

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1464 Session of 2012

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

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, MAY 22, 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~~ INTERNATIONAL insurance groups; AND further providing
19 for confidential treatment, for rules and regulations, for
20 injunctions and 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~~ CHIEF INSURANCE ←
4 REGULATORY OFFICIAL, the public hearing under paragraph (2) may
5 be held on a consolidated basis upon request of the person
6 filing the statement under subsection (a). He shall file the
7 statement under subsection (a) with the NAIC within five (5)
8 days of making the request for a public hearing. A ~~commissioner~~ ←
9 CHIEF INSURANCE REGULATORY OFFICIAL may opt out of a ←
10 consolidated hearing, and shall provide notice to the applicant
11 of the decision to opt out within ten (10) days of the receipt
12 of the statement under subsection (a). A hearing conducted on a
13 consolidated basis must be public and held in the United States
14 before the ~~commissioners~~ CHIEF INSURANCE REGULATORY OFFICIALS of ←
15 the states in which the insurers are domiciled. The
16 ~~commissioners~~ CHIEF INSURANCE REGULATORY OFFICIALS shall hear ←
17 and receive evidence. A ~~commissioner~~ CHIEF INSURANCE REGULATORY ←
18 OFFICIAL may attend the hearing in person or participate using
19 telecommunication.

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

25 * * *

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

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

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

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

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

5 * * *

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

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

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

14 (b) * * *

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

16 * * *

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

1 * * *

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

11 * * *

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

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

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

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

5 * * *

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

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

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

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

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

24 * * *

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

27 * * *

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

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

7 * * *

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

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

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

5 (k.1) The ultimate controlling person of every insurer
6 subject to registration shall also file an annual enterprise
7 risk report. The report must, to the best of the ultimate
8 controlling person's knowledge and belief, identify the material
9 risks within the insurance holding company system that could
10 pose enterprise risk to the insurer. The report must be filed
11 with the lead state regulator of the insurance holding company
12 system as determined by the procedures within the Financial
13 Analysis Handbook adopted by the NAIC. BEGINNING IN 2014 AND ←
14 EVERY YEAR THEREAFTER, THE REPORT SHALL BE FILED BY MARCH 31 FOR
15 THE PREVIOUS CALENDAR YEAR.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 or

15 (C) reinsurance pooling agreements.

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

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

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

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

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

1 department.

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

10 * * *

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

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

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

19 * * *

20 (c) * * *

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

28 * * *

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

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

15 (1) the ultimate controlling person;

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

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

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

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

27 (1) the ultimate controlling person;

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

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

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

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

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

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

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

8 (1) issue subpoenas;

9 (2) administer oaths; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (5) Establishing a crisis management plan.

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



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

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

11 Section 1406.2. Group wide Supervision for Internationally
12 Active Insurance Groups. (a) (Reserved).

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

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

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

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

26 (3) The location of the capital supporting the operations of
27 the internationally active insurance group.

28 (4) The location of the insurance business operations
29 supporting the internationally active insurance group.

30 (5) The location of employees of the insurance business

1 ~~operations within the internationally active insurance group.~~

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

5 ~~(i) substantially equivalent to that provided under the laws~~
6 ~~of this Commonwealth; or~~

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

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

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

30 ~~(e) If the department is the group wide supervisor for an~~

1 ~~internationally active insurance group, the department is~~
2 ~~authorized to engage in conducting and coordinating any of the~~
3 ~~following group wide supervision activities:~~

4 ~~(1) Assess the enterprise risks within the internationally~~
5 ~~active insurance group, pursuant to section 1406, to ensure~~
6 ~~that:~~

7 ~~(i) The material financial condition and liquidity risks to~~
8 ~~the members of the internationally active insurance group which~~
9 ~~are engaged in the business of insurance are identified by~~
10 ~~management.~~

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

13 ~~(2) Request, from any member of an internationally active~~
14 ~~insurance group subject to the department's supervision,~~
15 ~~information necessary and appropriate to assess enterprise risk,~~
16 ~~including, but not limited to, information about the members of~~
17 ~~the internationally active insurance group regarding:~~

18 ~~(i) Governance, risk assessment and management.~~

19 ~~(ii) Capital adequacy.~~

20 ~~(iii) Material intercompany transactions.~~

21 ~~(3) Compel development and implementation of reasonable~~
22 ~~measures designed to assure that the internationally active~~
23 ~~insurance group is able to timely recognize and mitigate~~
24 ~~material risks to members that are engaged in the business of~~
25 ~~insurance.~~

26 ~~(4) Communicate with other insurance regulatory officials~~
27 ~~for members within the internationally active insurance group,~~
28 ~~and share relevant information subject to the confidentiality~~
29 ~~provisions of section 1407, through supervisory colleges as set~~
30 ~~forth in section 1406.1 or otherwise.~~

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

13 ~~(6) Other group wide supervisory activities as considered~~
14 ~~appropriate by the department.~~

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

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

23 ~~(2) The regulator also recognizes and cooperates with the~~
24 ~~department's activities as a group wide supervisor for other~~
25 ~~internationally active insurance groups where applicable. Where~~
26 ~~such recognition and cooperation is not reasonably reciprocal,~~
27 ~~the department is authorized to refuse recognition and~~
28 ~~cooperation.~~

29 ~~(g) The department is authorized to enter into agreements~~
30 ~~with or obtain documentation from any insurer registered under~~

~~1 section 1404, any affiliate of the insurer and other regulatory
2 officials for members of the insurance group, which provide the
3 basis for or otherwise clarify a regulatory official's role as
4 group supervisor.~~

~~5 (h) The department may promulgate regulations necessary for
6 the administration of this section. In determining whether a
7 regulation should be promulgated, the department shall give due
8 consideration to model laws, model regulations and definitions
9 or guidelines pertaining to group wide supervision, if any,
10 promulgated by the NAIC or other recognized insurance regulatory
11 bodies or associations.~~

~~12 (i) A registered insurer subject to this section shall be
13 liable for and shall pay the reasonable expenses of the
14 department's participation in the administration of this
15 section, including the engagement of attorneys, actuaries and
16 any other professionals and all reasonable travel expenses.~~

~~17 (j) As used in this section, the following words and phrases
18 shall have the meanings given to them in this subsection unless
19 the context clearly indicates otherwise:~~

~~20 "Group wide supervisor." The chief insurance regulatory
21 official authorized to engage in conducting and coordinating
22 group wide supervision activities who is from the jurisdiction
23 determined or acknowledged by the department under subsection
24 (c) to have sufficient significant contacts with the
25 internationally active insurance group.~~

~~26 "Internationally active insurance group." An insurance
27 holding company system that includes an insurer registered under
28 section 1404 and one or more affiliates engaged in the business
29 of insurance that are domiciled or operating outside of a
30 jurisdiction accredited by NAIC.~~



1 SECTION 1406.2. GROUP-WIDE SUPERVISION FOR INTERNATIONAL
2 INSURANCE GROUPS.--(A) (RESERVED).

3 (B) THE DEPARTMENT IS AUTHORIZED TO ACT AS THE GROUP-WIDE
4 SUPERVISOR FOR ANY INTERNATIONAL INSURANCE GROUP WHERE THE
5 INTERNATIONAL INSURANCE GROUP'S ULTIMATE CONTROLLING PERSON IS
6 DOMICILED IN PENNSYLVANIA. HOWEVER, THE DEPARTMENT MAY OTHERWISE
7 ACKNOWLEDGE ANOTHER JURISDICTION AS THE GROUP-WIDE SUPERVISOR
8 WHERE THE INTERNATIONAL INSURANCE GROUP:

9 (1) DOES NOT HAVE SUBSTANTIAL INSURANCE OPERATIONS IN THE
10 UNITED STATES.

11 (2) HAS SUBSTANTIAL INSURANCE OPERATIONS IN THE UNITED
12 STATES, BUT NOT IN PENNSYLVANIA.

13 (3) HAS SUBSTANTIAL INSURANCE OPERATIONS IN THE UNITED
14 STATES AND PENNSYLVANIA, BUT THE DEPARTMENT HAS DETERMINED
15 PURSUANT TO THE FACTORS SET FORTH IN SUBSECTIONS (C) (1), (2),
16 (3), (4), (5), (6) AND (7) AND (F) THAT THE OTHER JURISDICTION
17 IS THE APPROPRIATE GROUP SUPERVISOR.

18 (C) IN COOPERATION WITH OTHER SUPERVISORS, THE DEPARTMENT
19 MAY DETERMINE THAT IT IS THE APPROPRIATE GROUP-WIDE SUPERVISOR
20 FOR AN INTERNATIONAL INSURANCE GROUP WITH SUBSTANTIAL OPERATIONS
21 CONCENTRATED IN PENNSYLVANIA OR IN INSURANCE OPERATIONS
22 CONDUCTED BY SUBSIDIARY INSURANCE COMPANIES DOMICILED IN
23 PENNSYLVANIA, WHERE THE ULTIMATE CONTROLLING PERSON IS DOMICILED
24 OUTSIDE PENNSYLVANIA, OR IT MAY ACKNOWLEDGE THAT ANOTHER CHIEF
25 INSURANCE REGULATORY OFFICIAL IS THE APPROPRIATE GROUP-WIDE
26 SUPERVISOR FOR THE INTERNATIONAL INSURANCE GROUP. THE DEPARTMENT
27 SHALL CONSIDER THE FOLLOWING FACTORS AND THE RELATIVE SCALE OF
28 EACH WHEN MAKING A DETERMINATION OR ACKNOWLEDGMENT UNDER THIS
29 SUBSECTION:

30 (1) THE LOCATION WHERE THE INTERNATIONAL INSURANCE GROUP IS

1 BASED OR THE PLACE OF DOMICILE OF THE ULTIMATE CONTROLLING
2 PERSON OF THE INTERNATIONAL INSURANCE GROUP.

3 (2) THE LOCATIONS OF THE INTERNATIONAL INSURANCE GROUP'S
4 EXECUTIVE OFFICES.

5 (3) THE LOCATIONS OF ORIGIN OF THE INSURANCE BUSINESS OF THE
6 INTERNATIONAL INSURANCE GROUP.

7 (4) THE LOCATIONS OF THE ASSETS AND LIABILITIES OF THE
8 INTERNATIONAL INSURANCE GROUP.

9 (5) THE LOCATIONS OF THE BUSINESS OPERATIONS AND ACTIVITIES
10 OF THE INTERNATIONAL INSURANCE GROUP.

11 (6) WHETHER ANOTHER CHIEF INSURANCE REGULATORY OFFICIAL IS
12 ACTING OR SEEKING TO ACT AS THE LEAD GROUP-WIDE SUPERVISOR UNDER
13 A REGULATORY SYSTEM THAT THE DEPARTMENT DETERMINES TO BE:

14 (I) SUBSTANTIALLY SIMILAR TO THAT PROVIDED UNDER THE LAWS OF
15 THIS COMMONWEALTH; OR

16 (II) OTHERWISE SUFFICIENT IN TERMS OF PROVISION OF GROUP-
17 WIDE SUPERVISION, ENTERPRISE RISK ANALYSIS AND COOPERATION WITH
18 OTHER CHIEF REGULATORY OFFICIALS.

19 (7) WHETHER A CHIEF INSURANCE REGULATORY OFFICIAL ACTING OR
20 SEEKING TO ACT AS THE LEAD GROUP-WIDE SUPERVISOR PROVIDES THE
21 DEPARTMENT WITH REASONABLY RECIPROCAL RECOGNITION AND
22 COOPERATION.

23 (D) PURSUANT TO SECTION 1406, THE DEPARTMENT IS AUTHORIZED
24 TO COLLECT FROM ANY INSURER REGISTERED PURSUANT TO SECTION 1404
25 ALL INFORMATION NECESSARY TO DETERMINE WHETHER THE DEPARTMENT
26 MAY ACT AS THE GROUP-WIDE SUPERVISOR OR IF THE DEPARTMENT MAY
27 ACKNOWLEDGE ANOTHER INSURANCE REGULATORY OFFICIAL TO ACT AS THE
28 GROUP-WIDE SUPERVISOR. PRIOR TO ISSUING A DETERMINATION THAT AN
29 INTERNATIONAL INSURANCE GROUP IS SUBJECT TO GROUP-WIDE
30 SUPERVISION BY THE DEPARTMENT, THE DEPARTMENT SHALL NOTIFY THE

1 INSURER REGISTERED PURSUANT TO SECTION 1404 AND THE ULTIMATE
2 CONTROLLING PERSON WITHIN THE INTERNATIONAL INSURANCE GROUP. THE
3 INTERNATIONAL INSURANCE GROUP SHALL HAVE NOT LESS THAN THIRTY
4 (30) DAYS TO PROVIDE THE DEPARTMENT WITH ADDITIONAL INFORMATION
5 PERTINENT TO THE PENDING DETERMINATION. THE DEPARTMENT SHALL
6 PUBLISH IN THE PENNSYLVANIA BULLETIN AND ON ITS INTERNET WEBSITE
7 THE IDENTITY OF INTERNATIONAL INSURANCE GROUPS THAT IT HAS
8 DETERMINED ARE SUBJECT TO ITS GROUP-WIDE SUPERVISION.

9 (E) IF THE DEPARTMENT IS THE GROUP-WIDE SUPERVISOR FOR AN
10 INTERNATIONAL INSURANCE GROUP, THE DEPARTMENT IS AUTHORIZED TO
11 ENGAGE IN CONDUCTING AND COORDINATING ANY OF THE FOLLOWING
12 GROUP-WIDE SUPERVISION ACTIVITIES:

13 (1) ASSESS THE ENTERPRISE RISKS WITHIN THE INTERNATIONAL
14 INSURANCE GROUP, PURSUANT TO SECTION 1406, TO ENSURE THAT:

15 (I) THE MATERIAL FINANCIAL CONDITION AND LIQUIDITY RISKS TO
16 THE MEMBERS OF THE INTERNATIONAL INSURANCE GROUP WHICH ARE
17 ENGAGED IN THE BUSINESS OF INSURANCE ARE IDENTIFIED BY
18 MANAGEMENT.

19 (II) REASONABLE AND EFFECTIVE MITIGATION MEASURES ARE IN
20 PLACE.

21 (2) REQUEST, FROM ANY MEMBER OF AN INTERNATIONAL INSURANCE
22 GROUP SUBJECT TO THE DEPARTMENT'S SUPERVISION, INFORMATION
23 NECESSARY AND APPROPRIATE TO ASSESS ENTERPRISE RISK, INCLUDING,
24 BUT NOT LIMITED TO, INFORMATION ABOUT THE MEMBERS OF THE
25 INTERNATIONAL INSURANCE GROUP REGARDING:

26 (I) GOVERNANCE, RISK ASSESSMENT AND MANAGEMENT.

27 (II) CAPITAL ADEQUACY.

28 (III) MATERIAL INTERCOMPANY TRANSACTIONS.

29 (3) COMPEL DEVELOPMENT AND IMPLEMENTATION OF REASONABLE
30 MEASURES DESIGNED TO ASSURE THAT THE INTERNATIONAL INSURANCE

1 GROUP IS ABLE TO TIMELY RECOGNIZE AND MITIGATE MATERIAL RISKS TO
2 MEMBERS THAT ARE ENGAGED IN THE BUSINESS OF INSURANCE.

3 (4) COMMUNICATE WITH OTHER INSURANCE REGULATORY OFFICIALS
4 FOR MEMBERS WITHIN THE INTERNATIONAL INSURANCE GROUP AND SHARE
5 RELEVANT INFORMATION SUBJECT TO THE CONFIDENTIALITY PROVISIONS
6 OF SECTION 1407, THROUGH SUPERVISORY COLLEGES AS SET FORTH IN
7 SECTION 1406.1 OR OTHERWISE.

8 (5) ENTER INTO AGREEMENTS WITH OR OBTAIN DOCUMENTATION FROM
9 ANY INSURER REGISTERED UNDER SECTION 1404, ANY MEMBER OF THE
10 INTERNATIONAL INSURANCE GROUP AND ANY OTHER CHIEF INSURANCE
11 REGULATORY OFFICIALS FOR MEMBERS, PROVIDING THE BASIS FOR OR
12 OTHERWISE CLARIFYING THE DEPARTMENT'S ROLE AS GROUP SUPERVISOR,
13 INCLUDING PROVISIONS FOR RESOLVING DISPUTES WITH OTHER RELEVANT
14 SUPERVISORY AUTHORITIES. SUCH AGREEMENTS OR DOCUMENTATION SHALL
15 NOT SERVE AS EVIDENCE IN ANY PROCEEDING THAT ANY INSURER OR
16 PERSON WITHIN AN INSURANCE HOLDING COMPANY SYSTEM NOT
17 INCORPORATED IN THIS COMMONWEALTH IS DOING BUSINESS IN THIS
18 COMMONWEALTH OR IS OTHERWISE SUBJECT TO JURISDICTION IN THIS
19 COMMONWEALTH.

20 (6) OTHER GROUP-WIDE SUPERVISORY ACTIVITIES AS CONSIDERED
21 APPROPRIATE BY THE DEPARTMENT.

22 (F) IF THE DEPARTMENT ACKNOWLEDGES THAT A REGULATORY
23 OFFICIAL FROM A JURISDICTION WHICH IS NOT ACCREDITED BY THE NAIC
24 IS THE GROUP-WIDE SUPERVISOR, THE DEPARTMENT IS AUTHORIZED TO
25 REASONABLY COOPERATE, THROUGH SUPERVISORY COLLEGES OR OTHERWISE,
26 WITH GROUP SUPERVISION UNDERTAKEN BY THE GROUP-WIDE SUPERVISOR,
27 PROVIDED THAT:

28 (1) THE DEPARTMENT'S COOPERATION IS IN COMPLIANCE WITH THE
29 LAWS OF THIS COMMONWEALTH.

30 (2) THE REGULATOR ALSO RECOGNIZES AND COOPERATES WITH THE

1 DEPARTMENT'S ACTIVITIES AS A GROUP-WIDE SUPERVISOR FOR OTHER
2 INTERNATIONAL INSURANCE GROUPS WHERE APPLICABLE. WHERE SUCH
3 RECOGNITION AND COOPERATION IS NOT REASONABLY RECIPROCAL, THE
4 DEPARTMENT IS AUTHORIZED TO REFUSE RECOGNITION AND COOPERATION.

5 (G) THE DEPARTMENT IS AUTHORIZED TO ENTER INTO AGREEMENTS
6 WITH OR OBTAIN DOCUMENTATION FROM ANY INSURER REGISTERED UNDER
7 SECTION 1404, ANY AFFILIATE OF THE INSURER AND OTHER REGULATORY
8 OFFICIALS FOR MEMBERS OF THE INSURANCE GROUP, WHICH PROVIDE THE
9 BASIS FOR OR OTHERWISE CLARIFY A REGULATORY OFFICIAL'S ROLE AS
10 GROUP SUPERVISOR.

11 (H) THE DEPARTMENT MAY PROMULGATE REGULATIONS NECESSARY FOR
12 THE ADMINISTRATION OF THIS SECTION. IN DETERMINING WHETHER A
13 REGULATION SHOULD BE PROMULGATED, THE DEPARTMENT SHALL GIVE DUE
14 CONSIDERATION TO MODEL LAWS, MODEL REGULATIONS AND DEFINITIONS
15 OR GUIDELINES PERTAINING TO GROUP-WIDE SUPERVISION, IF ANY,
16 PROMULGATED BY THE NAIC OR OTHER RECOGNIZED INSURANCE REGULATORY
17 BODIES OR ASSOCIATIONS.

18 (I) A REGISTERED INSURER SUBJECT TO THIS SECTION SHALL BE
19 LIABLE FOR AND SHALL PAY THE REASONABLE EXPENSES OF THE
20 DEPARTMENT'S PARTICIPATION IN THE ADMINISTRATION OF THIS
21 SECTION, INCLUDING THE ENGAGEMENT OF ATTORNEYS, ACTUARIES AND
22 ANY OTHER PROFESSIONALS AND ALL REASONABLE TRAVEL EXPENSES.

23 (J) AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES
24 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION UNLESS
25 THE CONTEXT CLEARLY INDICATES OTHERWISE:

26 "GROUP-WIDE SUPERVISOR." THE CHIEF INSURANCE REGULATORY
27 OFFICIAL AUTHORIZED TO ENGAGE IN CONDUCTING AND COORDINATING
28 GROUP-WIDE SUPERVISION ACTIVITIES WHO IS FROM THE JURISDICTION
29 DETERMINED OR ACKNOWLEDGED BY THE DEPARTMENT UNDER SUBSECTION
30 (C) TO HAVE SUFFICIENT SIGNIFICANT CONTACTS WITH THE

1 INTERNATIONAL INSURANCE GROUP.

2 "INTERNATIONAL INSURANCE GROUP." AN INSURANCE GROUP
3 OPERATING INTERNATIONALLY THAT INCLUDES AN INSURER REGISTERED
4 UNDER SECTION 1404.

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

8 Section 1407. Confidential Treatment.--(a) All information,
9 documents, materials and copies thereof in the possession or
10 control of the department that are produced by, obtained by or
11 disclosed to the department or any other person in the course of
12 an examination or investigation made pursuant to section 1406 or
13 investigation made pursuant to section 1406.1 or 1406.2 and all
14 information reported pursuant to sections 1402(b)(11.1) and
15 (11.2), 1404 and 1405 shall be privileged and given confidential
16 treatment and shall not be:

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

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

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

22 (4) [made] Made public by the department or any other
23 person, except to [insurance departments of other states,]
24 regulatory or law enforcement officials of other jurisdictions
25 or group supervisors or members of a supervisory college in
26 accordance with subsection (c), without the prior written
27 consent of the insurer to which it pertains unless the
28 department, after giving the insurer and its affiliates who
29 would be affected thereby notice and opportunity to be heard,
30 determines that the interest of policyholders, shareholders or

1 the public will be served by the publication thereof, in which
2 event it may publish all or any part thereof in such manner as
3 [he] it may deem appropriate.

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

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

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

28 (2) Receive and maintain as confidential any documents,
29 materials or other information from the IAIS or the NAIC and its
30 affiliates and subsidiaries or from regulatory and law

1 enforcement officials of this Commonwealth or other
2 jurisdictions in which the documents, materials or other
3 information are confidential by law in those jurisdictions.
4 Documents, materials or other information obtained under this
5 section shall be given confidential treatment, may not be
6 subject to subpoena and may not be made public by the
7 department, commissioner or any other person.

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

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

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

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

29 (4) A requirement that the IAIS or the NAIC and its
30 affiliates and subsidiaries will consent to intervention by an

1 insurer in any judicial or administrative action in which the
2 IAIS or the NAIC and its affiliates and subsidiaries may be
3 required to disclose confidential information about the insurer
4 that was shared with the IAIS or the NAIC and its affiliates and
5 subsidiaries under this article.

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

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

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

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

19 (1) Be confidential and privileged.

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

22 (3) Not be subject to subpoena.

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

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

29 Section 1409. Injunctions and Certain Prohibitions.--(a)
30 Whenever it appears to the department that any insurer or any

1 director, officer, employe or agent thereof has committed or is
2 about to commit a violation of this article or of any [rule,]
3 regulation or order issued by the department hereunder, the
4 department may apply to the Commonwealth Court for an order
5 enjoining such insurer or such director, officer, employe or
6 agent thereof from violating or continuing to violate this
7 article or any such [rule,] regulation or order, and for such
8 other equitable relief as the nature of the case and the
9 interest of the insurer's policyholders, creditors and
10 shareholders or the public may require.

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

1 void any vote of such security already cast at any meeting of
2 shareholders and for such other equitable relief as the nature
3 of the case and the interest of the insurer's policyholders,
4 creditors and shareholders or the public may require.

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

14 * * *

15 Section 9. Section 1410(a) of the act, added December 18,
16 1992 (P.L.1519, No.178), is amended and the section is amended
17 by adding a subsection to read:

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

29 * * *

30 (f) Whenever it appears to the department that a person has

1 committed a violation of this article that prevents the full
2 understanding of the enterprise risk to the insurer by
3 affiliates or by the insurance holding company system, the
4 violation may serve as an independent basis for disapproving
5 dividends or distributions and for placing the insurer under an
6 order of supervision in accordance with section 511 of the act
7 of act of May 17, 1921 (P.L.789, No.285), known as "The
8 Insurance Department Act of 1921."

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

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

12 (2) This section shall take effect immediately.

13 (3) The remainder of this act shall take effect in 60
14 days.