

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1464 Session of 2012

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

AS AMENDED ON THIRD CONSIDERATION, JUNE 4, 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 REINSURANCE ←
12 CREDITS, for definitions, for acquisition of control of or
13 merger or consolidation with domestic insurer, for
14 acquisitions involving insurers not otherwise covered, for
15 registration of insurers, for standards and management of an
16 insurer within a holding company system and for examination;
17 providing for supervisory colleges and for group-wide
18 supervision for international insurance groups; and further
19 providing for confidential treatment, for rules and
20 regulations, for injunctions and certain prohibitions and for
21 sanctions.

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

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



1 SECTION 1. SECTION 319.1 OF THE ACT OF MAY 17, 1921  
2 (P.L.682, NO.284), KNOWN AS THE INSURANCE COMPANY LAW OF 1921,  
3 AMENDED DECEMBER 18, 1992 (P.L.1519, NO.178), IS AMENDED TO  
4 READ:

5 SECTION 319.1. REINSURANCE CREDITS.-- (A) UNLESS AN  
6 UNLICENSED REINSURER IS QUALIFIED OR CERTIFIED TO ACCEPT  
7 REINSURANCE FROM INSURERS LICENSED IN THIS COMMONWEALTH, NO  
8 CREDIT SHALL BE ALLOWED AS AN ADMITTED ASSET OR AS A REDUCTION  
9 OF LIABILITY RELATIVE TO RISKS CEDED BY SUCH LICENSED INSURERS.  
10 QUALIFIED OR CERTIFIED REINSURERS ARE THOSE MEETING THE  
11 CONDITIONS FOR REINSURERS SPECIFIED BY THE COMMISSIONER, IN HIS  
12 DISCRETION, AND INCLUDED ON A LIST OF QUALIFIED OR CERTIFIED  
13 REINSURERS PUBLISHED AND PERIODICALLY REVIEWED BY SAID  
14 COMMISSIONER.

15 (B) A REDUCTION FROM LIABILITY FOR THE REINSURANCE CEDED BY  
16 A DOMESTIC INSURER TO AN ASSUMING INSURER WHICH IS NOT A  
17 QUALIFIED OR CERTIFIED REINSURER IN ACCORDANCE WITH THIS SECTION  
18 SHALL BE ALLOWED IN AN AMOUNT NOT EXCEEDING THE LIABILITIES  
19 CARRIED BY THE CEDING INSURER AND SUCH REDUCTION SHALL BE IN THE  
20 AMOUNT OF FUNDS HELD BY OR ON BEHALF OF THE CEDING INSURER,  
21 INCLUDING FUNDS HELD IN TRUST FOR THE CEDING INSURER, UNDER A  
22 REINSURANCE CONTRACT WITH SUCH ASSUMING INSURER AS SECURITY FOR  
23 THE PAYMENT OF OBLIGATIONS THEREUNDER, IF SUCH SECURITY IS HELD  
24 IN THE UNITED STATES SUBJECT TO WITHDRAWAL SOLELY BY AND UNDER  
25 THE EXCLUSIVE CONTROL OF THE CEDING INSURER OR, IN THE CASE OF A  
26 TRUST, HELD IN A QUALIFIED UNITED STATES FINANCIAL INSTITUTION,  
27 AS DEFINED IN SUBSECTION (G) (2). THIS SECURITY MAY BE IN THE  
28 FORM OF:

29 (1) CASH.

30 (2) SECURITIES LISTED BY A SECURITIES VALUATION OFFICE OF A

1 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR ANY SUCCESSOR  
2 THERETO, INCLUDING THOSE EXEMPTED FROM FILING UNDER THE PURPOSES  
3 AND PROCEDURES MANUAL OF THE SECURITIES VALUATION OFFICE OF THE  
4 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND QUALIFYING  
5 AS ADMITTED ASSETS.

6 (3) (I) CLEAN, IRREVOCABLE, UNCONDITIONAL AND EVERGREEN  
7 LETTERS OF CREDIT ISSUED OR CONFIRMED BY A QUALIFIED UNITED  
8 STATES FINANCIAL INSTITUTION, AS DEFINED IN SUBSECTION (G) (1),  
9 NO LATER THAN THE THIRTY-FIRST DAY OF DECEMBER IN RESPECT OF THE  
10 YEAR FOR WHICH FILING IS BEING MADE AND IN THE POSSESSION OF THE  
11 CEDING [COMPANY] INSURER ON OR BEFORE THE FILING DATE OF ITS  
12 ANNUAL STATEMENT.

13 (II) LETTERS OF CREDIT MEETING APPLICABLE STANDARDS OF  
14 ISSUER ACCEPTABILITY AS OF THE DATES OF THEIR ISSUANCE OR  
15 CONFIRMATION SHALL, NOTWITHSTANDING THE ISSUING OR CONFIRMING  
16 INSTITUTION'S SUBSEQUENT FAILURE TO MEET APPLICABLE STANDARDS OF  
17 ISSUER ACCEPTABILITY, CONTINUE TO BE ACCEPTABLE AS SECURITY  
18 UNTIL THEIR EXPIRATION, EXTENSION, RENEWAL, MODIFICATION OR  
19 AMENDMENT, WHICHEVER FIRST OCCURS.

20 (4) FUNDS OR LETTERS OF CREDIT PROVIDED BY A NONINSURER  
21 PARENT CORPORATION OF THE CEDING INSURER, IN LIEU OF THE FUNDS  
22 TO BE WITHHELD BY THE CEDING INSURER UNDER A REINSURANCE  
23 CONTRACT WITH SUCH ASSUMING INSURER AS SECURITY FOR PAYMENT OF  
24 OBLIGATIONS THEREUNDER, IF THE FOLLOWING REQUIREMENTS ARE MET:

25 (I) THE FUNDS OR LETTERS OF CREDIT ARE HELD SUBJECT TO  
26 WITHDRAWAL BY AND UNDER THE CONTROL OF THE CEDING INSURER.

27 (II) THE TYPE, AMOUNT AND FORM OF THE FUNDS OR LETTERS OF  
28 CREDIT RECEIVE THE PRIOR APPROVAL OF THE INSURANCE COMMISSIONER.

29 (5) ANY OTHER FORM OF SECURITY ACCEPTABLE TO THE INSURANCE  
30 COMMISSIONER.

1 (C) NO CREDIT SHALL BE ALLOWED AS AN ADMITTED ASSET OR AS A  
2 DEDUCTION FROM LIABILITY, TO ANY CEDING COMPANY FOR REINSURANCE  
3 UNLESS THE REINSURANCE IS PAYABLE TO SUCH COMPANY OR ITS  
4 STATUTORY LIQUIDATOR BY THE ASSUMING COMPANY ON THE BASIS OF THE  
5 LIABILITY OF THE CEDING COMPANY UNDER CONTRACT OR CONTRACTS  
6 REINSURED WITHOUT DIMINUTION BECAUSE OF INSOLVENCY OF THE CEDING  
7 COMPANY.

8 (D) NO SUCH CREDIT SHALL BE ALLOWED FOR REINSURANCE UNLESS  
9 THE REINSURANCE AGREEMENT PROVIDES THAT PAYMENT BY THE COMPANY  
10 SHALL BE MADE DIRECTLY TO THE CEDING COMPANY OR TO ITS  
11 LIQUIDATOR, RECEIVER, OR STATUTORY SUCCESSOR.

12 (E) NO CREDIT SHALL BE ALLOWED AS AN ADMITTED ASSET OR AS A  
13 REDUCTION IN LIABILITY IF THE GROSS RESERVES ESTABLISHED BY THE  
14 CEDING INSURER DO NOT INCLUDE PROVISION FOR THE POLICY BENEFITS  
15 AGAINST WHICH THE CEDING INSURER IS BEING INDEMNIFIED BY THE  
16 REINSURER.

17 (F) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE  
18 INSURANCE DEPARTMENT MAY PROMULGATE ONE OR MORE REGULATIONS TO  
19 LIMIT, PROHIBIT OR AUTHORIZE THE CREDIT WHICH A DOMESTIC INSURER  
20 MAY TAKE AS AN ADMITTED ASSET OR AS A REDUCTION IN LIABILITY  
21 WITH RESPECT TO REINSURANCE CEDED ON ANY FINANCIAL STATEMENTS  
22 FILED WITH THE INSURANCE DEPARTMENT.

23 (F.1) CREDIT FOR REINSURANCE CEDED TO A CERTIFIED REINSURER  
24 IS ALLOWED ONLY FOR REINSURANCE CONTRACTS ENTERED INTO OR  
25 RENEWED ON OR AFTER THE EFFECTIVE DATE OF THE CERTIFICATION OF  
26 THE ASSUMING INSURER BY THE INSURANCE COMMISSIONER.

27 (G) (1) THE TERM "QUALIFIED UNITED STATES FINANCIAL  
28 INSTITUTION" WHEN USED IN THIS SECTION MEANS AN INSTITUTION  
29 WHICH MEETS THE FOLLOWING QUALIFICATIONS:

30 (I) IS ORGANIZED OR, IN THE CASE OF A UNITED STATES OFFICE

1 OF A FOREIGN BANKING ORGANIZATION, LICENSED UNDER THE LAWS OF  
2 THE UNITED STATES OR ANY STATE THEREOF.

3 (II) IS REGULATED, SUPERVISED AND EXAMINED BY UNITED STATES  
4 FEDERAL OR STATE AUTHORITIES HAVING REGULATORY AUTHORITY OVER  
5 BANKS AND TRUST COMPANIES.

6 (III) HAS BEEN DETERMINED BY EITHER THE INSURANCE  
7 COMMISSIONER OR THE SECURITIES VALUATION OFFICE OF THE NATIONAL  
8 ASSOCIATION OF INSURANCE COMMISSIONERS OR A SUCCESSOR THERETO TO  
9 MEET SUCH STANDARDS OF FINANCIAL CONDITION AND STANDING AS ARE  
10 CONSIDERED NECESSARY AND APPROPRIATE TO REGULATE THE QUALITY OF  
11 FINANCIAL INSTITUTIONS WHOSE LETTERS OF CREDIT WILL BE  
12 ACCEPTABLE TO THE INSURANCE COMMISSIONER.

13 (2) THE TERM "QUALIFIED UNITED STATES FINANCIAL INSTITUTION"  
14 ALSO MEANS, FOR THE PURPOSES OF THE PROVISIONS OF THIS ACT  
15 SPECIFYING THOSE INSTITUTIONS THAT ARE ELIGIBLE TO ACT AS A  
16 FIDUCIARY OF A TRUST, AN INSTITUTION THAT MEETS THE FOLLOWING  
17 QUALIFICATIONS:

18 (I) IS ORGANIZED OR, IN THE CASE OF A UNITED STATES BRANCH  
19 OR AGENCY OFFICE OF A FOREIGN BANKING ORGANIZATION, LICENSED  
20 UNDER THE LAWS OF THE UNITED STATES OR ANY STATE THEREOF AND HAS  
21 BEEN GRANTED AUTHORITY TO OPERATE WITH FIDUCIARY POWERS.

22 (II) IS REGULATED, SUPERVISED AND EXAMINED BY FEDERAL OR  
23 STATE AUTHORITIES HAVING REGULATORY AUTHORITY OVER BANKS AND  
24 TRUST COMPANIES.

25 SECTION 1.1. THE DEFINITIONS OF "CONTROL" AND "NAIC" IN  
26 SECTION 1401 OF THE ACT, ADDED DECEMBER 18, 1992 (P.L.1519,  
27 NO.178), ARE AMENDED AND THE SECTION IS AMENDED BY ADDING  
28 DEFINITIONS TO READ:

29 Section 1401. Definitions.--As used in this article, and for  
30 the purposes of this article only, the following words and

1 phrases shall have the meanings given to them in this section:

2 \* \* \*

3 "Company action level event." As defined in section 501-A or  
4 501-B of the act of May 17, 1921 (P.L.789, No.285), known as  
5 "The Insurance Department Act of 1921."

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

25 \* \* \*

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

1 not limited to, anything that would:

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

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

4 financial condition under:

5 (i) Article V of the act of May 17, 1921 (P.L.789, No.285),

6 known as "The Insurance Department Act of 1921."

7 (ii) 31 Pa. Code Ch. 160 (relating to standards to define

8 insurers deemed to be in hazardous financial condition).

9 "IAIS." The International Association of Insurance

10 Supervisors or successor organization.

11 \* \* \*

12 "NAIC." The National Association of Insurance Commissioners

13 or successor organization.

14 \* \* \*

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

16 States.

17 \* \* \*

18 Section 2. Section 1402(a)(2), (b)(12), (f)(3), (h) and (j)

19 of the act, amended July 9, 2008 (P.L.885, No.62), are amended

20 and subsections (a), (b) and (f) are amended by adding

21 paragraphs to read:

22 Section 1402. Acquisition of Control of or Merger or

23 Consolidation with Domestic Insurer.--(a) \* \* \*

24 (2) [For purposes of this section, a "domestic insurer"

25 shall include any person controlling a domestic insurer unless

26 such person as determined by the department is either directly

27 or through its affiliates primarily engaged in business other

28 than the business of insurance. Such person shall, however, file

29 a preacquisition notification with the department containing the

30 information set forth in section 1403(c)(2) thirty (30) days

1 prior to the proposed effective date of the acquisition. Failure  
2 to file is subject to section 1403(e) (3). For purposes of this  
3 section, "person" shall not include any securities broker  
4 holding, in the usual and customary manner, less than twenty per  
5 centum (20%) of the voting securities of an insurance company or  
6 of any person which controls an insurance company.] For purposes  
7 of this section:

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

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

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

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



1 under section 1403(e) (3).

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

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

14 \* \* \*

15 (11.1) An agreement by the person required to file the  
16 statement referred to in subsection (a) that it will provide the  
17 annual enterprise risk report specified in section 1404(k.1) as  
18 long as control exists.

19 (11.2) An acknowledgment by the person required to file the  
20 statement referred to in subsection (a) that the person and the  
21 subsidiaries within its control in the insurance holding company  
22 system will provide information to the commissioner upon request  
23 as necessary to evaluate enterprise risk to the insurer.

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

28 \* \* \*

29 (f) \* \* \*

30 (2.1) If the proposed acquisition of control requires the

1 approval of more than one chief insurance regulatory official,  
2 the public hearing under paragraph (2) may be held on a  
3 consolidated basis upon request of the person filing the  
4 statement under subsection (a). He shall file the statement  
5 under subsection (a) with the NAIC within five (5) days of  
6 making the request for a public hearing. A chief insurance  
7 regulatory official may opt out of a consolidated hearing, and  
8 shall provide notice to the applicant of the decision to opt out  
9 within ten (10) days of the receipt of the statement under  
10 subsection (a). A hearing conducted on a consolidated basis must  
11 be public and held in the United States before the chief  
12 insurance regulatory officials of the states in which the  
13 insurers are domiciled. The chief insurance regulatory officials  
14 shall hear and receive evidence. A chief insurance regulatory  
15 official 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. Beginning in 2014 and  
11 every year thereafter, the report shall be filed by March 31 for  
12 the previous calendar year.

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

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

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

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

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

30 (iii) Expenses incurred and payment received shall be

1 allocated to the insurer in conformity with customary insurance  
2 accounting practices consistently applied and all cost-sharing  
3 or expense allocation arrangements must be formalized in writing  
4 and authorized by the board of directors of the domestic  
5 insurer.

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

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

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

27 (i) Sales, purchases, exchanges, loans or extensions of  
28 credit, guarantees, investments, pledges of assets or assets to  
29 be received by the domestic insurer as contributions to its  
30 surplus, provided that, as of the thirty-first day of December



1 next preceding, such transactions are equal to or exceed the  
2 lesser of [five per centum (5%)] three per centum (3%) of the  
3 insurer's admitted assets or twenty-five per centum (25%) of  
4 surplus as regards policyholders.

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

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

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

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

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

11 or

12 (C) reinsurance pooling agreements.

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

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

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

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

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

29 (3) A domestic insurer may not enter into transactions which  
30 are part of a plan or series of like transactions with persons

1 within the insurance holding company system if the purpose of  
2 those separate transactions is to avoid the statutory threshold  
3 amount and thus avoid the review that would occur otherwise. If  
4 the department determines that such separate transactions were  
5 entered into over any twelve-month period for such purpose, it  
6 may exercise its authority under section 1410.

7 \* \* \*

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

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

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

16 \* \* \*

17 (c) \* \* \*

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

25 \* \* \*

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

28 Section 1406. Examination.--(a) Subject to the limitation  
29 contained in this section and in addition to the powers which  
30 the department has under law relating to the examination of

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

12 (1) the ultimate controlling person;

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

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

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

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

24 (1) the ultimate controlling person;

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

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

29 the department may order an insurer registered under section  
30 1404 to produce information not in the possession of the insurer

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

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

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

30 (d) If the insurer fails to comply with an order issued

1 under this section, the department has the power to examine the  
2 insurer's affiliates to obtain the information necessary to  
3 determine an insurer's compliance with this section. The  
4 department also has the power to:

5 (1) issue subpoenas;

6 (2) administer oaths; and

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

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

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

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

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

30 (1) To assess the enterprise risk, business strategy, legal,

1 regulatory and financial position, risk exposure, risk  
2 management and governance processes of the insurer or its  
3 affiliates.

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

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

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

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

14 (2) Clarifying the membership and participation of other  
15 supervisors in the supervisory college.

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

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

22 (5) Establishing a crisis management plan.

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

1 to the supervisory college the authority of the department to  
2 regulate or supervise the insurer or its affiliates within its  
3 jurisdiction.

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

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

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

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

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

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

25 (c) In cooperation with other supervisors, the department  
26 may determine that it is the appropriate group-wide supervisor  
27 for an international insurance group with substantial operations  
28 concentrated in Pennsylvania or in insurance operations  
29 conducted by subsidiary insurance companies domiciled in  
30 Pennsylvania, where the ultimate controlling person is domiciled



1 outside Pennsylvania, or it may acknowledge that another chief  
2 insurance regulatory official is the appropriate group-wide  
3 supervisor for the international insurance group. The department  
4 shall consider the following factors and the relative scale of  
5 each when making a determination or acknowledgment under this  
6 subsection:

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

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

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

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

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

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

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

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

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

30 (d) Pursuant to section 1406, the department is authorized

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

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

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

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

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

28 (2) Request, from any member of an international insurance  
29 group subject to the department's supervision, information  
30 necessary and appropriate to assess enterprise risk, including,

1 but not limited to, information about the members of the  
2 international insurance group regarding:

3 (i) Governance, risk assessment and management.  
4 (ii) Capital adequacy.  
5 (iii) Material intercompany transactions.

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

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

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

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

29 (f) If the department acknowledges that a regulatory  
30 official from a jurisdiction which is not accredited by the NAIC

1 is the group-wide supervisor, the department is authorized to  
2 reasonably cooperate, through supervisory colleges or otherwise,  
3 with group supervision undertaken by the group-wide supervisor,  
4 provided that:

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

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

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

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

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

30 (j) As used in this section, the following words and phrases

1 shall have the meanings given to them in this subsection unless  
2 the context clearly indicates otherwise:

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

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

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

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

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

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

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

29 (4) [made] Made public by the department or any other  
30 person, except to [insurance departments of other states,]

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

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

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

20 (1) Share confidential and privileged documents, materials  
21 or other information covered under this section with regulatory  
22 or law enforcement officials of this Commonwealth or other  
23 jurisdictions, the IAIS, the NAIC and its affiliates and  
24 subsidiaries, group supervisors and members of any supervisory  
25 college under section 1406.1, provided that prior to receiving  
26 the documents, materials or other information, the recipient  
27 demonstrates by written statement the necessary authority and  
28 intent to provide the same confidential treatment to the  
29 information as required by this article. The department may only  
30 share confidential and privileged documents, materials or

1 information reported under section 1404(k.1) with state  
2 insurance regulators having statutes or regulations  
3 substantially similar to subsection (a) and who have agreed in  
4 writing not to disclose such information.

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

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

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

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

30 (3) A provision providing that the IAIS or the NAIC and its

1 affiliates and subsidiaries will, where permitted by law, give  
2 prompt notice to the department and the insurer regarding any  
3 subpoena, request for disclosure or request for production of  
4 the insurer's confidential information in the possession of the  
5 IAIS or the NAIC under this article.

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

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

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

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

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

26 (1) Be confidential and privileged.

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

29 (3) Not be subject to subpoena.

30 (4) Not be subject to discovery or admissible in evidence in



1 any private civil action.

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

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

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

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

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

21 \* \* \*

22 Section 9. Section 1410(a) of the act, added December 18,  
23 1992 (P.L.1519, No.178), is amended and the section is amended  
24 by adding a subsection to read:

25 Section 1410. Sanctions.--(a) [Any insurer failing, without  
26 just cause,] A person failing to file any registration statement  
27 or any summary of the registration statement or enterprise risk  
28 report as required [in] by this article or by regulation shall  
29 be required[, after notice and hearing,] to pay a penalty not to  
30 exceed [five hundred (\$500)] two hundred (\$200) dollars for each

1 day's delay. The maximum penalty under this section is twenty-  
2 five thousand (\$25,000) dollars. [The department may reduce the  
3 penalty if the insurer demonstrates to the department that the  
4 imposition of the penalty would constitute a financial hardship  
5 to the insurer.]

6 \* \* \*

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

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

17 (1) THE AMENDMENT OF SECTION 319.1 OF THE ACT SHALL TAKE ←  
18 EFFECT IMMEDIATELY.

19 ~~(1)~~ (2) The addition of section 1404(k.1) of the act ←  
20 shall take effect on January 1, 2013.

21 ~~(2)~~ (3) This section shall take effect immediately. ←

22 ~~(3)~~ (4) The remainder of this act shall take effect in ←  
23 60 days.