1) Initiating the establishment of a supervisory college.

17 (2) Clarifying the membership and participation of other
18 supervisors in the supervisory college.

19 (3) Clarifying the functions of the supervisory college and
20 the role of other regulators, including the establishment of a
21 group supervisor.

22 (4) Coordinating the ongoing activities of the supervisory
23 college, including planning meetings, supervisory activities and
24 processes for information sharing.

25 (5) Establishing a crisis management plan.

26 (e) The department may enter into agreements in accordance
27 with sections 1406.2, 1407 and Article II-A of the act of May
28 17, 1921 (P.L.789, No.285), known as "The Insurance Department
29 Act of 1921," to provide the basis for sharing information
30 between the department and other regulatory agencies. The

1 department may also enter into agreements to share information
2 and further coordinate the activities of the supervisory college
3 pursuant to this section. Nothing in this section shall delegate
4 to the supervisory college the authority of the department to
5 regulate or supervise the insurer or its affiliates within its
6 jurisdiction.

7 (f) A registered insurer subject to this section shall be
8 liable for and shall pay the reasonable expenses of the
9 department's participation in a supervisory college, including
10 reasonable travel expenses.

11 Section 1406.2. Group-wide Supervision for International
12 Insurance Groups.--(a) (Reserved).

13 (b) The department is authorized to act as the group-wide
14 supervisor for any international insurance group where the
15 international insurance group's ultimate controlling person is
16 domiciled in Pennsylvania. However, the department may otherwise
17 acknowledge another jurisdiction as the group-wide supervisor
18 where the international insurance group:

19 (1) Does not have substantial insurance operations in the
20 United States.

21 (2) Has substantial insurance operations in the United
22 States, but not in Pennsylvania.

23 (3) Has substantial insurance operations in the United
24 States and Pennsylvania, but the department has determined
25 pursuant to the factors set forth in subsections (c)(1), (2),
26 (3), (4), (5), (6) and (7) and (f) that the other jurisdiction
27 is the appropriate group supervisor.

28 (c) In cooperation with other supervisors, the department
29 may determine that it is the appropriate group-wide supervisor
30 for an international insurance group with substantial operations

1 concentrated in Pennsylvania or in insurance operations
2 conducted by subsidiary insurance companies domiciled in
3 Pennsylvania, where the ultimate controlling person is domiciled
4 outside Pennsylvania, or it may acknowledge that another chief
5 insurance regulatory official is the appropriate group-wide
6 supervisor for the international insurance group. The department
7 shall consider the following factors and the relative scale of
8 each when making a determination or acknowledgment under this
9 subsection:

10 (1) The location where the international insurance group is
11 based or the place of domicile of the ultimate controlling
12 person of the international insurance group.

13 (2) The locations of the international insurance group's
14 executive offices.

15 (3) The locations of origin of the insurance business of the
16 international insurance group.

17 (4) The locations of the assets and liabilities of the
18 international insurance group.

19 (5) The locations of the business operations and activities
20 of the international insurance group.

21 (6) Whether another chief insurance regulatory official is
22 acting or seeking to act as the lead group-wide supervisor under
23 a regulatory system that the department determines to be:

24 (i) substantially similar to that provided under the laws of
25 this Commonwealth; or

26 (ii) otherwise sufficient in terms of provision of group-
27 wide supervision, enterprise risk analysis and cooperation with
28 other chief regulatory officials.

29 (7) Whether a chief insurance regulatory official acting or
30 seeking to act as the lead group-wide supervisor provides the

1 department with reasonably reciprocal recognition and
2 cooperation.

3 (d) Pursuant to section 1406, the department is authorized
4 to collect from any insurer registered pursuant to section 1404
5 all information necessary to determine whether the department
6 may act as the group-wide supervisor or if the department may
7 acknowledge another insurance regulatory official to act as the
8 group-wide supervisor. Prior to issuing a determination that an
9 international insurance group is subject to group-wide
10 supervision by the department, the department shall notify the
11 insurer registered pursuant to section 1404 and the ultimate
12 controlling person within the international insurance group. The
13 international insurance group shall have not less than thirty
14 (30) days to provide the department with additional information
15 pertinent to the pending determination. The department shall
16 publish in the Pennsylvania Bulletin and on its Internet website
17 the identity of international insurance groups that it has
18 determined are subject to its group-wide supervision.

19 (e) If the department is the group-wide supervisor for an
20 international insurance group, the department is authorized to
21 engage in conducting and coordinating any of the following
22 group-wide supervision activities:

23 (1) Assess the enterprise risks within the international
24 insurance group, pursuant to section 1406, to ensure that:

25 (i) The material financial condition and liquidity risks to
26 the members of the international insurance group which are
27 engaged in the business of insurance are identified by
28 management.

29 (ii) Reasonable and effective mitigation measures are in
30 place.

1 (2) Request, from any member of an international insurance
2 group subject to the department's supervision, information
3 necessary and appropriate to assess enterprise risk, including,
4 but not limited to, information about the members of the
5 international insurance group regarding:

6 (i) Governance, risk assessment and management.

7 (ii) Capital adequacy.

8 (iii) Material intercompany transactions.

9 (3) Compel development and implementation of reasonable
10 measures designed to assure that the international insurance
11 group is able to timely recognize and mitigate material risks to
12 members that are engaged in the business of insurance.

13 (4) Communicate with other insurance regulatory officials
14 for members within the international insurance group and share
15 relevant information subject to the confidentiality provisions
16 of section 1407, through supervisory colleges as set forth in
17 section 1406.1 or otherwise.

18 (5) Enter into agreements with or obtain documentation from
19 any insurer registered under section 1404, any member of the
20 international insurance group and any other chief insurance
21 regulatory officials for members, providing the basis for or
22 otherwise clarifying the department's role as group supervisor,
23 including provisions for resolving disputes with other relevant
24 supervisory authorities. Such agreements or documentation shall
25 not serve as evidence in any proceeding that any insurer or
26 person within an insurance holding company system not
27 incorporated in this Commonwealth is doing business in this
28 Commonwealth or is otherwise subject to jurisdiction in this
29 Commonwealth.

30 (6) Other group-wide supervisory activities as considered

1 appropriate by the department.

2 (f) If the department acknowledges that a regulatory
3 official from a jurisdiction which is not accredited by the NAIC
4 is the group-wide supervisor, the department is authorized to
5 reasonably cooperate, through supervisory colleges or otherwise,
6 with group supervision undertaken by the group-wide supervisor,
7 provided that:

8 (1) The department's cooperation is in compliance with the
9 laws of this Commonwealth.

10 (2) The regulator also recognizes and cooperates with the
11 department's activities as a group-wide supervisor for other
12 international insurance groups where applicable. Where such
13 recognition and cooperation is not reasonably reciprocal, the
14 department is authorized to refuse recognition and cooperation.

15 (g) The department is authorized to enter into agreements
16 with or obtain documentation from any insurer registered under
17 section 1404, any affiliate of the insurer and other regulatory
18 officials for members of the insurance group, which provide the
19 basis for or otherwise clarify a regulatory official's role as
20 group supervisor.

21 (h) The department may promulgate regulations necessary for
22 the administration of this section. In determining whether a
23 regulation should be promulgated, the department shall give due
24 consideration to model laws, model regulations and definitions
25 or guidelines pertaining to group-wide supervision, if any,
26 promulgated by the NAIC or other recognized insurance regulatory
27 bodies or associations.

28 (i) A registered insurer subject to this section shall be
29 liable for and shall pay the reasonable expenses of the
30 department's participation in the administration of this

1 section, including the engagement of attorneys, actuaries and
2 any other professionals and all reasonable travel expenses.

3 (j) As used in this section, the following words and phrases
4 shall have the meanings given to them in this subsection unless
5 the context clearly indicates otherwise:

6 "Group-wide supervisor." The chief insurance regulatory
7 official authorized to engage in conducting and coordinating
8 group-wide supervision activities who is from the jurisdiction
9 determined or acknowledged by the department under subsection
10 (c) to have sufficient significant contacts with the
11 international insurance group.

12 "International insurance group." An insurance group
13 operating internationally that includes an insurer registered
14 under section 1404.

15 Section 8. Sections 1407, 1408 and 1409(a), (b) and (c) of
16 the act, added December 18, 1992 (P.L.1519, No.178), are amended
17 to read:

18 Section 1407. Confidential Treatment.--(a) All information,
19 documents, materials and copies thereof in the possession or
20 control of the department that are produced by, obtained by or
21 disclosed to the department or any other person in the course of
22 an examination or investigation made pursuant to section 1406 or
23 investigation made pursuant to section 1406.1 or 1406.2 and all
24 information reported pursuant to sections 1402(b)(11.1) and
25 (11.2), 1404 and 1405 shall be privileged and given confidential
26 treatment and shall not be:

27 (1) Subject to discovery or admissible in evidence in a
28 private civil action.

29 (2) [subject] Subject to subpoena [and shall not be].

30 (3) Subject to the act of February 14, 2008 (P.L.6, No.3),

1 known as the "Right-to-Know Law."

2 (4) [made] Made public by the department or any other
3 person, except to [insurance departments of other states,]
4 regulatory or law enforcement officials of other jurisdictions
5 or group supervisors or members of a supervisory college in
6 accordance with subsection (c), without the prior written
7 consent of the insurer to which it pertains unless the
8 department, after giving the insurer and its affiliates who
9 would be affected thereby notice and opportunity to be heard,
10 determines that the interest of policyholders, shareholders or
11 the public will be served by the publication thereof, in which
12 event it may publish all or any part thereof in such manner as
13 [he] it may deem appropriate.

14 (b) The commissioner, department or any individual or person
15 who receives documents, materials or other information while
16 acting under the authority of the commissioner or department or
17 with whom such documents, materials or other information are
18 shared under this article shall not be permitted or required to
19 testify in any private civil action concerning any confidential
20 documents, materials or information covered under this section.

21 (c) In order to assist in the performance of its duties, the
22 department may do any of the following:

23 (1) Share confidential and privileged documents, materials
24 or other information covered under this section with regulatory
25 or law enforcement officials of this Commonwealth or other
26 jurisdictions, the IAIS, the NAIC and its affiliates and
27 subsidiaries, group supervisors and members of any supervisory
28 college under section 1406.1, provided that prior to receiving
29 the documents, materials or other information, the recipient
30 demonstrates by written statement the necessary authority and

1 intent to provide the same confidential treatment to the
2 information as required by this article. The department may only
3 share confidential and privileged documents, materials or
4 information reported under section 1404(k.1) with state
5 insurance regulators having statutes or regulations
6 substantially similar to subsection (a) and who have agreed in
7 writing not to disclose such information.

8 (2) Receive and maintain as confidential any documents,
9 materials or other information from the IAIS or the NAIC and its
10 affiliates and subsidiaries or from regulatory and law
11 enforcement officials of this Commonwealth or other
12 jurisdictions in which the documents, materials or other
13 information are confidential by law in those jurisdictions.
14 Documents, materials or other information obtained under this
15 section shall be given confidential treatment, may not be
16 subject to subpoena and may not be made public by the
17 department, commissioner or any other person.

18 (d) The department shall enter into written agreements with
19 the IAIS or the NAIC governing the sharing and use of
20 information provided under this article, that include all of the
21 following:

22 (1) Specific procedures and protocols regarding the
23 confidentiality and security of information shared with the IAIS
24 or the NAIC and its affiliates and subsidiaries under this
25 article, including procedures and protocols for sharing by the
26 IAIS or the NAIC with other Federal, state, or international
27 regulators.

28 (2) Provisions specifying that ownership of information
29 shared with the IAIS or the NAIC and its affiliates and
30 subsidiaries under this article remains with the department and

1 that the use of the information by the IAIS or the NAIC is
2 subject to the approval of the department.

3 (3) A provision providing that the IAIS or the NAIC and its
4 affiliates and subsidiaries will, where permitted by law, give
5 prompt notice to the department and the insurer regarding any
6 subpoena, request for disclosure or request for production of
7 the insurer's confidential information in the possession of the
8 IAIS or the NAIC under this article.

9 (4) A requirement that the IAIS or the NAIC and its
10 affiliates and subsidiaries will consent to intervention by an
11 insurer in any judicial or administrative action in which the
12 IAIS or the NAIC and its affiliates and subsidiaries may be
13 required to disclose confidential information about the insurer
14 that was shared with the IAIS or the NAIC and its affiliates and
15 subsidiaries under this article.

16 (e) The sharing of information by the department under this
17 article shall not constitute a delegation of regulatory
18 authority or rulemaking.

19 (f) The department is solely responsible for the
20 administration, execution and enforcement of the provisions of
21 this article.

22 (g) The sharing of information by the department as
23 authorized by subsection (c) shall not constitute a waiver of
24 any applicable privilege or claim of confidentiality in the
25 documents, materials or information.

26 (h) Documents, materials or other information in the
27 possession or control of the IAIS or the NAIC as provided under
28 this article shall:

29 (1) Be confidential and privileged.

30 (2) Not be subject to the act of February 14, 2008 (P.L.6,

1 No.3), known as the "Right-to-Know Law."

2 (3) Not be subject to subpoena.

3 (4) Not be subject to discovery or admissible in evidence in
4 any private civil action.

5 Section 1408. [Rules and] Regulations.--The department may,
6 in the manner provided by law, promulgate the [rules and]
7 regulations, and may issue such orders as are necessary to carry
8 out this article.

9 Section 1409. Injunctions and Certain Prohibitions.--(a)
10 Whenever it appears to the department that any insurer or any
11 director, officer, employe or agent thereof has committed or is
12 about to commit a violation of this article or of any [rule,]
13 regulation or order issued by the department hereunder, the
14 department may apply to the Commonwealth Court for an order
15 enjoining such insurer or such director, officer, employe or
16 agent thereof from violating or continuing to violate this
17 article or any such [rule,] regulation or order, and for such
18 other equitable relief as the nature of the case and the
19 interest of the insurer's policyholders, creditors and
20 shareholders or the public may require.

21 (b) No security which is the subject of any agreement or
22 arrangement regarding acquisition, or which is acquired or to be
23 acquired, in contravention of the provisions of this article or
24 of any [rule,] regulation or order issued by the department
25 hereunder may be voted at any shareholder's meeting, or may be
26 counted for quorum purposes, and any action of shareholders
27 requiring the affirmative vote of a percentage of shares may be
28 taken as though such securities were not issued and outstanding,
29 but no action taken at any such meeting shall be invalidated by
30 the voting of such securities unless the action would materially

1 affect control of the insurer or unless the courts of this
2 Commonwealth have so ordered. If an insurer or the department
3 has reason to believe that any security of the insurer has been
4 or is about to be acquired in contravention of the provisions of
5 this article or of any [rule,] regulation or order issued by the
6 department hereunder, the insurer or the department may apply to
7 the Commonwealth Court to enjoin any offer, request, invitation,
8 agreement or acquisition made in contravention of section 1402,
9 or any [rule,] regulation or order issued by the department
10 thereunder to enjoin the voting of any security so acquired, to
11 void any vote of such security already cast at any meeting of
12 shareholders and for such other equitable relief as the nature
13 of the case and the interest of the insurer's policyholders,
14 creditors and shareholders or the public may require.

15 (c) In any case where a person has acquired or is proposing
16 to acquire any voting securities in violation of this article or
17 any [rule,] regulation or order issued by the department
18 hereunder, the Commonwealth Court may, on such notice as the
19 court deems appropriate, upon the application of the insurer or
20 the department seize or sequester any voting securities of the
21 insurer owned directly or indirectly by such person and issue
22 such order with respect thereto as may be appropriate to
23 effectuate the provisions of this article.

24 * * *

25 Section 9. Section 1410(a) of the act, added December 18,
26 1992 (P.L.1519, No.178), is amended and the section is amended
27 by adding a subsection to read:

28 Section 1410. Sanctions.--(a) [Any insurer failing, without
29 just cause,] A person failing to file any registration statement
30 or any summary of the registration statement or enterprise risk

1 report as required [in] by this article or by regulation shall
2 be required[, after notice and hearing,] to pay a penalty not to
3 exceed [five hundred (\$500)] two hundred (\$200) dollars for each
4 day's delay. The maximum penalty under this section is twenty-
5 five thousand (\$25,000) dollars. [The department may reduce the
6 penalty if the insurer demonstrates to the department that the
7 imposition of the penalty would constitute a financial hardship
8 to the insurer.]

9 * * *

10 (f) Whenever it appears to the department that a person has
11 committed a violation of this article that prevents the full
12 understanding of the enterprise risk to the insurer by
13 affiliates or by the insurance holding company system, the
14 violation may serve as an independent basis for disapproving
15 dividends or distributions and for placing the insurer under an
16 order of supervision in accordance with section 511 of the act
17 of act of May 17, 1921 (P.L.789, No.285), known as "The
18 Insurance Department Act of 1921."

19 Section 10. This act shall take effect as follows:

20 (1) The addition of section 1404(k.1) of the act shall
21 take effect on January 1, 2013.

22 (2) This section shall take effect immediately.

23 (3) The remainder of this act shall take effect in 60
24 days.