

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1464 Session of 2012

INTRODUCED BY D. WHITE AND STACK, MARCH 29, 2012

REFERRED TO BANKING AND INSURANCE, MARCH 29, 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 internationally  
 18 active 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  
 27 adding definitions to read:

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

4 \* \* \*

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

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

27 \* \* \*

28 "Enterprise risk." An activity, circumstance, event or  
29 series of events involving one or more affiliates of an insurer  
30 that, if not remedied promptly, would likely have a material

1 adverse effect on the financial condition or liquidity of an  
2 insurer or its insurance holding company system, including, but  
3 not limited to, anything that would:

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

5 (2) cause the insurer to be deemed to be in hazardous

6 financial condition under:

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

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

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

13 \* \* \*

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

16 \* \* \*

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

19 \* \* \*

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

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

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

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

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

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

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

30 (4) The acquiring person for transactions subject to this

1 section must file a preacquisition notification as required  
2 under section 1403(c) or be subject to a penalty as provided  
3 under section 1403(e) (3).

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

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

16 \* \* \*

17 (11.1) An agreement by the person required to file the  
18 statement referred to in subsection (a) that it will provide the  
19 annual enterprise risk report specified in section 1404(k.1) as  
20 long as control exists.

21 (11.2) An acknowledgment by the person required to file the  
22 statement referred to in subsection (a) that the person and the  
23 subsidiaries within its control in the insurance holding company  
24 system will provide information to the commissioner upon request  
25 as necessary to evaluate enterprise risk to the insurer.

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

30 \* \* \*

1 (f) \* \* \*

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

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

22 \* \* \*

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

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

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

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

2 \* \* \*

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

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

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

11 (b) \* \* \*

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

13 \* \* \*

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

28 \* \* \*

29 (vii) An acquisition of an insurer whose domiciliary  
30 insurance [department] regulator affirmatively finds that such

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

8 \* \* \*

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

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

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

28 (b) Every insurer subject to registration shall file the  
29 registration statement with the department on a form and in a  
30 format prescribed by the NAIC, which shall contain all of the

1 following current information:

2 \* \* \*

3 (4.1) If requested by the department, the insurer shall  
4 include financial statements of an insurance holding company  
5 system, including its affiliates. Financial statements may  
6 include, but are not limited to:

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

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

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

16 (4.2) Statements that the insurer's board of directors  
17 oversees corporate governance and internal controls and that the  
18 insurer's officers or senior management have approved,  
19 implemented and continue to maintain and monitor corporate  
20 governance and internal control procedures.

21 \* \* \*

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

24 \* \* \*

25 (d) No information need be disclosed on the registration  
26 statement filed pursuant to subsection (b) if such information  
27 is not material for the purposes of this section. Unless the  
28 department by [rule,] regulation or order provides otherwise,  
29 sales, purchases, exchanges, loans or extensions of credit,  
30 investments or guarantees involving one-half of one per centum

1 (0.5%) or less of an insurer's admitted assets as of the thirty-  
2 first day of December next preceding shall not be deemed  
3 material for purposes of this section.

4 \* \* \*

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

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

1 of the duty to register under this section.

2 (k.1) The ultimate controlling person of every insurer  
3 subject to registration shall also file an annual enterprise  
4 risk report. The report must, to the best of the ultimate  
5 controlling person's knowledge and belief, identify the material  
6 risks within the insurance holding company system that could  
7 pose enterprise risk to the insurer. The report must be filed  
8 with the lead state regulator of the insurance holding company  
9 system as determined by the procedures within the Financial  
10 Analysis Handbook adopted by the NAIC.

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

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

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

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

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

28 (iii) Expenses incurred and payment received shall be  
29 allocated to the insurer in conformity with customary insurance  
30 accounting practices consistently applied and all cost-sharing

1 or expense allocation arrangements must be formalized in writing  
2 and authorized by the board of directors of the domestic  
3 insurer.

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

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

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

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

1 insurer's admitted assets or twenty-five per centum (25%) of  
2 surplus as regards policyholders.

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

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

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

23 (B) agreements where the change in the insurer's liabilities  
24 or any transfer of assets required to fund the transaction in  
25 any of the next three twelve-month periods equals or exceeds  
26 twenty-five per centum (25%) of the insurer's surplus as regards  
27 policyholders as of the thirty-first day of December next  
28 preceding, including those agreements which may require as  
29 consideration the transfer of assets from an insurer to a  
30 nonaffiliate, if an agreement or understanding exists between

1 the insurer and nonaffiliate that any portion of such assets  
2 will be transferred to one or more affiliates of the insurer.  
3 Nothing in this paragraph shall affect or limit the requirements  
4 and applicability of section 3 of the act of July 31, 1968  
5 (P.L.941, No.288), entitled "An act providing for reporting to  
6 the Insurance Commissioner by domestic insurance companies,  
7 associations, or exchanges, of certain conveyances of interests  
8 in the assets of such companies, associations, or exchanges[.]";  
9 or

10 (C) reinsurance pooling agreements.

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

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

16 The notice for amendments or modifications must include the  
17 reasons for the change and the financial impact on the domestic  
18 insurer.

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

27 (3) A domestic insurer may not enter into transactions which  
28 are part of a plan or series of like transactions with persons  
29 within the insurance holding company system if the purpose of  
30 those separate transactions is to avoid the statutory threshold

1 amount and thus avoid the review that would occur otherwise. If  
2 the department determines that such separate transactions were  
3 entered into over any twelve-month period for such purpose, it  
4 may exercise its authority under section 1410.

5 \* \* \*

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

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

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

14 \* \* \*

15 (c) \* \* \*

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

23 \* \* \*

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

26 Section 1406. Examination.--(a) Subject to the limitation  
27 contained in this section and in addition to the powers which  
28 the department has under law relating to the examination of  
29 insurers, the department shall also have the power to [order any  
30 insurer registered under section 1404 to produce such records,

1 books or other information papers in the possession of the  
2 insurer or its affiliates as are reasonably necessary to  
3 ascertain the financial condition of such insurer or to  
4 determine compliance with this article. In the event an insurer  
5 fails to comply with such order, the department shall have the  
6 power to examine affiliates to obtain this information.] examine  
7 an insurer registered under section 1404 and its affiliates to  
8 ascertain the financial condition of the insurer, including the  
9 enterprise risk to the insurer by:

10 (1) the ultimate controlling person;

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

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

15 (a.1) The department may order an insurer registered under  
16 section 1404 to produce records, books or other information  
17 papers in the possession of the insurer or its affiliates as are  
18 reasonably necessary to ascertain the financial condition of the  
19 insurer or to determine compliance with this article. To  
20 ascertain the financial condition of the insurer, including the  
21 enterprise risk to the insurer by:

22 (1) the ultimate controlling person;

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

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

27 the department may order an insurer registered under section  
28 1404 to produce information not in the possession of the insurer  
29 if the insurer can obtain access to the information under a  
30 contractual relationship, a statutory obligation or other

1 method. If the insurer may not obtain the information requested  
2 by the department, the insurer shall provide the department a  
3 detailed explanation of the reason the insurer may not obtain  
4 the information and the identity of the holder of information.  
5 If the insurer fails to comply with this subsection or the  
6 department determines that the detailed explanation is without  
7 merit, the department may suspend or revoke the insurer's  
8 license or require the insurer to pay an administrative penalty  
9 of one thousand dollars (\$1,000) per day until the information  
10 is produced. The proceeding for suspension, revocation or  
11 imposition of a penalty shall be conducted pursuant to 2 Pa.C.S.  
12 (relating to administrative law and procedure).

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

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

28 (d) If the insurer fails to comply with an order issued  
29 under this section, the department has the power to examine the  
30 insurer's affiliates to obtain the information necessary to

1 determine an insurer's compliance with this section. The  
2 department also has the power to:  
3 (1) issue subpoenas;  
4 (2) administer oaths; and  
5 (3) examine under oath any person as to any matter pertinent  
6 to determining compliance with this section.

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

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

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

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

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

1 affiliates.

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

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

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

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

12 (2) Clarifying the membership and participation of other  
13 supervisors in the supervisory college.

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

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

20 (5) Establishing a crisis management plan.

21 (e) The department may enter into agreements in accordance  
22 with sections 1406.2, 1407 and Article II-A of the act of May  
23 17, 1921 (P.L.789, No.285), known as "The Insurance Department  
24 Act of 1921," to provide the basis for sharing information  
25 between the department and other regulatory agencies. The  
26 department may also enter into agreements to share information  
27 and further coordinate the activities of the supervisory college  
28 pursuant to this section. Nothing in this section shall delegate  
29 to the supervisory college the authority of the department to  
30 regulate or supervise the insurer or its affiliates within its

1 jurisdiction.

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

6 Section 1406.2. Group-wide Supervision for Internationally  
7 Active Insurance Groups.--(a) (Reserved).

8 (b) The department is authorized to act as a group-wide  
9 supervisor for any internationally active insurance group.

10 (c) The department may determine that it is an appropriate  
11 group-wide supervisor for an internationally active insurance  
12 group or it may acknowledge that another chief insurance  
13 regulatory official is an appropriate group-wide supervisor for  
14 the internationally active insurance group. The relevant factors  
15 to be considered by the department when making a determination  
16 or acknowledgment under this subsection include:

17 (1) The place of legal residence of the ultimate controlling  
18 person of the internationally active insurance group.

19 (2) The place of origin of the insurance business of the  
20 members within the internationally active insurance group.

21 (3) The location of the capital supporting the operations of  
22 the internationally active insurance group.

23 (4) The location of the insurance business operations  
24 supporting the internationally active insurance group.

25 (5) The location of employees of the insurance business  
26 operations within the internationally active insurance group.

27 (6) Whether another chief insurance regulatory official is  
28 acting or seeking to act as lead group supervisor under a  
29 regulatory system that the commissioner determines to be:

30 (i) substantially equivalent to that provided under the laws

1 of this Commonwealth; or

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

5 (7) Whether a chief insurance regulatory official acting or  
6 seeking to act as lead group supervisor provides the department  
7 with mutual equivalency or sufficiency recognition.

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

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

29 (1) Assess the enterprise risks within the internationally  
30 active insurance group, pursuant to section 1406, to ensure

1 that:

2 (i) The material financial condition and liquidity risks to  
3 the members of the internationally active insurance group which  
4 are engaged in the business of insurance are identified by  
5 management.

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

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

13 (i) Governance, risk assessment and management.

14 (ii) Capital adequacy.

15 (iii) Material intercompany transactions.

16 (3) Compel development and implementation of reasonable  
17 measures designed to assure that the internationally active  
18 insurance group is able to timely recognize and mitigate  
19 material risks to members that are engaged in the business of  
20 insurance.

21 (4) Communicate with other insurance regulatory officials  
22 for members within the internationally active insurance group,  
23 and share relevant information subject to the confidentiality  
24 provisions of section 1407, through supervisory colleges as set  
25 forth in section 1406.1 or otherwise.

26 (5) Enter into agreements with or obtain documentation from  
27 any insurer registered under section 1404, any member of the  
28 internationally active insurance group, and any other chief  
29 insurance regulatory officials for members, providing the basis  
30 for or otherwise clarifying the department's role as group

1 supervisor, including provisions for resolving disputes with  
2 other relevant supervisory authorities. Such agreements or  
3 documentation shall not serve as evidence in any proceeding that  
4 any insurer or person within an insurance holding company system  
5 not incorporated in this Commonwealth is doing business in this  
6 Commonwealth or is otherwise subject to jurisdiction in this  
7 Commonwealth.

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

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

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

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

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

30 (h) The department may promulgate regulations necessary for

1 the administration of this section. In determining whether a  
2 regulation should be promulgated, the department shall give due  
3 consideration to model laws, model regulations and definitions  
4 or guidelines pertaining to group-wide supervision, if any,  
5 promulgated by the NAIC or other recognized insurance regulatory  
6 bodies or associations.

7 (i) 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 the administration of this  
10 section, including the engagement of attorneys, actuaries and  
11 any other professionals and all reasonable travel expenses.

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

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

21 "Internationally active insurance group." An insurance  
22 holding company system that includes an insurer registered under  
23 section 1404 and one or more affiliates engaged in the business  
24 of insurance that are domiciled or operating outside of a  
25 jurisdiction accredited by NAIC.

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

29 Section 1407. Confidential Treatment.--(a) All information,  
30 documents, materials and copies thereof in the possession or

1 control of the department that are produced by, obtained by or  
2 disclosed to the department or any other person in the course of  
3 an examination or investigation made pursuant to section 1406 or  
4 investigation made pursuant to section 1406.1 or 1406.2 and all  
5 information reported pursuant to sections 1402(b)(11.1) and  
6 (11.2), 1404 and 1405 shall be privileged and given confidential  
7 treatment and shall not be:

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

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

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

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

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

1 documents, materials or information covered under this section.

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

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

19 (2) Receive and maintain as confidential any documents,  
20 materials or other information from the IAIS or the NAIC and its  
21 affiliates and subsidiaries or from regulatory and law  
22 enforcement officials of this Commonwealth or other  
23 jurisdictions in which the documents, materials or other  
24 information are confidential by law in those jurisdictions.  
25 Documents, materials or other information obtained under this  
26 section shall be given confidential treatment, may not be  
27 subject to subpoena and may not be made public by the  
28 department, commissioner or any other person.

29 (d) The department shall enter into written agreements with  
30 the IAIS or the NAIC governing the sharing and use of

1 information provided under this article, that include all of the  
2 following:

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

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

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

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

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

30 (f) The department is solely responsible for the

1 administration, execution and enforcement of the provisions of  
2 this article.

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

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

10 (1) Be confidential and privileged.

11 (2) Not be subject to the act of February 14, 2008 (P.L.6,  
12 No.3), known as the "Right-to-Know Law."

13 (3) Not be subject to subpoena.

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

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

20 Section 1409. Injunctions and Certain Prohibitions.--(a)  
21 Whenever it appears to the department that any insurer or any  
22 director, officer, employe or agent thereof has committed or is  
23 about to commit a violation of this article or of any [rule,]  
24 regulation or order issued by the department hereunder, the  
25 department may apply to the Commonwealth Court for an order  
26 enjoining such insurer or such director, officer, employe or  
27 agent thereof from violating or continuing to violate this  
28 article or any such [rule,] regulation or order, and for such  
29 other equitable relief as the nature of the case and the  
30 interest of the insurer's policyholders, creditors and

1 shareholders or the public may require.

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

26 (c) In any case where a person has acquired or is proposing  
27 to acquire any voting securities in violation of this article or  
28 any [rule,] regulation or order issued by the department  
29 hereunder, the Commonwealth Court may, on such notice as the  
30 court deems appropriate, upon the application of the insurer or

1 the department seize or sequester any voting securities of the  
2 insurer owned directly or indirectly by such person and issue  
3 such order with respect thereto as may be appropriate to  
4 effectuate the provisions of this article.

5 \* \* \*

6 Section 9. Section 1410(a) of the act, added December 18,  
7 1992 (P.L.1519, No.178), is amended and the section is amended  
8 by adding a subsection to read:

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

20 \* \* \*

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

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

- 1           (1) The addition of section 1404(k.1) of the act shall  
2 take effect on January 1, 2013.
- 3           (2) This section shall take effect immediately.
- 4           (3) The remainder of this act shall take effect in 60  
5 days.