

17:27A-1

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(Insurance holding companies--  
mergers)

NJSA: 17:27A-1

LAWS OF: 1993 CHAPTER: 241

BILL NO: A82

SPONSOR(S) Kramer and others

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COMMITTEE: ASSEMBLY: Insurance  
SENATE: Commerce

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes  
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clipping--attached:  
"Governor signs stricter scrutiny for insurance companies," 8-10-93, Star Ledger."

Attached: Model Insurance Holding Company System Act as promulgated by NAIC.

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[FIRST REPRINT]  
ASSEMBLY, No. 82

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1993

By Assemblymen KRAMER, GAFFNEY, Zecker, DiGaetano,  
Assemblywoman Crecco, Assemblyman Penn,  
Assemblywoman Wright, Assemblymen Augustine, Gibson,  
Geist, Kavanaugh, Assemblywoman Heck, Assemblymen Felice,  
Wolfe and Assemblywoman Haines

1 AN ACT concerning insurance holding company systems <sup>1</sup>[and],<sup>1</sup>  
2 amending and supplementing P.L.1970, c.22<sup>1</sup>, amending  
3 P.L.1975, c.160 and repealing parts of the statutory law<sup>1</sup>.

4  
5 BE IT ENACTED *by the Senate and General Assembly of the*  
6 *State of New Jersey:*

7 1. Section 1 of P.L.1970, c.22 (C.17:27A-1) is amended to read  
8 as follows:

9 1. Definitions.

10 As used in [this chapter] P.L.1970, c.22 (C.17:27A-1 et seq.),  
11 the following terms shall have the respective meanings  
12 hereinafter set forth, unless the context shall otherwise require:

13 a. An "affiliate" of, or person "affiliated" with, a specific  
14 person, is a person that directly, or indirectly through one or  
15 more intermediaries, controls, or is controlled by, or is under  
16 common control with, the person specified.

17 b. The term "commissioner" shall mean the Commissioner of  
18 Insurance or his deputies.

19 c. The term "control" (including the terms "controlling,"  
20 "controlled by" and "under common control with") means the  
21 possession, direct or indirect, of the power to direct or cause the  
22 direction of the management and policies of a person, whether  
23 through the ownership of voting securities, by contract other than  
24 a commercial contract for goods or nonmanagement services, or  
25 otherwise, unless the power is the result of an official position  
26 with or corporate office held by the person. Control shall be  
27 presumed to exist if any person, directly or indirectly, owns,  
28 controls, holds with the power to vote, or holds proxies  
29 representing, 10% or more of the voting securities of any other  
30 person, provided that no such presumption of control shall of  
31 itself relieve any person so presumed to have control from any  
32 requirement of [this chapter] P.L.1970, c.22 (C.17:27A-1 et  
33 seq.). This presumption may be rebutted by a showing made in  
34 the manner provided by subsection j. of section 3[(i)] that control  
35 does not exist in fact. The commissioner may determine, after  
36 furnishing all persons in interest notice and an opportunity to be  
37 heard, and making specific findings of fact to support such  
38 determination, that control exists in fact, notwithstanding the  
39 absence of a presumption to that effect.

40 d. An "insurance holding company system" consists of two or  
41 more affiliated persons, one or more of which is an insurer.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly AIN committee amendments adopted March 23, 1993.

1 e. The term "insurer" means any person or persons,  
2 corporation, partnership or company authorized by the laws of  
3 this State to transact the business of insurance in this State,  
4 except that it shall not include agencies, authorities or  
5 instrumentalities of the United States, its possessions and  
6 territories, the Commonwealth of Puerto Rico, the District of  
7 Columbia, or a state or political subdivision of a state.

8 f. A "person" is an individual, a corporation, a partnership, an  
9 association, a joint stock company, a trust, an unincorporated  
10 organization, any similar entity or any combination of the  
11 foregoing acting in concert[, but shall not include any securities  
12 broker performing no more than the usual and customary broker's  
13 function].

14 g. [A "securityholder" of a specified person is one who owns  
15 any security of such person, including common stock, preferred  
16 stock, debt obligations, and any other security convertible into or  
17 evidencing the right to acquire any of the foregoing.] (Deleted by  
18 amendment, P.L. , c. .)

19 h. A "subsidiary" of a specified person is an affiliate  
20 controlled by such person directly, or indirectly through one or  
21 more intermediaries.

22 i. The term "voting security" shall include any security  
23 convertible into or evidencing a right to acquire a voting security.

24 j. "Acquisition" means any agreement, arrangement or  
25 activity, the consummation of which results in a person acquiring  
26 directly or indirectly the control of another person, and includes  
27 but is not limited to the acquisition of voting securities, and  
28 assets, and bulk reinsurance and mergers.

29 (cf: P.L.1970, c.22, s.1)

30 2. Section 2 of P.L.1970, c.22 (C.17:27A-2) is amended to read  
31 as follows:

32 2. Acquisition of control of or merger with domestic insurer.

33 a. Filing requirements. No person other than the issuer shall  
34 make a tender offer for or a request or invitation for tenders of,  
35 or enter into any agreement to exchange securities for, seek to  
36 acquire, or acquire, in the open market or otherwise, any voting  
37 security of a domestic insurer if, after the consummation  
38 thereof, such person would, directly or indirectly (or by  
39 conversion or by exercise of any right to acquire) be in control of  
40 such insurer, and no person shall enter into an agreement to  
41 merge with or otherwise to acquire control of a domestic insurer  
42 unless, at the time any such offer, request, or invitation is made  
43 or any such agreement is entered into, or prior to the acquisition  
44 of such securities if no offer or agreement is involved, such  
45 person has filed with the commissioner and has sent to such  
46 insurer, [and, to the extent permitted by applicable Federal laws,  
47 rules and regulations, such insurer has sent to its shareholders,] a  
48 statement containing the information required by this section and  
49 such offer, request, invitation, agreement or acquisition has been  
50 approved by the commissioner in the manner hereinafter  
51 prescribed.

52 [(1)] For purposes of this [section:] subsection a domestic  
53 insurer shall include any other person controlling a domestic  
54 insurer [unless such other person is either directly or through its

1 affiliates primarily engaged in business other than the business of  
2 insurance].

3 b. Content of statement. The statement to be filed with the  
4 commissioner hereunder shall be made under oath or affirmation  
5 and shall contain the following information:

6 (1) The name and address of each person by whom or on whose  
7 behalf the merger or other acquisition of control referred to in  
8 subsection a. is to be effected (hereinafter called "acquiring  
9 party"), and

10 (i) If such person is an individual, his principal occupation and  
11 all offices and positions held during the past 5 years, and any  
12 conviction of crimes other than minor traffic violations during  
13 the past 10 years;

14 (ii) If such person is not an individual, a report of the nature of  
15 its business operations during the past 5 years or for such lesser  
16 period as such person and any predecessors thereof shall have  
17 been in existence; an informative description of the business  
18 intended to be done by such person and such person's subsidiaries;  
19 and a list of all individuals who are or who have been selected to  
20 become directors or executive officers of such person, or who  
21 perform or will perform functions appropriate to such positions.  
22 Such list shall include for each such individual the information  
23 required by subparagraph (i) of this paragraph [(i) of this  
24 subsection].

25 (2) The source, nature and amount of the consideration used or  
26 to be used in effecting the merger or other acquisition of control,  
27 a description of any transaction wherein funds were or are to be  
28 obtained for any such purpose (including any pledge of the  
29 insurer's stock, or the stock of any of its subsidiaries or  
30 controlling affiliates), and the identity of persons furnishing such  
31 consideration, provided, however, that where a source of such  
32 consideration is a loan made in the lender's ordinary course of  
33 business, the identity of the lender shall remain confidential, if  
34 the person filing such statement so requests.

35 (3) Fully audited financial information as to the earnings and  
36 financial condition of each acquiring party for the preceding 5  
37 fiscal years of each such acquiring party (or for such lesser period  
38 as such acquiring party and any predecessors thereof shall have  
39 been in existence), and similar unaudited information as of a date  
40 not earlier than 90 days prior to the filing of the statement.

41 (4) Any plans or proposals which each acquiring party may have  
42 to liquidate such insurer, to sell its assets or merge or consolidate  
43 it with any person, or to make any other material change in its  
44 business or corporate structure or management.

45 (5) The number of shares of any security referred to in  
46 subsection a. which each acquiring party proposes to acquire, and  
47 the terms of the offer, request, invitation, agreement, or  
48 acquisition referred to in subsection a., and a statement as to the  
49 method by which the fairness of the proposal was arrived at.

50 (6) The amount of each class of any security referred to in  
51 subsection a. which is beneficially owned or concerning which  
52 there is a right to acquire beneficial ownership by each acquiring  
53 party.

54 (7) A full description of any contracts, arrangements or

1 understandings with respect to any security referred to in  
2 subsection a. in which any acquiring party is involved, including  
3 but not limited to transfer of any of the securities, joint  
4 ventures, loan or option arrangements, puts or calls, guarantees  
5 of loans, guarantees against loss or guarantees of profits, division  
6 of losses or profits, or the giving or withholding of proxies. Such  
7 description shall identify the persons with whom such contracts,  
8 arrangements or understandings have been entered into.

9 (8) A description of the purchase of any security referred to in  
10 subsection a. during the 12 calendar months preceding the filing  
11 of the statement, by any acquiring party, including the dates of  
12 purchase, names of the purchasers, and consideration paid or  
13 agreed to be paid therefor.

14 (9) A description of any recommendations to purchase any  
15 security referred to in subsection a. made during the 12 calendar  
16 months preceding the filing of the statement, by any acquiring  
17 party, or by anyone based upon interviews or at the suggestion of  
18 such acquiring party.

19 (10) Copies of all tender offers for, requests or invitations for  
20 tenders of, exchange offers for, and agreements to acquire or  
21 exchange any securities referred to in subsection a., and (if  
22 distributed) of additional soliciting material relating thereto.

23 (11) The terms of any agreement, contract or understanding  
24 made or proposed to be made with any broker-dealer as to  
25 solicitation of securities referred to in subsection a. for tender,  
26 and the amount of any fees, commissions or other compensation  
27 to be paid to broker-dealers with regard thereto.

28 (12) Such additional information as the commissioner may by  
29 rule or regulation prescribe as necessary or appropriate for the  
30 protection of policyholders [and securityholders] of the insurer or  
31 in the public interest.

32 If the person required to file the statement referred to in  
33 subsection a. is a partnership, limited partnership, syndicate or  
34 other group, the commissioner may require that the information  
35 called for by [clauses] paragraphs (1) through (12) shall be given  
36 with respect to each partner of such partnership or limited  
37 partnership, each member of such syndicate or group, and each  
38 person who controls such partner or member. If any such partner,  
39 member or person is a corporation or the person required to file  
40 the statement referred to in subsection a. is a corporation, the  
41 commissioner may require that the information called for by  
42 [clauses] paragraphs (1) through (12) shall be given with respect to  
43 such corporation, each officer and director of such corporation,  
44 and each person who is directly or indirectly the beneficial owner  
45 of more than 10% of the outstanding voting securities of such  
46 corporation.

47 If any material change occurs in the facts set forth in the  
48 statement filed with the commissioner and sent to such insurer  
49 pursuant to this section, an amendment setting forth such change,  
50 together with copies of all documents and other material relevant  
51 to such change, shall be filed with the commissioner and sent to  
52 such insurer within 2 business days after the person learns of such  
53 change. [Such insurer shall send such amendment to its  
54 shareholders.]

1 c. Alternative filing materials. If any offer, request,  
2 invitation, agreement or acquisition referred to in subsection a. is  
3 proposed to be made by means of a registration statement under  
4 the Securities Act of 1933, 48 Stat. 74 (15 U.S.C. 77a et seq.), or  
5 in circumstances requiring the disclosure of similar information  
6 under the Securities Exchange Act of 1934, 48 Stat. 881 (15  
7 U.S.C. 78a et seq.), or under a State law requiring similar  
8 registration or disclosure, the person required to file the  
9 statement referred to in subsection a. may utilize such  
10 documents in furnishing the information called for by that  
11 statement.

12 d. Approval by commissioner; hearings.

13 (1) The commissioner shall approve any merger or other  
14 acquisition of control referred to in subsection a. unless, after a  
15 public departmental hearing thereon, he finds that:

16 (i) After the change of control the domestic insurer referred to  
17 in subsection a. would not be able to satisfy the requirements for  
18 the issuance of a license to write the line or lines of insurance for  
19 which it is presently licensed;

20 (ii) The effect of the merger or other acquisition of control  
21 would be substantially to lessen competition in insurance in this  
22 State or tend to create a monopoly therein . In applying the  
23 competitive standard of this subparagraph:

24 (a) The informational requirements of paragraph (1) of  
25 subsection c. and paragraph (2) of subsection d. of section 7 of  
26 P.L. , c. (C. ) (now pending before the Legislature as this  
27 bill) shall apply;

28 (b) The merger or other acquisition shall not be disapproved if  
29 the commissioner finds that any of the situations meeting the  
30 criteria provided by paragraph (3) of subsection d. of section 7 of  
31 P.L. , c. (C. ) (now pending before the Legislature as this  
32 bill.) exist; and

33 (c) The commissioner may condition approval of the merger or  
34 other acquisition on the removal of the basis of disapproval  
35 within a specified period of time;

36 (iii) The financial condition of any acquiring party is such as  
37 might jeopardize the financial stability of the insurer, or  
38 prejudice the interest of its policyholders [or the interests of any  
39 remaining securityholders who are unaffiliated with such  
40 acquiring party];

41 (iv) [The terms of the offer, request, invitation, agreement or  
42 acquisition referred to in subsection a. are unfair and  
43 unreasonable to the securityholders of the insurer] The financial  
44 condition of any acquiring party is such that (a) the acquiring  
45 party has not been financially solvent on a generally accepted  
46 accounting principals basis, or if an insurer, on a statutory  
47 accounting basis, for the most recent three fiscal years  
48 immediately prior to the date of the proposed acquisition (or for  
49 the whole of such lesser period as such acquiring party and any  
50 predecessors thereof shall have been in existence); (b) the  
51 acquiring party has not generated net before-tax profits from its  
52 normal business operations for the latest two fiscal years  
53 immediately prior to the date of acquisition ( or for the whole of  
54 such lesser period as such acquiring party and any predecessors

1 thereof shall have been in existence); or (c) the acquisition debt  
2 of the acquiring party exceeds 50% of the purchase price of the  
3 insurer;

4 (v) The plans or proposals which the acquiring party has to  
5 liquidate the insurer, sell its assets or consolidate or merge it  
6 with any person, or to make any other material change in its  
7 business or corporate structure or management, are unfair and  
8 unreasonable to policyholders of the insurer and not in the public  
9 interest; [or]

10 (vi) The competence, experience and integrity of those persons  
11 who would control the operation of the insurer are such that it  
12 would not be in the interest of policyholders of the insurer and of  
13 the public to permit the merger or other acquisition of control; or

14 (vii) The acquisition is likely to be hazardous or prejudicial to  
15 the insurance buying public.

16 (2) The public hearing referred to in [clause] paragraph (1) shall  
17 be held within [30] 60 days after the statement required by  
18 subsection a. is filed and at least 20 days' notice thereof shall be  
19 given by the commissioner to the person filing the statement and  
20 the insurer. Not less than 7 days' notice of such public hearing  
21 shall be given by the person filing the statement to such other  
22 persons as may be designated by the commissioner. [The insurer  
23 shall give such notice to its securityholders.] The hearing shall,  
24 at the commissioner's discretion, be conducted by the  
25 commissioner or his designee who shall report to the  
26 commissioner and advise him on the nature of the matter  
27 delegated. The commissioner shall make a determination or issue  
28 an order, based upon that advice and report, as he shall, in his  
29 discretion, determine, and that determination or order shall have  
30 the same force and effect as if the commissioner had conducted  
31 that hearing personally. The commissioner shall make a  
32 determination within [30] 45 business days after the conclusion of  
33 such hearing. At such hearing, the person filing the statement,  
34 the insurer, any person to whom notice of hearing was sent, and  
35 any other person whose interest may be affected thereby shall  
36 have the right to present evidence, examine and cross-examine  
37 witnesses, and offer oral and written arguments and in connection  
38 therewith shall be entitled to conduct discovery proceedings in  
39 the same manner as is presently allowed in the Superior Court of  
40 this State. All discovery proceedings shall be concluded not later  
41 than 3 days prior to the commencement of the public hearings.

42 (3) The commissioner may retain, at the acquiring person's  
43 expense, any attorneys, actuaries, accountants and other persons  
44 as may be reasonably necessary to assist the commissioner in  
45 reviewing the proposed acquisition of control.

46 e. [Mailings to shareholders; payment of expenses. To the  
47 extent permitted by applicable Federal laws, rules and  
48 regulations, all statements, amendments, or other material filed  
49 pursuant to subsection a. or b., and all notices of public hearings  
50 held pursuant to subsection d., shall be mailed by the insurer to  
51 its shareholders within 5 business days after the insurer has  
52 received such statements, amendments, other material, or  
53 notices. The expenses of mailing shall be borne by the person  
54 making the filing. As security for the payment of

1 such expenses, such person shall file with the commissioner an  
2 acceptable bond or other deposit in an amount to be determined  
3 by the commissioner.] (Deleted by amendment, P.L. , c. .)

4 f. Exemptions. The provisions of this section shall not apply to:

5 (1) Any [acquisitions by the person, other than the issuer,  
6 referred to in subsection a. of any newly issued voting securities  
7 referred to in subsection a. which, immediately prior to such  
8 acquisition, were not issued and outstanding] transaction which is  
9 subject to the provisions of R.S.17:27-1 et seq. or  
10 N.J.S.17B:18-60 et seq., concerning the merger or consolidation  
11 of two or more insurers; and

12 (2) Any offer, request, invitation, agreement or acquisition  
13 which the commissioner by order shall exempt therefrom as (a)  
14 not having been made or entered into for the purpose and not  
15 having the effect of changing or influencing the control of a  
16 domestic insurer, or (b) as otherwise not comprehended within the  
17 purposes of this section[; and

18 (3) Any transaction which is subject to the provisions of section  
19 four of P.L.1967, c.201 (C.17:24-20)].

20 g. Violations. The following shall be violations of this section:

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

23 (2) Subject to subsection f., the effectuation of, or any attempt  
24 to effectuate, an acquisition of control of, or merger with, a  
25 domestic insurer unless the commissioner has given his approval  
26 thereto.

27 h. Jurisdiction; consent to service of process.

28 The courts of this State are hereby vested with jurisdiction  
29 over every person not resident, domiciled, or authorized to do  
30 business in this State who files a statement with the  
31 commissioner under this section, and over all actions involving  
32 such person arising out of violations of this section, and each such  
33 person shall be deemed to have performed acts equivalent to and  
34 constituting an appointment by such a person of the commissioner  
35 to be his true and lawful attorney upon whom may be served all  
36 lawful process in any action, suit or proceeding arising out of  
37 violations of this section. Copies of all such lawful process shall  
38 be served on the commissioner and transmitted by registered or  
39 certified mail by the commissioner to such person at his last  
40 known address.

41 (cf: P.L.1970, c.22, s.2)

42 3. Section 3 of P.L.1970, c.22 (C.17:27A-3) is amended to read  
43 as follows:

44 3. Registration of insurers.

45 a. Registration. Every insurer which is authorized to do  
46 business in this State and which is a member of an insurance  
47 holding company system shall register with the commissioner,  
48 except a foreign insurer subject to disclosure requirements and  
49 standards adopted by statute or regulation in the jurisdiction of  
50 its domicile which are substantially similar to those contained in:  
51 this section; paragraph (1) of subsection a. and subsections b. and  
52 c. of section 4 of P.L.1970, c.22 (C.17:27A-4); and either  
53 paragraph (2) of subsection a. of section 4 of P.L.1970, c.22  
54 (C.17:27A-4) or a substantially similar provision which requires

1 that each registered insurer shall keep current the information  
2 required to be disclosed in its registration statement by reporting  
3 all material changes or additions, including change of or additions  
4 to ownership, within 15 days after the end of each month in which  
5 it learns of each such change or addition. Any insurer which is  
6 subject to registration under this section shall register within 60  
7 days after the effective date of this <sup>1</sup>[1992] 1993<sup>1</sup> amendatory  
8 and supplementary act or 15 days after it becomes subject to  
9 registration, whichever is later, and annually thereafter by April  
10 1 of each year for the previous calendar year, unless the  
11 commissioner for good cause shown extends the time for  
12 registration, and then within such extended time. The  
13 commissioner may require any authorized insurer which is a  
14 member of a holding company system which is not subject to  
15 registration under this section to furnish a copy of the  
16 registration statement or other information filed by such  
17 insurance company with the insurance regulatory authority of  
18 domiciliary jurisdiction.

19 b. Information and form required. Every insurer subject to  
20 registration shall file a registration statement and a summary of  
21 the registration statement on a form provided by the  
22 commissioner, which shall contain current information about:

23 (1) The capital structure, general financial condition, ownership  
24 and management of the insurer and any person controlling the  
25 insurer;

26 (2) The identity and relationship of every member of the  
27 insurance holding company system;

28 (3) The following agreements in force, relationships subsisting,  
29 and transactions currently outstanding or which have occurred  
30 during the last calendar year between such insurer and its  
31 affiliates:

32 (a) Loans, other investment, or purchases, sales or exchanges of  
33 securities of the affiliates by the insurer or of the insurer by its  
34 affiliates;

35 (b) Purchases, sales, or exchanges of assets;

36 (c) Transactions not in the ordinary course of business;

37 (d) Guarantees or undertakings for the benefit of an affiliate  
38 which result in an actual contingent exposure of the insurer's  
39 assets to liability, other than insurance contracts entered into in  
40 the ordinary course of the insurer's business;

41 (e) All management and service contracts and all cost-sharing  
42 arrangements, other than cost allocation arrangements based  
43 upon generally accepted accounting principles; [and]

44 (f) Reinsurance agreements [covering all or substantially all of  
45 one or more lines of insurance of the ceding company.];

46 (g) Dividends and other distributions to shareholders, including  
47 the declarations and authorizations thereof; and

48 (h) Consolidated tax allocation agreements;

49 (4) Any pledge of the insurer's stock, including stock of any  
50 subsidiary or controlling affiliate, for a loan made to any member  
51 of the insurance holding company system; or

52 (5) Other matters concerning transactions between registered  
53 insurers and any affiliates as may be included from time to time

1 in any registration forms adopted or approved by the  
2 commissioner.

3 All registration statements shall contain a summary outlining  
4 all items in the current registration statement representing  
5 changes from the prior registration statement.

6 c. Materiality. No information need be disclosed on the  
7 registration statement filed pursuant to subsection b. of this  
8 section [3b.] if such information is not material for the purposes  
9 of this section. Unless the commissioner by rule, regulation or  
10 order provides otherwise, sales, purchases, exchanges, loans or  
11 extensions of credit, [or] investments, guarantees or other  
12 contingent obligations involving 1/2 of 1% or less of an insurer's  
13 admitted assets as of December 31 next preceding shall not be  
14 deemed material for purposes of this section.

15 d. Amendments to registration statements. Each registered  
16 insurer shall keep current the information required to be  
17 disclosed in its registration statement by reporting all material  
18 changes or additions on amendment forms provided by the  
19 commissioner within 15 days after the end of the month in which  
20 it learns of each such change or addition [, provided, however,  
21 that subject to subsection c. of section 4, each registered insurer  
22 shall so report all such dividends and other distributions to  
23 shareholders within 2 business days following the declaration  
24 thereof].

25 e. Information of insurers. Any person within an insurance  
26 holding company system subject to registration shall be required  
27 to provide complete and accurate information to an insurer, if  
28 that information is reasonably necessary to enable the insurer to  
29 comply with the provisions of P.L.1970, c.22 (C.17:27A-1 et seq.).

30 f. Termination of registration. The commissioner shall  
31 terminate the registration of any insurer which demonstrates that  
32 it no longer is a member of an insurance holding company system.

33 [f.] g. Consolidated filing. The commissioner may require or  
34 allow 2 or more affiliated insurers subject to registration  
35 hereunder to file a consolidated registration statement or  
36 consolidated reports amending their consolidated registration  
37 statement or their individual registration statements.

38 [g.] h. Alternative registration. The commissioner may allow  
39 an insurer which is authorized to do business in this State and  
40 which is part of an insurance holding company system to register  
41 on behalf of any affiliated insurer which is required to register  
42 under subsection a. and to file all information and material  
43 required to be filed under this section.

44 [h.] i. Exemptions. The provisions of this section shall not  
45 apply to any insurer, information or transaction if and to the  
46 extent that the commissioner by rule, regulation, or order shall  
47 exempt the same from the provisions of this section.

48 [i.] j. Disclaimer. Any person may file with the commissioner  
49 a disclaimer of affiliation with any authorized insurer or such a  
50 disclaimer may be filed by such insurer or any member of an  
51 insurance holding company system. The disclaimer shall fully  
52 disclose all material relationships and bases for affiliation  
53 between such person and such insurer as well as the basis for  
54 disclaiming such affiliation. After a disclaimer has been filed,

1 the insurer shall be relieved of any duty to register or report  
2 under this section which may arise out of the insurer's  
3 relationship with such person unless and until the commissioner  
4 disallows such a disclaimer. The commissioner shall disallow such  
5 a disclaimer only after furnishing all parties in interest with  
6 notice and opportunity to be heard and after making specific  
7 findings of fact to support such disallowance.

8 [j.] k. Violations. The failure to file a registration statement  
9 or any amendment thereto required by this section within the  
10 time specified for such filing shall be a violation of this section.

11 (cf: P.L.1970, c.22, s.3)

12 4. Section 4 of P.L.1970, c.22 (C.17:27A-4) is amended to read  
13 as follows:

14 4. Standards.

15 a. Transactions with affiliates.

16 (1) [Material transactions] Transactions by registered insurers  
17 with their affiliates shall be subject to the following standards:

18 [(1)] (a) The terms shall be fair and reasonable;

19 [(2)] (b) Charges or fees for services performed shall be  
20 reasonable;

21 (c) Expenses incurred and payment received shall be allocated  
22 to the insurer in conformity with customary insurance accounting  
23 practices consistently applied;

24 (d) The books, accounts and records of each party to all such  
25 transactions shall be so maintained as to clearly and accurately  
26 disclose the precise nature and details of the transactions,  
27 including such accounting information as is necessary to support  
28 the reasonableness of the charges or fees to the respective  
29 parties; and

30 [(3)] (e) The insurer's surplus as regards policyholders  
31 following any transaction with affiliates or dividends or  
32 distributions to shareholder affiliates shall be reasonable in  
33 relation to the insurer's outstanding liabilities and adequate to  
34 its financial needs.

35 (2) The following transactions involving a domestic insurer and  
36 any person in its holding company system may not be entered into  
37 unless the insurer has notified the commissioner in writing of its  
38 intention to enter into that transaction at least 30 days prior  
39 thereto, or such shorter period as the commissioner may permit,  
40 and the commissioner has not disapproved it within that 30 day  
41 period:

42 (a) Sales, purchases, exchanges, loans or extensions of credit,  
43 guarantees or other contingent obligations, investments, or loans  
44 collateralized by the stock of a subsidiary or affiliate, provided  
45 such transactions equal or exceed: (i) with respect to insurers  
46 other than life insurers, the lesser of 3% of the insurer's  
47 admitted assets or 25% of surplus as regards policyholders, as of  
48 December 31 next preceding; (ii) with respect to life insurers, 3%  
49 of the insurer's admitted assets, as of December 31 next  
50 preceding;

51 (b) Loans or extensions of credit to any person who is not an  
52 affiliate, in which the insurer makes such loans or extensions of  
53 credit with the agreement or understanding that the proceeds of  
54 such transactions, in whole or in substantial part, are to be used

1 to make loans or extensions of credit to, to purchase assets of, or  
2 to make investments in, any affiliate of the insurer making those  
3 loans or extensions of credit, provided those transactions are  
4 equal to or exceed: (i) with respect to insurers other than life  
5 insurers, the lesser of 3% of the insurer's admitted assets or 25%  
6 of surplus as regards policyholders, as of December 31 next  
7 preceding; (ii) with respect to life insurers, 3% of the insurer's  
8 admitted assets, as of December 31 next preceding;

9 (c) Reinsurance agreements or modifications thereto in which  
10 the reinsurance premium or a change in the insurer's liabilities  
11 equals or exceeds 5% of the insurer's surplus as regards  
12 policyholders, as of December 31 next preceding, including those  
13 agreements which may require as consideration the transfer of  
14 assets from an insurer to a non-affiliate if an agreement or  
15 understanding exists between the insurer and non-affiliate that  
16 any portion of those assets will be transferred to one or more  
17 affiliates of the insurer;

18 (d) All management agreements, service contracts and all  
19 cost-sharing arrangements; and

20 (e) Any material transactions, specified by regulation, which  
21 the commissioner determines may adversely affect the interests  
22 of the insurer's policyholders. Nothing herein contained shall be  
23 deemed to authorize or permit any transactions which, in the  
24 case of an insurer which is not a member of the same holding  
25 company system, would be otherwise contrary to law.

26 (3) A domestic insurer may not enter into transactions which  
27 are part of a plan or series of like transactions with persons  
28 within the holding company system if the purpose of those  
29 separate transactions is to avoid the statutory threshold amount  
30 and thus avoid the review that would otherwise occur. If the  
31 commissioner determines that such separate transactions were  
32 entered into over any 12 month period for that purpose, he may  
33 exercise his authority under section 8 of P.L. \_\_\_\_\_, c.  
34 (C. )(now pending before the Legislature as this bill).

35 (4) The commissioner, in reviewing transactions pursuant to  
36 paragraph (2) of this subsection, shall consider whether the  
37 transactions comply with the standards set forth in paragraph (1)  
38 of this subsection and whether they may adversely affect the  
39 interests of policyholders.

40 (5) The commissioner shall be notified within 30 days of any  
41 investment of the domestic insurer in any one corporation if the  
42 total investment in that corporation by the insurance holding  
43 company system exceeds 10% of that corporation's voting  
44 securities.

45 <sup>1</sup>(6) The commissioner may by regulation specify certain types  
46 of transactions that need not be submitted for review under this  
47 subsection if he determines that those transactions would not  
48 have a significant impact on the financial condition or methods of  
49 operation of the insurer.<sup>1</sup>

50 b. Adequacy of surplus. For purposes of this chapter, in  
51 determining whether an insurer's surplus as regards policyholders  
52 is reasonable in relation to the insurer's outstanding liabilities  
53 and adequate to its financial needs, the following factors, among  
54 others, shall be considered:

- 1 (1) The size of the insurer as measured by its assets, capital  
2 and surplus, reserves, premium writings, insurance in force and  
3 other appropriate criteria;
- 4 (2) The extent to which the insurer's business is diversified  
5 among the several lines of insurance;
- 6 (3) The number and size of risks insured in each line of business;
- 7 (4) The extent of the geographical dispersion of the insurer's  
8 insured risks;
- 9 (5) The nature and extent of the insurer's reinsurance program;
- 10 (6) The quality, diversification, and liquidity of the insurer's  
11 investment portfolio;
- 12 (7) The recent past and projected future trend in the size of the  
13 insurer's surplus as regards policyholders;
- 14 (8) The surplus as regards policyholders maintained by other  
15 comparable insurers in respect of the factors enumerated in this  
16 subsection;
- 17 (9) The adequacy of the insurer's reserves; [and]
- 18 (10) The quality and liquidity of investments in [subsidiaries]  
19 affiliates. The commissioner may discount any such investments  
20 or treat any such investment as a disallowed asset for purposes of  
21 determining the adequacy of surplus as regards policyholders  
22 whenever in his judgment such investment so warrants; and
- 23 (11) The quality of the insurer's earnings and the extent to  
24 which the reported earnings include extraordinary items.
- 25 c. Dividends and other distributions.
- 26 (1) A domestic insurer subject to registration under section 3 of  
27 P.L.1970, c.22 (C.17:27A-3) shall report to the commissioner any  
28 dividend or distribution to its shareholders within five business  
29 days following declaration and at least 30 days, after receipt of  
30 that report by the commissioner, prior to payment. For good  
31 cause shown, the commissioner may reduce the notification  
32 period prior to payment to a period of not less than 10 days. The  
33 commissioner shall limit or disallow the payment of any dividend  
34 or distribution if he determines that the insurer's surplus as  
35 regards policyholders is not reasonable in relation to its  
36 outstanding liabilities and adequate to its financial needs  
37 pursuant to subsection b. of this section or if the insurer is  
38 otherwise found to be in a hazardous financial condition.
- 39 (2) (a) No domestic insurer subject to registration under section  
40 3 shall pay any extraordinary dividend or make any other  
41 extraordinary distribution to its shareholders until [(1)] (i) 30 days  
42 after the commissioner has received notice of the declaration  
43 thereof and has not within such period disapproved such payment,  
44 or [(2)] (ii) the commissioner shall have approved such payment  
45 within such 30-day period.
- 46 (b) For purposes of this [section] paragraph, an extraordinary  
47 dividend or distribution includes any dividend or distribution of  
48 cash or other property, whose fair market value together with  
49 that of other dividends or distributions made within the preceding  
50 12 months exceeds the greater of [(1)] (i) 10% of such insurer's  
51 surplus as regards policyholders as of December 31 next  
52 preceding, or [(2)] (ii) the net gain from operations of such  
53 insurer, if such insurer is a life insurer, or the net [investment]  
54 income, if such insurer is not a life insurer, not including realized

1 capital gains, for the 12 month period ending December 31 next  
2 preceding, but shall not include pro rata distributions of any class  
3 of the insurer's own securities.

4 (c) Notwithstanding any other provision of law, a domestic  
5 insurer may declare an extraordinary dividend or distribution  
6 which is conditional upon the commissioner's approval thereof,  
7 and such a declaration shall confer no rights upon policyholders  
8 until (i) 30 days after the commissioner has received notice of the  
9 declaration thereof and has not within such period disapproved  
10 such payment, or (ii) the commissioner shall have approved such  
11 payment within such 30-day period.

12 (3) <sup>1</sup>[All] Except for extraordinary dividends or distributions  
13 paid pursuant to paragraph (2) of this subsection, all<sup>1</sup> dividends or  
14 distributions to shareholders shall be declared or paid by insurers  
15 subject to registration under section 3 of P.L.1970, c.22  
16 (C.17:27A-3) from only earned surplus. For purposes of this  
17 paragraph, "earned surplus" means unassigned funds (surplus), as  
18 reported on the insurer's annual statement as of December 31  
19 next preceding, less unrealized capital gains and revaluation of  
20 assets.

21 d. Management of domestic insurers subject to registration.

22 (1) Notwithstanding the control of a domestic insurer by any  
23 person, the officers and directors of the insurer shall not thereby  
24 be relieved of any obligation or liability to which they would  
25 otherwise be subject by law, and the insurer shall be managed so  
26 as to assure its separate operating identity consistent with  
27 P.L.1970, c.22 (C.17:27A-1 et seq.)

28 (2) Nothing herein shall preclude a domestic insurer from  
29 having or sharing a common management or cooperative or joint  
30 use of personnel, property or services with one or more other  
31 persons under arrangements meeting the standards of paragraph  
32 (1) of subsection a. of this section.

33 (3) Not less than one-third of the directors of a domestic  
34 insurer, and not less than one-third of the members of each  
35 committee of the board of directors of any domestic insurer,  
36 shall be persons who are not officers or employees of that insurer  
37 or of any entity controlling, controlled by, or under common  
38 control with, that insurer and who are not beneficial owners of a  
39 controlling interest in the voting securities of that insurer or any  
40 such entity. At least one such person shall be included in any  
41 quorum for the transaction of business at any meeting of the  
42 board of directors or any committee thereof.

43 (4) The board of directors of a domestic insurer shall establish  
44 one or more committees comprised solely of directors who are  
45 not officers or employees of the insurer or of any entity  
46 controlling, controlled by, or under common control with, the  
47 insurer and who are not beneficial owners of a controlling  
48 interest in the voting securities of the insurer or any such entity.  
49 The committee shall be responsible for recommending the  
50 selection of independent certified public accountants, reviewing  
51 the insurer's financial condition, the scope and results of the  
52 independent audit and any internal audit, nominating candidates  
53 for director for election by shareholders or policyholders,  
54 evaluating the performance of officers deemed to be principal

1 officers of the insurer and recommending to the board of  
2 directors the selection and compensation, including bonuses or  
3 other special payments, of the principal officers.

4 (5) The provisions of paragraphs (3) and (4) of this subsection d.  
5 shall not apply to a domestic insurer if the person controlling the  
6 insurer is an entity having a board of directors and committees  
7 thereof that meet the requirements of those paragraphs.

8 (cf: P.L.1970, c.22, s.4)

9 5. Section 5 of P.L.1970, c.22 (C.17:27A-5) is amended to read  
10 as follows:

11 5. Examination.

12 a. Power of commissioner. Subject to the limitation contained  
13 in this section and in addition to the powers which the  
14 commissioner has under other sections of [this] Title 17 of the  
15 Revised Statutes and Title 17B of the New Jersey Statutes  
16 relating to the examination of insurers, the commissioner shall  
17 also have the power to order any insurer registered under section  
18 3 to produce such records, books, or other information papers in  
19 the possession of the insurer or its affiliates as shall be necessary  
20 to ascertain the financial condition or [legality of conduct of such  
21 insurer] to determine compliance with P.L.1970, c.22 (C.17:27A-1  
22 et seq.). In the event such insurer fails to comply with such  
23 order, the commissioner shall have the power to examine such  
24 affiliates to obtain such information.

25 b. [Purpose and limitation of examination. The commissioner  
26 shall exercise his power under subsection a. above only if the  
27 examination of the insurer under other sections of this Title is  
28 inadequate or the interests of the policyholders of such insurer  
29 may be adversely affected.] (Deleted by amendment, P.L. ,  
30 c. .)

31 c. Use of consultants. The commissioner may retain at the  
32 registered insurer's expense such attorneys, actuaries,  
33 accountants and other [experts not otherwise a part of the  
34 commissioner's staff] persons as shall be [reasonably] necessary  
35 to assist in the conduct of the examination under subsection a.  
36 above. Any persons so retained shall be under the direction and  
37 control of the commissioner and shall act in a purely advisory  
38 capacity.

39 d. Expenses. The reasonable expenses of the examination  
40 pursuant to subsection a. above shall be fixed and determined by  
41 the commissioner, and he shall collect them from the insurer  
42 examined, which shall pay them on presentation of [a detailed  
43 account] an accounting of the expenses.

44 (cf: P.L.1970, c.22, s.5)

45 6. Section 6 of P.L.1970, c.22 (C.17:27A-6) is amended to read  
46 as follows:

47 6. Confidential treatment. All information, documents and  
48 copies thereof obtained by or disclosed to the commissioner or  
49 any other person in the course of an examination or investigation  
50 made pursuant to section 5 of P.L.1970, c.22 (C.17:27A-5) and all  
51 information reported pursuant to section 3 and section 4 of  
52 P.L.1970, c.22 (C.17:27A-3 and 17:27A-4) shall be given  
53 confidential treatment and shall not be subject to subpoena and  
54 shall not be made public by the commissioner or any other person,

1 except to insurance departments of other states, without the  
2 prior written consent of the insurer to which it pertains unless  
3 the commissioner, after giving the insurer, and its affiliates who  
4 would be affected thereby, notice and opportunity to be heard,  
5 determines that the interests of policyholders, shareholders or  
6 the public will be served by the publication thereof, in which  
7 event he may publish all or any part thereof in such manner as he  
8 may deem appropriate.

9 (cf: P.L.1970, c.22, s.6)

10 7. (New section) a. As used in this section only:

11 "Acquisition" means any agreement, arrangement or activity,  
12 the consummation of which results in a person acquiring, directly  
13 or indirectly, the control of another person, and includes but is  
14 not limited to the acquisition of voting securities, the acquisition  
15 of assets, bulk reinsurance and mergers.

16 An "involved insurer" includes an insurer which either acquires  
17 or is acquired, is affiliated with an insurer which is an acquirer or  
18 is acquired, or is the result of a merger.

19 b. (1) Except as provided in paragraph (2) of this subsection,  
20 this section applies to any acquisition in which there is a change  
21 in control of an insurer authorized to do business in this State.

22 (2) This section shall not apply to the following:

23 (a) An acquisition subject to approval or disapproval by the  
24 commissioner pursuant to section 2 of P.L.1970, c.22  
25 (C.17:27A-2);

26 (b) A purchase of securities solely for investment purposes, so  
27 long as those securities are not used by voting or otherwise to  
28 cause or attempt to cause the substantial lessening of  
29 competition in any insurance market in this State. If a purchase  
30 of securities results in a presumption of control as defined in  
31 subsection c. of section 1 of P.L.1970, c.22 (C.17:27A-1), it is not  
32 solely for investment purposes unless the commissioner or other  
33 appropriate official of the insurer's state of domicile accepts a  
34 disclaimer of control or affirmatively finds that control does not  
35 exist and such disclaimer action or affirmative finding is  
36 communicated by the domiciliary commissioner or official to the  
37 commissioner of this State.

38 (c) The acquisition of already affiliated persons;

39 (d) An acquisition if, as an immediate result of the acquisition,  
40 the combined market share of the involved insurers would not  
41 exceed five percent of the total market, there would be no  
42 increase in the market, or

43 (i) the combined market share of the involved affiliated  
44 insurers would not exceed twelve percent of the total market, and

45 (ii) the market share increases by no more than two percent of  
46 the total market.

47 For the purpose of this subparagraph (d), "market" means  
48 direct written insurance premium in this State for a line of  
49 business as contained in the annual statement required to be filed  
50 by insurers licensed to do business in this State;

51 (e) An acquisition for which a pre-acquisition notification  
52 would be required pursuant to this section due solely to the  
53 resulting effect on the ocean marine insurance line of business;

54 (f) An acquisition of an insurer whose domiciliary

1 commissioner or other appropriate official affirmatively finds  
2 that: the insurer is in failing condition; there is a lack of feasible  
3 alternatives to improving that condition; the public benefits of  
4 improving that insurer's condition through the acquisition exceed  
5 the public benefits that would arise from not lessening  
6 competition; and such findings are communicated by the  
7 domiciliary commissioner or official to the commissioner of this  
8 State.

9 c. An acquisition covered by subsection b. of this section shall  
10 be subject to an order pursuant to subsection e. of this section  
11 unless the acquiring person files a pre-acquisition notification  
12 and the waiting period has expired. The acquired person may file  
13 a pre-acquisition notification. The commissioner shall give  
14 confidential treatment to information submitted under this  
15 subsection in the same manner as provided in section 6 of  
16 P.L.1970, c.22 (C.17:27A-6).

17 (1) The pre-acquisition notification shall be in such form and  
18 contain such information as prescribed by the commissioner  
19 relating to those markets which, under subparagraph (2)(d) of  
20 subsection b. of this section, cause the acquisition not to be  
21 exempted from the provisions of this section. The commissioner  
22 may require such additional material and information as he deems  
23 necessary. The required information may include an opinion of an  
24 economist as to the competitive impact of the acquisition in this  
25 State, accompanied by a summary of the education and  
26 experience of that person indicating his ability to render an  
27 informed opinion.

28 (2) The waiting period required shall begin on the date of  
29 receipt by the commissioner of pre-acquisition notification and  
30 shall end on the earlier of the 30th day after the date of that  
31 notification, or termination of the waiting period by the  
32 commissioner. Prior to the end of the waiting period, the  
33 commissioner on a one-time basis may require the submission of  
34 additional needed information relevant to the proposed  
35 acquisition, in which event the waiting period shall end on the  
36 earlier of the 30th day after receipt of that additional  
37 information by the commissioner or termination of the waiting  
38 period by the commissioner.

39 d. (1) The commissioner may enter an order under paragraph  
40 (1) of subsection e. with respect to an acquisition if there is  
41 substantial evidence that the effect of the acquisition may be  
42 substantially to lessen competition in any line of insurance of this  
43 State or, to tend to create a monopoly therein or if the insurer  
44 fails to file adequate information in compliance with subsection c.

45 (2) In determining whether a proposed acquisition would  
46 violate the competitive standard of paragraph (1) of this  
47 subsection, the commissioner shall consider the following:

48 (a) Any acquisition covered under subsection b. involving two  
49 or more insurers competing in the same market shall be prima  
50 facie evidence of violation of the competitive standard if the  
51 market is highly concentrated and the involved insurers possess  
52 the following shares of the market:

1	<u>Insurer A</u>	<u>Insurer B</u>
2	4%	4% or more
3	10%	2% or more
4	15%	1% or more

5  
6 or, if the market is not highly concentrated and the involved  
7 insurers possess the following shares of the market:

8		
9	<u>Insurer A</u>	<u>Insurer B</u>
10	5%	5% or more
11	10%	4% or more

12		
13	<u>Insurer A</u>	<u>Insurer B</u>
14	15%	3% or more
15	19%	1% or more

16  
17 For the purposes of this subparagraph (a), the insurer with the  
18 largest share of the market shall be deemed to be Insurer A. A  
19 highly concentrated market is one in which the share of the four  
20 largest insurers is seventy-five percent or more of the market.  
21 Percentages not shown in the tables are interpolated  
22 proportionately to the percentages that are shown. If more than  
23 two insurers are involved, exceeding the total of the two columns  
24 in the table shall be prima facie evidence of violation of the  
25 competitive standards in paragraph (1) of this subsection.

26 (b) There is a significant trend toward increased concentration  
27 when the aggregate market share of any grouping of the largest  
28 insurers in the market, from the two largest to the eight largest,  
29 has increased by seven percent or more of the market over a  
30 period of time, extending from any base year five to ten years  
31 prior to the acquisition, up to the time of the acquisition. Any  
32 acquisition or merger covered under subsection b. involving two  
33 or more insurers competing in the same market shall be prima  
34 facie evidence of a violation of the competitive standard in  
35 paragraph (1) of this subsection if:

36 (i) there is a significant trend toward increased concentration  
37 in the market;

38 (ii) one of the insurers involved is one of the insurers in a  
39 grouping of such large insurers showing the requisite increase in  
40 the market share; and

41 (iii) another involved insurer's market is two percent or more.

42 (c) Even though an acquisition is not prima facie violative of  
43 the competitive standard under subparagraphs (a) and (b) of this  
44 paragraph (2), the commissioner may establish the requisite  
45 anticompetitive effect based upon other substantial evidence.  
46 Even though an acquisition is prima facie violative of the  
47 competitive standard under those subparagraphs, a party may  
48 establish the absence of the requisite anticompetitive effect  
49 based upon other substantial evidence. Relevant factors in  
50 making a determination under this subparagraph (c) include, but  
51 are not limited to, the following: market shares, volatility of  
52 ranking of market leaders, number of competitors, concentration,  
53 trend of concentration in the industry, and ease of entry and exit  
54 into the market.

1 (d) For the purposes of this paragraph (2):

2 The term "insurer" includes any company or group of  
3 companies under common management, ownership or control;

4 The term "market" means the relevant product and  
5 geographical markets as determined by the commissioner. In  
6 determining the relevant product and geographical markets, the  
7 commissioner shall give due consideration to, among other things,  
8 the definitions or guidelines, if any, promulgated by the National  
9 Association of Insurance Commissioners and to information, if  
10 any, submitted by parties to the acquisition. In the absence of  
11 sufficient information to the contrary, the relevant product  
12 market is assumed to be the direct written insurance premium for  
13 a line of business, such line being that used in the annual  
14 statement required to be filed by insurers doing business in this  
15 State, and the relevant geographical market is assumed to be this  
16 State.

17 The burden of showing prima facie evidence of violation of the  
18 competitive standard rests upon the commissioner.

19 (3) An order may not be entered under paragraph (1) of  
20 subsection e. if:

21 (a) The acquisition will yield substantial economies of scale or  
22 economies in resource utilization that cannot be feasibly  
23 achieved in any other way, and the public benefits which would  
24 arise from those economies exceed the public benefits which  
25 would arise from not lessening competition; or

26 (b) The acquisition will substantially increase the availability  
27 of insurance, and the public benefits of that increase exceed the  
28 public benefits which would arise from not lessening competition.

29 e. (1) (a) If an acquisition violates the standards of this  
30 section, the commissioner may enter an order:

31 (i) requiring an involved insurer to cease and desist from doing  
32 business in this State with respect to the line or lines of insurance  
33 involved in the violation; or

34 (ii) denying the application of an acquired or acquiring insurer  
35 for a license to do business in this State.

36 (b) Such an order shall not be entered unless:

37 (i) there is a hearing,

38 (ii) notice of that hearing is issued prior to the end of the  
39 waiting period and not less than 15 days prior to the hearing; and

40 (iii) the hearing is concluded and the order is issued no later  
41 than 60 days after the end of the waiting period. Every order  
42 shall be accompanied by a written decision of the commissioner  
43 setting forth his findings of fact and conclusions of law.

44 (c) An order entered under this subsection shall not become  
45 final earlier than 30 days after it is issued, during which time the  
46 involved insurer may submit a plan to remedy the  
47 anti-competitive impact of the acquisition within a reasonable  
48 time. Based upon such plan or other information, the  
49 commissioner shall specify the conditions, if any, under which,  
50 and the time period during which, the aspects of the acquisition  
51 causing a violation of the standards of this section may be  
52 remedied and the order vacated or modified.

53 (d) An order pursuant to this subsection shall not apply if the  
54 acquisition is not consummated.

1 (2) Any person who violates a cease and desist order of the  
2 commissioner under paragraph (1) while such order is in effect,  
3 may after notice and hearing, be subject to a penalty of up to  
4 \$10,000 for each day of violation, or suspension or revocation of  
5 that person's license, or both.

6 (3) Any insurer or other person who fails to make any filing  
7 required by this section shall be required to pay a penalty of up to  
8 \$5,000 per violation.

9 f. Subsections b. and c. of section 8 of P.L.1970, c.22  
10 (C.17:27A-8) and section 10 of P.L.1970, c.22 (C.17:27A-10) shall  
11 not apply to acquisitions covered under this section.

12 g. This section shall not limit the commissioner's authority to  
13 refuse to renew or revoke the certificate of authority of an  
14 insurer admitted to transact business in this State pursuant to  
15 R.S.17:32-1 et seq, or N.J.S.17B:23-1 et seq.

16 8. (New section) a. Any insurer failing to file any registration  
17 statement as required by P.L.1970, c.22 (C.17:27A-1 et seq.) shall  
18 be required to pay a penalty of up to \$5,000 for each day's delay.

19 b. Every director or officer of an insurance holding company  
20 system who violates, participates in, or assents to, or who shall  
21 permit any of the officers or agents of the insurer to engage in  
22 transactions or make investments which have not been properly  
23 reported or submitted pursuant to subsection a. of section 3 of  
24 P.L.1970, c.22 (C.17:27A-3) or paragraph (2) of subsection a., or  
25 subsection c. of section 4 of P.L.1970, c.22 (C.17:27A-4), or  
26 which otherwise violate P.L.1970, c.22 (C.17:27A-1 et seq.), shall  
27 pay, in their individual capacity, a penalty of up to \$5,000 per  
28 violation.

29 c. Whenever it appears to the commissioner that any insurer  
30 subject to P.L.1970, c.22 (C.17:27A-1 et seq.) or any director,  
31 officer, employee or agent thereof has engaged in any transaction  
32 or entered into a contract which is subject to section 4 of  
33 P.L.1970, c.22 (C.17:27A-4) and which would not have been  
34 approved had such approval been requested, the commissioner  
35 may order the insurer to cease and desist immediately any  
36 further activity under that transaction or contract. After notice  
37 and hearing the commissioner may also order the insurer to void  
38 any such contracts and restore the status quo if such action is in  
39 the best interest of the policyholders, creditors or the public.

40 d. Whenever it appears to the commissioner that any insurer or  
41 any director, officer, employee or agent thereof has committed a  
42 willful violation of P.L.1970, c.22 (C.17:27A-1 et seq.), the  
43 commissioner may cause criminal proceedings to be instituted in  
44 the Superior Court against that insurer or the responsible  
45 director, officer, employee or agent thereof. An insurer which  
46 willfully violates that act may be fined up to \$10,000 per  
47 violation. Any individual who willfully violates P.L.1970, c.22  
48 (C.17:27A-1 et seq.) may be fined in his individual capacity up to  
49 \$10,000 per violation or, be imprisoned for not less than one year  
50 and not more than three years, or both.

51 e. Any officer, director, or employee of an insurance holding  
52 company system who willfully and knowingly subscribes to or  
53 makes or causes to be made any false statements or false reports  
54 or false filings with the intent to deceive the commissioner in the

1 performance of his duties under P.L.1970, c.22 (C.17:27A-1 et  
2 seq.), upon conviction thereof, may be imprisoned for not less  
3 than one year and not more than three years or fined up to  
4 \$10,000 per violation, or both. Any fines imposed shall be paid by  
5 the officer, director, or employee in his individual capacity, if  
6 legally liable, or the insurer.

7 9. (New section) a. If an order for rehabilitation or  
8 liquidation of a domestic insurer has been entered, the receiver  
9 appointed under that order shall have a right to recover on behalf  
10 of the insurer:

11 (1) from any parent corporation or holding company or person  
12 or affiliate who otherwise controlled the insurer, the amount of  
13 distributions (other than distributions of shares of the same class  
14 of stock) paid by the insurer on its capital stock; or

15 (2) any payment in the form of a bonus, termination settlement  
16 or extraordinary lump sum salary adjustment made by the insurer  
17 or its subsidiaries to a director, officer or employee, if the  
18 distribution or payment pursuant to (1) or (2) is made at any time  
19 during the 12 months preceding the filing of the petition for  
20 liquidation, conservation or rehabilitation, as the case may be,  
21 subject to the limitations of subsections b., c. and d. of this  
22 section.

23 b. No such distribution shall be recoverable if the parent or  
24 affiliate shows that, when paid, the distribution was lawful and  
25 reasonable, and that the insurer did not know and could not  
26 reasonably have known that the distribution might adversely  
27 affect the ability of the insurer to fulfill its contractual  
28 obligations.

29 c. Any person who was a parent corporation or holding  
30 company or a person who otherwise controlled the insurer or  
31 affiliate at the time such distributions were paid shall be liable  
32 up to the amount of the distributions or payments defined under  
33 subsection a. which that person received. Any person who  
34 otherwise controlled the insurer at the time such distributions  
35 were declared shall be liable up to the amount of distributions he  
36 would have received if they had been paid immediately. If two or  
37 more persons are liable with respect to the same distributions,  
38 they shall be jointly and severally liable.

39 d. In the case of an insurer being liquidated, the maximum  
40 amount recoverable under this section shall be the amount, in  
41 excess of all other available assets of the insurer, necessary to  
42 pay its contractual obligations and to reimburse any guaranty  
43 funds. In the case of an insurer being rehabilitated, the maximum  
44 amount recoverable shall be the full amount of any distributions  
45 which a receiver has a right to recover under this section.

46 e. To the extent that any person liable under subsection c. of  
47 this section is insolvent or otherwise fails to pay claims due from  
48 it pursuant to that subsection, its parent corporation or holding  
49 company or person who otherwise controlled it at the time the  
50 distribution was paid, shall be jointly and severely liable for any  
51 resulting deficiency in the amount recovered from such parent  
52 corporation or holding company or person who otherwise  
53 controlled it.

54 10. (New section) The commissioner may by rule or regulation

1 set reasonable, necessary and appropriate fees for any filing  
 2 required pursuant to P.L.1970, c.22 (C.17:27A-1 et seq.). All fees  
 3 payable to the commissioner pursuant to this section are  
 4 nonrefundable.

5 11. Section 59 of P.L.1975, c.106 (C.17:46B-60) is amended to  
 6 read as follows:

7 59. Other section applicable. In addition to the provisions of  
 8 this act, only the following provisions of the laws governing  
 9 insurance companies and insurance agents as presently enacted  
 10 and hereinafter amended, except as they are inconsistent with  
 11 the provisions of this act, shall apply to the business of title  
 12 insurance to title insurance companies, which shall be considered  
 13 as within the class of insurance companies regulated by such  
 14 provisions solely for the limited purpose of being subject to such  
 15 provisions:

16 P.L.1970, c.12 (C.17:1C-1 to 17:1C-18)  
 17 P.L.1948, c.266 (C.17:3A-1 to 17:3A-7)  
 18 R.S.17:17-1, 17:17-4, 17:17-5, 17:17-8 and 17:17-10  
 19 P.L.1948, c.157 (C.17:17A-1 to 17:17A-4)  
 20 P.L.1965, c.57 (C.17:17B-1 to 17:17B-8)  
 21 R.S.17:18-1, 17:18-2, 17:18-4 and 17:18-10  
 22 R.S.17:19-1 to 17:19-7  
 23 R.S.17:20-4 and 17:20-5  
 24 P.L.1966, c.85 (C.17:20-6)  
 25 R.S.17:21-1 to 17:21-3  
 26 P.L.1960, c.32, ss. 3, 4, 5 (C.17:22-6.37 to 17:22-6.39)  
 27 P.L. , c. (C.17:22B-1 et seq.)(now pending before the  
 28 Legislature as Assembly, No. 78)  
 29 P.L. , c. (C.17:22C-1 et seq.)(now pending before the  
 30 Legislature as Assembly, No. 80)  
 31 P.L. , c. (C.17:22D-1 et seq.)(now pending before the  
 32 Legislature as Assembly, No. 85)  
 33 R.S.17:23-2, 17:23-4 and 17:23-5  
 34 P.L.1958, c.15 (C.17:23-6, 17:23-7)  
 35 P.L. , c. (C.17:23-20 et seq.)(now pending before the  
 36 Legislature as Assembly, No. 77)  
 37 P.L. , c. (C. 17:23B-1 et seq.)(now pending before the  
 38 Legislature as Assembly, No. 79)  
 39 R.S.17:24-5, 17:24-12  
 40 P.L.1949, c.248 (C.17:24-13 to 17:24-16)  
 41 R.S.17:25-7  
 42 R.S.17:26-1 to 17:26-3  
 43 R.S.17:27-1 to 17:27-5  
 44 P.L.1970, c.22 (C.17:27A-1 et seq.)  
 45 P.L. , c. ss. 7, 8, 9 (C.17:27A-4.1 et al.)(now pending  
 46 before the Legislature as this bill)  
 47 R.S.17:32-1, 17:32-2, 17:32-4, 17:32-8 to 17:32-10  
 48 R.S.17:32-13 and 17:32-14  
 49 P.L.1950, c.231 (C.17:32-15)  
 50 P.L.1968, c.234 (C.17:32-16 to 17:32-20).  
 51 P.L. , c. (C.17:51A-1 et seq.)(now pending before the  
 52 Legislature as Assembly, No. 86)  
 53 P.L. , c. (C.17:51B-1 et seq.)(now pending before the  
 54 Legislature as Assembly No. 84)  
 55 (cf: P.L.1975, c.106, s.59)

1       12. Section 9 of P.L.1970, c.22 (C.17:27A-9) and sections 28  
2 and 29 of P.L.1975, c.106 (C.17:46B-28 and 17:46B-29) are  
3 repealed.

4       13. This act shall take effect immediately, provided that any  
5 sanctions imposed in accordance with section 8 shall apply only to  
6 violations occurring on or after the effective date of this act.

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11       Revises law concerning insurance holding company systems.

(1993)

1           SPONSORS' STATEMENT  
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3           This bill substantially revises the insurance holding company  
4 systems law, P.L.1970, c.22 (C.17:27A-1 et seq.), concerning  
5 mergers or acquisitions of control of domestic insurers. The law  
6 establishes procedures which enable the Commissioner of  
7 Insurance to ascertain the solvency, management performance  
8 and operational results of the acquirer so as to protect the  
9 insurer's policyholders. The present law is based on a previous  
10 version of the model act prepared by the National Association of  
11 Insurance Commissioners (NAIC). The NAIC has since adopted  
12 numerous amendments to the model, which New Jersey has not  
13 done in tandem. This bill amends and supplements the current  
14 law to reflect the most recent NAIC model and to effectuate  
15 other appropriate changes.

16          Among these revisions, the bill: (1) eliminates any reference to  
17 the "securityholder," while retaining all references to  
18 policyholders, to focus on the policyholder, whom the Department  
19 of Insurance has a primary responsibility to protect; (2) defines  
20 "acquisition" as it relates to control of an insurer; (3) expands the  
21 criteria for approval of a proposed acquisition to include an  
22 assessment of the effect on the insurance buying public; (4)  
23 extends the period of time in which a public hearing must be held  
24 by the Department of Insurance from 30 days to 60 days from the  
25 date of the filing of the application for acquisition; (5) extends  
26 the time for the commissioner's review of the proposal by  
27 allowing the commissioner 45 business days, instead of 30  
28 calendar days, from the required public hearing to approve or  
29 disapprove the acquisition; (6) grants the commissioner the  
30 discretion to retain outside consultants or other persons to assist  
31 him in making his determination as to the merits of the  
32 acquisition; (7) includes as a violation of the law any attempt to  
33 effectuate, in addition to the actual effectuation of, an  
34 acquisition or merger without the commissioner's approval; (8)  
35 increases the commissioner's authority to issue orders and levy  
36 penalties against violators of the law; (9) expands the  
37 requirements for certain information to include the payment of  
38 dividends and other declarations, distributions and authorizations  
39 thereof, consolidated tax allocation agreements and any pledge of  
40 the insurer's stock for loans made to holding company affiliates;  
41 (10) authorizes the commissioner to take certain steps with  
42 respect to mergers and acquisitions not otherwise covered by the  
43 law, if the effect of the merger or acquisition would be to lessen  
44 competition; and, finally, (11) permits the commissioner to  
45 impose a fee to cover costs of department review of filings  
46 required under the act.

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51   Revises law concerning insurance holding company systems.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 82**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 29, 1993

The Assembly Insurance Committee reports favorably and with committee amendments, Assembly Bill No. 82.

This bill substantially revises the insurance holding company systems law, P.L.1970, c.22 (C.17:27A-1 et seq.), concerning mergers or acquisitions of control of domestic insurers. The law establishes procedures which enable the Commissioner of Insurance to ascertain the solvency, management performance and operational results of the acquirer so as to protect the insurer's policyholders. The present law is based on a previous version of the model act prepared by the National Association of Insurance Commissioners (NAIC). The NAIC has since adopted numerous amendments to the model, which New Jersey has not done in tandem. This bill amends and supplements the current law to reflect the most recent NAIC model and to effectuate other appropriate changes.

Among these revisions, the bill: (1) eliminates any reference to the "securityholder," while retaining all references to policyholders, to focus on the policyholder, whom the Department of Insurance has a primary responsibility to protect; (2) defines "acquisition" as it relates to control of an insurer; (3) expands the criteria for approval of a proposed acquisition to include an assessment of the effect on the insurance buying public; (4) extends the period of time in which a public hearing must be held by the Department of Insurance from 30 days to 60 days from the date of the filing of the application for acquisition; (5) extends the time for the commissioner's review of the proposal by allowing the commissioner 45 business days, instead of 30 calendar days, from the required public hearing to approve or disapprove the acquisition; (6) grants the commissioner the discretion to retain outside consultants or other persons to assist him in making his determination as to the merits of the acquisition; (7) includes as a violation of the law any attempt to effectuate, in addition to the actual effectuation of, an acquisition or merger without the commissioner's approval; (8) increases the commissioner's authority to issue orders and levy penalties against violators of the law; (9) expands the requirements for certain information to include the payment of dividends and other declarations, distributions and authorizations thereof, consolidated tax allocation agreements and any pledge of the insurer's stock for loans made to holding company affiliates; (10) authorizes the commissioner to take certain steps with respect to mergers and acquisitions not otherwise covered by the law, if the effect of the merger or acquisition would be to lessen competition; and, finally, (11) permits the commissioner to impose a fee to cover costs of department review of filings required under the act.

The amendments clarify that the commissioner has authority to exempt certain transactions from reporting requirements, if the commissioner determines that such transactions would not significantly affect the financial conditions or operations of the insurer. The amendments also provide that extraordinary dividends may be paid or declared from other than earned surpluses.

Technical amendments have been made to the bill as well, to correct certain inaccuracies in the title and references to the year of the bill's potential enactment.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 82

STATE OF NEW JERSEY

DATED: MAY 27, 1993

The Senate Commerce Committee reports favorably Assembly, No. 82 (1R).

This bill substantially revises the insurance holding company systems law, P.L.1970, c.22 (C.17:27A-1 et seq.), concerning mergers or acquisitions of control of domestic insurers. The law establishes procedures which enable the Commissioner of Insurance to ascertain the solvency, management performance and operational results of the acquirer so as to protect the insurer's policyholders. The present law is based on a previous version of the model act prepared by the National Association of Insurance Commissioners (NAIC). The NAIC has since adopted numerous amendments to the model, which New Jersey has not done in tandem. This bill amends and supplements the current law to reflect the most recent NAIC model and to effectuate other appropriate changes.

Among these revisions, the bill: (1) eliminates any reference to the "securityholder," while retaining all references to policyholders, to focus on the policyholder, whom the Department of Insurance has a primary responsibility to protect; (2) defines "acquisition" as it relates to control of an insurer; (3) expands the criteria for approval of a proposed acquisition to include an assessment of the effect on the insurance buying public; (4) extends the period of time in which a public hearing must be held by the Department of Insurance from 30 days to 60 days from the date of the filing of the application for acquisition; (5) extends the time for the commissioner's review of the proposal by allowing the commissioner 45 business days, instead of 30 calendar days, from the required public hearing to approve or disapprove the acquisition; (6) grants the commissioner the discretion to retain outside consultants or other persons to assist him in making his determination as to the merits of the acquisition; (7) includes as a violation of the law any attempt to effectuate, in addition to the actual effectuation of, an acquisition or merger without the commissioner's approval; (8) increases the commissioner's authority to issue orders and levy penalties against violators of the law; (9) expands the requirements for certain information to include the payment of dividends and other declarations, distributions and authorizations thereof, consolidated tax allocation agreements and any pledge of the insurer's stock for loans made to holding company affiliates; (10) authorizes the commissioner to take certain steps with respect to mergers and acquisitions not otherwise covered by the law, if the effect of the merger or acquisition would be to lessen competition; and, finally, (11) permits the commissioner to impose a fee to cover costs of department review of filings required under the act.

## INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

### Table of Contents

Section 1.	Definitions
Section 2.	Subsidiaries of Insurers
Section 3.	Acquisitions of Control of or Merger With Domestic Insurer
Section 3.1	Acquisitions Involving Insurers Not Otherwise Covered
Section 4.	Registration of Insurers
Section 5.	Standards and Management of an Insurer Within a Holding Company System
Section 6.	Examination
Section 7.	Confidential Treatment
Section 8.	Rules and Regulations
Section 9.	Injunctions, Prohibitions against Voting Securities, Sequestration of Voting Securities
Section 10.	Sanctions
Section 11.	Receivership
Section 12.	Recovery
Section 13.	Revocation, Suspension, or Nonrenewal of Insurer's License
Section 14.	Judicial Review, Mandamus
Section 15.	Conflict with Other Laws
Section 16.	Separability of Provisions
Section 17.	Effective Date
Appendix.	Alternate Provisions

### Section 1. Definitions

As used in this Act, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

- A. "Affiliate." An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- B. "Commissioner." The term "Commissioner" shall mean the Insurance Commissioner, his deputies, or the Insurance Department, as appropriate.

**Drafting Note:** Insert the title of the chief insurance regulatory official wherever the word "Commissioner" appears.

- C. "Control." The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 4K that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
- D. "Insurance Holding Company System." An "insurance holding company system" consists of two (2) or more affiliated persons, one or more of which is an insurer.

## Holding Company Act

- E. "Insurer." The term "insurer" shall have the same meaning as set forth in Section [insert applicable section] of this Chapter, except that it shall not include:
- (1) Agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;
  - (2) Fraternal benefit societies; or
  - (3) Nonprofit medical and hospital service associations].

**Drafting Note:** References in this Model Act to "Chapter" are references to the entire state insurance code.

- F. "Person." A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.
- G. "Securityholder." A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.
- H. "Subsidiary." A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.
- I. "Voting Security." The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

### Section 2. Subsidiaries of Insurers

- A. Authorization. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

**Note:** This bill neither expressly authorizes noninsurance subsidiaries nor restricts subsidiaries to insurance related activities. It is believed that this is a policy decision which should be made by each individual state. Attached as an appendix are alternative provisions which would authorize the formation or acquisition of subsidiaries to engage in diversified business activity.

- (1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;
- (2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;
- (3) Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;
- (4) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
- (5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
- (6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups;

- (7) Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;

Note: Provided that the aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph shall not exceed the limitations applicable to such investments by the insurer.

- (8) Ownership and management of assets which the parent corporation could itself own or manage;
  - (9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function;
  - (10) Financing of insurance premiums, agents and other forms of consumer financing;
  - (11) Any other business activity determined by the Commissioner to be reasonably ancillary to an insurance business; and
  - (12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.
- B. Additional Investment Authority. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this Act, a domestic insurer may also:

- (1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of such insurer's assets or fifty percent (50%) of such insurer's surplus as regards policyholders, provided that after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:
  - (a) Total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and
  - (b) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;
- (2) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in Paragraph (1) or in Sections [insert applicable section] through [insert applicable section] of this Chapter applicable to the insurer. For the purpose of this paragraph, "the total investment of the insurer" shall include:
  - (a) Any direct investment by the insurer in an asset, and
  - (b) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary;

- (3) With the approval of the Commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after such investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- C. Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to Subsection B shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this Chapter applicable to such investments of insurers [except the following: \_\_\_\_\_].

Note: Last phrase optional in those states having certain special qualitative limitations such as prohibitions on investments in stock of mining companies, which the state may wish to retain as a matter of public policy.

- D. Qualification of Investment: When Determined. Whether any investment pursuant to Subsection B meets the applicable requirements thereof is to be determined before such investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.
- E. Cessation of Control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the Commissioner may prescribe, unless at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of this Chapter, and the insurer has notified the Commissioner thereof.

### Section 3. Acquisition of Control of or Merger with Domestic Insurer

#### A. Filing Requirements.

- (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the Commissioner and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the Commissioner in the manner hereinafter prescribed.
- (2) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless such person as determined by the Commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, such person shall file a pre-acquisition notification with the Commissioner containing the information set forth in Section 3.1C(1) thirty (30) days prior to the proposed effective date of the acquisition. Failure to file is subject to Section 3.1E(3). For the purposes of this Section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

- B. Content of Statement.** The statement to be filed with the Commissioner hereunder shall be made under oath or affirmation and shall contain the following information:
- (1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection A is to be effected (hereinafter called "acquiring party"), and
    - (a) If the person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;
    - (b) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for the lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to such positions. The list shall include for each individual the information required by Paragraph (a) of this subsection;
  - (2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;
  - (3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party (or for such lesser period as the acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;
  - (4) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;
  - (5) The number of shares of any security referred to in Subsection A which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in Subsection A, and a statement as to the method by which the fairness of the proposal was arrived at;
  - (6) The amount of each class of any security referred to in Subsection A which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;
  - (7) A full description of any contracts, arrangements or understandings with respect to any security referred to in Subsection A in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into;

- (8) A description of the purchase of any security referred to in Subsection A during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid;
- (9) A description of any recommendations to purchase any security referred to in Subsection A made during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;
- (10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection A, and (if distributed) of additional soliciting material relating thereto;
- (11) The term of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in Subsection A for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto; and
- (12) Such additional information as the Commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in Subsection A is a partnership, limited partnership, syndicate or other group, the Commissioner may require that the information called for by Paragraphs (1) through (12) shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in Subsection A is a corporation, the Commissioner may require that the information called for by Paragraphs (1) through (12) shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.

If any material change occurs in the facts set forth in the statement filed with the Commissioner and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the Commissioner and sent to the insurer within two (2) business days after the person learns of the change.

- C. Alternative Filing Materials. If any offer, request, invitation, agreement or acquisition referred to in Subsection A is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in Subsection A may utilize such documents in furnishing the information called for by that statement.

D. Approval by Commissioner: Hearings.

- (1) The Commissioner shall approve any merger or other acquisition of control referred to in Subsection A unless, after a public hearing thereon, he finds that:
  - (a) After the change of control, the domestic insurer referred to in Subsection A would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

- (b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein. In applying the competitive standard in this subparagraph:
- (i) The informational requirements of Section 3.1C(1) and the standards of Section 3.1D(2) shall apply;
  - (ii) The merger or other acquisition shall not be disapproved if the Commissioner finds that any of the situations meeting the criteria provided by Section 3.1D(3) exist; and
  - (iii) The Commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
- (c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;
- (d) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;
- (e) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
- (f) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.
- (2) The public hearing referred to in Paragraph (1) shall be held within thirty (30) days after the statement required by Subsection A is filed, and at least twenty (20) days notice thereof shall be given by the Commissioner to the person filing the statement. Not less than seven (7) days notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the Commissioner. The Commissioner shall make a determination within thirty (30) days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the [insert title] Court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.
- (3) The Commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed acquisition of control.

E. Exemptions. The provisions of this section shall not apply to:

- (1) [Any transaction which is subject to the provisions of Sections [insert applicable section] and [insert applicable section] of the laws of this state, dealing with the merger or consolidation of two or more insurers].

**Note:** Optional for use in those states where existing law adequately governs standards and procedures for the merger or consolidation of two or more insurers.

cation is filed with the Commissioner in accordance with Subsection 3.1C(1) thirty (30) days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of section 3.1B(2);

- (d) The acquisition of already affiliated persons;
- (e) An acquisition if, as an immediate result of the acquisition,
  - (i) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market,
  - (ii) There would be no increase in any market share, or
  - (iii) In no market would
    - The combined market share of the involved insurers exceeds twelve percent (12%) of the total market, and
    - The market share increases by more than two percent (2%) of the total market.

For the purpose of this Paragraph (2)(e), a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

- (f) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;
- (g) An acquisition of an insurer whose domiciliary Commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving such insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary Commissioner to the Commissioner of this state.

C. Pre-acquisition Notification, Waiting Period. An acquisition covered by Subsection 3.1B may be subject to an order pursuant to Subsection 3.1E unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The Commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in Section 7 of this Act.

- (1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners relating to those markets which, under Subsection 3.1B(2)(e), cause the acquisition not to be exempted from the provisions of this section. The Commissioner may require such additional material and information as he deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of Subsection 3.1D. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.
- (2) The waiting period required shall begin on the date of receipt of the Commissioner of a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of such receipt, or termination of the waiting period by the Commissioner. Prior to the end of the waiting period, the Commissioner on a one-time basis may require the submission of addi-

tional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of such additional information by the Commissioner or termination of the waiting period by the Commissioner.

**D. Competitive Standard.**

(1) The Commissioner may enter an order under Section 3.1E(1) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with Subsection 3.1C.

(2) In determining whether a proposed acquisition would violate the competitive standard of Paragraph (1) of this subsection, the Commissioner shall consider the following:

(a) Any acquisition covered under Subsection 3.1B involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standards

(i) If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

(ii) or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard in Paragraph (1) of this subsection. For the purpose of this subparagraph, the insurer with the largest share of the market shall be deemed to be Insurer A.

(b) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under Subsection 3.1B involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in Paragraph (1) of this subsection if:

(i) There is a significant trend toward increased concentration in the market;

(ii) One of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and

(iii) Another involved insurer's market is two percent (2%) or more.

- (c) For the purposes of Subsection 3.1D(2):
- (i) The term "insurer" includes any company or group of companies under common management, ownership or control;
  - (ii) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the Commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;
  - (iii) The burden of showing prima facie evidence of violation of the competitive standard rests upon the Commissioner.
- (d) Even though an acquisition is not prima facie violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, the Commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.
- (3) An order may not be entered under Section 3.1E(1) if:
- (a) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or
  - (b) The acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits which would arise from not lessening competition.

E. Orders and Penalties.

- (1) (a) If an acquisition violates the standards of this section, the Commissioner may enter an order:
- (i) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or
  - (ii) Denying the application of an acquired or acquiring insurer for a license to do business in this state.
- (b) Such an order shall not be entered unless:
- (i) There is a hearing;

is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in Section 4C or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

- B. Information and Form Required. Every insurer subject to registration shall file the registration statement on a form prescribed by the NAIC, which shall contain the following current information:
- (1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;
  - (2) The identity and relationship of every member of the insurance holding company system;
  - (3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:
    - (a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the the insurer by its affiliates;
    - (b) Purchases, sales or exchange of assets;
    - (c) Transactions not in the ordinary course of business;
    - (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
    - (e) All management agreements, service contracts and all cost-sharing arrangements;
    - (f) Reinsurance agreements;
    - (g) Dividends and other distributions to shareholders; and
    - (h) Consolidated tax allocation agreements;
  - (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;
  - (5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Commissioner.
- C. Summary of Registration Statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
- D. Materiality. No information need be disclosed on the registration statement filed pursuant to Section 4B if the information is not material for the purposes of this section. Unless the Commissioner by rule, regulation or order provides otherwise; sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (.5%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

## Holding Company Act

- E. **Reporting of Dividends to Shareholders.** Subject to Section 5B, each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.
- F. **Information of Insurers.** Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of this Act.
- G. **Termination of Registration.** The Commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.
- H. **Consolidated Filing.** The Commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement.
- I. **Alternative Registration.** The Commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection A and to file all information and material required to be filed under this section.
- J. **Exemptions.** The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the Commissioner by rule, regulation or order shall exempt the same from the provisions of this section.
- K. **Disclaimer.** Any person may file with the Commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the Commissioner disallows the disclaimer. The Commissioner shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.
- L. **Violations.** The failure to file a registration statement or any summary of the registration statement required by this section within the time specified for filing shall be a violation of this section.

### Section 5. Standards and Management of an Insurer Within a Holding Company System

- A. **Transactions Within a Holding Company System.**
  - (1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:
    - (a) The terms shall be fair and reasonable;
    - (b) Charges or fees for services performed shall be reasonable;
    - (c) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
    - (d) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

- (e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- (2) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the Commissioner may permit, and the Commissioner has not disapproved it within that period.
- (a) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments provided the transactions are equal to or exceed:
    - (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;
    - (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;
  - (b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:
    - (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;
    - (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;
  - (c) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between the insurer and non-affiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;
  - (d) All management agreements, service contracts and all cost-sharing arrangements; and
  - (e) Any material transactions, specified by regulation, which the Commissioner determines may adversely affect the interests of the insurer's policyholders.

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

- (3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would

occur otherwise. If the Commissioner determines that such separate transactions were entered into over any twelve-month period for that purpose, he may exercise his authority under Section 10.

- (4) The Commissioner, in reviewing transactions pursuant to Subsection A(2), shall consider whether the transactions comply with the standards set forth in Subsection A(1) and whether they may adversely affect the interests of policyholders.
- (5) The Commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

B. Dividends and other Distributions.

No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (1) thirty (30) days after the Commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or (2) the Commissioner shall have approved the payment within the thirty-day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the lesser of (1) ten percent (10%) of the insurer's surplus as regards policyholders as of the 31st day of December next preceding, or (2) the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two (2) calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Commissioner's approval, and the a declaration shall confer no rights upon shareholders until (1) the Commissioner has approved the payment of the dividend or distribution or (2) the Commissioner has not disapproved payment within the thirty-day period referred to above.

**Drafting Note:** The following Subsection C entitled "Management of Domestic Insurers Subject to Registration" is optional and is to be adopted according to the needs of the individual jurisdiction.

[C. Management of Domestic Insurers Subject To Registration.

- (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this Act.
- (2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of Section 5A(1).
- (3) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer shall be persons

who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

- (4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. Such committee or committees shall have responsibility for recommending the selection of independent certified public accountants, reviewing the insurer's financial condition, the scope and results of the independent audit and any internal audit, nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.
- (5) The provisions of Subsections C(3) and C(4) of this section shall not apply to a domestic insurer if the person controlling the insurer is an insurer having a board of directors and committees thereof that meet the requirements of Subsections C(3) and C(4).

D. Adequacy of Surplus. For purposes of this Act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;
- (2) The extent to which the insurer's business is diversified among the several lines of insurance;
- (3) The number and size of risks insured in each line of business;
- (4) The extent of the geographical dispersion of the insurer's insured risks;
- (5) The nature and extent of the insurer's reinsurance program;
- (6) The quality, diversification and liquidity of the insurer's investment portfolio;
- (7) The recent past and projected future trend in the size of the insurer's investment portfolio;
- (8) The surplus as regards policyholders maintained by other comparable insurers;
- (9) The adequacy of the insurer's reserves; and
- (10) The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment the investment so warrants.

## Section 6. Examination

- A. Power of Commissioner. Subject to the limitation contained in this section and in addition to the powers which the Commissioner has under Sections [insert applicable sections] relating to the examination of insurers, the Commissioner shall also have the power to order any insurer registered under Section 4 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ascertain the financial condition of the

insurer or to determine compliance with this Chapter. In the event the insurer fails to comply with the order, the Commissioner shall have the power to examine the affiliates to obtain the information.

- B. Use of Consultants. The Commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under Subsection A above. Any persons so retained shall be under the direction and control of the Commissioner and shall act in a purely advisory capacity.
- C. Expenses. Each registered insurer producing for examination records, books and papers pursuant to Subsection A above shall be liable for and shall pay the expense of examination in accordance with Section [insert applicable section].

**Section 7. Confidential Treatment**

All information, documents and copies thereof obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation made pursuant to Section 6 and all information reported pursuant to Section 4 and Section 5, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the Commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the Commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

**Section 8. Rules and Regulations**

The Commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations and orders as shall be necessary to carry out the provisions of this Act.

**Section 9. Injunctions, Prohibitions Against Voting Securities, Sequestration of Voting Securities**

- A. Injunctions. Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this Act or of any rule, regulation or order issued by the Commissioner hereunder, the Commissioner may apply to the [insert title] Court for the county in which the principal officer of the insurer is located or if the insurer has no office in this state then to the [insert title] Court for [insert county] County for an order enjoining the insurer or director, officer, employee or agent thereof from violating or continuing to violate this Act or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.
- B. Voting of Securities; When Prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this Act or of any rule, regulation or order issued by the Commissioner hereunder may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the Commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this Article or of any rule, regulation or order issued by the Commissioner hereunder, the insurer or the Commissioner may apply to the [insert title] Court for the county in

which the insurer has its principle place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of Section 3 or any rule, regulation or order issued by the Commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditor and shareholders or the public may require.

- C. Sequestration of Voting Securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this Act or any rule, regulation or order issued by the Commissioner hereunder, the [insert title] Court for [insert county] County or the [insert title] Court for the county in which the insurer has its principal place of business may, on the notice as the court deems appropriate, upon the application of the insurer or the Commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue the order with respect thereto as may be appropriate to effectuate the provisions of this Act.

Notwithstanding any other provisions of law, for the purposes of this Act the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

#### Section 10. Sanctions

- A. Any insurer failing, without just cause, to file any registration statement as required in this Act shall be required, after notice and hearing, to pay a penalty of \$[insert amount] for each day's delay, to be recovered by the Commissioner of Insurance and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section is \$[insert amount]. The Commissioner may reduce the penalty if the insurer demonstrates to the Commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.
- B. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Section 4A, 5A(2), or 5B, or which violate this Act, shall pay, in their individual capacity, a civil forfeiture of not more than \$[insert amount] per violation, after notice and hearing before the Commissioner. In determining the amount of the civil forfeiture, the Commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.
- C. Whenever it appears to the Commissioner that any insurer subject to this Act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 5 of this Act and which would not have been approved had the approval been requested, the Commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the Commissioner may also order the insurer to void any contracts and restore the status quo if the action is in the best interest of the policyholders, creditors or the public.
- D. Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this Act, the Commissioner may cause criminal proceedings to be instituted by the [insert title] Court for the county in which the principal office of the insurer is located or if the insurer has no office in this state, then by the [insert county] Court for [insert title] County against the insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this Act may be fined not more than \$[insert amount]. Any individual who willfully violates this Act may be fined in his/her individual capacity not more than \$[insert amount] or be imprisoned for not more than one to three (3) years or both.
- E. Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false

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# OFFICE OF THE GOVERNOR NEWS RELEASE

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## GOVERNOR FLORIO SIGNS FINANCIAL SOLVENCY LEGISLATION

Governor Jim Florio today signed legislation that will increase the New Jersey Insurance Department's effectiveness in monitoring the industry's financial activities.

The 12-bill package adopts the insurer solvency standards recommended by the National Association of Insurance Commissioners (NAIC).

Under the NAIC Accreditation Program, state insurance departments must be accredited by January 1, 1994. Accredited states will not be permitted to accept financial examinations of domestic insurance companies by non-accredited states. An independent audit team will review New Jersey's standards to ensure their compliance with the program.

"This legislation will strengthen the Insurance Department's ability to regulate the industry and to take preventive measures if companies experience financial difficulties," Governor Florio said. "The citizens of New Jersey can rest assured that the NAIC Accreditation Program will enhance the capabilities of a department which already is one of the most proactive consumer protection agencies in the country."

Insurance Commissioner Samuel F. Fortunato praised the efforts of Governor Florio and several members of the State Legislature in adopting the legislation.

"We are grateful to the Governor and members of the Legislature for acting quickly on these bills," Fortunato stated. "Their support and sponsorship of vital elements of this package have shown that great things may be accomplished through a true team effort."

Failure to receive accreditation could have affected New Jersey's 27 domestic property and casualty companies and 12 life and health insurers. These companies would be subject to accredited state insurance departments' audits at the companies' expense. These additional costs ultimately would be passed on to policyholders.

The NAIC accreditation audit team is tentatively scheduled to review the state's financial solvency standards in October.

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