

INSURANCE COMPANY LAW OF 1921 - OMNIBUS AMENDMENTS

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No. 2012-136

SB 1464

AN ACT

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

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

Section 1. Section 319.1 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, amended December 18, 1992 (P.L.1519, No.178), is amended to read:

Section 319.1. Reinsurance Credits.--(a) Unless an unlicensed reinsurer is qualified **or certified** to accept reinsurance from insurers licensed in this Commonwealth, no credit shall be allowed as an admitted asset or as a reduction of liability relative to risks ceded by such licensed insurers. Qualified **or certified** reinsurers are those meeting the conditions for reinsurers specified by the commissioner, in his discretion, and included on a list of qualified **or certified** reinsurers published and periodically reviewed by said commissioner.

(b) A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer which is not a qualified **or certified** reinsurer in accordance with this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer or, in the case of a trust, held in a qualified United States financial institution, as defined in subsection (g)(2). This security may be in the form of:

(1) Cash.

(2) Securities listed by a securities valuation office of a national association of insurance commissioners or any successor thereto, **including those exempted from filing under the Purposes and Procedures Manual of the Securities Valuation Office of the National Association of Insurance Commissioners**, and qualifying as admitted assets.

(3) (i) Clean, irrevocable, unconditional and evergreen letters of credit issued or confirmed by a qualified United States financial institution, as defined in subsection (g) (1), no later than the thirty-first day of December in respect of the year for which filing is being made and in the possession of the ceding [company] **insurer** on or before the filing date of its annual statement.

(ii) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

(4) Funds or letters of credit provided by a noninsurer parent corporation of the ceding insurer, in lieu of the funds to be withheld by the ceding insurer under a reinsurance contract with such assuming insurer as security for payment of obligations thereunder, if the following requirements are met:

(i) The funds or letters of credit are held subject to withdrawal by and under the control of the ceding insurer.

(ii) The type, amount and form of the funds or letters of credit receive the prior approval of the Insurance Commissioner.

(5) Any other form of security acceptable to the Insurance Commissioner.

(c) No credit shall be allowed as an admitted asset or as a deduction from liability, to any ceding company for reinsurance unless the reinsurance is payable to such company or its statutory liquidator by the assuming company on the basis of the liability of the ceding company under contract or contracts reinsured without diminution because of insolvency of the ceding company.

(d) No such credit shall be allowed for reinsurance unless the reinsurance agreement provides that payment by the company shall be made directly to the ceding company or to its liquidator, receiver, or statutory successor.

(e) No credit shall be allowed as an admitted asset or as a reduction in liability if the gross reserves established by the ceding insurer do not include provision for the policy benefits against which the ceding insurer is being indemnified by the reinsurer.

(f) Notwithstanding the provisions of this section, the Insurance Department may promulgate one or more regulations to limit, prohibit or authorize the credit which a domestic insurer may take as an admitted asset or as a reduction in liability with respect to reinsurance ceded on any financial statements filed with the Insurance Department.

**(f.1) Credit for reinsurance ceded to a certified reinsurer is allowed only for reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer by the Insurance Commissioner.**

(g) (1) The term "qualified United States financial institution" when used in this section means an institution which meets the following qualifications:

(i) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof.

(ii) Is regulated, supervised and examined by United States Federal or state authorities having regulatory authority over banks and trust companies.

(iii) Has been determined by either the Insurance Commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners or a successor thereto to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Insurance Commissioner.

(2) The term "qualified United States financial institution" also means, for the purposes of the provisions of this act specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that meets the following qualifications:

(i) Is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers.

(ii) Is regulated, supervised and examined by Federal or state authorities having regulatory authority over banks and trust companies.

Section 1.1. The definitions of "control" and "NAIC" in section 1401 of the act, added December 18, 1992 (P.L.1519, No.178), are amended and the section is amended by adding definitions to read:

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

\* \* \*

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

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

\* \* \*

**"Enterprise risk." An activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, would likely have a material adverse effect on the financial condition or liquidity of an insurer or its insurance holding company system, including, but not limited to, anything that would:**

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

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

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

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

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

\* \* \*

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

\* \* \*

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

\* \* \*

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

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

(2) [For purposes of this section, a "domestic insurer" shall include any person controlling a domestic insurer unless such person as determined by the department is either directly or through its affiliates primarily engaged in business other than the business of insurance. Such person shall, however, file a preacquisition notification with the department containing the information set forth in section 1403(c)(2) thirty (30) days prior to the proposed effective date of the acquisition. Failure to file is subject to section 1403(e)(3). For purposes of this section, "person" shall not include any securities broker holding, in the usual and customary manner, less than twenty per centum (20%) of the voting securities of an insurance company or of any person which controls an insurance company.] For purposes of this section:

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

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

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

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

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

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

\* \* \*

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

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

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

\* \* \*

(f) \* \* \*

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

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

\* \* \*

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

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

(2) the effectuation or any attempt to effectuate an acquisition of control of **or divestiture of** or merger or consolidation with a domestic insurer unless the department has given its approval thereto; or

(3) a violation of section 819-A.

\* \* \*

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

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

Section 1403. Acquisitions Involving Insurers not Otherwise Covered.--\* \* \*

(b) \* \* \*

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

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

\* \* \*

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

\* \* \*

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

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

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

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

\* \* \*

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

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

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

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

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

\* \* \*

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

\* \* \*

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purposes of this section. Unless the department by [rule,] regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of one per centum (0.5%) or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this section.

\* \* \*

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

(k) Any person may file with the department a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. [After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the department disallows such a disclaimer. The department shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance] **A disclaimer of affiliation is deemed granted unless the department notifies the filing party the disclaimer is disallowed within thirty (30) days following receipt of a complete disclaimer. In the event of disallowance, the disclaiming party may request an administrative hearing under the provisions of 2 Pa.C.S. (relating to administrative law and procedure), which must be granted. If the commissioner approves the disclaimer or if the disclaimer is deemed approved, the disclaiming party is relieved of the duty to register under this section.**

(k.1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report must, to the best of the ultimate

controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report must be filed with the lead state regulator of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC. Beginning in 2014, and every year thereafter, the report shall be filed by March 31 for the previous calendar year.

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

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

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

(i) The terms shall be fair and reasonable.

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

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

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

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

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

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



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

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

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

(B) **agreements where** the change in the insurer's liabilities or any transfer of assets required to fund the transaction **in any of the next three twelve-month periods** equals or exceeds twenty-five per centum (25%) of the insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer. Nothing in this paragraph shall affect or limit the requirements and applicability of section 3 of the act of July 31, 1968 (P.L.941, No.288), entitled "An act providing for reporting to the Insurance Commissioner by domestic insurance companies, associations, or exchanges, of certain conveyances of interests in the assets of such companies, associations, or exchanges[.]" ;  
**or**

(C) **reinsurance pooling agreements.**

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

(v) **Management agreements, service contracts, tax allocation agreements, guarantees and cost-sharing arrangements. The notice for amendments or modifications must include the reasons for the change and the financial impact on the domestic insurer.**

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

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

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

\* \* \*

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

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

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

\* \* \*

(c) \* \* \*

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

\* \* \*

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

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

(1) the ultimate controlling person;

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

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

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

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

(1) the ultimate controlling person;

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

(3) the insurance holding company system on a consolidated basis,

the department may order an insurer registered under section 1404 to produce information not in the possession of the insurer if the insurer can obtain access to the information under a contractual relationship, a statutory obligation or other method. If the insurer may not obtain the information requested by the department, the insurer shall provide the department a detailed explanation of the reason the insurer may not obtain the information and the identity of the holder of information. If the insurer fails to comply with this subsection or the department determines that the detailed explanation is without

merit, the department may suspend or revoke the insurer's license or require the insurer to pay an administrative penalty of one thousand dollars (\$1,000) per day until the information is produced. The proceeding for suspension, revocation or imposition of a penalty shall be conducted pursuant to 2 Pa.C.S. (relating to administrative law and procedure).

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

(c) Each registered insurer producing for examination records, books and papers pursuant to [subsection (a)] **subsections (a), (a.1) and (a.2)** shall be liable for and shall pay the expense of such examination as provided for in Article IX of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of one thousand nine hundred and twenty-one."

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

(1) issue subpoenas;

(2) administer oaths; and

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

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

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

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

(b) The department may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including international, Federal and other state regulatory agencies, for any of the following reasons:

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

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

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

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

(1) Initiating the establishment of a supervisory college.  
(2) Clarifying the membership and participation of other supervisors in the supervisory college.

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

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

(5) Establishing a crisis management plan.

(e) The department may enter into agreements in accordance with sections 1406.2, 1407 and Article II-A of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921," to provide the basis for sharing information between the department and other regulatory agencies. The department may also enter into agreements to share information and further coordinate the activities of the supervisory college pursuant to this section. Nothing in this section shall delegate to the supervisory college the authority of the department to regulate or supervise the insurer or its affiliates within its jurisdiction.

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

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

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

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

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

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

(c) In cooperation with other supervisors, the department may determine that it is the appropriate group-wide supervisor for an international insurance group with substantial operations concentrated in Pennsylvania or in insurance operations conducted by subsidiary insurance companies domiciled in Pennsylvania, where the ultimate controlling person is domiciled outside Pennsylvania, or it may acknowledge that another chief insurance regulatory official is the appropriate group-wide supervisor for the international insurance group. The department shall consider the following factors and the relative scale of each when making a determination or acknowledgment under this subsection:

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

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

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

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

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

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

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

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

(7) Whether a chief insurance regulatory official acting or seeking to act as the lead group-wide supervisor provides the department with reasonably reciprocal recognition and cooperation.

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

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

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

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

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

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

(i) Governance, risk assessment and management.

(ii) Capital adequacy.

(iii) Material intercompany transactions.

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

(4) Communicate with other insurance regulatory officials for members within the international insurance group and share relevant information subject to the confidentiality provisions

of section 1407, through supervisory colleges as set forth in section 1406.1 or otherwise.

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

(6) Other group-wide supervisory activities as considered appropriate by the department.

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

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

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

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

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

(i) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the department's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

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

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

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

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

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

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

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

(3) **Subject to the act of February 14, 2008 (P.L.6, No.3), known as the "Right-to-Know Law."**

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

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

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

(1) **Share confidential and privileged documents, materials or other information covered under this section with regulatory or law enforcement officials of this Commonwealth or other jurisdictions, the IAIS, the NAIC and its affiliates and subsidiaries, group supervisors and members of any supervisory college under section 1406.1, provided that prior to receiving the documents, materials or other information, the recipient demonstrates by written statement the necessary authority and intent to provide the same confidential treatment to the information as required by this article. The department may only share confidential and privileged documents, materials or information reported under section 1404(k.1) with state insurance regulators having statutes or regulations substantially similar to subsection (a) and who have agreed in writing not to disclose such information.**

(2) **Receive and maintain as confidential any documents, materials or other information from the IAIS or the NAIC and its affiliates and subsidiaries or from regulatory and law enforcement officials of this Commonwealth or other jurisdictions in which the documents, materials or other information are confidential by law in those jurisdictions. Documents, materials or other information obtained under this section shall be given confidential treatment, may not be**

subject to subpoena and may not be made public by the department, commissioner or any other person.

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

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

(2) Provisions specifying that ownership of information shared with the IAIS or the NAIC and its affiliates and subsidiaries under this article remains with the department and that the use of the information by the IAIS or the NAIC is subject to the approval of the department.

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

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

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

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

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

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

- (1) Be confidential and privileged.
- (2) Not be subject to the "Right-to-Know Law."
- (3) Not be subject to subpoena.
- (4) Not be subject to discovery or admissible in evidence in any private civil action.

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

Section 1409. Injunctions and Certain Prohibitions.--(a) Whenever it appears to the department that any insurer or any director, officer, employe or agent thereof has committed or is about to commit a violation of this article or of any [rule,] regulation or order issued by the department hereunder, the department may apply to the Commonwealth Court for an order enjoining such insurer or such director, officer, employe or agent thereof from violating or continuing to violate this article or any such [rule,] regulation or order, and for such other equitable relief as the nature of the case and the



interest of the insurer's policyholders, creditors and shareholders or the public may require.

(b) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this article or of any [rule,] regulation or order issued by the department hereunder may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding, but no action taken at any such meeting shall be invalidated by the voting of such securities unless the action would materially affect control of the insurer or unless the courts of this Commonwealth have so ordered. If an insurer or the department has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any [rule,] regulation or order issued by the department hereunder, the insurer or the department may apply to the Commonwealth Court to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 1402, or any [rule,] regulation or order issued by the department thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.

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

\* \* \*

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

Section 1410. Sanctions.--(a) [Any insurer failing, without just cause,] **A person failing** to file any registration statement **or any summary of the registration statement or enterprise risk report** as required [in] **by** this article **or by regulation** shall be required[, after notice and hearing,] to pay a penalty not to exceed [five hundred (\$500)] **two hundred (\$200)** dollars for each day's delay. The maximum penalty under this section is twenty-five thousand (\$25,000) dollars. [The department may reduce the penalty if the insurer demonstrates to the department that the imposition of the penalty would constitute a financial hardship to the insurer.]

\* \* \*

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

Section 10. This act shall take effect as follows:

(1) The amendment of section 319.1 of the act shall take effect immediately.

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

(3) This section shall take effect immediately.

(4) The remainder of this act shall take effect in 60 days.

APPROVED--The 5th day of July, A.D. 2012.

TOM CORBETT