

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 644 Session of 2011

INTRODUCED BY DeLUCA, CALTAGIRONE, D. COSTA, MURT, KULA AND JOSEPHS, FEBRUARY 14, 2011

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 14, 2011

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 registration of insurers, for standards  
14 and management of an insurer within a holding company system  
15 and for examination; providing for supervisory colleges; and  
16 further providing for sanctions.

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

19 Section 1. Section 1401 of the act of May 17, 1921 (P.L.682,  
20 No.284), known as The Insurance Company Law of 1921, is amended  
21 by adding a definition to read:

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

25 \* \* \*

1 "Enterprise risk." An activity, circumstance, event or  
2 series of events involving one or more affiliates of an insurer  
3 that, if not remedied promptly, is likely to have a material  
4 adverse affect upon the financial condition or liquidity of the  
5 insurer or its insurance holding company system as a whole,  
6 including, but not limited to, anything that would cause the  
7 insurer's risk-based capital to fall into company action level  
8 as set forth in section 505-B of the act of May 17, 1921  
9 (P.L.789, No.285), known as "The Insurance Department Act of  
10 1921," or would cause the insurer to be in hazardous financial  
11 condition under 31 Pa. Code Ch. 160 (relating to standards to  
12 define insurers deemed to be in hazardous financial condition).

13 \* \* \*

14 Section 2. Section 1402(h) of the act, amended July 9, 2008  
15 (P.L.885, No.62), is amended and subsection (b) is amended by  
16 adding paragraphs to read:

17 Section 1402. Acquisition of Control of or Merger or  
18 Consolidation with Domestic Insurer.--\* \* \*

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

22 \* \* \*

23 (11.1) An agreement by the person required to file the  
24 statement referred to in subsection (a) that it will provide the  
25 annual report, specified in section 320, for so long as control  
26 exists.

27 (11.2) An acknowledgment by the person required to file the  
28 statement referred to in subsection (a) that the person and the  
29 subsidiaries within its control in the insurance holding company  
30 system will provide information to the commissioner upon request

1 as necessary to evaluate enterprise risk to the insurer.

2 \* \* \*

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

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

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

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

12 \* \* \*

13 Section 3. Section 1404(a), (b) and (k), added December 18,  
14 1992 (P.L.1519, No.178), are amended to read:

15 Section 1404. Registration of Insurers.--(a) (1) Every  
16 insurer which is authorized to do business in this Commonwealth  
17 and which is a member of an insurance holding company system  
18 shall register with the department, except a foreign insurer  
19 subject to registration requirements and standards adopted by  
20 statute or regulation in the jurisdiction of its domicile which  
21 are substantially similar to those contained in this section and  
22 section 1405(a)(1) and (2), (b) and (d). Each registered insurer  
23 shall keep current the information required to be disclosed in  
24 its registration statement by reporting all material changes or  
25 additions within fifteen (15) days after the end of the month in  
26 which it learns of each such change or addition.

27 (2) Any insurer which is subject to registration under this  
28 section shall register within fifteen (15) days after it becomes  
29 subject to registration, and annually thereafter by the thirty-  
30 first day of March of each year for the previous calendar year,

1 unless the department for good cause shown extends the time for  
2 registration, and then within such extended time. The department  
3 may require any insurer authorized to do business in this  
4 Commonwealth which is a member of [a] an insurance holding  
5 company system and which is not subject to registration under  
6 this section to furnish a copy of the registration statement,  
7 the summary specified in subsection (c) or other information  
8 filed by such insurance company with the insurance regulatory  
9 authority of its domiciliary jurisdiction.

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

14 (1) The capital structure, general financial condition,  
15 ownership and management of the insurer and any person  
16 controlling the insurer.

17 (2) The identity and relationship of every member of the  
18 insurance holding company system.

19 (3) All of the following agreements in force and  
20 transactions currently outstanding or which have occurred during  
21 the last calendar year between such insurer and its affiliates:

22 (i) Loans and other investments and the purchase, sale or  
23 exchange of securities of an affiliate by the insurer or of the  
24 insurer by an affiliate.

25 (ii) Purchases, sales or exchange of assets.

26 (iii) Transactions not in the ordinary course of business.

27 (iv) Guarantees or undertakings for the benefit of an  
28 affiliate which result in an actual contingent exposure of the  
29 insurer's assets to liability, other than insurance contracts  
30 entered into in the ordinary course of the insurer's business.

1 (v) All management agreements, tax allocation agreements,  
2 service contracts and all cost-sharing arrangements.

3 (vi) Reinsurance agreements.

4 (vii) Dividends and other distributions to shareholders.

5 (viii) Consolidated tax allocation agreements.

6 (4) Any pledge of the insurer's stock, including stock of  
7 any subsidiary or controlling affiliate, for a loan made to any  
8 member of the insurance holding company system.

9 (4.1) If requested by the department, the insurer shall  
10 include financial statements of or within an insurance holding  
11 company system, including its affiliates. Financial statements  
12 may include, but are not limited to, annual audited financial  
13 statements filed with the Securities and Exchange Commission  
14 (SEC) under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. §  
15 77a et seq.) or the Securities Exchange Act of 1934 (48 Stat.  
16 881, 15 U.S.C. § 78a et seq.). An insurer required to file  
17 financial statements under this paragraph may satisfy the  
18 request by providing the commissioner with the most recently  
19 filed parent corporation financial statements that have been  
20 filed with the SEC.

21 (5) Any other matters concerning transactions between  
22 registered insurers and any affiliates as may be included from  
23 time to time in any registration forms adopted or approved by  
24 the department.

25 (6) Statements that the insurer's board of directors is  
26 responsible for and oversees corporate governance and internal  
27 controls and that the insurer's officers or senior management  
28 have approved, implemented and continue to maintain and monitor  
29 corporate governance and internal control procedures.

30 (7) Other information required by the department by rule or

1 regulation.

2 \* \* \*

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

26 \* \* \*

27 Section 4. Section 1405 heading, (a) and (c) of the act,  
28 amended February 17, 1994 (P.L.92, No.9), December 20, 2000  
29 (P.L.967, No.132) and July 9, 2008 (P.L.885, No.62), are amended  
30 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.

(vi) Agreements for cost-sharing services and management  
shall include the provisions as required by rule and regulation  
issued by the department.

(2) The following transactions involving a domestic insurer  
and any person in its insurance holding company system,

1 including amendments or modifications of affiliate agreements  
2 previously filed under this section, which are subject to  
3 materiality standards contained in subparagraphs (i), (ii),  
4 (iii) and (iv), may not be entered into unless the insurer has  
5 notified the department in writing of its intention to enter  
6 into such transaction at least thirty (30) days prior thereto or  
7 such shorter period as the department may permit and the  
8 department has not disapproved it within such period:

9 (i) Sales, purchases, exchanges, loans or extensions of  
10 credit, guarantees, investments, pledges of assets or assets to  
11 be received by the domestic insurer as contributions to its  
12 surplus, provided that, as of the thirty-first day of December  
13 next preceding, such transactions are equal to or exceed the  
14 lesser of five per centum (5%) of the insurer's admitted assets  
15 or twenty-five per centum (25%) of surplus as regards  
16 policyholders. With respect to life insurers, three per centum  
17 (3%) of the insurer's admitted assets as of the thirty-first day  
18 of December next preceding.

19 (ii) Loans or extensions of credit to any person who is not  
20 an affiliate, where the insurer makes such loans or extensions  
21 of credit with the agreement or understanding that the proceeds  
22 of such transactions, in whole or in substantial part, are to be  
23 used to make loans or extensions of credit to, to purchase  
24 assets of or to make investments in any affiliate of the insurer  
25 making such loans or extensions of credit provided that, as of  
26 the thirty-first day of December next preceding, such  
27 transactions are equal to or exceed the lesser of five per  
28 centum (5%) of the insurer's admitted assets or twenty-five per  
29 centum (25%) of surplus as regards policyholders. With respect  
30 to life insurers, three per centum (3%) of the insurer's



1 admitted assets as of the thirty-first day of December next  
2 preceding.

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

5 (A) [the] Agreements in which the reinsurance premium or the  
6 projected reinsurance premium or a change in the insurer's  
7 liabilities in any of the next three (3) years equals or exceeds  
8 five per centum (5%) of the insurer's surplus as regards  
9 policyholders as of the thirty-first day of December next  
10 preceding[; or].

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

26 (C) Reinsurance pooling agreements.

27 (D) Management agreements, service contracts, tax allocation  
28 agreements, guarantees and cost-sharing arrangements.

29 (E) Guarantees when made by a domestic insurer, provided a  
30 guarantee that is quantifiable as to amount and is not subject

1 to the notice requirements of this paragraph unless it exceeds  
2 the lesser of one-half of one per centum (0.5%) of the insurer's  
3 admitted assets or ten per centum (10%) of surplus as regards  
4 policyholders as of the thirty-first day of December next  
5 preceding. Guarantees that are not quantifiable as to amount are  
6 subject to the notice requirements of this paragraph.

7 (F) Direct or indirect acquisitions or investments in a  
8 person that controls the insurer or in an affiliate of the  
9 insurer in an amount which, together with its present holdings  
10 in the investments, exceeds two and one-half per centum (2.5%)  
11 of the insurer's surplus to policyholders. Direct or indirect  
12 acquisitions or investments in subsidiaries acquired under  
13 section 1402 or authorized under this chapter, or in  
14 nonsubsidiary insurance affiliates subject to the provisions of  
15 this act, are exempt from this requirement.

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

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

1       (4) The department, in reviewing transactions pursuant to  
2 paragraph (2), shall consider whether the transactions comply  
3 with the standards set forth in paragraph (1) and whether they  
4 may adversely affect the interests of policyholders. The  
5 department may retain at the insurer's expense any attorneys,  
6 actuaries, accountants and other experts not otherwise a part of  
7 the department's staff as may be reasonably necessary to assist  
8 the department in reviewing the transaction.

9       (5) The department shall be notified within thirty (30) days  
10 of any investment of the domestic insurer in any one corporation  
11 if the total investment in such corporation by the insurance  
12 holding company system exceeds ten per centum (10%) of such  
13 corporations' voting securities.

14       \* \* \*

15       (c) (1) Notwithstanding the control of a domestic insurer  
16 by any person, the officers and directors of the insurer shall  
17 not thereby be relieved of any obligation or liability to which  
18 they would otherwise be subject by law, and the insurer shall be  
19 managed so as to assure its separate operating identity  
20 consistent with this article.

21       (2) Nothing herein shall preclude a domestic insurer from  
22 having or sharing a common management or cooperative or joint  
23 use of personnel, property or services with one or more other  
24 persons under arrangements meeting the standards of subsection  
25 (a) (1).

26       (3) (i) Not less than one-third of the directors of a  
27 domestic insurer shall be persons who are not officers or  
28 employes of such insurer or of any entity controlling,  
29 controlled by or under common control with such insurer and who  
30 are not beneficial owners of a controlling interest in the

1 voting stock of such insurer or any such entity. At least one  
2 such person must be included in any quorum for the transaction  
3 of business at any meeting of the board of directors.

4 (ii) Not less than one-third of the members of each  
5 committee of the board of directors of any domestic insurer  
6 shall be persons who are not officers or employees of such  
7 insurer or of any entity controlling, controlled by or under  
8 common control with such insurer. At least one such person must  
9 be included in any quorum for the transaction of business at any  
10 meeting of each committee.

11 (4) The board of directors of a domestic insurer shall  
12 establish a committee comprised solely of directors who are not  
13 officers or employees of the insurer or of any entity  
14 controlling, controlled by or under common control with the  
15 insurer and who are not beneficial owners of a controlling  
16 interest in the voting stock of the insurer or any such entity.  
17 The committee shall have responsibility for recommending the  
18 selection of independent certified public accountants and  
19 reviewing the insurer's financial condition, the scope and  
20 results of the independent audit and any internal audit. The  
21 committee may also have the responsibilities described in  
22 paragraph (4.1) if one or more committees described in paragraph  
23 (4.1) are not separately established.

24 (4.1) The board of directors of a domestic insurer shall  
25 establish one or more committees comprised solely of directors  
26 who are not officers or employees of the insurer or of any entity  
27 controlling, controlled by or under common control with the  
28 insurer. The committee or committees shall have responsibility  
29 for recommending candidates to be nominated by the board of  
30 directors, in addition to any other nominations by voting

1 shareholders or policyholders, for election as directors by  
2 voting shareholders or policyholders, evaluating the performance  
3 of officers deemed to be principal officers of the insurer and  
4 recommending to the board of directors the selection and  
5 compensation of the principal officers.

6 (5) The provisions of paragraphs (3), (4) and (4.1) shall  
7 not apply to a domestic insurer if the person controlling such  
8 insurer is an insurer, a mutual insurance holding company or  
9 another business entity having a board of directors and  
10 committees thereof which already meet the requirements of  
11 paragraphs (3), (4) and (4.1) regarding the controlling entity.

12 \* \* \*

13 Section 5. Section 1406 of the act, added December 18, 1992  
14 (P.L.1519, No.178), is amended to read:

15 Section 1406. Examination.--(a) Subject to the limitation  
16 contained in this section and in addition to the powers which  
17 the department has under law relating to the examination of  
18 insurers, the department shall also have the power to examine an  
19 insurer registered under section 1404 and its affiliates to  
20 ascertain the financial condition of the insurer, including the  
21 enterprise risk to the insurer by the ultimate controlling  
22 party, or by an entity or combination of entities within the  
23 insurance holding company system or by the insurance holding  
24 company system on a consolidated basis.

25 (a.1) The department may order any insurer registered under  
26 section 1404 to produce such records, books or other information  
27 papers in the possession of the insurer or its affiliates as are  
28 reasonably necessary to ascertain the financial condition of  
29 such insurer or to determine compliance with this article. [In  
30 the event an insurer fails to comply with such order, the

department shall have the power to examine affiliates to obtain this information.]

(a.2) To determine compliance with this article, 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 contractual relationships, statutory obligations or other method. If the insurer cannot obtain the information requested by the department, the insurer shall provide the department a detailed explanation of the reason the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the department the detailed explanation is without merit, the department may require, after notice and hearing, the insurer to pay a penalty of one thousand (\$1,000) dollars for each day's delay or may suspend or revoke the insurer's license.

(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). Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(c) Each registered insurer producing for examination records, books and papers pursuant to subsection (a) 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, the

commissioner shall have the power to examine the affiliates to  
obtain the information. The department shall also have the power  
to issue subpoenas, to administer oaths and to examine under  
oath a person for purposes of 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. He  
shall be entitled to the same fees and mileage, if claimed, as a  
witness in the Commonwealth Court. The fees, mileage and expense  
necessarily incurred in securing the attendance and testimony of  
witnesses shall be itemized and charged against, and be paid by,  
the company being examined.

Section 6. The act is amended by adding a section to read:

Section 1406.1. Supervisory Colleges.--(a) Regarding an  
insurer registered under section 1404 and in accordance with  
subsection (c), the department shall have the power to  
participate in a supervisory college for a domestic insurer that  
is part of an insurance holding company system with  
international operations in order to determine compliance by the  
insurer with this article. 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

1 the role of other regulators, including the establishment of a  
2 group-wide supervisor.

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

6 (5) Establishing a crisis management plan.

7 (b) 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 in  
10 accordance with subsection (c), including reasonable travel  
11 expenses. For purposes of this section, a supervisory college  
12 may be convened as either a temporary or permanent forum for  
13 communication and cooperation between the regulators charged  
14 with the supervision of the insurer or its affiliates. The  
15 department may establish a regular assessment to the insurer for  
16 the payment of the expenses.

17 (c) In order to assess the business strategy, financial  
18 position, legal and regulatory position, risk exposure, risk  
19 management and governance processes, and as part of the  
20 examination of individual insurers in accordance with section  
21 1406, the department may participate in a supervisory college  
22 with other regulators charged with supervision of the insurer or  
23 its affiliates, including international, Federal and other state  
24 regulatory agencies. The department may enter into agreements in  
25 accordance with Article II-A of the act of May 17, 1921  
26 (P.L.789, No.285), known as "The Insurance Department Act of  
27 1921," providing the basis for cooperation between the  
28 department and the other regulatory agencies and the activities  
29 of the supervisory college. Nothing in this section shall  
30 delegate to the supervisory college the authority of the



1 department to regulate or supervise the insurer or its  
2 affiliates within its jurisdiction.

3 Section 7. Section 1410 of the act is amended by adding a  
4 subsection to read:

5 Section 1410. Sanctions.--\* \* \*

6 (f) Whenever it appears to the department that a person has  
7 committed a violation of section 1403 which prevents the full  
8 understanding of the enterprise risk to the insurer by  
9 affiliates or by the insurance holding company system, the  
10 violation may serve as an independent basis for disapproving  
11 dividends or distributions and for placing the insurer under an  
12 order of supervision in accordance with section 511 of the act  
13 of May 17, 1921 (P.L.789, No.285), known as "The Insurance  
14 Department Act of 1921."

15 Section 8. This act shall take effect in 60 days.