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§§7 & 8 - C.17:27A-5.1 to 17:27A-5.2
§§11-15 - C.17:48-12.1 to 17:48-12.5
§§16-20 - C.17:48A-19.1 to 17:48A-19.5
§§21-25 - C.17:48C-28.1 to 17:48C-28.5
§§26-30 - C.17:48D-11.1 to 17:48D-11.5
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§§41-45 - C.17:48H-22.1 to 17:48H-22.5
§§46-56 - C.17:23-27 to 17:23-37
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§§63-66 - C.17B:19-11 to 17B:19-14
§68 - Note

P.L.2014, CHAPTER 81, *approved December 26, 2014*
Assembly, No. 3271 (*First Reprint*)

1 AN ACT concerning the modernization of the financial solvency
2 regulation of insurers and amending and supplementing various
3 parts of statutory law.

4

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

7

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

10 1. Definitions.

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

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

18 b. The term "commissioner" shall mean the Commissioner of
19 Banking and Insurance or the commissioner's deputies¹, except that
20 when a health maintenance organization is the subject of an
21 acquisition of control or merger, the commissioner shall consult
22 with the Commissioner of Health on matters relating to quality of,
23 and access to, health care services¹.

24 c. The term "control" (including the terms "controlling,"
25 "controlled by" and "under common control with") means the
26 possession, direct or indirect, of the power to direct or cause the
27 direction of the management and policies of a person, whether
28 through the ownership of voting securities, by contract other than a

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:

¹Assembly AFI committee amendments adopted September 18, 2014.

1 commercial contract for goods or nonmanagement services, or
2 otherwise, unless the power is the result of an official position with
3 or corporate office held by the person. Control shall be presumed
4 to exist if any person, directly or indirectly, owns, controls, holds
5 with the power to vote, or holds proxies representing, 10% or more
6 of the voting securities of any other person, provided that no such
7 presumption of control shall of itself relieve any person so
8 presumed to have control from any requirement of P.L.1970, c.22
9 (C.17:27A-1 et seq.). This presumption may be rebutted by a
10 showing made in the manner provided by subsection j. of section 3
11 of P.L.1970, c.22 (C.17:27A-3) that control does not exist in fact.
12 The commissioner may determine, after furnishing all persons in
13 interest notice and an opportunity to be heard, and making specific
14 findings of fact to support such determination, that control exists in
15 fact, notwithstanding the absence of a presumption to that effect.

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

18 e. The term "insurer" means any person or persons,
19 corporation, partnership or company authorized by the laws of this
20 State to transact the business of insurance or to operate a health
21 maintenance organization in this State, except that it shall not
22 include agencies, authorities or instrumentalities of the United
23 States, its possessions and territories, the Commonwealth of Puerto
24 Rico, the District of Columbia, or a state or political subdivision of
25 a state.

26 f. A "person" is an individual, a corporation, a limited liability
27 company, partnership, an association, a joint stock company, a
28 trust, an unincorporated organization, any similar entity or any
29 combination of the foregoing acting in concert.

30 g. (Deleted by amendment, P.L.1993, c.241).

31 h. A "subsidiary" of a specified person is an affiliate controlled
32 by such person directly, or indirectly through one or more
33 intermediaries.

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

36 j. "Acquisition" means any agreement, arrangement or activity,
37 the consummation of which results in a person acquiring directly or
38 indirectly the control of another person, and includes but is not
39 limited to the acquisition of voting securities, and assets, and bulk
40 reinsurance and mergers.

41 k. "Health maintenance organization" means any person
42 operating under a certificate of authority issued pursuant to
43 P.L.1973, c.337 (C.26:2J-1 et seq.).

44 l. "Enterprise risk" means any activity, circumstance, event or
45 series of events involving one or more affiliates of an insurer that, if
46 not remedied promptly, is likely to have a material adverse effect
47 upon the financial condition ¹[of] or¹ liquidity of the insurer or its
48 insurance holding company system as a whole, including, but not

1 limited to, anything that would cause the insurer's Risk-Based
2 Capital to fall into company action level as set forth in
3 administrative rules adopted by the commissioner which reflect the
4 standards set forth in the Risk-Based Capital For Insurers Model
5 Act adopted by the National Association of Insurance
6 Commissioners or would cause the insurer to be in hazardous
7 financial condition as defined in administrative rules adopted by the
8 commissioner which reflect the standards set forth in the Model
9 Regulation adopted by the National Association of Insurance
10 Commissioners to define standards and the commissioner's
11 authority over companies deemed to be in a hazardous financial
12 condition.

13 (cf: P.L.2012, c.17, s.30)

14

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

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

18 a. (1) Filing requirements. No person other than the issuer
19 shall make a tender offer for or a request or invitation for tenders
20 of, or enter into any agreement to exchange securities for, seek to
21 acquire, or acquire, in the open market or otherwise, any voting
22 security of a domestic insurer if, after the consummation thereof,
23 such person would, directly or indirectly (or by conversion or by
24 exercise of any right to acquire) be in control of such insurer, and
25 no person shall enter into an agreement to merge with or otherwise
26 to acquire control of a domestic insurer unless, at the time any such
27 offer, request, or invitation is made or any such agreement is
28 entered into, or prior to the acquisition of such securities if no offer
29 or agreement is involved, such person has filed with the
30 commissioner and has sent to such insurer, a statement containing
31 the information required by this section and such offer, request,
32 invitation, agreement or acquisition has been approved by the
33 commissioner in the manner hereinafter prescribed.

34 For purposes of this subsection, a domestic insurer shall include
35 any other person controlling a domestic insurer.

36 (2) For purposes of this subsection, any controlling person of a
37 domestic insurer seeking to divest its controlling interest in the
38 domestic insurer, in any manner, shall file with the commissioner,
39 with a copy to the insurer, confidential notice of its proposed
40 divestiture at least 30 days prior to the cessation of control. The
41 commissioner shall by regulation determine those instances in
42 which the party seeking to divest or to acquire a controlling interest
43 in an insurer will be required to file for and obtain approval of the
44 transaction. The information shall remain confidential until the
45 conclusion of the transaction unless the commissioner, in his or her
46 discretion, determines that confidential treatment will interfere with
47 enforcement of this subsection a. If the statement referred to in

1 paragraph (1) of this subsection a. is otherwise filed, this paragraph
2 (2) regarding notice of divestiture or acquisition shall not apply.

3 (3) With respect to a transaction subject to this subsection a., the
4 acquiring person shall also file a pre-acquisition notification with
5 the commissioner, which shall contain the information set forth in
6 section 7 of P.L.1993, c.241 (C.17:27A-4.1). A failure to file the
7 notification may be subject to penalties specified in paragraph 3 of
8 subsection e. of section 7 of P.L.1993, c.241 (C.17:27A-4.1).

9 b. Content of statement. The statement to be filed with the
10 commissioner hereunder shall be made under oath or affirmation
11 and shall contain the following **[information]**:

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

16 (i) If such person is an individual, his principal occupation and
17 all offices and positions held during the past five years, and any
18 conviction of crimes other than minor traffic violations during the
19 past 10 years;

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

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

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

46 (4) Any plans or proposals which each acquiring party may have
47 to liquidate such insurer, to sell its assets or merge or consolidate it

1 with any person, or to make any other material change in its
2 business or corporate structure or management.

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

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

11 (7) A full description of any contracts, arrangements or
12 understandings with respect to any security referred to in subsection
13 a. in which any acquiring party is involved, including but not
14 limited to transfer of any of the securities, joint ventures, loan or
15 option arrangements, puts or calls, guarantees of loans, guarantees
16 against loss or guarantees of profits, division of losses or profits, or
17 the giving or withholding of proxies. Such description shall
18 identify the persons with whom such contracts, arrangements or
19 understandings have been entered into.

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

25 (9) A description of any recommendations to purchase any
26 security referred to in subsection a. made during the 12 calendar
27 months preceding the filing of the statement, by any acquiring
28 party, or by anyone based upon interviews or at the suggestion of
29 such acquiring party.

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

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

39 (12) An agreement by the person required to file the statement
40 referred to in subsection a. of this section that it will provide the
41 annual enterprise risk report, specified in subsection k. of section 3
42 of P.L.1970, c.22 (C.17:27A-3), so long as control exists.

43 (13) An acknowledgement by the person required to file the
44 statement referred to in subsection a. of this section that the person
45 and all subsidiaries within its control in the insurance holding
46 company system will provide information to the commissioner upon
47 request as necessary to evaluate enterprise risk to the insurer.

1 (14) Such additional information as the commissioner may by
2 rule or regulation prescribe as necessary or appropriate for the
3 protection of policyholders of the insurer or in the public interest.

4 If the person required to file the statement referred to in
5 subsection a. is a partnership, limited partnership, syndicate or other
6 group, the commissioner may require that the information called for
7 by paragraphs (1) through ~~[(12)]~~ (14) shall be given with respect to
8 each partner of such partnership or limited partnership, each
9 member of such syndicate or group, and each person who controls
10 such partner or member. If any such partner, member or person is a
11 corporation or the person required to file the statement referred to in
12 subsection a. is a corporation, the commissioner may require that
13 the information called for by paragraphs (1) through ~~[(12)]~~ (14)
14 shall be given with respect to such corporation, each officer and
15 director of such corporation, and each person who is directly or
16 indirectly the beneficial owner of more than 10% of the outstanding
17 voting securities of such corporation.

18 If any material change occurs in the facts set forth in the
19 statement filed with the commissioner and sent to such insurer
20 pursuant to this section, an amendment setting forth such change,
21 together with copies of all documents and other material relevant to
22 such change, shall be filed with the commissioner and sent to such
23 insurer within two business days after the person learns of such
24 change.

25 c. Alternative filing materials. If any offer, request, invitation,
26 agreement or acquisition referred to in subsection a. is proposed to
27 be made by means of a registration statement under the Securities
28 Act of 1933, 48 Stat. 74 (15U.S.C. s.77a et seq.), or in
29 circumstances requiring the disclosure of similar information under
30 the Securities Exchange Act of 1934, 48 Stat. 881 (15 U.S.C. s. 78a
31 et seq.), or under a State law requiring similar registration or
32 disclosure, the person required to file the statement referred to in
33 subsection a. may utilize such documents in furnishing the
34 information called for by that statement.

35 d. Approval by commissioner; hearings.

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

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

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

- 1 (a) The informational requirements of paragraph (1) of
2 subsection c. and paragraph (2) of subsection d. of section 7 of
3 P.L.1993, c.241 (C.17:27A-4.1) shall apply;
- 4 (b) The merger or other acquisition shall not be disapproved if
5 the commissioner finds that any of the situations meeting the
6 criteria provided by paragraph (3) of subsection d. of section 7 of
7 P.L.1993, c.241 (C.17:27A-4.1) exist; and
- 8 (c) The commissioner may condition approval of the merger or
9 other acquisition on the removal of the basis of disapproval within a
10 specified period of time;
- 11 (iii) The financial condition of any acquiring party is such as
12 might jeopardize the financial stability of the insurer, or prejudice
13 the interest of its policyholders;
- 14 (iv) The financial condition of any acquiring party is such that
15 (a) the acquiring party has not been financially solvent on a
16 generally accepted accounting principles basis, or if an insurer, on a
17 statutory accounting basis, for the most recent three fiscal years
18 immediately prior to the date of the proposed acquisition (or for the
19 whole of such lesser period as such acquiring party and any
20 predecessors thereof shall have been in existence); (b) the acquiring
21 party has not generated net before-tax profits from its normal
22 business operations for the latest two fiscal years immediately prior
23 to the date of acquisition (or for the whole of such lesser period as
24 such acquiring party and any predecessors thereof shall have been
25 in existence); or (c) the acquisition debt of the acquiring party
26 exceeds 50% of the purchase price of the insurer;
- 27 (v) The plans or proposals which the acquiring party has to
28 liquidate the insurer, sell its assets or consolidate or merge it with
29 any person, or to make any other material change in its business or
30 corporate structure or management, are unfair and unreasonable to
31 policyholders of the insurer and not in the public interest;
- 32 (vi) The competence, experience and integrity of those persons
33 who would control the operation of the insurer are such that it
34 would not be in the interest of policyholders of the insurer and of
35 the public to permit the merger or other acquisition of control; or
- 36 (vii) The acquisition is likely to be hazardous or prejudicial to
37 the insurance buying public.
- 38 (2) The public hearing referred to in paragraph (1) shall be held
39 within 60 days after the statement required by subsection a. is filed
40 and at least 20 days' notice thereof shall be given by the
41 commissioner to the person filing the statement and the insurer.
42 Not less than seven days' notice of such public hearing shall be
43 given by the person filing the statement to such other persons as
44 may be designated by the commissioner. The hearing shall, at the
45 commissioner's discretion, be conducted by the commissioner or his
46 designee who shall report to the commissioner and advise him on
47 the nature of the matter delegated. The commissioner shall make a
48 determination or issue an order, based upon that advice and report,

1 as he shall, in his discretion, determine, and that determination or
2 order shall have the same force and effect as if the commissioner
3 had conducted that hearing personally. The commissioner shall
4 make a determination within 45 business days after the conclusion
5 of such hearing. At such hearing, the person filing the statement,
6 the insurer, any person to whom notice of hearing was sent, and any
7 other person whose interest may be affected thereby shall have the
8 right to present evidence, examine and cross-examine witnesses,
9 and offer oral and written arguments and in connection therewith
10 shall be entitled to conduct discovery proceedings in the same
11 manner as is presently allowed in the Superior Court of this State.
12 All discovery proceedings shall be concluded not later than three
13 days prior to the commencement of the public hearings.

14 (3) If the proposed acquisition of control requires the approval
15 of more than one commissioner, the public hearing referred to in
16 paragraph (2) may be held on a consolidated basis upon request of
17 the person filing the statement referred to in subsection a. of this
18 section. That person shall file the statement referred to in subsection
19 a. of this section with the National Association of Insurance
20 Commissioners within five days of making the request for a public
21 hearing. A commissioner may opt out of a consolidated hearing, and
22 shall provide notice to the applicant of the decision to opt out
23 within 10 days of the receipt of the statement referred to in
24 subsection a. of this section. A hearing conducted on a consolidated
25 basis shall be public, if not conducted on the documents filed in
26 accordance with the applicable state's procedures for such hearings,
27 and shall be held within the United States in accordance with the
28 rules and procedures of the state hosting the consolidated hearing
29 before the commissioners of the states in which the insurers are
30 domiciled. The commissioners shall hear and receive evidence. A
31 commissioner may attend the hearing, in person or by
32 telecommunication.

33 (4) The commissioner may retain, at the acquiring person's
34 expense, any attorneys, actuaries, accountants and other persons as
35 may be reasonably necessary to assist the commissioner in
36 reviewing the proposed acquisition of control.

37 e. (Deleted by amendment, P.L.1993, c.241.)

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

40 (1) Any transaction which is subject to the provisions of
41 R.S.17:27-1 et seq. or N.J.S.17B:18-60 et seq., concerning the
42 merger or consolidation of two or more insurers; and

43 (2) Any offer, request, invitation, agreement or acquisition
44 which the commissioner by order shall exempt therefrom as (a) not
45 having been made or entered into for the purpose and not having the
46 effect of changing or influencing the control of a domestic insurer,
47 or (b) as otherwise not comprehended within the purposes of this
48 section.

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

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

4 (2) Subject to subsection f., the effectuation of, or any attempt
5 to effectuate, an acquisition of control of, divestiture of, or merger
6 with, a domestic insurer unless the commissioner has given his
7 approval thereto.

8 h. Jurisdiction; consent to service of process.

9 The courts of this State are hereby vested with jurisdiction over
10 every person not resident, domiciled, or authorized to do business in
11 this State who files a statement with the commissioner under this
12 section, and over all actions involving such person arising out of
13 violations of this section, and each such person shall be deemed to
14 have performed acts equivalent to and constituting an appointment
15 by such a person of the commissioner to be his true and lawful
16 attorney upon whom may be served all lawful process in any action,
17 suit or proceeding arising out of violations of this section. Copies
18 of all such lawful process shall be served on the commissioner and
19 transmitted by registered or certified mail by the commissioner to
20 such person at his last known address.

21 (cf: P.L.1993, c.241, s.2)

22

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

25 3. Registration of insurers.

26 a. Registration. Every insurer which is authorized to do
27 business in this State and which is a member of an insurance
28 holding company system shall register with the commissioner,
29 except a foreign insurer subject to disclosure requirements and
30 standards adopted by statute or regulation in the jurisdiction of its
31 domicile which are substantially similar to those contained in: this
32 section; paragraph (1) of subsection a. and subsections b. and c. of
33 section 4 of P.L.1970, c.22 (C.17:27A-4); and either paragraph (2)
34 of subsection a. of section 4 of P.L.1970, c.22 (C.17:27A-4) or a
35 substantially similar provision which requires that each registered
36 insurer shall keep current the information required to be disclosed
37 in its registration statement by reporting all material changes or
38 additions, including change of or additions to ownership, within 15
39 days after the end of each month in which it learns of each such
40 change or addition. Any insurer which is subject to registration
41 under this section shall register within 60 days after the effective
42 date of P.L.1993, c.241 or 15 days after it becomes subject to
43 registration, whichever is later, and annually thereafter by April 1
44 of each year for the previous calendar year, unless the
45 commissioner for good cause shown extends the time for
46 registration, and then within such extended time. The commissioner
47 may require any authorized insurer which is a member of **[a]** an
48 insurance holding company system which is not subject to

1 registration under this section to furnish a copy of the registration
2 statement or other information filed by such insurance company
3 with the insurance regulatory authority of domiciliary jurisdiction.

4 b. Information and form required. Every insurer subject to
5 registration shall file a registration statement and a summary of the
6 registration statement with the commissioner on a form provided by
7 the commissioner, which shall contain current information about:

8 (1) The capital structure, general financial condition, ownership
9 and management of the insurer and any person controlling the
10 insurer;

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

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

16 (a) Loans, other investments, or purchases, sales or exchanges
17 of securities of the affiliates by the insurer or of the insurer by its
18 affiliates;

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

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

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

25 (e) All management agreements, service contracts and all cost-
26 sharing arrangements;

27 (f) Reinsurance agreements;

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

30 (h) Consolidated tax allocation agreements;

31 (4) Any pledge of the insurer's stock, including stock of any
32 subsidiary or controlling affiliate, for a loan made to any member of
33 the insurance holding company system; **[or]**

34 (5) Financial statements of or within an insurance holding
35 company system, including all affiliates, if requested by the
36 commissioner. Financial statements shall include, but are not
37 limited to, annual audited financial statements filed with the U.S.
38 Securities and Exchange Commission (SEC) pursuant to the
39 Securities Act of 1933, 15 U.S.C. s.77a et seq., or the Securities
40 Exchange Act of 1934, 15 U.S.C. s.78a et seq. An insurer required
41 to file financial statements pursuant to this paragraph may satisfy
42 the request by providing the commissioner with the most recently
43 filed parent corporation financial statements that have been filed
44 with the SEC;

45 (6) Other matters concerning transactions between registered
46 insurers and any affiliates as may be included from time to time in
47 any registration forms adopted or approved by the commissioner;

1 (7) Statements that the insurer's board of directors is responsible
2 for and oversees corporate governance and internal controls and that
3 the insurer's officers or senior management have approved,
4 implemented, and continue to maintain and monitor corporate
5 governance and internal control procedures; and

6 (8) Any other information required by the commissioner by rule
7 or regulation .

8 All registration statements shall contain a summary outlining all
9 items in the current registration statement representing changes
10 from the prior registration statement.

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

20 d. Amendments to registration statements. Each registered
21 insurer shall keep current the information required to be disclosed
22 in its registration statement by reporting all material changes or
23 additions on amendment forms provided by the commissioner
24 within 15 days after the end of the month in which it learns of each
25 such change or addition.

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

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

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

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

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

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

22 k. Enterprise risk filing. The ultimate controlling person of
23 every insurer subject to registration shall also file an annual
24 enterprise risk report. The report shall, to the best of the ultimate
25 controlling person's knowledge and belief, identify the material
26 risks within the insurance holding company system that could pose
27 enterprise risk to the insurer. The report shall be filed with the lead
28 state commissioner of the insurance holding company system as
29 determined by the procedures within the Financial Analysis
30 Handbook adopted by the National Association of Insurance
31 Commissioners.

32 l. Violations. The failure to file a registration statement or any
33 amendment thereto or enterprise risk filing required by this section
34 within the time specified for such filing shall be a violation of this
35 section.

36 (cf: P.L.1995, c.338, s.1)

37

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

40 4. Standards

41 a. Transactions **【with affiliates】** within an insurance holding
42 company system.

43 (1) Transactions **【by registered insurers with their affiliates】**
44 within an insurance holding company system to which an insurer
45 subject to registration is a party shall be subject to the following
46 standards:

47 (a) The terms shall be fair and reasonable;

1 (b) Agreements for cost sharing services and management shall
2 include such provisions as required by rules and regulations adopted
3 by the commissioner;

4 (c) Charges or fees for services performed shall be reasonable;

5 **【c】** (d) Expenses incurred and payment received shall be
6 allocated to the insurer in conformity with customary insurance
7 accounting practices consistently applied;

8 **【d】** (e) The books, accounts and records of each party to all such
9 transactions shall be so maintained as to clearly and accurately
10 disclose the precise nature and details of the transactions, including
11 such accounting information as is necessary to support the
12 reasonableness of the charges or fees to the respective parties; and

13 **【e】** (f) The insurer's surplus as regards policyholders following
14 any transaction with affiliates or dividends or distributions to
15 shareholder affiliates shall be reasonable in relation to the insurer's
16 outstanding liabilities and adequate to its financial needs.

17 (2) The following transactions, set forth in subparagraphs (a)
18 through (g) of this paragraph (2) involving a domestic insurer and
19 any person in its insurance holding company system, including
20 amendments or modifications of affiliate agreements previously
21 filed pursuant to this section, which are subject to any materiality
22 standards contained in subparagraphs (a) through (g) of this
23 paragraph (2) may not be entered into unless the insurer has notified
24 the commissioner in writing of its intention to enter into that
25 transaction at least 30 days prior thereto, or such shorter period as
26 the commissioner may permit, and the commissioner has not
27 disapproved it within that 30-day period . The notice for
28 amendments or modifications shall include the reasons for the
29 change and the financial impact on the domestic insurer. Informal
30 notice shall be reported, within 30 days after a termination of a
31 previously filed agreement, to the commissioner for determination
32 of the type of filing required.

33 (a) Sales, purchases, exchanges, loans or extensions of credit,
34 guarantees or other contingent obligations, investments, or loans
35 collateralized by the stock of a subsidiary or affiliate, provided such
36 transactions equal or exceed: (i) with respect to insurers other than
37 life insurers, the lesser of 3% of the insurer's admitted assets or 25%
38 of surplus as regards policyholders, as of December 31 next
39 preceding; (ii) with respect to life insurers, 3% of the insurer's
40 admitted assets, as of December 31 next preceding;

41 (b) Loans or extensions of credit to any person who is not an
42 affiliate, in which the insurer makes such loans or extensions of
43 credit with the agreement or understanding that the proceeds of
44 such transactions, in whole or in substantial part, are to be used to
45 make loans or extensions of credit to, to purchase assets of, or to
46 make investments in, any affiliate of the insurer making those loans
47 or extensions of credit, provided those transactions are equal to or
48 exceed: (i) with respect to insurers other than life insurers, the

1 lesser of 3% of the insurer's admitted assets or 25% of surplus as
2 regards policyholders, as of December 31 next preceding; (ii) with
3 respect to life insurers, 3% of the insurer's admitted assets, as of
4 December 31 next preceding;

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

17 (d) All management agreements, service contracts, tax
18 allocation agreements, and all cost-sharing arrangements; **[and]**

19 (e) Guarantees when made by a domestic insurer; provided,
20 however, that a guarantee which is quantifiable as to amount shall
21 not be subject to the notice requirements of this paragraph unless it
22 exceeds the lesser of one-half of one percent (.5%) of the insurer's
23 admitted assets or ten percent (10%) of surplus as regards
24 policyholders as of the 31st day of December next preceding.
25 Further, all guarantees which are not quantifiable as to amount shall
26 be subject to the notice requirements of this paragraph;

27 (f) Direct or indirect acquisitions or investments in a person that
28 controls the insurer or in an affiliate of the insurer in an amount
29 which, together with its present holdings in such investments,
30 exceeds two and one-half percent (2.5%) of the insurer's surplus to
31 policyholders. Direct or indirect acquisitions in insurance affiliates
32 that are subject to section 2 of P.L.1970, c.22 (C.17:27A-2), shall
33 be exempt from this requirement; and

34 (g) Any material transactions, specified by regulation, which the
35 commissioner determines may adversely affect the interests of the
36 insurer's policyholders. Nothing herein contained shall be deemed
37 to authorize or permit any transactions which, in the case of an
38 insurer which is not a member of the same insurance holding
39 company system, would be otherwise contrary to law.

40 (3) A domestic insurer may not enter into transactions which are
41 part of a plan or series of like transactions with persons within the
42 insurance holding company system if the purpose of those separate
43 transactions is to avoid the statutory threshold amount and thus
44 avoid the review that would otherwise occur. If the commissioner
45 determines that such separate transactions were entered into over
46 any 12-month period for that purpose, he may exercise his authority
47 under section 8 of P.L.1993, c.241 (C.17:27A-9.1).

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

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

11 (6) The commissioner may by regulation specify certain types of
12 transactions that need not be submitted for review under this
13 subsection if he determines that those transactions would not have a
14 significant impact on the financial condition or methods of
15 operation of the insurer.

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

21 (1) The size of the insurer as measured by its assets, capital and
22 surplus, reserves, premium writings, insurance in force and other
23 appropriate criteria;

24 (2) The extent to which the insurer's business is diversified
25 among the several lines of insurance;

26 (3) The number and size of risks insured in each line of
27 business;

28 (4) The extent of the geographical dispersion of the insurer's
29 insured risks;

30 (5) The nature and extent of the insurer's reinsurance program;

31 (6) The quality, diversification, and liquidity of the insurer's
32 investment portfolio;

33 (7) The recent past and projected future trend in the size of the
34 insurer's surplus as regards policyholders;

35 (8) The surplus as regards policyholders maintained by other
36 comparable insurers in respect of the factors enumerated in this
37 subsection;

38 (9) The adequacy of the insurer's reserves;

39 (10) The quality and liquidity of investments in affiliates. The
40 commissioner may discount any such investments or treat any such
41 investment as a disallowed asset for purposes of determining the
42 adequacy of surplus as regards policyholders whenever in his
43 judgment such investment so warrants; and

44 (11) The quality of the insurer's earnings and the extent to which
45 the reported earnings include extraordinary items.

46 c. Dividends and other distributions.

47 (1) A domestic insurer subject to registration under section 3 of
48 P.L.1970, c.22 (C.17:27A-3) shall report to the commissioner any

1 dividend or distribution to its shareholders within five business days
2 following declaration and at least 30 days, after receipt of that
3 report by the commissioner, prior to payment. For good cause
4 shown, the commissioner may reduce the notification period prior
5 to payment to a period of not less than 10 days. The commissioner
6 shall limit or disallow the payment of any dividend or distribution if
7 he determines that the insurer's surplus as regards policyholders is
8 not reasonable in relation to its outstanding liabilities and adequate
9 to its financial needs pursuant to subsection b. of this section or if
10 the insurer is otherwise found to be in a hazardous financial
11 condition.

12 (2) (a) No domestic insurer subject to registration under section
13 3 shall pay any extraordinary dividend or make any other
14 extraordinary distribution to its shareholders until (i) 30 days after
15 the commissioner has received notice of the declaration thereof and
16 has not within such period disapproved such payment, or (ii) the
17 commissioner shall have approved such payment within such 30-
18 day period.

19 (b) For purposes of this paragraph, an extraordinary dividend or
20 distribution includes any dividend or distribution of cash or other
21 property, whose fair market value together with that of other
22 dividends or distributions made within the preceding 12 months
23 exceeds the greater of (i) 10% of such insurer's surplus as regards
24 policyholders as of December 31 next preceding, or (ii) the net gain
25 from operations of such insurer, if such insurer is a life insurer, or
26 the net income, if such insurer is not a life insurer, not including
27 realized capital gains, for the 12-month period ending December 31
28 next preceding, but shall not include pro rata distributions of any
29 class of the insurer's own securities.

30 (c) Notwithstanding any other provision of law, a domestic
31 insurer may declare an extraordinary dividend or distribution which
32 is conditional upon the commissioner's approval thereof, and such a
33 declaration shall confer no rights upon **【policyholders】**
34 shareholders until (i) 30 days after the commissioner has received
35 notice of the declaration thereof and has not within such period
36 disapproved such payment, or (ii) the commissioner shall have
37 approved such payment within such 30-day period.

38 (3) Except for extraordinary dividends or distributions paid
39 pursuant to paragraph (2) of this subsection, all dividends or
40 distributions to shareholders shall be declared or paid by insurers
41 subject to registration under section 3 of P.L.1970, c.22 (C.17:27A-
42 3) from only earned surplus. For purposes of this paragraph,
43 "earned surplus" means unassigned funds (surplus), as reported on
44 the insurer's annual statement as of December 31 next preceding,
45 less unrealized capital gains and revaluation of assets.

46 d. Management of domestic insurers subject to registration.

47 (1) Notwithstanding the control of a domestic insurer by any
48 person, the officers and directors of the insurer shall not thereby be

1 relieved of any obligation or liability to which they would otherwise
2 be subject by law, and the insurer shall be managed so as to assure
3 its separate operating identity consistent with P.L.1970, c.22
4 (C.17:27A-1 et seq.).

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

10 (3) Not less than one-third of the directors of a domestic insurer,
11 and not less than one-third of the members of each committee of the
12 board of directors of any domestic insurer, shall be persons who are
13 not officers or employees of that insurer or of any entity
14 controlling, controlled by, or under common control with, that
15 insurer and who are not beneficial owners of a controlling interest
16 in the voting securities of that insurer or any such entity. At least
17 one such person shall be included in any quorum for the transaction
18 of business at any meeting of the board of directors or any
19 committee thereof.

20 (4) The board of directors of a domestic insurer shall establish
21 one or more committees comprised solely of directors who are not
22 officers or employees of the insurer or of any entity controlling,
23 controlled by, or under common control with, the insurer and who
24 are not beneficial owners of a controlling interest in the voting
25 securities of the insurer or any such entity. The committee shall be
26 responsible for recommending the selection of independent certified
27 public accountants, reviewing the insurer's financial condition, the
28 scope and results of the independent audit and any internal audit,
29 nominating candidates for director for election by shareholders or
30 policyholders, evaluating the performance of officers deemed to be
31 principal officers of the insurer and recommending to the board of
32 directors the selection and compensation, including bonuses or
33 other special payments, of the principal officers.

34 (5) The provisions of paragraphs (3) and (4) of this subsection d.
35 shall not apply to a domestic insurer if the person controlling the
36 insurer, such as an insurer, a mutual insurance holding company, or
37 a publicly held corporation, is an entity having a board of directors
38 and committees thereof that substantially meet the requirements of
39 those paragraphs.

40 (6) An insurer may make application to the commissioner for a
41 waiver from the requirements of this subsection, if the insurer's
42 annual direct written and assumed premium, excluding premiums
43 reinsured with the Federal Crop Insurance Corporation and National
44 Flood Insurance Program, is less than \$300,000,000. An insurer
45 may also make application to the commissioner for a waiver from
46 the requirements of this subsection based upon unique
47 circumstances. The commissioner may consider various factors
48 including, but not limited to, the type of business entity, volume of

1 business written, availability of qualified board members, or the
2 ownership or organizational structure of the entity.

3 (cf: P.L.1995, c.338, s.2)

4

5 5. Section 7 of P.L.1993, c.241 (C.17:27A-4.1) is amended to
6 read as follows:

7 7. a. As used in this section only:

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

13 An "involved insurer" includes an insurer which either acquires
14 or is acquired, is affiliated with an insurer which is an acquirer or is
15 acquired, or is the result of a merger.

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

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

20 (a) **[**An acquisition subject to approval or disapproval by the
21 commissioner pursuant to section 2 of P.L.1970, c.22 (C.17:27A-
22 2);**]** Deleted by amendment P.L. _____, c. _____ (pending before
23 the Legislature as this bill)

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

35 (c) The acquisition of already affiliated persons;

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

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

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

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

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

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

12 (g) The acquisition of a person by another person when both
13 persons are neither directly nor through affiliates primarily engaged
14 in the business of insurance, if pre-acquisition notification is filed
15 with the commissioner in accordance with paragraph (1) of
16 subsection c. of this section 30 days prior to the proposed effective
17 date of the acquisition. Such pre-acquisition notification is not
18 required for exclusion from this section if the acquisition would
19 otherwise be excluded from this section by any other paragraph of
20 this subsection.

21 c. An acquisition covered by subsection b. of this section shall
22 be subject to an order pursuant to subsection e. of this section
23 unless the acquiring person files a pre-acquisition notification and
24 the waiting period has expired. The acquired person may file a pre-
25 acquisition notification. The commissioner shall give confidential
26 treatment to information submitted under this subsection in the
27 same manner as provided in section 6 of P.L.1970, c.22 (C.17:27A-
28 6).

29 (1) The pre-acquisition notification shall be in such form and
30 contain such information as prescribed by the commissioner relating
31 to those markets which, under subparagraph (2)(d) of subsection b.
32 of this section, cause the acquisition not to be exempted from the
33 provisions of this section. The commissioner may require such
34 additional material and information as he deems necessary. The
35 required information may include an opinion of an economist as to
36 the competitive impact of the acquisition in this State, accompanied
37 by a summary of the education and experience of that person
38 indicating his ability to render an informed opinion.

39 (2) The waiting period required shall begin on the date of
40 receipt by the commissioner of pre-acquisition notification and shall
41 end on the earlier of the 30th day after the date of that notification,
42 or termination of the waiting period by the commissioner. Prior to
43 the end of the waiting period, the commissioner on a one-time basis
44 may require the submission of additional needed information
45 relevant to the proposed acquisition, in which event the waiting
46 period shall end on the earlier of the 30th day after receipt of that
47 additional information by the commissioner or termination of the
48 waiting period by the commissioner.

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

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

10 (a) Any acquisition covered under subsection b. involving two
11 or more insurers competing in the same market shall be prima facie
12 evidence of violation of the competitive standard if the market is
13 highly concentrated and the involved insurers possess the following
14 shares of the market:

15

16	Insurer A	Insurer B
17	4%	4% or more
18	10%	2% or more
19	15%	1% or more

20 or, if the market is not highly concentrated and the involved
21 insurers possess the following shares of the market:

22

23	Insurer A	Insurer B
24	5%	5% or more
25	10%	4% or more

26

27	Insurer A	Insurer B
28	15%	3% or more
29	19%	1% or more

30

31 For the purposes of this subparagraph (a), the insurer with the
32 largest share of the market shall be deemed to be Insurer A. A
33 highly concentrated market is one in which the share of the four
34 largest insurers is seventy-five percent or more of the market.
35 Percentages not shown in the tables are interpolated proportionately
36 to the percentages that are shown. If more than two insurers are
37 involved, exceeding the total of the two columns in the table shall
38 be prima facie evidence of violation of the competitive standards in
39 paragraph (1) of this subsection.

40 (b) There is a significant trend toward increased concentration
41 when the aggregate market share of any grouping of the largest
42 insurers in the market, from the two largest to the eight largest, has
43 increased by seven percent or more of the market over a period of
44 time, extending from any base year five to ten years prior to the
45 acquisition, up to the time of the acquisition. Any acquisition or
46 merger covered under subsection b. involving two or more insurers
47 competing in the same market shall be prima facie evidence of a

1 violation of the competitive standard in paragraph (1) of this
2 subsection if:

3 (i) there is a significant trend toward increased concentration in
4 the market;

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

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

9 (c) Even though an acquisition is not prima facie violative of the
10 competitive standard under subparagraphs (a) and (b) of this
11 paragraph (2), the commissioner may establish the requisite
12 anticompetitive effect based upon other substantial evidence. Even
13 though an acquisition is prima facie violative of the competitive
14 standard under those subparagraphs, a party may establish the
15 absence of the requisite anticompetitive effect based upon other
16 substantial evidence. Relevant factors in making a determination
17 under this subparagraph (c) include, but are not limited to, the
18 following: market shares, volatility of ranking of market leaders,
19 number of competitors, concentration, trend of concentration in the
20 industry, and ease of entry and exit into the market.

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

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

24 The term "market" means the relevant product and geographical
25 markets as determined by the commissioner. In determining the
26 relevant product and geographical markets, the commissioner shall
27 give due consideration to, among other things, the definitions or
28 guidelines, if any, promulgated by the National Association of
29 Insurance Commissioners and to information, if any, submitted by
30 parties to the acquisition. In the absence of sufficient information
31 to the contrary, the relevant product market is assumed to be the
32 direct written insurance premium for a line of business, such line
33 being that used in the annual statement required to be filed by
34 insurers doing business in this State, and the relevant geographical
35 market is assumed to be this State.

36 The burden of showing prima facie evidence of violation of the
37 competitive standard rests upon the commissioner.

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

40 (a) The acquisition will yield substantial economies of scale or
41 economies in resource utilization that cannot be feasibly achieved
42 in any other way, and the public benefits which would arise from
43 those economies exceed the public benefits which would arise from
44 not lessening competition; or

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

- 1 e. (1) (a) If an acquisition violates the standards of this section,
2 the commissioner may enter an order:
- 3 (i) requiring an involved insurer to cease and desist from doing
4 business in this State with respect to the line or lines of insurance
5 involved in the violation; or
- 6 (ii) denying the application of an acquired or acquiring insurer
7 for a license to do business in this State.
- 8 (b) Such an order shall not be entered unless:
- 9 (i) there is a hearing,
10 (ii) notice of that hearing is issued prior to the end of the waiting
11 period and not less than 15 days prior to the hearing; and
12 (iii) the hearing is concluded and the order is issued no later than
13 60 days after the end of the waiting period. Every order shall be
14 accompanied by a written decision of the commissioner setting
15 forth his findings of fact and conclusions of law.
- 16 (c) An order entered under this subsection shall not become
17 final earlier than 30 days after it is issued, during which time the
18 involved insurer may submit a plan to remedy the anti-competitive
19 impact of the acquisition within a reasonable time. Based upon
20 such plan or other information, the commissioner shall specify the
21 conditions, if any, under which, and the time period during which,
22 the aspects of the acquisition causing a violation of the standards of
23 this section may be remedied and the order vacated or modified.
- 24 (d) An order pursuant to this subsection shall not apply if the
25 acquisition is not consummated.
- 26 (2) Any person who violates a cease and desist order of the
27 commissioner under paragraph (1) while such order is in effect,
28 may after notice and hearing, be subject to a penalty of up to
29 \$10,000 for each day of violation, or suspension or revocation of
30 that person's license, or both.
- 31 (3) Any insurer or other person who fails to make any filing
32 required by this section shall be required to pay a penalty of up to
33 \$5,000 per violation.
- 34 f. Subsections b. and c. of section 8 of P.L.1970, c.22
35 (C.17:27A-8) and section 10 of P.L.1970, c.22 (C.17:27A-10) shall
36 not apply to acquisitions covered under this section.
- 37 g. This section shall not limit the commissioner's authority to
38 refuse to renew or revoke the certificate of authority of an insurer
39 admitted to transact business in this State pursuant to R.S.17:32-1 et
40 seq., or N.J.S.17B:23-1 et seq.
41 (cf: P.L.1993, c.241, s.7)
- 42
- 43 6. Section 5 of P.L.1970, c.22 (C.17:27A-5) is amended to read
44 as follows:
- 45 5. Examination.
- 46 a. Power of commissioner. In addition to the powers which the
47 commissioner has under other sections of Title 17 of the Revised
48 Statutes and Title 17B of the New Jersey Statutes relating to the

1 examination of insurers, the commissioner shall **[also]** have the
2 power to examine any insurer registered under section 3 of
3 P.L.1970, c.22 (C.17:27A-3) and its affiliates to ascertain the
4 financial condition of the insurer, including the enterprise risk to the
5 insurer by the ultimate controlling party, or by any entity or
6 combination of entities within the insurance holding company
7 system, or by the insurance holding company system on a
8 consolidated basis.

9 The commissioner shall also have the power to order any insurer
10 registered under section 3 to produce such records, books, or other
11 information papers in the possession of the insurer or its affiliates as
12 shall be necessary to ascertain the financial condition of the insurer
13 or to determine compliance with P.L.1970, c.22 (C.17:27A-1 et
14 seq.). In the event such insurer fails to comply with such order, the
15 commissioner shall have the power to examine such affiliates to
16 obtain such information.

17 In addition, to determine compliance with this section, the
18 commissioner may order any insurer registered under section 3 of
19 P.L.1970, c.22 (C.17:27A-3) to produce information not in the
20 possession of the insurer if the insurer can obtain access to that
21 information pursuant to contractual relationships, statutory
22 obligations, or other method. In the event the insurer cannot obtain
23 the information requested by the commissioner, the insurer shall
24 provide to the commissioner a detailed explanation of the reason
25 that the insurer cannot obtain the information and the identity of the
26 holder of the information. Whenever it appears to the commissioner
27 that the detailed explanation is without merit, the commissioner
28 may require the insurer, after notice and opportunity for a hearing,
29 to pay a penalty of up to \$5,000 for each day's delay, or may
30 suspend or revoke the insurer's certificate of authority.

31 b. (Deleted by amendment, P.L.1993, c.241.)

32 c. Use of consultants. The commissioner may retain at the
33 registered insurer's expense such attorneys, actuaries, accountants
34 and other persons as shall be necessary to assist in the conduct of
35 the examination under subsection a. above. Any persons so retained
36 shall be under the direction and control of the commissioner and
37 shall act in a purely advisory capacity.

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

43 e. Compelling production. In the event the insurer fails to
44 comply with an order issued pursuant to this section, the
45 commissioner shall have the power to examine the affiliates to
46 obtain the information. The commissioner shall also have the power
47 to issue subpoenas, to administer oaths, and to examine under oath
48 any person for purposes of determining compliance with this

1 section. Upon the failure or refusal of any person to obey a
2 subpoena, the commissioner may petition a court of competent
3 jurisdiction, and upon proper showing, the court may enter an order
4 compelling the witness to appear and testify or produce
5 documentary evidence. Failure to obey the court order shall be
6 punishable as contempt of court. Every person shall be obliged to
7 attend as a witness at the place specified in the subpoena, when
8 subpoenaed, anywhere within the State. He or she shall be entitled
9 to the same fees and mileage, if claimed, as a witness in the
10 Superior Court of New Jersey, which fees, mileage, and actual
11 expense, if any, necessarily incurred in securing the attendance of
12 witnesses, and their testimony, shall be itemized and charged
13 against, and be paid by, the company being examined.

14 (cf: P.L.1995, c.338, s.3)

15

16 7. (New section) a. Power of commissioner. With respect to
17 any insurer registered under section 3 of P.L.1970, c.22 (C.17:27A-
18 3), and in accordance with subsection c. of this section, the
19 commissioner shall also have the power to participate in a
20 supervisory college for any domestic insurer that is part of an
21 insurance holding company system with international operations in
22 order to determine compliance by the insurer with P.L. ,
23 c. (C.) (pending before the Legislature as this bill). The
24 powers of the commissioner with respect to supervisory colleges
25 include, but are not limited to, the following:

26 (1) Initiating the establishment of a supervisory college;

27 (2) Clarifying the membership and participation of other
28 supervisors in the supervisory college;

29 (3) Clarifying the functions of the supervisory college and the
30 role of other regulators, including the establishment of a group-wide
31 supervisor;

32 (4) Coordinating the ongoing activities of the supervisory
33 college, including planning meetings, supervisory activities, and
34 processes for information sharing; and

35 (5) Establishing a crisis management plan.

36 b. Expenses. Each registered insurer subject to this section
37 shall be liable for and shall pay the reasonable expenses of the
38 commissioner's participation in a supervisory college in accordance
39 with subsection c. of this section, including reasonable travel
40 expenses. For purposes of this section, a supervisory college may be
41 convened as either a temporary or permanent forum for
42 communication and cooperation between the regulators charged
43 with the supervision of the insurer or its affiliates, and the
44 commissioner may establish a regular assessment to the insurer for
45 the payment of these expenses.

46 c. Supervisory college. In order to assess the business strategy,
47 financial position, legal and regulatory position, risk exposure, risk
48 management and governance processes, and as part of the

1 examination of individual insurers in accordance with section 5 of
2 P.L.1970, c.22 (C.17:27A-5), the commissioner may participate in a
3 supervisory college with other regulators charged with supervision
4 of the insurer or its affiliates, including other state, federal and
5 international regulatory agencies. The commissioner may enter into
6 agreements in accordance with subsection c. of section 6 of
7 P.L.1970, c.22, (C.17:27A-6) providing the basis for cooperation
8 between the commissioner and the other regulatory agencies, and
9 the activities of the supervisory college. Nothing in this section
10 shall delegate to the supervisory college the authority of the
11 commissioner to regulate or supervise the insurer or its affiliates
12 within its jurisdiction.

13

14 8. (New section) Group-wide supervision for international
15 insurance groups

16 a. As used in this section, the following terms shall have the
17 respective meanings hereinafter set forth, unless the context clearly
18 indicates otherwise:

19 “Group-wide supervisor” means the chief insurance regulatory
20 official authorized to engage in conducting and coordinating group-
21 wide supervision activities who is from the jurisdiction determined
22 or acknowledged by the commissioner under ¹‘[subsection c. of]’
23 this section to have sufficient significant contacts with the
24 international insurance group.

25 “International insurance group” means an insurance group
26 operating internationally that includes an insurer registered under
27 section 3 of P.L.1970, c.22 (C.17:27A-3).

28 b. The commissioner is authorized to act as the group-wide
29 supervisor for any international insurance group if the international
30 insurance group's ultimate controlling person is domiciled in this
31 State. The commissioner may otherwise acknowledge another
32 jurisdiction as the group-wide supervisor ¹pursuant to the factors set
33 forth in subsections c. and f. of this section¹ whenever the
34 international insurance group:

35 (1) Does not have substantial insurance operations in the United
36 States;

37 (2) Has substantial insurance operations in the United States,
38 but not in this State; or

39 (3) Has substantial insurance operations in the United States and
40 this State, but the ¹‘[department] commissioner’¹ has determined
41 ¹‘[pursuant to the factors set forth in subsections c. and f. of this
42 <sup>section]’¹ that ¹‘[the other] another’¹ jurisdiction is the appropriate
43 ¹‘[group] group-wide’¹ supervisor.</sup>

44 c. In cooperation with other supervisors, the commissioner may
45 determine that the commissioner is the appropriate group-wide
46 supervisor for an international insurance group with substantial
47 operations concentrated in this State or ¹‘[in] with substantial’¹

1 insurance operations conducted by subsidiary insurance companies
2 domiciled in this State, where the ultimate controlling person is
3 domiciled outside of this State, or the commissioner may
4 acknowledge that another chief insurance regulatory official is the
5 appropriate group-wide supervisor for the international insurance
6 group. The commissioner shall consider the following factors and
7 the relative scale of each when making a determination or
8 acknowledgment under this subsection:

9 (1) The location where the international insurance group is
10 based or the place of domicile of the ultimate controlling person of
11 the international insurance group ¹**[.];**¹

12 (2) The locations of the international insurance group's
13 executive offices ¹**[.];**¹

14 (3) The locations of origin of the insurance business of the
15 international insurance group ¹**[.];**¹

16 (4) The locations of the assets and liabilities of the international
17 insurance group ¹**[.];**¹

18 (5) The locations of the business operations and activities of the
19 international insurance group ¹**[.];** and¹

20 (6) ¹**[Whether] If**¹ another chief insurance regulatory official is
21 ¹**[acting or]**¹ seeking to act as the lead group-wide supervisor
22 ¹**[under a regulatory system that the commissioner determines to**
23 **be] whether that jurisdiction**¹:

24 ¹**[(a) substantially similar to that provided under the insurance**
25 **laws of this State; or**

26 **(b) otherwise sufficient in terms of provision of group-wide**
27 **supervision, enterprise risk analysis and cooperation with other**
28 **chief regulatory officials.**

29 (7) Whether a chief insurance regulatory official acting or
30 seeking to act as the lead group-wide supervisor provides the
31 commissioner with reasonably reciprocal recognition and
32 cooperation**]**

33 (a) provides the commissioner with reasonably reciprocal
34 recognition and cooperation; and

35 (b) is accredited by the National Association of Insurance
36 Commissioners (NAIC) or has substantially similar laws when
37 compared to the insurance laws of this State, especially with regard
38 to the provision of group-wide supervision, enterprise risk analysis
39 and cooperation with other chief insurance regulatory officials.

40 However, when another chief insurance regulatory official is
41 currently acting as the lead group-wide supervisor of an
42 international insurance group and is acknowledged as such in the
43 National Association of Insurance Commissioners (NAIC) Lead
44 State Summary Report, the commissioner shall defer to that lead
45 group-wide supervisor designation unless the commissioner
46 determines that there has been a significant material change in the
47 international insurance group that:

- 1 (i) results in the group's insurers domiciled in this State holding
2 the majority of the group's assets or liabilities;
- 3 (ii) materially alters the operations or ownership of the group's
4 insurers domiciled in this State; or
- 5 (iii) makes this State the jurisdiction with the group's largest
6 premium volume or insured exposures.
- 7 In the event of a dispute as to the proper jurisdiction to act as
8 lead group-wide supervisor, a determination by the commissioner
9 not to defer to the current lead group-wide supervisor shall be made
10 only after notice and a hearing, and such determination shall be
11 accompanied by specific findings of fact and conclusions of law¹.
- 12 d. Pursuant to section 5 of P.L.1970, c.22 (C.17:27A-5), the
13 commissioner is authorized to collect from any insurer registered
14 pursuant to section 3 of P.L.1970, c.22 (C.17:27A-3) all
15 information necessary to determine whether the commissioner may
16 act as the group-wide supervisor or if the commissioner may
17 acknowledge another insurance regulatory official to act as the
18 group-wide supervisor. Prior to issuing a determination that an
19 international insurance group is subject to group-wide supervision
20 by the commissioner, the commissioner shall notify the insurer
21 registered pursuant to section 3 of P.L.1970, c.22 (C.17:27A-3) and
22 the ultimate controlling person within the international insurance
23 group. The international insurance group shall have not less than 30
24 days to provide the commissioner with additional information
25 pertinent to the pending determination. The commissioner shall
26 publish on the Department of Banking and Insurance website the
27 identity of international insurance groups that the commissioner has
28 determined are subject to its group-wide supervision.
- 29 e. If the commissioner is the group-wide supervisor for an
30 international insurance group, the commissioner is authorized to
31 engage in conducting and coordinating any of the following group-
32 wide supervision activities:
- 33 (1) Assess the enterprise risks within the international insurance
34 group, pursuant to section 5 of P.L.1970, c.22 (C.17:27A-5), to
35 ensure that:
- 36 (a) The material financial condition and liquidity risks to the
37 members of the international insurance group which are engaged in
38 the business of insurance are identified by management.
- 39 (b) Reasonable and effective mitigation measures are in place.
- 40 (2) Request, from any member of an international insurance
41 group subject to the commissioner's supervision, information
42 necessary and appropriate to assess enterprise risk, including, but
43 not limited to, information about the members of the international
44 insurance group regarding:
- 45 (a) Governance, risk assessment and management.
- 46 (b) Capital adequacy.
- 47 (c) Material intercompany transactions.

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

5 (4) Communicate with other insurance regulatory officials for
6 members within the international insurance group and share
7 relevant information subject to the confidentiality provisions of
8 section 6 of P.L.1970, c.22 (C.17:27A-6), through supervisory
9 colleges as set forth in section 7 of P.L. c. (C.) (pending
10 before the Legislature as this bill) or otherwise.

11 (5) Enter into agreements with or obtain documentation from
12 any insurer registered under section 3 of P.L.1970, c.22 (C.17:27A-
13 3), any member of the international insurance group and any other
14 chief insurance regulatory officials for members, providing the
15 basis for or otherwise clarifying the commissioner's role as group
16 supervisor, including provisions for resolving disputes with other
17 relevant supervisory authorities. Such agreements or documentation
18 shall not serve as evidence in any proceeding that any insurer or
19 person within an insurance holding company system not
20 incorporated in this State is doing business in this State or is
21 otherwise subject to jurisdiction in this State.

22 (6) Other group-wide supervisory activities as considered
23 appropriate by the commissioner.

24 f. If the commissioner acknowledges that a regulatory official
25 from a jurisdiction which is not accredited by the National
26 Association of Insurance Commissioners (NAIC) is the group-wide
27 supervisor, the commissioner is authorized to reasonably cooperate,
28 through supervisory colleges or otherwise, with group supervision
29 undertaken by the group-wide supervisor, provided that:

30 (1) The commissioner's cooperation is in compliance with the
31 insurance laws of this State.

32 (2) The regulator also recognizes and cooperates with the
33 commissioner's activities as a group-wide supervisor for other
34 international insurance groups where applicable. Whenever such
35 recognition and cooperation is not reasonably reciprocal, the
36 commissioner is authorized to refuse recognition and cooperation.

37 g. The commissioner is authorized to enter into agreements
38 with or obtain documentation from any insurer registered under
39 section 3 of P.L.1970, c.22 (C.17:27A-3), any affiliate of the insurer
40 and other regulatory officials for members of the insurance group,
41 which provide the basis for or otherwise clarify a regulatory
42 official's role as group supervisor.

43 h. The commissioner may promulgate regulations pursuant to
44 the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et
45 seq.) necessary for the administration of this section. In
46 determining whether to promulgate a regulation, the commissioner
47 shall give appropriate consideration to model laws, model
48 regulations and definitions or guidelines pertaining to group-wide

1 supervision, if any, promulgated by the NAIC or other recognized
2 insurance regulatory bodies or associations.

3 i. A registered insurer subject to this section shall be liable for
4 and shall pay the reasonable expenses of the commissioner's
5 participation in the administration of this section, including the
6 engagement of attorneys, actuaries and any other professionals and
7 all reasonable travel expenses.

8
9 9. Section 6 of P.L.1970, c.22 (C.17:27A-6) is amended to read
10 as follows:

11 6. Confidential treatment. **[All information, documents and**
12 **copies thereof obtained by or disclosed to the commissioner or any**
13 **other person in the course of an examination or investigation made**
14 **pursuant to section 5 of P.L.1970, c.22 (C.17:27A-5) and all**
15 **information reported pursuant to section 3 and section 4 of**
16 **P.L.1970, c.22 (C.17:27A-3 and 17:27A-4) shall be given**
17 **confidential treatment and shall not be subject to subpoena and shall**
18 **not be made public by the commissioner or any other person, except**
19 **to insurance departments of other states, without the prior written**
20 **consent of the insurer to which it pertains unless the commissioner,**
21 **after giving the insurer, and its affiliates who would be affected**
22 **thereby, notice and opportunity to be heard, determines that the**
23 **interests of policyholders, shareholders or the public will be served**
24 **by the publication thereof, in which event he may publish all or any**
25 **part thereof in such manner as he may deem appropriate.]**

26 a. Documents, materials or other information in the possession
27 or control of the department that are obtained by or disclosed to the
28 commissioner or any other person in the course of an examination
29 or investigation made pursuant to section 5 of P.L.1970, c.22
30 (C.17:27A-5) and all information reported pursuant to paragraphs
31 (12) and (13) of subsection b. of section 2 of P.L.1970, c.22 (C.
32 17:27A-2), section 3 and section 4 of P.L.1970, c.22 (C.17:27A-3
33 and 17:27A-4) shall be confidential by law and privileged, shall not
34 be subject to P.L.1963, c.73 (C.47:1A-1 et seq.), shall not be subject
35 to subpoena, and shall not be subject to discovery or admissible in
36 evidence in any private civil action. The commissioner is authorized
37 to use the documents, materials or other information in the
38 furtherance of any regulatory or legal action brought as a part of the
39 commissioner's official duties. The commissioner shall not
40 otherwise make the documents, materials or other information
41 public without the prior written consent of the insurer to which it
42 pertains unless the commissioner, after giving the insurer and its
43 affiliates who would be affected thereby notice and opportunity to
44 be heard, determines that the interest of policyholders, shareholders
45 or the public will be served by the publication thereof, in which
46 event the commissioner may publish all or any part in such manner
47 as may be deemed appropriate.

1 b. Neither the commissioner nor any person who received
2 documents, materials or other information while acting under the
3 authority of the commissioner or with whom such documents,
4 materials or other information are shared pursuant to P.L.1970, c.22
5 (C.17:27A-1 et seq.) shall be permitted or required to testify in any
6 private civil action concerning any confidential documents,
7 materials, or information subject to subsection a. of this section.

8 c. In order to assist in the performance of the commissioner's
9 duties, the commissioner:

10 (1) May, upon request, be required to share documents,
11 materials or other information, including the confidential and
12 privileged documents, materials or information subject to
13 subsection a. of this section, with other state, federal and
14 international regulatory agencies, with the National Association of
15 Insurance Commissioners (NAIC) and its affiliates and subsidiaries,
16 and with state, federal, and international law enforcement
17 authorities, including members of any supervisory college described
18 in section 7 of P.L. , c. (C.) (pending before the Legislature
19 as this bill), provided that the recipient agrees in writing to maintain
20 the confidentiality and privileged status of the document, material
21 or other information, and has verified in writing the legal authority
22 to maintain confidentiality.

23 (2) Notwithstanding paragraph (1) of this subsection c., the
24 commissioner may only share confidential and privileged
25 documents, material, or information reported pursuant to subsection
26 k. of section 3 of P.L.1970, c.22 (C.17:27A-3) with commissioners
27 of states having statutes or regulations substantially similar to
28 subsection a. of this section and who have agreed in writing not to
29 disclose that information.

30 (3) May receive documents, materials or information, including
31 otherwise confidential and privileged documents, materials or
32 information from the NAIC and its affiliates and subsidiaries and
33 from regulatory and law enforcement officials of other foreign or
34 domestic jurisdictions, and shall maintain as confidential or
35 privileged any document, material or information received with
36 notice or the understanding that it is confidential or privileged
37 under the laws of the jurisdiction that is the source of the document,
38 material or information; and

39 (4) Shall enter into written agreements with the NAIC governing
40 the sharing and use of information provided pursuant to P.L. ,
41 c. (C.) (pending before the Legislature as this bill) consistent
42 with this subsection that shall:

43 (a) specify procedures and protocols regarding the
44 confidentiality and security of information shared with the NAIC
45 and its affiliates and subsidiaries pursuant to P.L. , c. (C.)
46 (pending before the Legislature as this bill), including procedures
47 and protocols for sharing by the NAIC with other state, federal or
48 international regulators;

1 (b) specify that ownership of information shared with the NAIC
2 and its affiliates and subsidiaries pursuant to this subsection
3 remains with the commissioner and the use by the NAIC of the
4 information is subject to the direction of the commissioner;

5 (c) require prompt notice to be given to an insurer whose
6 confidential information in the possession of the NAIC pursuant to
7 P.L. , c. (C.) (pending before the Legislature as this bill)
8 is subject to a request or subpoena to the NAIC for disclosure or
9 production; and

10 (d) require the NAIC and its affiliates and subsidiaries to
11 consent to intervention by an insurer in any judicial or
12 administrative action in which the NAIC and its affiliates and
13 subsidiaries may be required to disclose confidential information
14 about the insurer shared with the NAIC and its affiliates and
15 subsidiaries pursuant to P.L.1970 c.22 (C.17:27A-1 et seq.),
16 including with respect to the participation in supervisory colleges in
17 accordance with section 7 of P.L. , c. (C.) (pending before
18 the Legislature as this bill).

19 d. The sharing of information by the commissioner pursuant to
20 this section shall not constitute a delegation of regulatory authority
21 or rulemaking, and the commissioner is solely responsible for the
22 administration, execution and enforcement of the provisions of P.L.,
23 c. (C.) (pending before the Legislature as this bill).

24 e. No waiver of any applicable privilege or claim of
25 confidentiality in the documents, materials or information shall
26 occur as a result of disclosure to the commissioner under this
27 section or as a result of sharing as authorized in subsection c. of this
28 section.

29 f. Documents, materials or other information in the possession
30 or control of the NAIC pursuant to P.L. , c. (C.) (pending
31 before the Legislature as this bill) shall be confidential by law and
32 privileged, shall not be subject to P.L.1963, c.73 (C.47:1A-1 et
33 seq.), shall not be subject to subpoena, and shall not be subject to
34 discovery or admissible in evidence in any private civil action.

35 (cf: P.L.1993, c.241, s.6)

36
37 10. Section 8 of P.L.1993, c.241 (C.17:27A-9.1) is amended to
38 read as follows:

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

42 b. Every director or officer of an insurance holding company
43 system who violates, participates in, or assents to, or who shall
44 permit any of the officers or agents of the insurer to engage in
45 transactions or make investments which have not been properly
46 reported or submitted pursuant to subsection a. of section 3 of
47 P.L.1970, c.22 (C.17:27A-3) or paragraph (2) of subsection a., or
48 subsection c. of section 4 of P.L.1970, c.22 (C.17:27A-4), or which

1 otherwise violate P.L.1970, c.22 (C.17:27A-1 et seq.), shall pay, in
2 their individual capacity, a penalty of up to \$5,000 per violation.

3 c. Whenever it appears to the commissioner that any insurer
4 subject to P.L.1970, c.22 (C.17:27A-1 et seq.) or any director,
5 officer, employee or agent thereof has engaged in any transaction or
6 entered into a contract which is subject to section 4 of P.L.1970,
7 c.22 (C.17:27A-4) and which would not have been approved had
8 such approval been requested, the commissioner may order the
9 insurer to cease and desist immediately any further activity under
10 that transaction or contract. After notice and hearing the
11 commissioner may also order the insurer to void any such contracts
12 and restore the status quo if such action is in the best interest of the
13 policyholders, creditors or the public.

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

25 e. Any officer, director, or employee of an insurance holding
26 company system who willfully and knowingly subscribes to or
27 makes or causes to be made any false statements or false reports or
28 false filings with the intent to deceive the commissioner in the
29 performance of his duties under P.L.1970, c.22 (C.17:27A-1 et
30 seq.), upon conviction thereof, may be imprisoned for not less than
31 one year and not more than three years or fined up to \$10,000 per
32 violation, or both. Any fines imposed shall be paid by the officer,
33 director, or employee in his individual capacity, if legally liable, or
34 the insurer.

35 f. Whenever it appears to the commissioner that any person
36 has committed a violation of section 2 of P.L.1970, c.22 (C.17:27A-
37 2), which violation prevents the full understanding of the enterprise
38 risk to the insurer by affiliates or by the insurance holding company
39 system, the violation may serve as an independent basis for
40 disapproving dividends or distributions and for placing the insurer
41 under an order of supervision in accordance with P.L.1993, c.245
42 (C.17:51A-1 et seq.).

43 (cf: P.L.1993, c.241, s.8)

44

45 11. (New section) As used in sections 11 through 15 of P.L. ,
46 c. (C.) (pending before the Legislature as this bill):

47 “Commissioner” means the Commissioner of Banking and
48 Insurance.

1 “Hospital service corporation” means an entity authorized to
2 transact business in this State pursuant to P.L.1938, c.366 (C.17:48-
3 1 et seq.).
4

5 12. (New section) The commissioner may increase the amount
6 of capital or surplus required of a hospital service corporation, or
7 subsequently revise or redetermine that increase, using appropriate
8 methods and procedures established by rules and regulations
9 adopted by the commissioner, in order to provide adequate
10 protection against risks affecting the hospital service corporation's
11 financial condition that are not adequately or fully covered by its
12 reserves or other assets, but under no circumstances shall a hospital
13 service corporation's capital or surplus be less than the capital or
14 surplus required pursuant to regulation as prescribed by the
15 commissioner; provided, however, that any increase required by a
16 subsequent revision or redetermination pursuant to this section,
17 shall be made only after a departmental hearing, unless that hearing
18 is waived by the affected hospital service corporation. All matters
19 pertaining to a hearing or to an increase in capital or surplus
20 pursuant to this section shall be confidential and not subject to
21 subpoena or public inspection, except to the extent that the
22 commissioner finds release of that information necessary to protect
23 the public. The hearing shall be initiated within 20 days after
24 written notice to the hospital service corporation. Any declaration
25 regarding an increase required by a subsequent revision or
26 redetermination shall contain findings specifying the factors
27 deemed significant in regard to the particular hospital service
28 corporation, and shall set forth the reasons supporting the increase
29 of capital or surplus ordered by the commissioner. In determining
30 any increase, revision or redetermination in the amount of capital or
31 surplus, the commissioner shall consider the risks of:

32 a. Increases or decreases in the frequency and severity of losses
33 under normal operating conditions, as well as increases or decreases
34 in those values, above or below the levels contemplated by the rates
35 that the hospital service corporation charged for coverage and above
36 or below those reasonably expected under normal conditions;

37 b. Increases or decreases in expenses under normal operating
38 conditions, as well as increases or decreases in those values, above
39 or below the levels contemplated by the rates the hospital service
40 corporation charged for coverage and above or below those
41 reasonably expected under normal conditions;

42 c. Increases or decreases in the value of, or return on, invested
43 assets under normal operating conditions, as well as increases or
44 decreases in those values, above or below those levels anticipated
45 under normal conditions;

46 d. Changes in economic, social or market conditions that could
47 adversely or favorably affect the financial condition of the hospital
48 service corporation, including conditions that would make liquidity

1 more or less important than contemplated and would prevent or
2 facilitate timely investments or force or prohibit untimely sales of
3 assets; and

4 e. Any other contingencies, including reinsurance and
5 unfunded or extra contractual obligations, which may affect the
6 hospital service corporation's financial condition.

7
8 13. (New section) In determining any increase, revision or
9 redetermination in the capital or surplus of a hospital service
10 corporation pursuant to the provisions of section 12 of P.L. ,
11 c. (C.) (pending before the Legislature as this bill) the
12 commissioner shall take into account the following factors:

13 a. Methods and techniques used to measure risk exposure and
14 variability;

15 b. The information available relating to the magnitude of the
16 various risks described in section 12 of P.L. , c. (C.)
17 (pending before the Legislature as this bill);

18 c. The extent to which risks described in section 12 of P.L. ,
19 c. (C.) (pending before the Legislature as this bill) are
20 independent or interrelated, and whether any dependency is direct
21 or inverse;

22 d. The extent to which the hospital service corporation has
23 provided protection against contingencies in ways other than the
24 establishment of surplus, including, but not limited to: redundancy
25 of premiums; margin in reserves and liabilities; adjustability of
26 contracts pursuant to the terms of the contracts; voluntary or
27 mandatory investment valuation reserves; reinsurance; the use of
28 conservative actuarial assumptions to provide a margin of security;
29 reserve adjustments after rate increases for policies written at earlier
30 and less adequate rates; contingency or catastrophe reserves; and
31 diversification of assets and underwriting risk; and

32 e. Any other relevant factors, including the National
33 Association of Insurance Commissioners' reports and independent
34 judgments of the soundness of the hospital service corporation's
35 financial condition, as evidenced by the rating and reports of
36 reliable professional financial services.

37
38 14. (New Section) The commissioner may suspend or revoke the
39 authority to do business in this State of any hospital service
40 corporation that does not comply with the provisions of sections 11
41 through 15 of P.L. , c. (C.) (pending before the Legislature
42 as this bill).

43
44 15. (New section) The commissioner may promulgate
45 regulations pursuant to the "Administrative Procedure Act,"
46 P.L.1968, c.410 (C. 52:14B-1 et seq.) necessary to effectuate the
47 purposes of sections 11 through 15 of P.L. , c. (C.)
48 (pending before the Legislature as this bill). Such rules and

1 regulations shall be consistent with the standards for risk based
2 capital for health organizations adopted by the National Association
3 of Insurance Commissioners.

4

5 16. (New section) As used in sections 16 through 20 of P.L. ,
6 c. (C.) (pending before the Legislature as this bill):

7 “Commissioner” means the Commissioner of Banking and
8 Insurance.

9 “Medical service corporation” means an entity authorized to
10 transact business in this State pursuant to P.L.1940, c.74
11 (C.17:48A-1 et seq.).

12

13 17. (New section) The commissioner may increase the amount
14 of capital or surplus required of a medical service corporation, or
15 subsequently revise or redetermine that increase, using appropriate
16 methods and procedures established by rules and regulations
17 adopted by the commissioner, in order to provide adequate
18 protection against risks affecting the medical service corporation's
19 financial condition that are not adequately or fully covered by its
20 reserves or other assets, but under no circumstances shall a medical
21 service corporation's capital or surplus be less than the capital or
22 surplus required pursuant to regulation as prescribed by the
23 commissioner; provided, however, that any increase required by a
24 subsequent revision or redetermination pursuant to this section,
25 shall be made only after a departmental hearing, unless that hearing
26 is waived by the affected medical service corporation. All matters
27 pertaining to a hearing or to an increase in capital or surplus
28 pursuant to this section shall be confidential and not subject to
29 subpoena or public inspection, except to the extent that the
30 commissioner finds release of that information necessary to protect
31 the public. The hearing shall be initiated within 20 days after
32 written notice to the medical service corporation. Any declaration
33 regarding an increase required by a subsequent revision or
34 redetermination shall contain findings specifying the factors
35 deemed significant in regard to the particular medical service
36 corporation, and shall set forth the reasons supporting the increase
37 of capital or surplus ordered by the commissioner. In determining
38 any increase, revision or redetermination in the amount of capital or
39 surplus, the commissioner shall consider the risks of:

40 a. Increases or decreases in the frequency and severity of losses
41 under normal operating conditions, as well as increases or decreases
42 in those values, above or below the levels contemplated by the rates
43 that the medical service corporation charged for coverage and above
44 or below those reasonably expected under normal conditions;

45 b. Increases or decreases in expenses under normal operating
46 conditions, as well as increases or decreases in those values, above
47 or below the levels contemplated by the rates the medical service

1 corporation charged for coverage and above or below those
2 reasonably expected under normal conditions;

3 c. Increases or decreases in the value of, or return on, invested
4 assets under normal operating conditions, as well as increases or
5 decreases in those values, above or below those levels anticipated
6 under normal conditions;

7 d. Changes in economic, social or market conditions that could
8 adversely or favorably affect the financial condition of the medical
9 service corporation, including conditions that would make liquidity
10 more or less important than contemplated and would prevent or
11 facilitate timely investments or force or prohibit untimely sales of
12 assets; and

13 e. Any other contingencies, including reinsurance and
14 unfunded or extra contractual obligations, which may affect the
15 medical service corporation's financial condition.

16

17 18. (New section) In determining any increase, revision or
18 redetermination in the capital or surplus of a medical service
19 corporation pursuant to the provisions of section 17 of P.L. ,

20 c. (C.) (pending before the Legislature as this bill) the
21 commissioner shall take into account the following factors:

22 a. Methods and techniques used to measure risk exposure and
23 variability;

24 b. The information available relating to the magnitude of the
25 various risks described in section 17 of P.L. , c. (C.)
26 (pending before the Legislature as this bill);

27 c. The extent to which risks described in section 17 of P.L. ,
28 c. (C.) (pending before the Legislature as this bill) are
29 independent or interrelated, and whether any dependency is direct
30 or inverse;

31 d. The extent to which the medical service corporation has
32 provided protection against contingencies in ways other than the
33 establishment of surplus, including, but not limited to: redundancy
34 of premiums; margin in reserves and liabilities; adjustability of
35 contracts pursuant to the terms of the contracts; voluntary or
36 mandatory investment valuation reserves; reinsurance; the use of
37 conservative actuarial assumptions to provide a margin of security;
38 reserve adjustments after rate increases for policies written at earlier
39 and less adequate rates; contingency or catastrophe reserves; and
40 diversification of assets and underwriting risk; and

41 e. Any other relevant factors, including the National
42 Association of Insurance Commissioners' reports and independent
43 judgments of the soundness of the medical service corporation's
44 financial condition, as evidenced by the rating and reports of
45 reliable professional financial services.

46

47 19. (New Section) The commissioner may suspend or revoke the
48 authority to do business in this State of any medical service

1 corporation that does not comply with the provisions of sections 16
2 through 20 of P.L. , c. (C.) (pending before the
3 Legislature as this bill).

4
5 20. (New section) The commissioner may promulgate
6 regulations pursuant to the "Administrative Procedure Act,"
7 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
8 purposes of sections 16 through 20 of P.L. , c. (C.)
9 (pending before the Legislature as this bill). Such rules and
10 regulations shall be consistent with the standards for risk based
11 capital for health organizations adopted by the National Association
12 of Insurance Commissioners.

13
14 21. (New section) As used in sections 21 through 25 of P.L. ,
15 c. (C.) (pending before the Legislature as this bill):

16 "Commissioner" means the Commissioner of Banking and
17 Insurance.

18 "Dental service corporation" means an entity authorized to
19 transact business in this State pursuant to P.L.1968, c.305
20 (C.17:48C-1 et seq.).

21
22 22. (New section) The commissioner may increase the amount
23 of capital or surplus required of a dental service corporation, or
24 subsequently revise or redetermine that increase, using appropriate
25 methods and procedures established by rules and regulations
26 adopted by the commissioner, in order to provide adequate
27 protection against risks affecting the dental service corporation's
28 financial condition that are not adequately or fully covered by its
29 reserves or other assets, but under no circumstances shall a dental
30 service corporation 's capital or surplus be less than the capital or
31 surplus required pursuant to regulation as prescribed by the
32 commissioner; provided, however, that any increase required by a
33 subsequent revision or redetermination pursuant to this section shall
34 be made only after a departmental hearing, unless that hearing is
35 waived by the affected dental service corporation. All matters
36 pertaining to a hearing or to an increase in capital or surplus
37 pursuant to this section shall be confidential and not subject to
38 subpoena or public inspection, except to the extent that the
39 commissioner finds release of that information necessary to protect
40 the public. The hearing shall be initiated within 20 days after
41 written notice to the dental service corporation. Any declaration
42 regarding an increase required by a subsequent revision or
43 redetermination shall contain findings specifying the factors
44 deemed significant in regard to the particular dental service
45 corporation, and shall set forth the reasons supporting the increase
46 of capital or surplus ordered by the commissioner. In determining
47 any increase, revision or redetermination in the amount of capital or
48 surplus, the commissioner shall consider the risks of:

- 1 a. Increases or decreases in the frequency and severity of losses
2 under normal operating conditions, as well as increases or decreases
3 in those values, above or below the levels contemplated by the rates
4 that the dental service corporation charged for coverage and above
5 or below those reasonably expected under normal conditions;
- 6 b. Increases or decreases in expenses under normal operating
7 conditions, as well as increases or decreases in those values, above
8 or below the levels contemplated by the rates the dental service
9 corporation charged for coverage and above or below those
10 reasonably expected under normal conditions;
- 11 c. Increases or decreases in the value of, or return on, invested
12 assets under normal operating conditions, as well as increases or
13 decreases in those values, above or below those levels anticipated
14 under normal conditions;
- 15 d. Changes in economic, social or market conditions that could
16 adversely or favorably affect the financial condition of the dental
17 service corporation, including conditions that would make liquidity
18 more or less important than contemplated and would prevent or
19 facilitate timely investments or force or prohibit untimely sales of
20 assets; and
- 21 e. Any other contingencies, including reinsurance and
22 unfunded or extra contractual obligations, which may affect the
23 dental service corporation's financial condition.
24
- 25 23. (New section) In determining any increase, revision or
26 redetermination in the capital or surplus of a dental service
27 corporation pursuant to the provisions of section 22 of P.L. ,
28 c. (C.) (pending before the Legislature as this bill) the
29 commissioner shall take into account the following factors:
- 30 a. Methods and techniques used to measure risk exposure and
31 variability;
- 32 b. The information available relating to the magnitude of the
33 various risks described in section 22 of P.L. , c. (C.)
34 (pending before the Legislature as this bill);
- 35 c. The extent to which risks described in section 22 of P.L. ,
36 c. (C.) (pending before the Legislature as this bill) are
37 independent or interrelated, and whether any dependency is direct
38 or inverse;
- 39 d. The extent to which the dental service corporation has
40 provided protection against contingencies in ways other than the
41 establishment of surplus, including, but not limited to: redundancy
42 of premiums; margin in reserves and liabilities; adjustability of
43 contracts pursuant to the terms of the contracts; voluntary or
44 mandatory investment valuation reserves; reinsurance; the use of
45 conservative actuarial assumptions to provide a margin of security;
46 reserve adjustments after rate increases for policies written at earlier
47 and less adequate rates; contingency or catastrophe reserves; and
48 diversification of assets and underwriting risk; and

1 e. Any other relevant factors, including the National
2 Association of Insurance Commissioners' reports and independent
3 judgments of the soundness of the dental service corporation's
4 financial condition, as evidenced by the rating and reports of
5 reliable professional financial services.

6
7 24. (New Section) The commissioner may suspend or revoke
8 the authority to do business in this State of any dental service
9 corporation that does not comply with the provisions of sections 21
10 through 25 of P.L. , c. (C.) (pending before the
11 Legislature as this bill).

12
13 25. (New section) The commissioner may promulgate
14 regulations pursuant to the "Administrative Procedure Act,"
15 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
16 purposes of sections 21 through 25 of P.L. , c. (C.)
17 (pending before the Legislature as this bill). Such rules and
18 regulations shall be consistent with the standards for risk based
19 capital for health organizations adopted by the National Association
20 of Insurance Commissioners.

21
22 26. (New section) As used in sections 26 through 30 of P.L. ,
23 c. (C.) (pending before the Legislature as this bill):

24 "Commissioner" means the Commissioner of Banking and
25 Insurance.

26 "Dental plan organization" means an entity authorized to transact
27 business in this State pursuant to P.L.1979, c.478 (C.17:48D-1 et
28 seq.).

29
30 27. (New section) The commissioner may increase the amount
31 of capital or surplus required of a dental plan organization, or
32 subsequently revise or redetermine that increase, using appropriate
33 methods and procedures established by rules and regulations
34 adopted by the commissioner, in order to provide adequate
35 protection against risks affecting the dental plan organization's
36 financial condition that are not adequately or fully covered by its
37 reserves or other assets, but under no circumstances shall a dental
38 plan organization's capital or surplus be less than the capital or
39 surplus required pursuant to regulation as prescribed by the
40 commissioner; provided, however, that any increase required by a
41 subsequent revision or redetermination pursuant to this section shall
42 be made only after a departmental hearing, unless that hearing is
43 waived by the affected dental plan organization. All matters
44 pertaining to a hearing or to an increase in capital or surplus
45 pursuant to this section shall be confidential and not subject to
46 subpoena or public inspection, except to the extent that the
47 commissioner finds release of that information necessary to protect
48 the public. The hearing shall be initiated within 20 days after

1 written notice to the dental plan organization. Any declaration
2 regarding an increase required by a subsequent revision or
3 redetermination shall contain findings specifying the factors
4 deemed significant in regard to the particular dental plan
5 organization, and shall set forth the reasons supporting the increase
6 of capital or surplus ordered by the commissioner. In determining
7 any increase, revision or redetermination in the amount of capital or
8 surplus, the commissioner shall consider the risks of:

9 a. Increases or decreases in the frequency and severity of losses
10 under normal operating conditions, as well as increases or decreases
11 in those values, above or below the levels contemplated by the rates
12 that the dental plan organization charged for coverage and above or
13 below those reasonably expected under normal conditions;

14 b. Increases or decreases in expenses under normal operating
15 conditions, as well as increases or decreases in those values, above
16 or below the levels contemplated by the rates the dental plan
17 organization charged for coverage and above or below those
18 reasonably expected under normal conditions;

19 c. Increases or decreases in the value of, or return on, invested
20 assets under normal operating conditions, as well as increases or
21 decreases in those values, above or below those levels anticipated
22 under normal conditions;

23 d. Changes in economic, social or market conditions that could
24 adversely or favorably affect the financial condition of the dental
25 plan organization, including conditions that would make liquidity
26 more or less important than contemplated and would prevent or
27 facilitate timely investments or force or prohibit untimely sales of
28 assets; and

29 e. Any other contingencies, including reinsurance and
30 unfunded or extra contractual obligations, which may affect the
31 dental plan organization's financial condition.

32
33 28. (New section) In determining any increase, revision or
34 redetermination in the capital or surplus of a dental plan
35 organization pursuant to the provisions of section 27 of P.L. ,
36 c. (C.) (pending before the Legislature as this bill) the
37 commissioner shall take into account the following factors:

38 a. Methods and techniques used to measure risk exposure and
39 variability;

40 b. The information available relating to the magnitude of the
41 various risks described in section 27 of P.L. , c. (C.)
42 (pending before the Legislature as this bill);

43 c. The extent to which risks described in section 27 of P.L. ,
44 c. (C.) (pending before the Legislature as this bill) are
45 independent or interrelated, and whether any dependency is direct
46 or inverse;

47 d. The extent to which the dental plan organization has
48 provided protection against contingencies in ways other than the

1 establishment of surplus, including, but not limited to: redundancy
2 of premiums; margin in reserves and liabilities; adjustability of
3 contracts pursuant to the terms of the contracts; voluntary or
4 mandatory investment valuation reserves; reinsurance; the use of
5 conservative actuarial assumptions to provide a margin of security;
6 reserve adjustments after rate increases for policies written at earlier
7 and less adequate rates; contingency or catastrophe reserves; and
8 diversification of assets and underwriting risk; and

9 e. Any other relevant factors, including the National
10 Association of Insurance Commissioners' reports and independent
11 judgments of the soundness of the dental plan organization's
12 financial condition, as evidenced by the rating and reports of
13 reliable professional financial services.
14

15 29. (New section) The commissioner may suspend or revoke the
16 authority to do business in this State of any dental plan organization
17 that does not comply with the provisions of sections 26 through 30
18 of P.L. , c. (C.) (pending before the Legislature as this
19 bill).
20

21 30. (New section) The commissioner may promulgate
22 regulations pursuant to the "Administrative Procedure Act,"
23 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
24 purposes of sections 26 through 30 of P.L. , c. (C.)
25 (pending before the Legislature as this bill). Such rules and
26 regulations shall be consistent with the standards for risk based
27 capital for health organizations adopted by the National Association
28 of Insurance Commissioners.
29

30 31. (New section) As used in sections 31 through 35 of P.L. ,
31 c. (C.) (pending before the Legislature as this bill):

32 "Commissioner" means the Commissioner of Banking and
33 Insurance.

34 "Health service corporation" means an entity authorized to
35 transact business in this State pursuant to P.L.1985, c.236
36 (C. 17:48E-1 et seq.).
37

38 32. (New section) The commissioner may increase the amount
39 of capital or surplus required of a health service corporation, or
40 subsequently revise or redetermine that increase, using appropriate
41 methods and procedures established by rules and regulations
42 adopted by the commissioner, in order to provide adequate
43 protection against risks affecting the health service corporation's
44 financial condition that are not adequately or fully covered by its
45 reserves or other assets, but under no circumstances shall a health
46 service corporation's capital or surplus be less than the capital or
47 surplus required pursuant to regulation as prescribed by the
48 commissioner; provided, however, that any increase required by a

1 subsequent revision or redetermination pursuant to this section shall
2 be made only after a departmental hearing, unless that hearing is
3 waived by the affected health service corporation. All matters
4 pertaining to a hearing or to an increase in capital or surplus
5 pursuant to this section shall be confidential and not subject to
6 subpoena or public inspection, except to the extent that the
7 commissioner finds release of that information necessary to protect
8 the public. The hearing shall be initiated within 20 days after
9 written notice to the health service corporation. Any declaration
10 regarding an increase required by a subsequent revision or
11 redetermination shall contain findings specifying the factors
12 deemed significant in regard to the particular health service
13 corporation, and shall set forth the reasons supporting the increase
14 of capital or surplus ordered by the commissioner. In determining
15 any increase, revision or redetermination in the amount of capital or
16 surplus, the commissioner shall consider the risks of:

17 a. Increases or decreases in the frequency and severity of losses
18 under normal operating conditions, as well as increases or decreases
19 in those values, above or below the levels contemplated by the rates
20 that the health service corporation charged for coverage and above
21 or below those reasonably expected under normal conditions;

22 b. Increases or decreases in expenses under normal operating
23 conditions, as well as increases or decreases in those values, above
24 or below the levels contemplated by the rates the health service
25 corporation charged for coverage and above or below those
26 reasonably expected under normal conditions;

27 c. Increases or decreases in the value of, or return on, invested
28 assets under normal operating conditions, as well as increases or
29 decreases in those values, above or below those levels anticipated
30 under normal conditions;

31 d. Changes in economic, social or market conditions that could
32 adversely or favorably affect the financial condition of the health
33 service corporation, including conditions that would make liquidity
34 more or less important than contemplated and would prevent or
35 facilitate timely investments or force or prohibit untimely sales of
36 assets; and

37 e. Any other contingencies, including reinsurance and
38 unfunded or extra contractual obligations, which may affect the
39 health service corporation's financial condition.

40

41 33. (New section) In determining any increase, revision or
42 redetermination in the capital or surplus of a health service
43 corporation pursuant to the provisions of section 32 of P.L. ,

44 c. (C.) (pending before the Legislature as this bill) the
45 commissioner shall take into account the following factors:

46 a. Methods and techniques used to measure risk exposure and
47 variability;

1 b. The information available relating to the magnitude of the
2 various risks described in section 32 of P.L. , c. (C.)
3 (pending before the Legislature as this bill);

4 c. The extent to which risks described in section 32 of P.L. ,
5 c. (C.) (pending before the Legislature as this bill) are
6 independent or interrelated, and whether any dependency is direct
7 or inverse;

8 d. The extent to which the health service corporation has
9 provided protection against contingencies in ways other than the
10 establishment of surplus, including, but not limited to: redundancy
11 of premiums; margin in reserves and liabilities; adjustability of
12 contracts pursuant to the terms of the contracts; voluntary or
13 mandatory investment valuation reserves; reinsurance; the use of
14 conservative actuarial assumptions to provide a margin of security;
15 reserve adjustments after rate increases for policies written at earlier
16 and less adequate rates; contingency or catastrophe reserves; and
17 diversification of assets and underwriting risk; and

18 e. Any other relevant factors, including the National
19 Association of Insurance Commissioners' reports and independent
20 judgments of the soundness of the health service corporation's
21 financial condition, as evidenced by the rating and reports of
22 reliable professional financial services.

23

24 34. (New Section) The commissioner may suspend or revoke the
25 authority to do business in this State of any health service
26 corporation that does not comply with the provisions of sections 31
27 through 35 of P.L. , c. (C.) (pending before the Legislature
28 as this bill).

29

30 35. (New section) The commissioner may promulgate
31 regulations pursuant to the "Administrative Procedure Act,"
32 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
33 purposes of sections 31 through 35 of P.L. , c. (C.)
34 (pending before the Legislature as this bill). Such rules and
35 regulations shall be consistent with the standards for risk based
36 capital for health organizations adopted by the National Association
37 of Insurance Commissioners.

38

39 36. (New section) As used in sections 36 through 40 of P.L. ,
40 c. (C.) (pending before the Legislature as this bill):

41 "Commissioner" means the Commissioner of Banking and
42 Insurance.

43 "Prepaid prescription service organization" means an entity
44 authorized to transact business in this State pursuant to P.L.1997,
45 c.380 (C.17:48F-1 et seq.).

46

47 37. (New section) The commissioner may increase the amount
48 of capital or surplus required of a prepaid prescription service

1 organization, or subsequently revise or redetermine that increase,
2 using appropriate methods and procedures established by rules and
3 regulations adopted by the commissioner, in order to provide
4 adequate protection against risks affecting the prepaid prescription
5 service organization's financial condition that are not adequately or
6 fully covered by its reserves or other assets, but under no
7 circumstances shall a prepaid prescription service organization's
8 capital or surplus be less than the capital or surplus required
9 pursuant to regulation as prescribed by the commissioner; provided,
10 however, that any increase required by a subsequent revision or
11 redetermination pursuant to this section shall be made only after a
12 departmental hearing, unless that hearing is waived by the affected
13 prepaid prescription service organization. All matters pertaining to
14 a hearing or to an increase in capital or surplus pursuant to this
15 section shall be confidential and not subject to subpoena or public
16 inspection, except to the extent that the commissioner finds release
17 of that information necessary to protect the public. The hearing
18 shall be initiated within 20 days after written notice to the prepaid
19 prescription service organization. Any declaration regarding an
20 increase required by a subsequent revision or redetermination shall
21 contain findings specifying the factors deemed significant in regard
22 to the particular prepaid prescription service organization, and shall
23 set forth the reasons supporting the increase of capital or surplus
24 ordered by the commissioner. In determining any increase, revision
25 or redetermination in the amount of capital or surplus, the
26 commissioner shall consider the risks of:

27 a. Increases or decreases in the frequency and severity of losses
28 under normal operating conditions, as well as increases or decreases
29 in those values, above or below the levels contemplated by the rates
30 that the prepaid prescription service organization charged for
31 coverage and above or below those reasonably expected under
32 normal conditions;

33 b. Increases or decreases in expenses under normal operating
34 conditions, as well as increases or decreases in those values, above
35 or below the levels contemplated by the rates the prepaid
36 prescription service organization charged for coverage and above or
37 below those reasonably expected under normal conditions;

38 c. Increases or decreases in the value of, or return on, invested
39 assets under normal operating conditions, as well as increases or
40 decreases in those values, above or below those levels anticipated
41 under normal conditions;

42 d. Changes in economic, social or market conditions that could
43 adversely or favorably affect the financial condition of the prepaid
44 prescription service organization, including conditions that would
45 make liquidity more or less important than contemplated and would
46 prevent or facilitate timely investments or force or prohibit
47 untimely sales of assets; and

1 e. Any other contingencies, including reinsurance and
2 unfunded or extra contractual obligations, which may affect the
3 prepaid prescription service organization's financial condition.
4

5 38. (New section) In determining any increase, revision or
6 redetermination in the capital or surplus of a prepaid prescription
7 service organization pursuant to the provisions of section 37 of
8 P.L., c. (C.) (pending before the Legislature as this bill) the
9 commissioner shall take into account the following factors:

10 a. Methods and techniques used to measure risk exposure and
11 variability;

12 b. The information available relating to the magnitude of the
13 various risks described in section 37 of P.L. , c. (C.)
14 (pending before the Legislature as this bill);

15 c. The extent to which risks described in section 37 of P.L. ,
16 c. (C.) (pending before the Legislature as this bill) are
17 independent or interrelated, and whether any dependency is direct
18 or inverse;

19 d. The extent to which the prepaid prescription services
20 organization has provided protection against contingencies in ways
21 other than the establishment of surplus, including, but not limited
22 to: redundancy of premiums; margin in reserves and liabilities;
23 adjustability of contracts pursuant to the terms of the contracts;
24 voluntary or mandatory investment valuation reserves; reinsurance;
25 the use of conservative actuarial assumptions to provide a margin of
26 security; reserve adjustments after rate increases for policies written
27 at earlier and less adequate rates; contingency or catastrophe
28 reserves; and diversification of assets and underwriting risk; and

29 e. Any other relevant factors, including the National
30 Association of Insurance Commissioners' reports and independent
31 judgments of the soundness of the prepaid prescription service
32 organization's financial condition, as evidenced by the rating and
33 reports of reliable professional financial services.
34

35 39. (New section) The commissioner may suspend or revoke the
36 authority to do business in this State of any prepaid prescription
37 services organization that does not comply with the provisions of
38 sections 36 through 40 of P.L. , c. (C.) (pending before the
39 Legislature as this bill).
40

41 40. (New section) The commissioner may promulgate
42 regulations pursuant to the "Administrative Procedure Act,"
43 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
44 purposes of sections 36 through 40 of P.L. , c. (C.)
45 (pending before the Legislature as this bill). Such rules and
46 regulations shall be consistent with the standards for risk based
47 capital for health organizations adopted by the National Association
48 of Insurance Commissioners.

1 41. (New section) As used in sections 41 through 45 of P.L. ,
2 c. (C.) (pending before the Legislature as this bill):

3 “Commissioner” means the Commissioner of Banking and
4 Insurance.

5 “Licensed organized delivery system” means an entity authorized
6 to transact business in this State as a licensed organized delivery
7 system pursuant to P.L.1999, c.409 (C.17:48H-1 et seq.).

8
9 42. (New section) The commissioner may increase the amount
10 of capital or surplus required of a licensed organized delivery
11 system, or subsequently revise or redetermine that increase, using
12 appropriate methods and procedures established by rules and
13 regulations adopted by the commissioner, in order to provide
14 adequate protection against risks affecting the licensed organized
15 delivery system's financial condition that are not adequately or fully
16 covered by its reserves or other assets, but under no circumstances
17 shall a licensed organized delivery system's capital or surplus be
18 less than the capital or surplus required pursuant to regulation as
19 prescribed by the commissioner; provided, however, that any
20 increase required by a subsequent revision or redetermination
21 pursuant to this section shall be made only after a departmental
22 hearing, unless that hearing is waived by the affected licensed
23 organized delivery system. All matters pertaining to a hearing or to
24 an increase in capital or surplus pursuant to this section shall be
25 confidential and not subject to subpoena or public inspection,
26 except to the extent that the commissioner finds release of that
27 information necessary to protect the public. The hearing shall be
28 initiated within 20 days after written notice to the licensed
29 organized delivery system. Any declaration regarding an increase
30 required by a subsequent revision or redetermination shall contain
31 findings specifying the factors deemed significant in regard to the
32 particular licensed organized delivery system, and shall set forth the
33 reasons supporting the increase of capital or surplus ordered by the
34 commissioner. In determining any increase, revision or
35 redetermination in the amount of capital or surplus, the
36 commissioner shall consider the risks of:

37 a. Increases or decreases in the frequency and severity of losses
38 under normal operating conditions, as well as increases or decreases
39 in those values, above or below the levels contemplated by the rates
40 that the licensed organized delivery system charged for coverage
41 and above or below those reasonably expected under normal
42 conditions;

43 b. Increases or decreases in expenses under normal operating
44 conditions, as well as increases or decreases in those values, above
45 or below the levels contemplated by the rates the licensed organized
46 delivery system charged for coverage and above or below those
47 reasonably expected under normal conditions;

1 c. Increases or decreases in the value of, or return on, invested
2 assets under normal operating conditions, as well as increases or
3 decreases in those values, above or below those levels anticipated
4 under normal conditions;

5 d. Changes in economic, social or market conditions that could
6 adversely or favorably affect the financial condition of the licensed
7 organized delivery system, including conditions that would make
8 liquidity more or less important than contemplated and would
9 prevent or facilitate timely investments or force or prohibit
10 untimely sales of assets; and

11 e. Any other contingencies, including reinsurance and
12 unfunded or extra contractual obligations, which may affect the
13 licensed organized delivery system's financial condition.

14

15 43. (New section) In determining any increase, revision or
16 redetermination in the capital or surplus of a licensed organized
17 delivery system pursuant to the provisions of section 42 of P.L. ,

18 c. (C.) (pending before the Legislature as this bill) the
19 commissioner shall take into account the following factors:

20 a. Methods and techniques used to measure risk exposure and
21 variability;

22 b. The information available relating to the magnitude of the
23 various risks described in section 42 of P.L. , c. (C.)
24 (pending before the Legislature as this bill);

25 c. The extent to which risks described in section 42 of P.L. ,
26 c. (C.) (pending before the Legislature as this bill) are
27 independent or interrelated, and whether any dependency is direct
28 or inverse;

29 d. The extent to which the licensed organized delivery system
30 has provided protection against contingencies in ways other than the
31 establishment of surplus, including, but not limited to: redundancy
32 of premiums; margin in reserves and liabilities; adjustability of
33 contracts pursuant to the terms of the contracts; voluntary or
34 mandatory investment valuation reserves; reinsurance; the use of
35 conservative actuarial assumptions to provide a margin of security;
36 reserve adjustments after rate increases for policies written at earlier
37 and less adequate rates; contingency or catastrophe reserves; and
38 diversification of assets and underwriting risk; and

39 e. Any other relevant factors, including the National
40 Association of Insurance Commissioners' reports and independent
41 judgments of the soundness of the licensed organized delivery
42 system's financial condition, as evidenced by the rating and reports
43 of reliable professional financial services.

44

45 44. (New section) The commissioner may suspend or revoke the
46 authority to do business in this State of any licensed organized
47 delivery system that does not comply with the provisions of

1 sections 41 through 45 of P.L. , c. (C.) (pending before
2 the Legislature as this bill).

3

4 45. (New section) The commissioner may promulgate
5 regulations pursuant to the "Administrative Procedure Act,"
6 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
7 purposes of sections 41 through 45 of P.L. , c. (C.)
8 (pending before the Legislature as this bill). Such rules and
9 regulations shall be consistent with the standards for risk based
10 capital for health organizations adopted by the National Association
11 of Insurance Commissioners.

12

13 46. (New section) a. The purpose of sections 46 through 56 of
14 P.L. , c. (C.) (pending before the Legislature as this bill)
15 is to provide the requirements for maintaining a risk management
16 framework and completing an Own Risk and Solvency Assessment
17 (ORSA) and provide guidance and instructions for filing an ORSA
18 Summary Report with the Commissioner of Banking and Insurance.

19 b. The requirements of sections 46 through 56 of P.L. ,
20 c. (C.) (pending before the Legislature as this bill) shall apply
21 to all insurers domiciled in this State unless exempt pursuant to
22 section 51 of P.L. , c. (C.) (pending before the
23 Legislature as this bill).

24 c. The Legislature finds and declares that the ORSA Summary
25 Report shall contain confidential and sensitive information related
26 to an insurer or insurance group's identification of risks material
27 and relevant to the insurer or insurance group filing the report. This
28 information will include proprietary and trade secret information
29 that has the potential for harm and competitive disadvantage to the
30 insurer or insurance group if the information is made public. It is
31 the intent of this Legislature that, notwithstanding any other law to
32 the contrary, the ORSA Summary Report shall be a confidential
33 document filed with the commissioner, that the ORSA Summary
34 Report shall be shared only as stated herein and to assist the
35 commissioner in the performance of his or her duties, and that in no
36 event shall the ORSA Summary Report be subject to public
37 disclosure.

38

39 47. (New section) For the purposes of sections 46 through 56 of
40 P.L. , c. (C.) (pending before the Legislature as this bill):
41 "Commissioner" means the Commissioner of Banking and
42 Insurance.

43 "Insurance group" for the purpose of conducting an ORSA,
44 means those insurers and affiliates included within an insurance
45 holding company system as defined in P.L.1970, c.22 (C.17:27A-1
46 et seq.).

47 "Insurer" shall have the same meaning as set forth in section 2 of
48 P.L.1993, c.236 (C.17:23-21), except that it shall not include

1 agencies, authorities or instrumentalities of the United States, its
2 possessions and territories, the Commonwealth of Puerto Rico, the
3 District of Columbia, or a state or political subdivision of a state.

4 “Own Risk and Solvency Assessment” or “ORSA” means a
5 confidential internal assessment, appropriate to the nature, scale and
6 complexity of an insurer or insurance group, conducted by that
7 insurer or insurance group of the material and relevant risks
8 associated with the insurer or insurance group’s current business
9 plan, and the sufficiency of capital resources to support those risks.

10 “ORSA Guidance Manual” means the current version of the *Own*
11 *Risk and Solvency Assessment Guidance Manual* developed and
12 adopted by the National Association of Insurance Commissioners
13 (NAIC) and as amended from time to time. A change in the ORSA
14 Guidance Manual shall be effective on the January 1 following the
15 calendar year in which the changes have been adopted by the NAIC.

16 “ORSA Summary Report” means a confidential high-level
17 summary of an insurer or insurance group’s ORSA.

18

19 48. (New section) An insurer shall maintain a risk management
20 framework to assist the insurer with identifying, assessing,
21 monitoring, managing and reporting on its material and relevant
22 risks. This requirement may be satisfied if the insurance group of
23 which the insurer is a member maintains a risk management
24 framework applicable to the operations of the insurer.

25

26 49. (New section) Except as provided in section 51 of P.L. ,
27 c. (C.) (pending before the Legislature as this bill), an
28 insurer, or the insurance group of which the insurer is a member,
29 shall regularly conduct an ORSA consistent with a process
30 comparable to the ORSA Guidance Manual. The ORSA shall be
31 conducted no less than annually but also at any time when there are
32 significant changes to the risk profile of the insurer or the insurance
33 group of which the insurer is a member.

34

35 50. (New section) a. Upon the commissioner’s request, and no
36 more than once each year, an insurer shall submit to the
37 commissioner an ORSA Summary Report or any combination of
38 reports that together contain the information described in the ORSA
39 Guidance Manual applicable to the insurer or the insurance group of
40 which it is a member. Notwithstanding any request from the
41 commissioner, if the insurer is a member of an insurance group, the
42 insurer shall submit the report or reports required by this subsection
43 if the commissioner is the lead state commissioner of the insurance
44 group as determined by the procedures within the Financial
45 Analysis Handbook adopted by the National Association of
46 Insurance Commissioners.

47 b. The report or reports shall include a signature of the insurer
48 or insurance group’s chief risk officer or other executive having

1 responsibility for the oversight of the insurer's enterprise risk
2 management process attesting to the best of the individual's belief
3 and knowledge that the insurer applies the enterprise risk
4 management process described in the ORSA Summary Report and
5 that a copy of the report has been provided to the insurer's board of
6 directors or the appropriate committee thereof.

7 c. An insurer may comply with subsection a. of this section by
8 providing the most recent and substantially similar report or reports
9 provided by the insurer or another member of an insurance group of
10 which the insurer is a member to the commissioner of another state
11 or to a supervisor or regulator of a foreign jurisdiction, if that report
12 provides information that is comparable to the information
13 described in the ORSA Guidance Manual. Any such report in a
14 language other than English must be accompanied by a translation
15 of that report into the English language.

16
17 51. (New section) a. An insurer shall be exempt from the
18 requirements of sections 46 through 56 of P.L. , c. (C.)
19 (pending before the Legislature as this bill), if:

20 (1) The insurer has annual direct written and unaffiliated
21 assumed premium, including international direct and assumed
22 premium but excluding premiums reinsured with the Federal Crop
23 Insurance Corporation and National Flood Insurance Program, less
24 than \$500,000,000; and

25 (2) The insurance group of which the insurer is a member has
26 annual direct written and unaffiliated assumed premium including
27 international direct and assumed premium, but excluding premiums
28 reinsured with the Federal Crop Insurance Corporation and National
29 Flood Insurance Program, less than \$1,000,000,000.

30 b. If an insurer qualifies for exemption pursuant to paragraph
31 (1) of subsection a. of this section, but the insurance group of which
32 the insurer is a member does not qualify for exemption pursuant to
33 paragraph (2) of subsection a. of this section, then the ORSA
34 Summary Report that may be required pursuant to section 50 of
35 P.L. c. (C.) (pending before the Legislature as this bill),
36 shall include every insurer within the insurance group. This
37 requirement may be satisfied by the submission of more than one
38 ORSA Summary Report for any combination of insurers so long as
39 any combination of reports includes every insurer within the
40 insurance group.

41 c. If an insurer does not qualify for exemption pursuant to
42 paragraph (1) of subsection a. of this section, but the insurance
43 group of which it is a member qualifies for exemption pursuant to
44 paragraph (2) of subsection a. of this section, then the only ORSA
45 Summary Report that may be required pursuant section 50 of P.L. ,
46 c. (C.) (pending before the Legislature as this bill) shall be
47 the report applicable to that insurer.

1 d. An insurer that does not qualify for exemption pursuant to
2 subsection a. of this section may apply to the commissioner for a
3 waiver from the requirements of sections 46 through 56 of P.L. ,
4 c. (C.) (pending before the Legislature as this bill) based
5 upon unique circumstances. In deciding whether to grant the
6 insurer's request for waiver, the commissioner may consider the
7 type and volume of business written, ownership and organizational
8 structure, and any other factor the commissioner considers relevant
9 to the insurer or insurance group of which the insurer is a member.
10 If the insurer is part of an insurance group with insurers domiciled
11 in more than one state, the commissioner shall coordinate with the
12 lead state commissioner and with the other domiciliary
13 commissioners in considering whether to grant the insurer's request
14 for a waiver.

15 e. Notwithstanding the exemptions stated in this section:

16 (1) The commissioner may require that an insurer maintain a
17 risk management framework, conduct an ORSA and file an ORSA
18 Summary Report based on unique circumstances including, but not
19 limited to, the type and volume of business written, ownership and
20 organizational structure, federal agency requests, and international
21 supervisor requests.

22 (2) The commissioner may require that an insurer maintain a
23 risk management framework, conduct an ORSA and file an ORSA
24 Summary Report if:

25 (a) the insurer has risk-based capital for company action level
26 event as set forth in applicable regulations of this State governing
27 risk-based capital;

28 (b) meets one or more of the standards of an insurer deemed to
29 be in hazardous financial condition as defined in applicable
30 regulations of this State defining standards and commissioner's
31 authority over companies deemed to be in hazardous financial
32 condition; or

33 (c) otherwise exhibits qualities of a troubled insurer as
34 determined by the commissioner.

35 f. If an insurer that qualifies for an exemption pursuant to
36 subsection a. of this section subsequently no longer qualifies for
37 that exemption due to changes in premium as reflected in the
38 insurer's most recent annual statement or in the most recent annual
39 statements of the insurers within the insurance group of which the
40 insurer is a member, the insurer shall have one year following the
41 year in which the threshold is exceeded to comply with the
42 requirements of sections 46 through 56 of P.L. , c. (C.)
43 (pending before the Legislature as this bill).

44
45 52. (New section) a. The ORSA Summary Report shall be
46 prepared consistent with the ORSA Guidance Manual, subject to the
47 requirements of subsection b. of this section. Documentation and

1 supporting information shall be maintained and made available
2 upon examination or upon request of the commissioner.

3 b. The review of the ORSA Summary Report, and any
4 additional requests for information, shall be made using similar
5 procedures currently used in the analysis and examination of multi-
6 state or global insurers and insurance groups.

7
8 53. (New section) a. Documents, materials or other
9 information, including the ORSA Summary Report, in the
10 possession of or control of the Department of Banking and
11 Insurance that are obtained by, created by or disclosed to the
12 commissioner or any other person pursuant to sections 46 through
13 56 of P.L. , c. (C.) (pending before the Legislature as this
14 bill), shall be recognized by this State as being proprietary and to
15 contain trade secrets. All such documents, materials or other
16 information shall be confidential by law and privileged, shall not be
17 subject to P.L.1963, c.71 (C.47:1A-1 et seq.), shall not be subject to
18 subpoena, and shall not be subject to discovery or admissible in
19 evidence in any private civil action. However, the commissioner is
20 authorized to use the documents, materials or other information in
21 the furtherance of any regulatory or legal action brought as a part of
22 the commissioner's official duties. The commissioner shall not
23 otherwise make the documents, materials or other information
24 public without the prior written consent of the insurer.

25 b. Neither the commissioner nor any person who received
26 documents, materials or other ORSA-related information, through
27 examination or otherwise, while acting under the authority of the
28 commissioner or with whom such documents, materials or other
29 information are shared pursuant to sections 46 through 56 of P.L. ,
30 c. (C.) (pending before the Legislature as this bill) shall be
31 permitted or required to testify in any private civil action
32 concerning any confidential documents, materials, or information
33 subject to subsection a. of this section.

34 c. In order to assist in the performance of the commissioner's
35 regulatory duties, the commissioner:

36 (1) May, upon request, share documents, materials or other
37 ORSA-related information, including the confidential and
38 privileged documents, materials or information subject to
39 subsection a. of this section, including proprietary and trade secret
40 documents and materials with other state, federal and international
41 financial regulatory agencies, including members of any
42 supervisory college as defined in section 7 of P.L. , c. (C.)
43 (pending before the Legislature as this bill), with the National
44 Association of Insurance Commissioners (NAIC) and with any
45 third-party consultants designated by the commissioner, provided
46 that the recipient agrees in writing to maintain the confidentiality
47 and privileged status of the ORSA-related documents, materials or

1 other information and has verified in writing the legal authority to
2 maintain confidentiality; and

3 (2) May receive documents, materials or other ORSA-related
4 information, including otherwise confidential and privileged
5 documents, materials or information, including proprietary and
6 trade-secret information or documents, from regulatory officials of
7 other foreign or domestic jurisdictions, including members of any
8 supervisory college as defined in section 7 of P.L. , c. (C.)
9 (pending before the Legislature as this bill), and from the NAIC,
10 and shall maintain as confidential or privileged any documents,
11 materials or information received with notice or the understanding
12 that it is confidential or privileged under the laws of the jurisdiction
13 that is the source of the document, material or information.

14 (3) Shall enter into a written agreement with the NAIC or a
15 third-party consultant governing sharing and use of information
16 provided pursuant to sections 46 through 56 of P.L. , c. (C.)
17 (pending before the Legislature as this bill), consistent with this
18 subsection c. that shall:

19 (a) Specify procedures and protocols regarding the
20 confidentiality and security of information shared with the NAIC or
21 a third-party consultant pursuant to sections 46 through 56 of P.L. ,
22 c. (C.) (pending before the Legislature as this bill), including
23 procedures and protocols for sharing by the NAIC with other state
24 regulators from states in which the insurance group has domiciled
25 insurers. The agreement shall provide that the recipient agrees in
26 writing to maintain the confidentiality and privileged status of the
27 ORSA-related documents, materials or other information and has
28 verified in writing the legal authority to maintain confidentiality;

29 (b) Specify that ownership of information shared with the NAIC
30 or a third-party consultant pursuant to sections 46 through 56 of
31 P.L. , c. (C.) (pending before the Legislature as this bill)
32 remains with the commissioner, and the NAIC's or a third-party
33 consultant's use of the information is subject to the direction of the
34 commissioner;

35 (c) Prohibit the NAIC or third-party consultant from storing the
36 information shared pursuant to sections 46 through 56 of P.L. ,
37 c. (C.) (pending before the Legislature as this bill) in a
38 permanent database after the underlying analysis is completed;

39 (d) Require prompt notice to be given to an insurer whose
40 confidential information in the possession of the NAIC or a third-
41 party consultant pursuant to sections 46 through 56 of P.L. ,
42 c. (C.) (pending before the Legislature as this bill) is subject to a
43 request or subpoena to the NAIC or a third-party consultant for
44 disclosure or production;

45 (e) Require the NAIC or a third-party consultant to consent to
46 intervention by an insurer in any judicial or administrative action in
47 which the NAIC or a third-party consultant may be required to
48 disclose confidential information about the insurer shared with the

1 NAIC or a third-party consultant pursuant to sections 46 through
2 56 of P.L. , c. (C.) (pending before the Legislature as this
3 bill); and

4 (f) In the case of an agreement involving a third-party
5 consultant, provide for the insurer's written consent.

6 d. The sharing of information and documents by the
7 commissioner pursuant to sections 46 through 56 of P.L. ,
8 c. (C.) (pending before the Legislature as this bill) shall not
9 constitute a delegation of regulatory authority or rulemaking, and
10 the commissioner is solely responsible for the administration,
11 execution and enforcement of the provisions of sections 46 through
12 56 of P.L. , c. (C.) (pending before the Legislature as this
13 bill).

14 e. No waiver of any applicable privilege or claim of
15 confidentiality in the documents, proprietary and trade-secret
16 materials or other ORSA-related information shall occur as a result
17 of disclosure of such ORSA-related information or documents to
18 the commissioner pursuant to this section or as a result of sharing as
19 authorized in sections 46 through 56 of P.L. , c. (C.)
20 (pending before the Legislature as this bill).

21 f. Documents, materials or other information in the possession
22 or control of the NAIC or a third-party consultants pursuant to
23 sections 46 through 56 of P.L. , c. (C.) (pending before the
24 Legislature as this bill) shall be confidential by law and privileged,
25 shall not be subject to P.L.1963, c.71 (C.47:1A-1 et seq.), shall not
26 be subject to subpoena, and shall not be subject to discovery or
27 admissible in evidence in any private civil action.

28

29 54. (New section) Any insurer failing, without just cause, to
30 timely file the ORSA Summary Report as required in sections 46
31 through 56 of P.L. , c. (C.) (pending before the
32 Legislature as this bill) shall be required, after notice and
33 opportunity for a hearing, to pay a penalty of up to \$5,000 for each
34 day's delay, to be recovered by the commissioner and the penalty so
35 recovered shall be paid into the General Fund of this State.

36

37 55. (New section) If any provision of sections 46 through 56 of
38 P.L. , c. (C.) (pending before the Legislature as this bill),
39 or the application thereof to any person or circumstance, is held
40 invalid, such determination shall not affect the provisions or
41 applications of sections 46 through 56 of P.L. , c. (C.)
42 (pending before the Legislature as this bill) which can be given
43 effect without the invalid provision or application, and to that end
44 the provisions of sections 46 through 56 of P.L. , c. (C.)
45 (pending before the Legislature as this bill) are severable.

1 56. (New section) The first filing of the ORSA Summary Report
2 shall be in 2015 pursuant to section 50 of P.L. , c. (C.)
3 (pending before the Legislature as this bill).

4
5 57. Section 6 of P.L.1996, c.45 (C.17:1-15) is amended to read
6 as follows:

7 6. The commissioner, as administrator and chief executive
8 **【office】** officer of the department, shall:

9 a. Administer the work of the department;

10 b. Appoint and remove officers and other personnel employed
11 within the department, subject to the provisions of Title 11A of the
12 New Jersey Statutes, and other applicable statutes, except as
13 otherwise specifically provided;

14 c. Perform, exercise and discharge the functions, powers and
15 duties of the department through those divisions established by law
16 or as the commissioner deems necessary;

17 d. Organize the work of the department pursuant to the
18 structure or organizational units the commissioner determines to be
19 necessary for efficient and effective operation, and which are not
20 inconsistent with the provisions of this 1996 amendatory and
21 supplementary act;

22 e. Formulate, adopt, issue and promulgate, pursuant to the
23 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
24 seq.), in the name of the department, rules and regulations
25 authorized by law for the efficient conduct of the work and general
26 administration of the department, and the appropriate regulation of
27 the institutions, companies, agencies, boards, commissions, and
28 other entities within its jurisdiction, including licensees, officers
29 and employees as authorized by law;

30 f. Determine all matters of policy within the commissioner's
31 jurisdiction;

32 g. Institute or cause to be instituted the legal proceedings or
33 processes necessary to enforce properly and give effect to any of the
34 commissioner's powers or duties;

35 h. Make a report each year to the Governor and to the
36 Legislature of the department's operations for the preceding fiscal
37 year, and render such other reports as the Governor shall from time
38 to time request, or as may be required by law;

39 i. Appoint advisory committees which may be desirable to
40 advise and assist the department or a division in carrying out its
41 functions and duties;

42 j. Have the power, in addition to any powers prescribed by
43 law, to order any person violating any provision of Title 17 of the
44 Revised Statutes or Title 17B of the New Jersey Statutes to cease
45 and desist from engaging in such conduct;

46 k. Perform such other functions as may be prescribed by law in
47 this act or by any other law; and

1 **[k.]** 1. Maintain suitable headquarters for the department and
2 such other quarters as the commissioner shall deem necessary to the
3 proper functioning of the department.

4 (cf: P.L.1996, c.45, s.6)

5

6 58. (New section) For the purposes of chapter 19 of Title 17B
7 of the New Jersey Statutes, N.J.S.17B:25-19, and sections 58, 60,
8 63, 64, 65 and 66 of P.L. , c. (C.) (pending before the
9 Legislature as this bill) the following definitions shall apply on or
10 after the operative date of the valuation manual:

11 “Accident and health insurance” means a contract that
12 incorporates morbidity risk and provides protection against
13 economic loss resulting from accident, sickness, or medical
14 conditions and as may be specified in the valuation manual.

15 “Appointed actuary” means a qualified actuary who is appointed
16 in accordance with the valuation manual to prepare the actuarial
17 opinion required in subsection e. of section 2 of P.L.1995, c.339
18 (C.17B:19-10).

19 “Company” means an entity, which:

20 (1) has written, issued, or reinsured life insurance contracts,
21 accident and health insurance contracts, or deposit-type contracts in
22 this State and has at least one such policy in force or on claim; or

23 (2) has written, issued, or reinsured life insurance contracts,
24 accident and health insurance contracts, or deposit-type contracts in
25 any state and is required to hold a certificate of authority to write
26 life insurance, accident and health insurance, or deposit-type
27 contracts in this State.

28 “Deposit-type contract” means contracts that do not incorporate
29 mortality or morbidity risks and as may be specified in the
30 valuation manual.

31 “Life insurance” means contracts that incorporate mortality risk,
32 including annuity and pure endowment contracts, and as may be
33 specified in the valuation manual.

34 “NAIC” means the National Association of Insurance
35 Commissioners.

36 “Policyholder behavior” means any action a policyholder,
37 contract holder or any other person with the right to elect options,
38 such as a certificate holder, may take under a policy or contract
39 subject to sections 58, 60, 63, 64, 65 and 66 of P.L. , c. (C.)
40 (pending before the Legislature as this bill) including, but not
41 limited to, lapse, withdrawal, transfer, deposit, premium payment,
42 loan, annuitization, or benefit elections prescribed by the policy or
43 contract but excluding events of mortality or morbidity that result in
44 benefits prescribed in their essential aspects by the terms of the
45 policy or contract.

46 “Principle-based valuation” means a reserve valuation that uses
47 one or more methods or one or more assumptions determined by the
48 insurer and is required to comply with section 64 of P.L. , c. (C.)

1 (pending before the Legislature as this bill) as specified in the
2 valuation manual.

3 “Qualified actuary” means an individual who is qualified to sign
4 the applicable statement of actuarial opinion in accordance with the
5 American Academy of Actuaries qualification standards for
6 actuaries signing such statements and who meets the requirements
7 specified in the valuation manual.

8 “Tail risk” means a risk that occurs either where the frequency of
9 low probability events is higher than expected under a normal
10 probability distribution or where there are observed events of very
11 significant size or magnitude.

12 “Valuation manual” means the manual of valuation instructions
13 adopted by the NAIC as specified in sections 58, 60, 63, 64, 65 and
14 66 of P.L. , c. (C.) (pending before the Legislature as this
15 bill) or as subsequently amended.

16

17 59. N.J.S.17B:19-2 is amended to read as follows:

18 17B:19-2. The commissioner shall annually value, or cause to be
19 valued, the reserve liabilities (hereinafter called reserves) for all
20 outstanding life insurance policies and annuity and pure endowment
21 contracts of every life insurer doing business in this State issued
22 prior to the operative date of the valuation manual, except that in
23 the case of an alien insurer, such valuation shall be limited to its
24 United States business, and may certify the amount of any such
25 reserves, specifying the mortality table or tables, rate or rates of
26 interest and methods (net level premium method or other) used in
27 the calculation of such reserves. All valuations made by him or by
28 his authority shall be upon the net premium basis or such
29 modifications thereof as are provided by law. In calculating such
30 reserves, he may use group methods and approximate averages for
31 fractions of a year or otherwise and, with the concurrence of the
32 insurer, make classifications of benefits by years of issue according
33 to such relevant factors as the date as of which the rated age of the
34 insured is determined, the date as of which the benefits have been
35 provided or the premium rates have been changed, or, for policies
36 under which premium rates are guaranteed for a limited period of
37 time, the most recent date as of which the insurer had the right to
38 modify those premium rates. In lieu of the valuation of the reserves
39 herein required of any foreign or alien insurer, he may accept any
40 valuation made, or caused to be made, by the insurance supervisory
41 official of any state or other jurisdiction when such valuation
42 complies with the minimum standards provided by law and if the
43 official of such state or jurisdiction accepts as sufficient and valid
44 for all legal purposes the certificate of valuation of the
45 commissioner when such certificate states the valuation to have
46 been made in a specified manner according to which the aggregate
47 reserves would be at least as large as if they had been computed in
48 the manner prescribed by the law of that state or jurisdiction.

1 Any such insurer which at any time shall have adopted any
2 standard of valuation producing greater aggregate reserves than
3 those calculated according to the minimum standards provided by
4 law may, with the approval of the commissioner, adopt any lower
5 standard of valuation, but not lower than the minimum standards so
6 provided.

7 Except in the case of policies for which the reserve liabilities are
8 valued on the basis of the provisions of the standard valuation law
9 contained in **[section]** N.J.S.17B:19-8 or policies issued on or after
10 the operative date of the valuation manual, all valuations made by
11 the commissioner or by his authority shall be upon the net premium
12 basis, or such modification thereof as hereinafter expressly
13 provided; and all policies issued prior to January 1, 1901, shall be
14 valued according to the actuaries' table of mortality, with compound
15 interest at the rate of 4% per annum, except in cases where a life
16 insurer elects or has elected to have the policies or any class thereof
17 valued according to the American Experience table of mortality, or
18 according to the American Men Ultimate table of mortality, with
19 compound interest at the rate of either 3% or 3 1/2 % per annum or
20 with the approval of the commissioner at a rate of less than 3% per
21 annum; and all policies issued on or after January 1, 1901, shall be
22 valued according to the American Experience table of mortality,
23 with compound interest at the rate of 3 1/2 % per annum, except in
24 cases where a life insurer elects or has elected to have such policies
25 or any class thereof valued according to the American Experience
26 table of mortality with compound interest at a rate of less than 3 1/2
27 % per annum but not less than 3% per annum or with the approval
28 of the commissioner at a rate of less than 3% per annum; and except
29 in cases where any life insurer with the approval of the
30 commissioner may elect or shall have elected to have its ordinary
31 policies or any class thereof valued according to the American Men
32 Ultimate table of mortality, with compound interest at a rate which
33 is not more than 3 1/2 % per annum. The minimum standard for the
34 valuation of group term insurance policies under which premium
35 rates are not guaranteed for a period in excess of 5 years shall be
36 the American Men Ultimate table of mortality with interest at 3 1/2
37 % per annum. The commissioner may vary the standards of interest
38 and mortality in the case of annuities and industrial policies and of
39 invalid lives and other extra hazards. When the actual premium
40 charged for an insurance policy is less than the net premium for the
41 insurance, computed according to the table of mortality, and the rate
42 of interest prescribed herein, the value of the policy shall be
43 increased by the value of an annuity, the amount of which shall
44 equal the difference between the premiums and the term of which in
45 years shall equal the number of future annual payments receivable
46 on the insurance after the date of valuation.

47 Reserves for all policies and contracts to which the foregoing
48 standards apply may be calculated, at the option of the insurer,

1 according to any standards which produce greater aggregate
2 reserves for all such policies and contracts than the minimum
3 reserves required by this section.
4 (cf: P.L.1981, c.285, s.1)

5
6 60. (New section) The commissioner shall annually value, or
7 cause to be valued, the reserve liabilities (hereinafter called
8 reserves) for all outstanding life insurance contracts, annuity and
9 pure endowment contracts, accident and health contracts, and
10 deposit-type contracts of every company issued on or after the
11 operative date of the valuation manual. In lieu of the valuation of
12 the reserves required of a foreign or alien company, the
13 commissioner may accept a valuation made, or caused to be made,
14 by the insurance supervisory official of any State or other
15 jurisdiction when the valuation complies with the minimum
16 standard provided in sections 58, 60, 63, 64, 65 and 66 of P.L. ,
17 c. (C.) (pending before the Legislature as this bill). The
18 provisions set forth in sections 63 and 64 of P.L. , c. (C.)
19 (pending before the Legislature as this bill) shall apply to all
20 policies and contracts issued on or after the operative date of the
21 valuation manual.

22
23 61. N.J.S.17B:19-5 is amended to read as follows:

24 17B:19-5. The commissioner shall annually make or cause to be
25 made or shall annually require the insurer to make calculations of
26 policy and loss reserves for accident and health insurance written by
27 insurers authorized to write accident and health insurance in this
28 State as defined in N.J.S.17B:17-4. The commissioner shall
29 promulgate regulations establishing the minimum standards
30 applicable to the valuation of accident and health insurance
31 reserves.
32 (cf: P.L.2001, c.2, s.3)

33
34 62. Section 2 of P.L.1995, c.339 (C.17B:19-10) is amended to
35 read as follows:

36 2. a. **【Every】** For years ending prior to the operative date of
37 the valuation manual every, insurer authorized to transact life,
38 health or annuity business and every fraternal benefit society doing
39 business in this State shall annually submit the opinion of a
40 qualified actuary as to whether the reserves and related actuarial
41 items held in support of the policies and contracts specified by the
42 commissioner by regulation are: computed appropriately; based on
43 assumptions which satisfy contractual provisions; and consistent
44 with prior reported amounts and comply with applicable laws of this
45 State. The commissioner shall define by regulation the specifics of
46 this opinion and add such other items deemed to be necessary to its
47 scope.

1 b. (1) Every insurer authorized to transact life, health or
2 annuity business and every fraternal benefit society, except as
3 exempted by the commissioner by regulation, shall also annually
4 include in the opinion required pursuant to subsection a. of this
5 section, an opinion of the same qualified actuary as to whether the
6 reserves and related actuarial items held in support of the policies
7 and contracts specified by the commissioner by regulation, when
8 considered in light of the assets held by the insurer or society with
9 respect to the reserves and related actuarial items, including, but not
10 limited to, the investment earnings on the assets and the
11 considerations anticipated to be received and retained under the
12 policies and contracts, make adequate provision for the insurer's or
13 society's obligations under the policies and contracts, including, but
14 not limited to, the benefits under and expenses associated with the
15 policies and contracts.

16 (2) The commissioner may provide by regulation for a transition
17 period for establishing any higher reserves which the qualified
18 actuary may deem necessary in order to render the opinion required
19 by this section.

20 c. Each opinion required pursuant to subsection b. of this
21 section shall be governed by the following provisions:

22 (1) A memorandum, in form and substance acceptable to the
23 commissioner as specified by regulation, shall be prepared to
24 support each actuarial opinion.

25 (2) If the insurer or society fails to provide a supporting
26 memorandum at the request of the commissioner within a period
27 specified by regulation, or the commissioner determines that the
28 supporting memorandum provided by the insurer or society fails to
29 meet the standards prescribed by regulation or is otherwise
30 unacceptable to the commissioner, the commissioner may engage a
31 qualified actuary at the expense of the insurer or society to review
32 the opinion and the basis for the opinion and prepare such
33 supporting memorandum as is required by the commissioner.

34 d. Every opinion shall be governed by the following
35 provisions:

36 (1) The opinion shall be submitted with the annual statement
37 reflecting the valuation of reserves for each year ending on or after
38 December 31, 1995.

39 (2) The opinion shall apply to all policies or contracts in force,
40 including individual and group health insurance plans, in form and
41 substance acceptable to the commissioner as specified by
42 regulation.

43 (3) The opinion shall be based on standards adopted from time
44 to time by the Actuarial Standards Board and on such additional
45 standards as the commissioner may by regulation prescribe.

46 (4) In the case of an opinion required to be submitted by a
47 foreign or alien insurer or fraternal benefit society, the
48 commissioner may accept the opinion filed by that insurer or

1 society with the insurance supervisory official of another state or
2 jurisdiction if the commissioner determines that the opinion
3 reasonably meets the requirements applicable to an insurer or
4 society domiciled in this State.

5 (5) **【**For the purpose of this section, "qualified actuary" means a
6 member in good standing of the American Academy of Actuaries
7 who meets the requirements set forth in those regulations.**】** (Deleted
8 by amendment, P.L. _____, c. _____ (pending before the Legislature as
9 this bill)

10 (6) Except in cases of fraud or willful misconduct, the qualified
11 actuary shall not be liable for damages to any person, other than the
12 insurer, the fraternal benefit society and the commissioner, for any
13 act, error, omission, decision or conduct with respect to the
14 actuary's opinion.

15 (7) Disciplinary action by the commissioner against the insurer,
16 fraternal benefit society or the qualified actuary shall be defined in
17 regulation by the commissioner.

18 (8) **【**Any memorandum in support of the opinion, and any other
19 material provided by the insurer or fraternal benefit society to the
20 commissioner in connection therewith, shall be kept confidential by
21 the commissioner and shall not be made public and shall not be
22 subject to subpoena, other than for the purpose of defending an
23 action seeking damages from any person by reason of any action
24 required by this section or by regulations promulgated hereunder;
25 provided, however, that the memorandum or other material may
26 otherwise be released by the commissioner (a) with the written
27 consent of the insurer or fraternal benefit society or (b) to the
28 American Academy of Actuaries upon request stating that the
29 memorandum or other material is required for the purpose of
30 professional disciplinary proceedings and setting forth procedures
31 satisfactory to the commissioner for preserving the confidentiality
32 of the memorandum or other material. Once any portion of the
33 confidential memorandum is cited by the insurer or fraternal benefit
34 society in its marketing or is cited before any governmental agency
35 other than a state insurance department or is released by the insurer
36 or fraternal benefit society to the news media, all portions of the
37 confidential memorandum shall no longer be confidential.**】**
38 (Deleted by amendment, P.L. _____, c. _____ (pending before the
39 Legislature as this bill)

40 e. On or after the operative date of the valuation manual, every
41 company with outstanding life insurance contracts, accident and
42 health insurance contracts or deposit-type contracts in this State and
43 subject to regulation by the commissioner shall annually submit the
44 opinion of the appointed actuary as to whether the reserves and
45 related actuarial items held in support of the policies and contracts
46 are computed appropriately, are based on assumptions that satisfy
47 contractual provisions, are consistent with prior reported amounts
48 and comply with applicable laws of this State. The valuation

1 manual will prescribe the specifics of this opinion including any
2 items deemed to be necessary to its scope.

3 f. Every company with outstanding life insurance contracts,
4 accident and health insurance contracts or deposit-type contracts in
5 this State and subject to regulation by the commissioner, except as
6 exempted in the valuation manual, shall also annually include in the
7 opinion required by subsection e. of this section, an opinion of the
8 same appointed actuary as to whether the reserves and related
9 actuarial items held in support of the policies and contracts
10 specified in the valuation manual, when considered in light of the
11 assets held by the company with respect to the reserves and related
12 actuarial items, including but not limited to the investment earnings
13 on the assets and the considerations anticipated to be received and
14 retained under the policies and contracts, make adequate provision
15 for the company's obligations under the policies and contracts,
16 including but not limited to the benefits under and expenses
17 associated with the policies and contracts.

18 g. Each opinion required by subsection e. of this section shall
19 be governed by the following provisions:

20 (1) A memorandum, in form and substance as specified in the
21 valuation manual, and acceptable to the commissioner, shall be
22 prepared to support each actuarial opinion.

23 (2) If the insurer fails to provide a supporting memorandum at
24 the request of the commissioner within a period specified in the
25 valuation manual or the commissioner determines that the
26 supporting memorandum provided by the insurer fails to meet the
27 standards prescribed by the valuation manual or is otherwise
28 unacceptable to the commissioner, the commissioner may engage a
29 qualified actuary at the expense of the company to review the
30 opinion and the basis for the opinion and prepare the supporting
31 memorandum required by the commissioner.

32 h. Every opinion required by subsection e. of this section shall
33 be governed by the following provisions:

34 (1) The opinion shall be in form and substance as specified in
35 the valuation manual and acceptable to the commissioner.

36 (2) The opinion shall be submitted with the annual statement
37 reflecting the valuation of such reserve liabilities for each year
38 ending on or after the operative date of the valuation manual.

39 (3) The opinion shall apply to all policies and contracts subject
40 to subsection f. of this section, plus other actuarial liabilities as may
41 be specified in the valuation manual.

42 (4) The opinion shall be based on standards adopted from time
43 to time by the Actuarial Standards Board or its successor, and on
44 such additional standards as may be prescribed in the valuation
45 manual.

46 (5) In the case of an opinion required to be submitted by a
47 foreign or alien company, the commissioner may accept the opinion
48 filed by that company with the insurance supervisory official of

1 another state if the commissioner determines that the opinion
2 reasonably meets the requirements applicable to a company
3 domiciled in this State.

4 (6) Except in cases of fraud or willful misconduct, the appointed
5 actuary shall not be liable for damages to any person, other than the
6 insurance company and the commissioner, for any act, error,
7 omission, decision or conduct with respect to the appointed
8 actuary's opinion.

9 (7) Disciplinary action by the commissioner against the
10 company or the appointed actuary shall be prescribed and defined in
11 regulations by the commissioner.

12 (cf: P.L.1995, c.339, s.2)

13

14 63. (New section) a. For policies issued on or after the operative
15 date of the valuation manual, the standard prescribed in the
16 valuation manual is the minimum standard of valuation required
17 under section 60 of P.L. c. (c.) (pending before the
18 Legislature as this bill) except as provided under subsections e. or
19 g. of this section.

20 b. The operative date of the valuation manual is January 1 of
21 the first calendar year following the first July 1 as of which all of
22 the following have occurred:

23 (1) The valuation manual has been adopted by the NAIC by an
24 affirmative vote of at least 42 members, or three-fourths of the
25 members voting, whichever is greater.

26 (2) The NAIC Model Standard Valuation Law, as amended by
27 the NAIC in 2009, or legislation including substantially similar
28 terms and provisions, has been enacted by States representing
29 greater than 75% of the direct premiums written as reported in the
30 following annual statements submitted for 2008: life, accident and
31 health annual statements; health annual statements; or fraternal
32 annual statements.

33 (3) The NAIC Model Standard Valuation Law, as amended by
34 the NAIC in 2009, or legislation including substantially similar
35 terms and provisions, has been enacted by at least 42 of the
36 following 55 jurisdictions: The 50 States of the United States,
37 American Samoa, the American Virgin Islands, the District of
38 Columbia, Guam, and Puerto Rico.

39 c. Unless a change in the valuation manual specifies a later
40 effective date, changes to the valuation manual shall be effective on
41 January 1 following the date when all of the following have
42 occurred:

43 (1) The change to the valuation manual has been adopted by the
44 NAIC by an affirmative vote representing:

45 (a) At least three-fourths (3/4) of the members of the NAIC
46 voting, but not less than a majority of the total membership, and

47 (b) Members of the NAIC representing jurisdictions totaling
48 greater than 75% of the direct premiums written as reported in the

1 following annual statements most recently available prior to the
2 vote in subparagraph (a) of paragraph (1) of this subsection: life,
3 accident and health annual statements, health annual statements, or
4 fraternal annual statements.

5 (2) No later than 30 days before the operative date of the
6 valuation manual or any changes thereto adopted by the NAIC, the
7 commissioner shall by order notify all companies as defined in
8 section 58 of P.L. , c. (C.)(pending before the Legislature
9 as this bill) of the adoption and its operative date. Failure to
10 provide this notice shall not delay the operative date of the
11 valuation manual or any changes thereto.

12 d. The valuation manual must specify all of the following:

13 (1) Minimum valuation standards for and definitions of the
14 policies or contracts subject to section 60 of P.L. , c. (C.)
15 (pending before the Legislature as this bill). Such minimum
16 valuation standards shall be:

17 (a) The commissioner's reserve valuation method for life
18 insurance contracts, other than annuity contracts, subject to section
19 60 of P.L. , c. (C.) (pending before the Legislature as this
20 bill);

21 (b) The commissioner's annuity reserve valuation method for
22 annuity contracts subject to section 60 of P.L. , c. (C.)
23 (pending before the Legislature as this bill); and

24 (c) Minimum reserves for all other policies or contracts subject
25 to section 60 of P.L. , c. (C.) (pending before the
26 Legislature as this bill);

27 (2) Which policies or contracts or types of policies or contracts
28 that are subject to the requirements of a principle-based valuation in
29 subsection a. of section 64 of P.L. , c. (C.) (pending before
30 the Legislature as this bill) and the minimum valuation standards
31 consistent with those requirements;

32 (3) For policies and contracts subject to a principle-based
33 valuation under section 64 of P.L. , c. (C.) (pending before
34 the Legislature as this bill):

35 (a) Requirements for the format of reports to the commissioner
36 under paragraph 3 of subsection b. of section 64 of P.L. , c. (C.)
37 (pending before the Legislature as this bill) and which shall include
38 information necessary to determine if the valuation is appropriate
39 and in compliance with sections 58, 60, 63, 64, 65 and 66 of P.L. ,
40 (C.) (pending before the Legislature as this bill);

41 (b) Assumptions shall be prescribed for risks over which the
42 company does not have significant control or influence.

43 (c) Procedures for corporate governance and oversight of the
44 actuarial function, and a process for appropriate waiver or
45 modification of such procedures.

46 (4) For policies not subject to a principle-based valuation under
47 section 64 of P.L. , c. (C.) (pending before the Legislature
48 as this bill) the minimum valuation standard shall either:

- 1 (a) Be consistent with the minimum standard of valuation prior
2 to the operative date of the valuation manual; or
- 3 (b) Develop reserves that quantify the benefits and guarantees,
4 and the funding, associated with the contracts and their risks at a
5 level of conservatism that reflects conditions that include
6 unfavorable events that have a reasonable probability of occurring;
- 7 (5) Other requirements, including, but not limited to, those
8 relating to reserve methods, models for measuring risk, generation
9 of economic scenarios, assumptions, margins, use of company
10 experience, risk measurement, disclosure, certifications, reports,
11 actuarial opinions and memorandums, transition rules and internal
12 controls; and
- 13 (6) The data and form of the data required under section 65 of
14 P.L. , c. (C.) (pending before the Legislature as this bill),
15 with whom the data must be submitted, and may specify other
16 requirements, including data analyses and reporting of analyses.
- 17 e. In the absence of a specific valuation requirement or if a
18 specific valuation requirement in the valuation manual is not, in the
19 opinion of the commissioner, in compliance with sections 58, 60,
20 63, 64, 65 and 66 of P.L. c. (C.) (pending before the
21 Legislature as this bill), then the company shall, with respect to
22 such requirements, comply with minimum valuation standards
23 prescribed by the commissioner by regulation.
- 24 f. The commissioner may engage a qualified actuary, at the
25 expense of the company, to perform an actuarial examination of the
26 company and opine on the appropriateness of any reserve
27 assumption or method used by the company, or to review and opine
28 on a company's compliance with any requirement set forth in
29 sections 58, 60, 63, 64, 65 and 66 of P.L. c. (C.) (pending
30 before the Legislature as this bill). The commissioner may rely
31 upon the opinion, regarding provisions contained within sections
32 58, 60, 63, 64, 65 and 66 of P.L. c. (C.) (pending before the
33 Legislature as this bill), of a qualified actuary engaged by the
34 commissioner of another state, district or territory of the United
35 States.
- 36 As used in this subsection f., the term "engage" includes
37 employment and contracting.
- 38 g. The commissioner may require a company to change any
39 assumption or method that in the opinion of the commissioner is
40 necessary in order to comply with the requirements of the valuation
41 manual or sections 58, 60, 63, 64, 65 and 66 of P.L. c. (C.)
42 (pending before the Legislature as this bill); and the company shall
43 adjust the reserves as required by the commissioner. The
44 commissioner may suspend or revoke the authority to do business in
45 this State of any company and impose a fine, after notice and a
46 hearing, pursuant to the "Administrative Procedure Act," P.L.1968,
47 c.410 (C.52:14B-1 et seq.) if it fails to comply with any provision

1 of law obligatory upon it under sections 58, 60, 63, 64, 65 and 66 of
2 P.L. , c. (C.) (pending before the Legislature as this bill).

3

4 64. (New section) a. A company shall establish reserves using
5 a principle-based valuation that meets the following conditions for
6 policies or contracts as specified in the valuation manual:

7 (1) Quantify the benefits and guarantees, and the funding,
8 associated with the contracts and their risks at a level of
9 conservatism that reflects conditions that include unfavorable
10 events that have a reasonable probability of occurring during the
11 lifetime of the contracts. For polices or contracts with significant
12 tail risk, reflects conditions appropriately adverse to quantify the
13 tail risk.

14 (2) Incorporate assumptions, risk analysis methods and financial
15 models and management techniques that are consistent with, but not
16 necessarily identical to, those utilized within the company's overall
17 risk assessment process, while recognizing potential differences in
18 financial reporting structures and any prescribed assumptions or
19 methods.

20 (3) Incorporate assumptions that are derived in one of the
21 following manners:

22 (a) The assumption is prescribed in the valuation manual.

23 (b) For assumptions that are not prescribed, the assumptions
24 shall:

25 (i) Be established utilizing the company's available experience,
26 to the extent it is relevant and statistically credible; or

27 (ii) To the extent that company data is not available, relevant, or
28 statistically credible, be established utilizing other relevant,
29 statistically credible experience.

30 (4) Provide margins for uncertainty including adverse deviation
31 and estimation error, such that the greater the uncertainty the larger
32 the margin and resulting reserve.

33 b. A company using a principle-based valuation for one or
34 more policies or contracts subject to this section as specified in the
35 valuation manual shall:

36 (1) Establish procedures for corporate governance and oversight
37 of the actuarial valuation function consistent with those described in
38 the valuation manual.

39 (2) Provide to the commissioner and the board of directors an
40 annual certification of the effectiveness of the internal controls with
41 respect to the principle-based valuation. Such controls shall be
42 designed to assure that all material risks inherent in the liabilities
43 and associated assets subject to such valuation are included in the
44 valuation, and that valuations are made in accordance with the
45 valuation manual. The certification shall be based on the controls in
46 place as of the end of the preceding calendar year.

1 (3) Develop, and file with the commissioner upon request, a
2 principle-based valuation report that complies with standards
3 prescribed in the valuation manual.

4 c. A principle-based valuation may include a prescribed
5 formulaic reserve component.

6

7 65. (New section) A company shall submit mortality, morbidity,
8 policyholder behavior, or expense experience and other data as
9 prescribed in the valuation manual.

10

11 66. (New section) a. For purposes of this section “confidential
12 information” means:

13 (1) A memorandum in support of an opinion submitted under
14 section 2 of P.L.1995, c.339 (C.17B:19-10) and any other
15 documents, materials and other information, including, but not
16 limited to, all working papers, and copies thereof, created, produced
17 or obtained by or disclosed to the commissioner or any other person
18 in connection with such a memorandum;

19 (2) All documents, materials and other information, including,
20 but not limited to, all working papers, and copies thereof, created,
21 produced or obtained by or disclosed to the commissioner or any
22 other person in the course of an examination made under subsection
23 f. of section 63 of P.L. , c. (C.) (pending before the
24 Legislature as this bill); provided, however, that if an examination
25 report or other material prepared in connection with an examination
26 made under N.J.S.17B:21-1 is not held as private and confidential
27 information under N.J.S.17B:21-1, an examination report or other
28 material prepared in connection with an examination made under
29 subsection f. of section 63 of P.L. , c. (C.) (pending before
30 the Legislature as this bill) shall not be confidential information to
31 the same extent as if such examination report or other material had
32 been prepared under N.J.S. 17B:21-1;

33 (3) Any reports, documents, materials and other information
34 developed by a company in support of, or in connection with, an
35 annual certification by the company under subsection b. of section
36 64 of P.L. , c. (C.) (pending before the Legislature as this
37 bill) evaluating the effectiveness of the company’s internal controls
38 with respect to a principle-based valuation and any other
39 documents, materials and other information, including, but not
40 limited to, all working papers, and copies thereof, created, produced
41 or obtained by or disclosed to the commissioner or any other person
42 in connection with such reports, documents, materials and other
43 information;

44 (4) Any principle-based valuation report developed under
45 paragraph 3 of subsection b. of section 64 of P.L. , c. (C.)
46 (pending before the Legislature as this bill) and any other
47 documents, materials and other information, including, but not
48 limited to, all working papers, and copies thereof, created, produced

1 or obtained by or disclosed to the commissioner or any other person
2 in connection with that report; and

3 (5) Any documents, materials, data and other information
4 submitted by a company under section 65 of P.L. , c. (C.)
5 (pending before the Legislature as this bill), collectively,
6 “experience data,” and any other documents, materials, data and
7 other information, including, but not limited to, all working papers,
8 and copies thereof, created or produced in connection with such
9 experience data, in each case that include any potentially company-
10 identifying or personally identifiable information, that is provided
11 to or obtained by the commissioner, together with any “experience
12 data,” the “experience materials,” and any other documents,
13 materials, data and other information, including, but not limited to,
14 all working papers, and copies thereof, created, produced or
15 obtained by or disclosed to the commissioner or any other person in
16 connection with such experience materials.

17 b. (1) Except as provided in this section, a company’s
18 confidential information is confidential by law and privileged, and
19 shall not be subject to P.L.1963, c.73 (C.47:1A-1 et seq.), shall not
20 be subject to subpoena and shall not be subject to discovery or
21 admissible in evidence in any private civil action; provided,
22 however, that the commissioner is authorized to use the confidential
23 information in the furtherance of any regulatory or legal action
24 brought against the company as a part of the commissioner’s
25 official duties.

26 (2) Neither the commissioner nor any person who received
27 confidential information while acting under the authority of the
28 commissioner shall be permitted or required to testify in any private
29 civil action concerning any confidential information.

30 (3) In order to assist in the performance of the commissioner’s
31 duties, the commissioner may share confidential information: (a)
32 with other state, federal and international regulatory agencies and
33 with the National Association of Insurance Commissioners (NAIC)
34 and its affiliates and subsidiaries; and (b) in the case of confidential
35 information specified in paragraphs (1) and (2) of subsection a. of
36 this section only, with the Actuarial Board for Counseling and
37 Discipline or its successor upon request stating that the confidential
38 information is required for the purpose of professional disciplinary
39 proceedings; and (c) with state, federal and international law
40 enforcement officials; in the case of (a) and (b), provided that such
41 recipient agrees, and has the legal authority to agree, to maintain the
42 confidentiality and privileged status of such documents, materials,
43 data and other information in the same manner and to the same
44 extent as required for the commissioner.

45 (4) The commissioner may receive documents, materials, data
46 and other information, including otherwise confidential and
47 privileged documents, materials, data or information, from the
48 NAIC and its affiliates and subsidiaries, from regulatory or law

1 enforcement officials of other foreign or domestic jurisdictions and
2 from the Actuarial Board for Counseling and Discipline or its
3 successor and shall maintain as confidential or privileged any
4 document, material, data or other information received with notice
5 or the understanding that it is confidential or privileged under the
6 laws of the jurisdiction that is the source of the document, material
7 or other information.

8 (5) The commissioner may enter into agreements governing
9 sharing and use of information consistent with this section.

10 (6) No waiver of any applicable privilege or claim of
11 confidentiality in the confidential information shall occur as a result
12 of disclosure to the commissioner under this section or as a result of
13 sharing as authorized in paragraph (3) of this subsection b.

14 (7) A privilege established under the law of any state or
15 jurisdiction that is substantially similar to the privilege established
16 under this subsection shall be available and enforced in any
17 proceeding in, and in any court of, this State.

18 (8) For purposes of this section “regulatory agency,” “law
19 enforcement agency” and the “NAIC” shall include, but shall not be
20 limited to, their employees, agents, consultants and contractors.

21 c. Notwithstanding subsection b. of this section, any
22 confidential information specified in paragraphs (1) and (4) of
23 subsection a. of this section:

24 (1) May be subject to subpoena for the purpose of defending an
25 action seeking damages from the appointed actuary submitting the
26 related memorandum in support of an opinion submitted under
27 section 2 of P.L.1995, c.339 (C.17B:19-10) or principle-based
28 valuation report developed under subsection b. of section 64 of
29 P.L., c. (C.) (pending before the Legislature as this bill) by
30 reason of an action required by sections 58, 60, 63, 64, 65 and 66 of
31 P.L. , c. (C.) (pending before the Legislature as this bill) or
32 by regulations promulgated hereunder;

33 (2) May otherwise be released by the commissioner with the
34 written consent of the company; and

35 (3) Once any portion of a memorandum in support of an opinion
36 submitted under section 2 of P.L.1995, c.339 (C.17B:19-10) or a
37 principle-based valuation report developed under subsection b. of
38 section 64 of P.L. , c. (C.) (pending before the Legislature
39 as this bill) is cited by the company in its marketing or is publicly
40 volunteered to or before a governmental agency other than a state
41 insurance department or is released by the company to the news
42 media, all portions of such memorandum or report shall no longer
43 be confidential.

44

45 67. N.J.S.17B:25-19 is amended to read as follows:

46 17B:25-19. This section shall be known as the standard
47 nonforfeiture law for life insurance.

1 a. No policy of life insurance, except as stated in subsection l.,
2 shall be delivered or issued for delivery in this State unless it shall
3 contain in substance the following provisions, or corresponding
4 provisions which in the opinion of the commissioner are at least as
5 favorable to the defaulting or surrendering policyholder as are the
6 minimum requirements hereinafter specified and are essentially in
7 compliance with subsection k. of this section:

8 (1) That, in the event of default in any premium payment, the
9 insurer will grant, upon proper request not later than 60 days after
10 the due date of the premium in default, a paid-up nonforfeiture
11 benefit on a plan stipulated in the policy, effective as of such due
12 date, of such amount as may be hereinafter specified. In lieu of such
13 stipulated paid-up nonforfeiture benefit, the insurer may substitute,
14 upon proper request not later than 60 days after the due date of the
15 premium in default, an actuarially equivalent alternative paid-up
16 nonforfeiture benefit which provides a greater amount or longer
17 period of death benefits or, if applicable, a greater amount or earlier
18 payment of endowment benefits.

19 (2) That, upon surrender of the policy within 60 days after the
20 due date of any premium payment in default after premiums have
21 been paid for at least 3 full years in the case of ordinary insurance
22 or 5 full years in the case of industrial insurance, the insurer will
23 pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender
24 value of such amount as may be hereinafter specified.

25 (3) That a specified paid-up nonforfeiture benefit shall become
26 effective as specified in the policy unless the person entitled to
27 make such election elects another available option not later than 60
28 days after the due date of the premium in default.

29 (4) That, if the policy shall have become paid up by completion
30 of all premium payments or if it is continued under any paid-up
31 nonforfeiture benefit which became effective on or after the third
32 policy anniversary in the case of ordinary insurance or the fifth
33 policy anniversary in the case of industrial insurance, the insurer
34 will pay, upon surrender of the policy within 30 days after any
35 policy anniversary, a cash surrender value of such amount as may
36 be hereinafter specified.

37 (5) In the case of policies which cause on a basis guaranteed in
38 the policy unscheduled changes in benefits or premiums, or which
39 provide an option for changes in benefits or premiums other than a
40 change to a new policy, a statement of the mortality table, interest
41 rate, and method used in calculating cash surrender values and the
42 paid-up nonforfeiture benefits available under the policy. In the
43 case of all other policies, a statement of the mortality tables and
44 interest rates used in calculating the cash surrender values and the
45 mortality tables and interest rates used in calculating the paid-up
46 nonforfeiture benefits available under the policy, together with a
47 table showing the cash surrender value, if any, and paid-up
48 nonforfeiture benefit, if any, available under the policy on each

1 policy anniversary either during the first 20 policy years or during
2 the term of the policy, whichever is shorter, such values and
3 benefits to be calculated upon the assumption that there are no
4 dividends or paid-up additions credited to the policy and that there
5 is no indebtedness to the insurer on the policy.

6 (6) A statement that the cash surrender values and the paid-up
7 nonforfeiture benefits available under the policy are not less than
8 the minimum values and benefits required by or pursuant to the
9 insurance law of the state in which the policy is delivered; an
10 explanation of the manner in which the cash surrender values and
11 the paid-up nonforfeiture benefits are altered by the existence of
12 any paid-up additions credited to the policy or any indebtedness to
13 the insurer on the policy; if a detailed statement of the method of
14 computation of the cash surrender values and paid-up nonforfeiture
15 benefits shown in the policy is not stated therein, a statement that
16 such method of computation has been filed with the insurance
17 supervisory official of the state in which the policy is delivered; and
18 a statement of the method to be used in calculating the cash
19 surrender value and paid-up nonforfeiture benefit available under
20 the policy on any policy anniversary beyond the last anniversary for
21 which such values and benefits are consecutively shown in the
22 policy.

23 Any of the foregoing provisions or portions thereof not
24 applicable by reason of the plan of insurance may, to the extent
25 inapplicable, be omitted from the policy.

26 The insurer shall reserve the right to defer the payment of any
27 cash surrender value for a period of 6 months after demand therefor
28 with surrender of the policy.

29 b. (Deleted by amendment; P.L.1981, c.285.)

30 c. Any cash surrender value available under any policy referred
31 to in subsection a. in the event of default in a premium payment due
32 on any policy anniversary, whether or not required by subsection a.,
33 shall be an amount not less than the excess, if any, of the present
34 value, on such anniversary, of the future guaranteed benefits which
35 would have been provided for by the policy, including any existing
36 paid-up additions, if there had been no default, over the sum of (1)
37 the then present value of the adjusted premiums as defined in
38 subsection g., corresponding to premiums which would have fallen
39 due on and after such anniversary, and (2) the amount of any
40 indebtedness to the insurer on the policy.

41 Provided, however, that for any policy issued on or after the
42 operative date provided for in paragraph (xi) of subsection h. of
43 N.J.S.17B:25-19, which provides supplemental life insurance or
44 annuity benefits at the option of the insured and for an identifiable
45 additional premium by rider or supplemental policy provision, the
46 cash surrender value referred to in the first paragraph of this
47 subsection shall be an amount not less than the sum of the cash
48 surrender value as defined in that paragraph for an otherwise similar

1 policy issued at the same age without such rider or supplemental
2 policy provision and the cash surrender value as defined in that
3 paragraph for a policy which provides only the benefits otherwise
4 provided by such rider or supplemental policy provision.

5 Provided, further, that for any family policy issued on or after
6 the operative date provided for in paragraph (xi) of subsection h.,
7 which defines a primary insured and provides term insurance on the
8 life of the spouse of the primary insured expiring before the
9 spouse's age 71, the cash surrender value referred to in the first
10 paragraph of this subsection shall be an amount not less than the
11 sum of the cash surrender value as defined in that paragraph for an
12 otherwise similar policy issued at the same age without such term
13 insurance on the life of the spouse and the cash surrender value as
14 defined in that paragraph for a policy which provides only the
15 benefits otherwise provided by such term insurance on the life of
16 the spouse.

17 Any cash surrender value available within 30 days after any
18 policy anniversary under any policy paid up by completion of all
19 premium payments or any policy continued under any paid-up
20 nonforfeiture benefit, whether or nor required by subsection a., shall
21 be an amount not less than the present value, on such anniversary,
22 of the future guaranteed benefits provided for by the policy,
23 including any existing paid-up additions, decreased by any
24 indebtedness to the insurer on the policy.

25 d. Any paid-up nonforfeiture benefit available under any policy
26 referred to in subsection a. in the event of default in a premium
27 payment due on any policy anniversary shall be such that its present
28 value as of such anniversary shall be at least equal to the cash
29 surrender value then provided for by the policy or, if none is
30 provided for, that cash surrender value which would have been
31 required by this section in the absence of the condition that
32 premiums shall have been paid for at least a specified period.

33 e. (Deleted by amendment; P.L.1981, c.285.)

34 f. (Deleted by amendment; P.L.1981, c.285.)

35 g. This subsection shall not apply to policies issued on or after
36 the operative date of subsection h. as defined therein. Except as
37 provided in the third paragraph of this subsection, the adjusted
38 premiums for any policy referred to in subsection a. shall be
39 calculated on an annual basis and shall be such uniform percentage
40 of the respective premiums specified in the policy for each policy
41 year, excluding any extra premiums charged because of
42 impairments or special hazards, that the present value, at the date of
43 issue of the policy, of all such adjusted premiums shall be equal to
44 the sum of (1) the then present value of the future guaranteed
45 benefits provided for by the policy; (2) 2% of the amount of
46 insurance, if the insurance be uniform in amount or of the
47 equivalent uniform amount, as hereinafter defined, if the amount of
48 insurance varies with duration of the policy; (3) 40% of the adjusted

1 premium for the first policy year; (4) 25% of either the adjusted
2 premium for the first policy year or the adjusted premium for a
3 whole life policy of the same uniform or equivalent uniform amount
4 with uniform premiums for the whole of life issued at the same age
5 for the same amount of insurance, whichever is less; provided,
6 however, that in applying the percentages specified in (3) and (4)
7 above, no adjusted premium shall be deemed to exceed 4% of the
8 amount of insurance or uniform amount equivalent thereto. The date
9 of issue of a policy for the purpose of this subsection shall be the
10 date as of which the rated age of the insured is determined.

11 In the case of a policy providing an amount of insurance varying
12 with duration of the policy, the equivalent uniform amount thereof
13 for the purpose of this subsection shall be deemed to be the uniform
14 amount of insurance provided by an otherwise similar policy,
15 containing the same endowment benefit or benefits, if any, issued at
16 the same age and for the same term, the amount of which does not
17 vary with duration, and the benefits under which have the same
18 present value at the date of issue as the benefits under the policy;
19 provided, however, that in the case of a policy providing a varying
20 amount of insurance issued on the life of a child under age 10, the
21 equivalent uniform amount may be computed as though the amount
22 of insurance provided by the policy prior to the attainment of age 10
23 were the amount provided by such policy at age 10.

24 The adjusted premiums for any policy providing term insurance
25 benefits by rider or supplemental policy provision shall be equal to
26 (a) the adjusted premiums for an otherwise similar policy issued at
27 the same age without such term insurance benefits, increased,
28 during the period for which premiums for such term insurance
29 benefits are payable, by (b) the adjusted premiums for such term
30 insurance, the foregoing items (a) and (b) being calculated
31 separately and as specified in the first two paragraphs of this
32 subsection except that, for the purpose of (2), (3) and (4) of the first
33 such paragraph, the amount of insurance or equivalent uniform
34 amount of insurance used in the calculation of the adjusted
35 premiums referred to in (b) shall be equal to the excess of the
36 corresponding amount determined for the entire policy over the
37 amount used in the calculation of the adjusted premiums in (a).

38 All adjusted premiums and present values referred to in this
39 subsection shall for all policies of ordinary insurance be calculated
40 on the basis of the Commissioners 1958 Standard Ordinary
41 Mortality Table. Notwithstanding this provision, for any category of
42 ordinary insurance such calculations may be made, at the option of
43 the insurer, on the basis of the Approved Standard Ordinary
44 Mortality Table; provided, further, that for any category of ordinary
45 insurance issued on female risks adjusted premiums and present
46 values may be calculated, at the option of the insurer with approval
47 of the commissioner, according to an age not more than 6 years
48 younger than the actual age of the insured. Such calculations for all

1 policies of industrial insurance shall be made on the basis of the
2 Commissioners 1961 Standard Industrial Mortality Table.

3 All calculations shall be made on the basis of the applicable rates
4 of interest specified in the policy for calculating cash surrender
5 values and paid-up nonforfeiture benefits not exceeding 5 1/2 % per
6 annum. Provided, however, that in calculating the present value of
7 any paid-up term insurance with accompanying pure endowment, if
8 any, offered as a nonforfeiture benefit, the rates of mortality
9 assumed may be not more than the rates shown in the
10 Commissioners 1958 Extended Term Insurance Table if the
11 adjusted premiums for the policy are calculated on the basis of the
12 Commissioners 1958 Standard Ordinary Mortality Table, may be
13 not more than 130% of the rates shown in the Approved Standard
14 Ordinary Mortality Table if the adjusted premiums for the policy
15 are calculated on the basis of said table, and may be not more than
16 the rates shown in the Commissioners 1961 Industrial Extended
17 Term Insurance Table if the adjusted premiums for the policy are
18 calculated on the basis of the Commissioners 1961 Standard
19 Industrial Mortality Table. Provided, further, that for insurance
20 issued on a substandard basis, the calculation of any such adjusted
21 premiums and present values may be based on such other table of
22 mortality as may be specified by the insurer and approved by the
23 commissioner.

24 h. (i) This subsection h. shall apply to all policies issued on or
25 after the operative date established by paragraph (xi) of this
26 subsection h. Except as provided in paragraph (vii) of this
27 subsection, the adjusted premiums for any policy shall be calculated
28 on an annual basis and shall be such uniform percentage of the
29 respective premiums specified in the policy for each policy year,
30 excluding amounts payable as extra premiums to cover impairments
31 or special hazards and also excluding any uniform annual contract
32 charge or policy fee specified in the policy in a statement of the
33 method to be used in calculating the cash surrender values and paid-
34 up nonforfeiture benefits, that the present value, at the date of the
35 policy, of all adjusted premiums shall be equal to the sum of (A) the
36 then present value of the future guaranteed benefits provided for by
37 the policy; (B) 1% of either the amount of insurance, if the
38 insurance be uniform in amount, or the average amount of insurance
39 at the beginning of each of the first 10 policy years; and (C) 125%
40 of the nonforfeiture net level premium as defined in paragraph (ii).
41 Provided, however, that in applying the percentage specified in (C)
42 above no nonforfeiture net level premium shall be deemed to
43 exceed 4% of either the amount of insurance, if the insurance be
44 uniform in amount, or the average amount of insurance at the
45 beginning of each of the first 10 policy years. The date of issue of a
46 policy for the purpose of this section shall be the date as of which
47 the rated age of the insured is determined.

1 (ii) The nonforfeiture net level premium shall be equal to the
2 present value, at the date of issue of the policy, of the guaranteed
3 benefits provided for by the policy divided by the present value, at
4 the date of issue of the policy, of an annuity of one per annum
5 payable on the date of issue of the policy and on each anniversary
6 of such policy on which a premium falls due.

7 (iii) In the case of policies which cause on a basis guaranteed in
8 the policy unscheduled changes in benefits or premiums, or which
9 provide an option for changes in benefits or premiums other than a
10 change to a new policy, the adjusted premiums and present values
11 shall initially be calculated on the assumption that future benefits
12 and premiums do not change from those stipulated at the date of
13 issue of the policy. At the time of any such change in the benefits or
14 premiums the future adjusted premiums, nonforfeiture net level
15 premiums and present values shall be recalculated on the
16 assumption that future benefits and premiums do not change from
17 those stipulated by the policy immediately after the change.

18 (iv) Except as otherwise provided in paragraph (vii) of this
19 subsection, the recalculated future adjusted premiums for any such
20 policy shall be such uniform percentage of the respective future
21 premiums specified in the policy for each policy year, excluding
22 amounts payable as extra premiums to cover impairments and
23 special hazards, and also excluding any uniform annual contract
24 charge or policy fee specified in the policy in a statement of the
25 method to be used in calculating the cash surrender values and paid-
26 up nonforfeiture benefits, that the present value, at the time of
27 change to the newly defined benefits or premiums, of all such future
28 adjusted premiums shall be equal to the excess of the sum of the
29 then present value of the then future guaranteed benefits provided
30 for by the policy and the additional expense allowance, if any, over
31 the then cash surrender value, if any, or present value of any paid-
32 up nonforfeiture benefit under the policy.

33 (v) The additional expense allowance, at the time of the change
34 to the newly defined benefits or premiums, shall be the sum of 1%
35 of the excess of the average amount of insurance at the beginning of
36 each of the first 10 policy years subsequent to the change over the
37 average amount of insurance prior to the change at the beginning of
38 each of the first 10 policy years subsequent to the time of the most
39 recent previous change, or, if there has been no previous change,
40 the date of issue of the policy; and 125% of the increase, if positive,
41 in the nonforfeiture net level premium.

42 (vi) The recalculated nonforfeiture net level premium shall be
43 equal to the result obtained by dividing (A) by (B) where

44 (A) equals the sum of the nonforfeiture net level premium
45 applicable prior to the change times the present value of an annuity
46 of one per annum payable on each anniversary of the policy on or
47 subsequent to the date of the change on which a premium would
48 have fallen due had the change not occurred, and the present value

1 of the increase in future guaranteed benefits provided for by the
2 policy, and

3 (B) equals the present value of an annuity of one per annum
4 payable on each anniversary of the policy on or subsequent to the
5 date or change on which a premium falls due.

6 (vii) Notwithstanding any other provisions of this subsection to
7 the contrary, in the case of a policy issued on a substandard basis
8 which provides reduced graded amounts of insurance so that, in
9 each policy year, such policy has the same tabular mortality cost as
10 an otherwise similar policy issued on the standard basis which
11 provides higher uniform amounts of insurance, adjusted premiums
12 and present values for such substandard policy may be calculated as
13 if it were issued to provide such higher uniform amounts of
14 insurance on the standard basis.

15 (viii) For purposes of this subsection, the term “operative date of
16 the valuation manual” means the January 1 of the first calendar year
17 that the valuation manual as defined in section 58 of P.L. _____,
18 c. (C.) (pending before the Legislature as this bill) is effective. All
19 adjusted premiums and present values referred to in this subsection
20 shall for all policies of ordinary insurance be calculated on the basis
21 of the Commissioners 1980 Standard Ordinary Mortality Table or at
22 the election of the insurer for any one or more specified plans of life
23 insurance, the Commissioners 1980 Standard Ordinary Mortality
24 Table with 10-Year Select Mortality Factors; shall for all policies of
25 industrial insurance be calculated on the basis of the Commissioners
26 1961 Standard Industrial Mortality Table; and shall for all policies
27 issued in a particular calendar year be calculated on the basis of a
28 rate of interest not exceeding the nonforfeiture interest rate as
29 defined in paragraph (ix) of this subsection for policies issued in
30 that calendar year. Provided, however, that:

31 At the option of the insurer, calculations for all policies
32 issued in a particular calendar year may be made on the basis
33 of a rate of interest not exceeding the nonforfeiture interest
34 rate, as defined in this section, for policies issued in the
35 immediately preceding calendar year.

36 Under any paid-up nonforfeiture benefit, including any
37 paid-up dividend additions, any cash surrender value
38 available, whether or not required by subsection a., shall be
39 calculated on the basis of the mortality table and rate of
40 interest used in determining the amount of such paid-up
41 nonforfeiture benefit and paid-up dividend additions, if any.

42 An insurer may calculate the amount of any guaranteed
43 paid-up nonforfeiture benefit including any paid-up
44 additions under the policy on the basis of an interest rate not
45 lower than that specified in the policy for calculating cash
46 surrender values.

47 In calculating the present value of any paid-up term
48 insurance with accompanying pure endowment, if any,

1 offered as a nonforfeiture benefit, the rates of mortality
2 assumed may be not more than those shown in the
3 Commissioners 1980 Extended Term Insurance for policies
4 of ordinary insurance and not more than the Commissioners
5 1961 Industrial Extended Term Insurance Table for policies
6 of industrial insurance.

7 For insurance issued on a substandard basis, the
8 calculation of such adjusted premiums and present values
9 may be based on appropriate modifications of the
10 aforementioned tables.

11 **【Any】** For policies issued prior to the operative date of
12 the valuation manual, any Commissioners Standard ordinary
13 mortality tables, adopted after 1980 by the National
14 Association of Insurance Commissioners, that are approved
15 by regulation promulgated by the **【Commissioner】**
16 commissioner for use in determining the minimum
17 nonforfeiture standard may be substituted for the
18 Commissioners 1980 Standard Ordinary Mortality Table
19 with or without 10-Year Select Mortality Factors or for the
20 Commissioners 1980 Extended Term Insurance Table.

21 **【Any】** For policies issued on or after the operative date
22 of the valuation manual, the valuation manual shall provide
23 the Commissioners Standard mortality table for use in
24 determining the minimum nonforfeiture standard that may be
25 substituted for the Commissioners 1980 Standard Ordinary
26 Mortality Table with or without Ten-Year Select Mortality
27 Factors or for the Commissioners 1980 Extended Term
28 Insurance Table. If the commissioner approves by regulation
29 any Commissioners Standard ordinary mortality table
30 adopted by the National Association of Insurance
31 Commissioners for use in determining the minimum
32 nonforfeiture standard for policies issued on or after the
33 operative date of the valuation manual, then that minimum
34 nonforfeiture standard supersedes the minimum
35 nonforfeiture standard provided by the valuation manual.

36 For policies issued prior to the operative date of the
37 valuation manual, any Commissioners Standard industrial
38 mortality tables, adopted after 1980 by the National
39 Association of Insurance Commissioners, that are approved
40 by regulation promulgated by the commissioner for use in
41 determining the minimum nonforfeiture standard may be
42 substituted for the Commissioners 1961 Standard Industrial
43 Mortality Table or the Commissioners 1961 Industrial
44 Extended Term Insurance Table.

45 For policies issued on or after the operative date of the
46 valuation manual the valuation manual shall provide the
47 Commissioners Standard mortality table for use in
48 determining the minimum nonforfeiture standard that may be

1 substituted for the Commissioners 1961 Standard Industrial
2 Mortality Table or the Commissioners 1961 Industrial
3 Extended Term Insurance Table. If the commissioner
4 approves by regulation any Commissioners Standard
5 industrial mortality table adopted by the National
6 Association of Insurance Commissioners for use in
7 determining the minimum nonforfeiture standard for policies
8 issued on or after the operative date of the valuation manual
9 then that minimum nonforfeiture standard supersedes the
10 minimum nonforfeiture standard provided by the valuation
11 manual.

12 (ix) **【The】** For purposes of this subsection, the term “operative
13 date of the valuation manual” means the January 1 of the first
14 calendar year that the valuation manual as defined in section 58 of
15 P.L. , c. (C.) (pending before the Legislature as this bill) is
16 effective.

17 The nonforfeiture interest rate is defined below:

18 (1) For policies issued prior to the operative date of the
19 valuation manual, the nonforfeiture interest rate per annum for any
20 policy issued in a particular calendar year shall be equal to 125% of
21 the calendar year statutory valuation interest rate for such policy as
22 defined in the standard valuation law, paragraph (x) of subsection
23 17B:19-8a., rounded to nearer 1/4 of 1%.

24 (2) For policies issued on or after the operative date of the
25 valuation manual the nonforfeiture interest rate per annum for any
26 policy issued in a particular calendar year shall be provided by the
27 valuation manual.

28 (x) Notwithstanding any other provisions in this code (Title
29 17B) to the contrary, any refiling of nonforfeiture values or their
30 methods of computation for any previously approved policy forms
31 which involves only a change in the interest rate or mortality table
32 used to compute nonforfeiture values shall not require refiling of
33 any other provisions of that policy form.

34 (xi) After the effective date of this subsection, any insurer may
35 file with the commissioner a written notice of its election to
36 comply, with respect to any category of insurance, with the
37 provisions of this subsection after a specified date before January 1,
38 1989, which shall be the operative date of this subsection for that
39 category of insurance for such insurer. If an insurer makes no such
40 election with respect to any category of insurance, the operative
41 date of this subsection for that category of insurance issued by such
42 insurer shall be January 1, 1989.

43 i. In the case of any plan of life insurance which provides for
44 future premium determination, the amounts of which are to be
45 determined by the insurer based on then estimates of future
46 experience, or in the case of any plan of life insurance which is of
47 such a nature that minimum values cannot be determined by the

1 methods described in the preceding subsections of this section,
2 then:

3 the commissioner must be satisfied that the benefits
4 provided under the plan are substantially as favorable to
5 policyholders and insureds as the minimum benefits
6 otherwise required by the preceding subsections of this
7 section;

8 the commissioner must be satisfied that the benefits and
9 the pattern of premiums of that plan are not such as to
10 mislead prospective policyholders or insureds;

11 the cash surrender values and paid-up nonforfeiture
12 benefits provided by such plan must not be less than the
13 minimum values and benefits required for the plan computed
14 by a method consistent with the principles of this standard
15 nonforfeiture law for life insurance, as determined by
16 regulations promulgated by the commissioner.

17 j. Any cash surrender value and any paid-up nonforfeiture
18 benefit, available under the policy in the event of default in a
19 premium payment due at any time other than on the policy
20 anniversary, shall be calculated with allowance for the lapse of time
21 and the payment of fractional premiums beyond the last preceding
22 policy or contract anniversary. All values referred to in subsections
23 c., d., g., h. and i. may be calculated upon the assumption that any
24 death benefit is payable at the end of the policy year of death. The
25 net value of any paid-up additions, other than paid-up term
26 additions, shall be not less than the amounts used to provide such
27 additions. Notwithstanding the provisions of subsection c.,
28 additional benefits payable (1) in the event of death or
29 dismemberment by accident or accidental means, (2) in the event of
30 total and permanent disability, (3) as reversionary annuity or
31 deferred reversionary annuity benefits, (4) as term insurance
32 benefits provided by a rider or supplemental policy provision to
33 which, if issued as a separate policy, this section would not apply,
34 (5) as term insurance on the life of a child or on the lives of children
35 provided in a policy on the life of a parent of the child, if such term
36 insurance expires before the child's age is 26, is uniform in amount
37 after the child's age is one, and has not become paid-up by reason of
38 the death of a parent of the child, and (6) as other policy benefits
39 additional to life insurance and endowment benefits, and premiums
40 for all such additional benefits, shall be disregarded in ascertaining
41 cash surrender values and nonforfeiture benefits required by this
42 section, and no such additional benefits shall be required to be
43 included in any paid-up nonforfeiture benefits. Notwithstanding the
44 provisions of subsection c., additional benefits providing the
45 privilege to purchase additional insurance benefits at some future
46 time without furnishing evidence of insurability, and premiums
47 therefor, may, with the consent of the commissioner, be disregarded
48 in ascertaining cash surrender values and nonforfeiture benefits

1 required by this section, and no such additional benefits shall be
2 required to be included in any paid-up nonforfeiture benefits.

3 k. This subsection shall apply to all policies issued on or after
4 January 1, 1985. Any cash surrender value available under the
5 policy in the event of default in a premium payment due on any
6 policy anniversary shall be in an amount which does not differ by
7 more than $\frac{2}{10}$ of 1% of either the amount of insurance, if the
8 insurance be uniform in amount, or the average amount of insurance
9 at the beginning of each of the first 10 policy years, from the sum of
10 (a) the greater of zero and the basic cash value hereinafter specified
11 and (b) the present value of any existing paid-up additions less the
12 amount of any indebtedness to the insurer under the policy.

13 The basic cash value shall be equal to the present value, on such
14 anniversary, of the future guaranteed benefits which would have
15 been provided by the policy, excluding any existing paid-up
16 additions and before deduction of any indebtedness to the insurer, if
17 there had been no default, less the then present value of the
18 nonforfeiture factors, as hereinafter defined, corresponding to
19 premiums which would have fallen due on and after such
20 anniversary. Provided, however, that the effects on the basic cash
21 value of supplemental life insurance or annuity benefits or of family
22 coverage, as described in subsection c. or subsection g., whichever
23 is applicable shall be the same as are the effects specified in
24 subsection c. or subsection g., whichever is applicable on the cash
25 surrender values defined therein.

26 The nonforfeiture factor for each policy year shall be an amount
27 equal to a percentage of the adjusted premium for the policy year,
28 as defined in subsection g. or h., whichever is applicable. Except as
29 required by the next succeeding sentence of this paragraph, such
30 percentage:

31 shall be the same percentage for each policy year
32 between the second policy anniversary and the later of the
33 fifth policy anniversary and the first policy anniversary at
34 which there is available under the policy a cash surrender
35 value in an amount, before including any paid-up additions
36 and before deducting any indebtedness, of at least $\frac{2}{10}$ of
37 1% of either the amount of insurance, if the insurance be
38 uniform in amount, or the average amount of insurance at
39 the beginning of each of the first 10 policy years; and

40 shall be such that no percentage after the later of the two
41 policy anniversaries specified in the preceding item may
42 apply to fewer than 5 consecutive policy years.

43 Provided, that no basic cash value may be less than the value
44 which would be obtained if the adjusted premiums for the policy, as
45 defined in subsection g., or h., whichever is applicable, were
46 substituted for the nonforfeiture factors in the calculation of the
47 basic cash value.

1 All adjusted premiums and present values referred to in this
2 subsection shall for a particular policy be calculated on the same
3 mortality and interest bases as are used in demonstrating the
4 policy's compliance with the other sections of this amendatory and
5 supplementary act. The cash surrender values referred to in this
6 subsection shall include any endowment benefits provided for by
7 the policy.

8 Any cash surrender value available other than in the event of
9 default in a premium payment due on a policy anniversary, and the
10 amount of any paid-up nonforfeiture benefit available under the
11 policy in the event of default in a premium payment shall be
12 determined in a manner consistent with that specified for
13 determining the appropriate minimum amounts in subsections a., c.,
14 d., g., h. and i. The amounts of any cash surrender values and of any
15 paid-up nonforfeiture benefits granted in connection with additional
16 benefits such as those listed as items (1) through (6) in subsection j.
17 shall conform with the principles of this subsection.

18 l. This section shall not apply to any of the following:

- 19 • reinsurance,
- 20 • group insurance,
- 21 • annuity contract,
- 22 • single premium pure endowment contract or single premium
23 reversionary annuity contract,
- 24 • term policy of uniform amount, which provides no
25 guaranteed nonforfeiture or endowment benefits, or renewal
26 thereof, of 20 years or less expiring before age 71, for which
27 uniform premiums are payable during the entire term of the
28 policy,
- 29 • term policy of decreasing amount which provides no
30 guaranteed nonforfeiture or endowment benefits, on which
31 each adjusted premium, calculated as specified in
32 subsections g. and h. is less than the adjusted premium so
33 calculated on a term policy of uniform amount, or renewal
34 thereof, which provides no guaranteed nonforfeiture
35 endowment benefits, issued at the same age and for the same
36 initial amount of insurance and for a term of 20 years or less
37 expiring before age 71, for which uniform premiums are
38 payable during the entire term of the policy,
- 39 • policy which provides no guaranteed nonforfeiture or
40 endowment benefits, for which no cash surrender value, if
41 any, or present value of any paid-up nonforfeiture benefit, at
42 the beginning of any policy year, calculated as specified in
43 subsections c., g., and h. exceeds 2 1/2 % of the amount of
44 insurance at the beginning of the same policy year,
- 45 • policy which shall be delivered outside this State through an
46 agent or other representative of the insurer issuing the
47 policy.

1 For the purposes of determining the applicability of this section,
2 the age at expiry for a joint term life insurance policy shall be the
3 age at expiry of the oldest life.

4 (cf: P.L.1981, c.285, s.4)

5

6 68. This act shall take effect immediately except that sections 58
7 through 67 of this act shall remain inoperative until the operative
8 date of the valuation manual as provided in those sections.

9

10

11

12 _____
13 Increases and modernizes solvency requirements for certain
14 insurers and authority of DOBI Commissioner to regulate insurer
solvency.

ASSEMBLY, No. 3271

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JUNE 5, 2014

Sponsored by:

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblyman JACK M. CIATTARELLI

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Assemblyman CARMELO G. GARCIA

District 33 (Hudson)

SYNOPSIS

Increases and modernizes solvency requirements for certain insurers and authority of DOBI Commissioner to regulate insurer solvency.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/10/2014)

1 AN ACT concerning the modernization of the financial solvency
2 regulation of insurers and amending and supplementing various
3 parts of statutory law.

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

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

10 1. Definitions.

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

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

18 b. The term "commissioner" shall mean the Commissioner of
19 Banking and Insurance or the commissioner's deputies~~],~~ except that
20 when a health maintenance organization is the subject of an
21 acquisition of control or merger, the commissioner shall consult
22 with the Commissioner of Health on matters relating to quality of,
23 and access to, health care services~~].~~

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

44 d. An "insurance holding company system" consists of two or
45 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.

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

9 f. A "person" is an individual, a corporation, a limited liability
10 company, partnership, an association, a joint stock company, a
11 trust, an unincorporated organization, any similar entity or any
12 combination of the foregoing acting in concert.

13 g. (Deleted by amendment, P.L. 1993, c. 241).

14 h. A "subsidiary" of a specified person is an affiliate controlled
15 by such person directly, or indirectly through one or more
16 intermediaries.

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

19 j. "Acquisition" means any agreement, arrangement or activity,
20 the consummation of which results in a person acquiring directly or
21 indirectly the control of another person, and includes but is not
22 limited to the acquisition of voting securities, and assets, and bulk
23 reinsurance and mergers.

24 k. "Health maintenance organization" means any person
25 operating under a certificate of authority issued pursuant to
26 P.L.1973, c.337 (C.26:2J-1 et seq.).

27 l. "Enterprise risk" means any activity, circumstance, event or
28 series of events involving one or more affiliates of an insurer that, if
29 not remedied promptly, is likely to have a material adverse effect
30 upon the financial condition of liquidity of the insurer or its
31 insurance holding company system as a whole, including, but not
32 limited to, anything that would cause the insurer's Risk-Based
33 Capital to fall into company action level as set forth in
34 administrative rules adopted by the commissioner which reflect the
35 standards set forth in the Risk-Based Capital For Insurers Model
36 Act adopted by the National Association of Insurance
37 Commissioners or would cause the insurer to be in hazardous
38 financial condition as defined in administrative rules adopted by the
39 commissioner which reflect the standards set forth in the Model
40 Regulation adopted by the National Association of Insurance
41 Commissioners to define standards and the commissioner's
42 authority over companies deemed to be in a hazardous financial
43 condition.

44 (cf: P.L.2012, c.17, s.30)

45
46 2. Section 2 of P.L.1970, c.22 (C.17:27A-2) is amended to read
47 as follows:

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

1 a. (1) Filing requirements. No person other than the issuer
2 shall make a tender offer for or a request or invitation for tenders
3 of, or enter into any agreement to exchange securities for, seek to
4 acquire, or acquire, in the open market or otherwise, any voting
5 security of a domestic insurer if, after the consummation thereof,
6 such person would, directly or indirectly (or by conversion or by
7 exercise of any right to acquire) be in control of such insurer, and
8 no person shall enter into an agreement to merge with or otherwise
9 to acquire control of a domestic insurer unless, at the time any such
10 offer, request, or invitation is made or any such agreement is
11 entered into, or prior to the acquisition of such securities if no offer
12 or agreement is involved, such person has filed with the
13 commissioner and has sent to such insurer, a statement containing
14 the information required by this section and such offer, request,
15 invitation, agreement or acquisition has been approved by the
16 commissioner in the manner hereinafter prescribed.

17 For purposes of this subsection, a domestic insurer shall include
18 any other person controlling a domestic insurer.

19 (2) For purposes of this subsection, any controlling person of a
20 domestic insurer seeking to divest its controlling interest in the
21 domestic insurer, in any manner, shall file with the commissioner,
22 with a copy to the insurer, confidential notice of its proposed
23 divestiture at least 30 days prior to the cessation of control. The
24 commissioner shall by regulation determine those instances in
25 which the party seeking to divest or to acquire a controlling interest
26 in an insurer will be required to file for and obtain approval of the
27 transaction. The information shall remain confidential until the
28 conclusion of the transaction unless the commissioner, in his or her
29 discretion, determines that confidential treatment will interfere with
30 enforcement of this subsection a. If the statement referred to in
31 paragraph (1) of this subsection a. is otherwise filed, this paragraph
32 (2) regarding notice of divestiture or acquisition shall not apply.

33 (3) With respect to a transaction subject to this subsection a., the
34 acquiring person shall also file a pre-acquisition notification with
35 the commissioner, which shall contain the information set forth in
36 section 7 of P.L.1993, c.241 (C.17:27A-4.1). A failure to file the
37 notification may be subject to penalties specified in paragraph 3 of
38 subsection e. of section 7 of P.L.1993, c.241 (C.17:27A-4.1).

39 b. Content of statement. The statement to be filed with the
40 commissioner hereunder shall be made under oath or affirmation
41 and shall contain the following **[information]**:

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

46 (i) If such person is an individual, his principal occupation and
47 all offices and positions held during the past five years, and any

1 conviction of crimes other than minor traffic violations during the
2 past 10 years;

3 (ii) If such person is not an individual, a report of the nature of
4 its business operations during the past five years or for such lesser
5 period as such person and any predecessors thereof shall have been
6 in existence; an informative description of the business intended to
7 be done by such person and such person's subsidiaries; and a list of
8 all individuals who are or who have been selected to become
9 directors or executive officers of such person, or who perform or
10 will perform functions appropriate to such positions. Such list shall
11 include for each such individual the information required by
12 subparagraph (i) of this paragraph.

13 (2) The source, nature and amount of the consideration used or
14 to be used in effecting the merger or other acquisition of control, a
15 description of any transaction wherein funds were or are to be
16 obtained for any such purpose (including any pledge of the insurer's
17 stock, or the stock of any of its subsidiaries or controlling
18 affiliates), and the identity of persons furnishing such consideration,
19 provided, however, that where a source of such consideration is a
20 loan made in the lender's ordinary course of business, the identity of
21 the lender shall remain confidential, if the person filing such
22 statement so requests.

23 (3) Fully audited financial information as to the earnings and
24 financial condition of each acquiring party for the preceding five
25 fiscal years of each such acquiring party (or for such lesser period
26 as such acquiring party and any predecessors thereof shall have
27 been in existence), and similar unaudited information as of a date
28 not earlier than 90 days prior to the filing of the statement.

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

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

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

41 (7) A full description of any contracts, arrangements or
42 understandings with respect to any security referred to in subsection
43 a. in which any acquiring party is involved, including but not
44 limited to transfer of any of the securities, joint ventures, loan or
45 option arrangements, puts or calls, guarantees of loans, guarantees
46 against loss or guarantees of profits, division of losses or profits, or
47 the giving or withholding of proxies. Such description shall

1 identify the persons with whom such contracts, arrangements or
2 understandings have been entered into.

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

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

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

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

22 (12) An agreement by the person required to file the statement
23 referred to in subsection a. of this section that it will provide the
24 annual enterprise risk report, specified in subsection k. of section 3
25 of P.L. 1970, c. 22 (C. 17:27A-3), so long as control exists.

26 (13) An acknowledgement by the person required to file the
27 statement referred to in subsection a. of this section that the person
28 and all subsidiaries within its control in the insurance holding
29 company system will provide information to the commissioner upon
30 request as necessary to evaluate enterprise risk to the insurer.

31 (14) Such additional information as the commissioner may by
32 rule or regulation prescribe as necessary or appropriate for the
33 protection of policyholders of the insurer or in the public interest.

34 If the person required to file the statement referred to in
35 subsection a. is a partnership, limited partnership, syndicate or other
36 group, the commissioner may require that the information called for
37 by paragraphs (1) through **[(12)] (14)** shall be given with respect to
38 each partner of such partnership or limited partnership, each
39 member of such syndicate or group, and each person who controls
40 such partner or member. If any such partner, member or person is a
41 corporation or the person required to file the statement referred to in
42 subsection a. is a corporation, the commissioner may require that
43 the information called for by paragraphs (1) through **[(12)] (14)**
44 shall be given with respect to such corporation, each officer and
45 director of such corporation, and each person who is directly or
46 indirectly the beneficial owner of more than 10% of the outstanding
47 voting securities of such corporation.

1 If any material change occurs in the facts set forth in the
2 statement filed with the commissioner and sent to such insurer
3 pursuant to this section, an amendment setting forth such change,
4 together with copies of all documents and other material relevant to
5 such change, shall be filed with the commissioner and sent to such
6 insurer within two business days after the person learns of such
7 change.

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

18 d. Approval by commissioner; hearings.

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

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

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

30 (a) The informational requirements of paragraph (1) of
31 subsection c. and paragraph (2) of subsection d. of section 7 of
32 P.L.1993, c.241 (C.17:27A-4.1) shall apply;

33 (b) The merger or other acquisition shall not be disapproved if
34 the commissioner finds that any of the situations meeting the
35 criteria provided by paragraph (3) of subsection d. of section 7 of
36 P.L.1993, c.241 (C.17:27A-4.1) exist; and

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

40 (iii) The financial condition of any acquiring party is such as
41 might jeopardize the financial stability of the insurer, or prejudice
42 the interest of its policyholders;

43 (iv) The financial condition of any acquiring party is such that
44 (a) the acquiring party has not been financially solvent on a
45 generally accepted accounting principles basis, or if an insurer, on a
46 statutory accounting basis, for the most recent three fiscal years
47 immediately prior to the date of the proposed acquisition (or for the
48 whole of such lesser period as such acquiring party and any

1 predecessors thereof shall have been in existence); (b) the acquiring
2 party has not generated net before-tax profits from its normal
3 business operations for the latest two fiscal years immediately prior
4 to the date of acquisition (or for the whole of such lesser period as
5 such acquiring party and any predecessors thereof shall have been
6 in existence); or (c) the acquisition debt of the acquiring party
7 exceeds 50% of the purchase price of the insurer;

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

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

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

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

43 (3) If the proposed acquisition of control requires the approval
44 of more than one commissioner, the public hearing referred to in
45 paragraph (2) may be held on a consolidated basis upon request of
46 the person filing the statement referred to in subsection a. of this
47 section. That person shall file the statement referred to in subsection
48 a. of this section with the National Association of Insurance

1 Commissioners within five days of making the request for a public
2 hearing. A commissioner may opt out of a consolidated hearing, and
3 shall provide notice to the applicant of the decision to opt out
4 within 10 days of the receipt of the statement referred to in
5 subsection a. of this section. A hearing conducted on a consolidated
6 basis shall be public, if not conducted on the documents filed in
7 accordance with the applicable state's procedures for such hearings,
8 and shall be held within the United States in accordance with the
9 rules and procedures of the state hosting the consolidated hearing
10 before the commissioners of the states in which the insurers are
11 domiciled. The commissioners shall hear and receive evidence. A
12 commissioner may attend the hearing, in person or by
13 telecommunication.

14 (4) The commissioner may retain, at the acquiring person's
15 expense, any attorneys, actuaries, accountants and other persons as
16 may be reasonably necessary to assist the commissioner in
17 reviewing the proposed acquisition of control.

18 e. (Deleted by amendment, P.L.1993, c.241.)

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

21 (1) Any transaction which is subject to the provisions of
22 R.S.17:27-1 et seq. or N.J.S.17B:18-60 et seq., concerning the
23 merger or consolidation of two or more insurers; and

24 (2) Any offer, request, invitation, agreement or acquisition
25 which the commissioner by order shall exempt therefrom as (a) not
26 having been made or entered into for the purpose and not having the
27 effect of changing or influencing the control of a domestic insurer,
28 or (b) as otherwise not comprehended within the purposes of this
29 section.

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

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

33 (2) Subject to subsection f., the effectuation of, or any attempt
34 to effectuate, an acquisition of control of, divestiture of, or merger
35 with, a domestic insurer unless the commissioner has given his
36 approval thereto.

37 h. Jurisdiction; consent to service of process.

38 The courts of this State are hereby vested with jurisdiction over
39 every person not resident, domiciled, or authorized to do business in
40 this State who files a statement with the commissioner under this
41 section, and over all actions involving such person arising out of
42 violations of this section, and each such person shall be deemed to
43 have performed acts equivalent to and constituting an appointment
44 by such a person of the commissioner to be his true and lawful
45 attorney upon whom may be served all lawful process in any action,
46 suit or proceeding arising out of violations of this section. Copies
47 of all such lawful process shall be served on the commissioner and

1 transmitted by registered or certified mail by the commissioner to
2 such person at his last known address.

3 (cf: P.L.1993, c.241, s.2)

4

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

7 3. Registration of insurers.

8 a. Registration. Every insurer which is authorized to do
9 business in this State and which is a member of an insurance
10 holding company system shall register with the commissioner,
11 except a foreign insurer subject to disclosure requirements and
12 standards adopted by statute or regulation in the jurisdiction of its
13 domicile which are substantially similar to those contained in: this
14 section; paragraph (1) of subsection a. and subsections b. and c. of
15 section 4 of P.L.1970, c.22 (C.17:27A-4); and either paragraph (2)
16 of subsection a. of section 4 of P.L.1970, c.22 (C.17:27A-4) or a
17 substantially similar provision which requires that each registered
18 insurer shall keep current the information required to be disclosed
19 in its registration statement by reporting all material changes or
20 additions, including change of or additions to ownership, within 15
21 days after the end of each month in which it learns of each such
22 change or addition. Any insurer which is subject to registration
23 under this section shall register within 60 days after the effective
24 date of P.L.1993, c.241 or 15 days after it becomes subject to
25 registration, whichever is later, and annually thereafter by April 1
26 of each year for the previous calendar year, unless the
27 commissioner for good cause shown extends the time for
28 registration, and then within such extended time. The commissioner
29 may require any authorized insurer which is a member of **[a]** an
30 insurance holding company system which is not subject to
31 registration under this section to furnish a copy of the registration
32 statement or other information filed by such insurance company
33 with the insurance regulatory authority of domiciliary jurisdiction.

34 b. Information and form required. Every insurer subject to
35 registration shall file a registration statement and a summary of the
36 registration statement with the commissioner on a form provided by
37 the commissioner, which shall contain current information about:

38 (1) The capital structure, general financial condition, ownership
39 and management of the insurer and any person controlling the
40 insurer;

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

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

46 (a) Loans, other investments, or purchases, sales or exchanges
47 of securities of the affiliates by the insurer or of the insurer by its
48 affiliates;

- 1 (b) Purchases, sales, or exchanges of assets;
- 2 (c) Transactions not in the ordinary course of business;
- 3 (d) Guarantees or undertakings for the benefit of an affiliate
4 which result in an actual contingent exposure of the insurer's assets
5 to liability, other than insurance contracts entered into in the
6 ordinary course of the insurer's business;
- 7 (e) All management agreements, service contracts and all cost-
8 sharing arrangements;
- 9 (f) Reinsurance agreements;
- 10 (g) Dividends and other distributions to shareholders, including
11 the declarations and authorizations thereof; and
- 12 (h) Consolidated tax allocation agreements;
- 13 (4) Any pledge of the insurer's stock, including stock of any
14 subsidiary or controlling affiliate, for a loan made to any member of
15 the insurance holding company system; **[or]**
- 16 (5) Financial statements of or within an insurance holding
17 company system, including all affiliates, if requested by the
18 commissioner. Financial statements shall include, but are not
19 limited to, annual audited financial statements filed with the U.S.
20 Securities and Exchange Commission (SEC) pursuant to the
21 Securities Act of 1933, 15 U.S.C. s.77a et seq., or the Securities
22 Exchange Act of 1934, 15 U.S.C. s.78a et seq. An insurer required
23 to file financial statements pursuant to this paragraph may satisfy
24 the request by providing the commissioner with the most recently
25 filed parent corporation financial statements that have been filed
26 with the SEC;
- 27 (6) Other matters concerning transactions between registered
28 insurers and any affiliates as may be included from time to time in
29 any registration forms adopted or approved by the commissioner;
- 30 (7) Statements that the insurer's board of directors is responsible
31 for and oversees corporate governance and internal controls and that
32 the insurer's officers or senior management have approved,
33 implemented, and continue to maintain and monitor corporate
34 governance and internal control procedures; and
- 35 (8) Any other information required by the commissioner by rule
36 or regulation .

37 All registration statements shall contain a summary outlining all
38 items in the current registration statement representing changes
39 from the prior registration statement.

40 c. Materiality. No information need be disclosed on the
41 registration statement filed pursuant to subsection b. of this section
42 if such information is not material for the purposes of this section.
43 Unless the commissioner by rule, regulation or order provides
44 otherwise, sales, purchases, exchanges, loans or extensions of
45 credit, investments, or guarantees or other contingent obligations
46 involving 1/2 of 1% or less of an insurer's admitted assets as of
47 December 31 next preceding shall not be deemed material for
48 purposes of this section.

1 d. Amendments to registration statements. Each registered
2 insurer shall keep current the information required to be disclosed
3 in its registration statement by reporting all material changes or
4 additions on amendment forms provided by the commissioner
5 within 15 days after the end of the month in which it learns of each
6 such change or addition.

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

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

15 g. Consolidated filing. The commissioner may require or allow
16 two or more affiliated insurers subject to registration hereunder to
17 file a consolidated registration statement or consolidated reports
18 amending their consolidated registration statement or their
19 individual registration statements.

20 h. Alternative registration. The commissioner may allow an
21 insurer which is authorized to do business in this State and which is
22 part of an insurance holding company system to register on behalf
23 of any affiliated insurer which is required to register under
24 subsection a. and to file all information and material required to be
25 filed under this section.

26 i. Exemptions. The provisions of this section shall not apply
27 to any insurer, information or transaction if and to the extent that
28 the commissioner by rule, regulation, or order shall exempt the
29 same from the provisions of this section.

30 j. Disclaimer. Any person may file with the commissioner a
31 disclaimer of affiliation with any authorized insurer or such a
32 disclaimer may be filed by such insurer or any member of an
33 insurance holding company system. The disclaimer shall fully
34 disclose all material relationships and bases for affiliation between
35 such person and such insurer as well as the basis for disclaiming
36 such affiliation. **【After a disclaimer has been filed, the insurer shall
37 be relieved of any duty to register or report under this section which
38 may arise out of the insurer's relationship with such person unless
39 and until the commissioner disallows such a disclaimer. The
40 commissioner shall disallow such a disclaimer only after furnishing
41 all parties in interest with notice and opportunity to be heard and
42 after making specific findings of fact to support such
43 disallowance.】** A disclaimer of affiliation shall be deemed to have
44 been granted unless the commissioner, within 30 days following
45 receipt of a complete disclaimer, notifies the filing party in writing
46 that the disclaimer is disallowed. In the event of disallowance, the
47 disclaiming party may request a hearing. The disclaiming party
48 shall be relieved of its duty to register under this section if approval

1 of the disclaimer has been granted by the commissioner, or if the
2 disclaimer is deemed to have been approved.

3 k. Enterprise risk filing. The ultimate controlling person of
4 every insurer subject to registration shall also file an annual
5 enterprise risk report. The report shall, to the best of the ultimate
6 controlling person's knowledge and belief, identify the material
7 risks within the insurance holding company system that could pose
8 enterprise risk to the insurer. The report shall be filed with the lead
9 state commissioner of the insurance holding company system as
10 determined by the procedures within the Financial Analysis
11 Handbook adopted by the National Association of Insurance
12 Commissioners.

13 l. Violations. The failure to file a registration statement or any
14 amendment thereto or enterprise risk filing required by this section
15 within the time specified for such filing shall be a violation of this
16 section.

17 (cf: P.L.1995, c.338, s.1)

18

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

21 4. Standards

22 a. Transactions **【with affiliates】** within an insurance holding
23 company system.

24 (1) Transactions **【by registered insurers with their affiliates】**
25 within an insurance holding company system to which an insurer
26 subject to registration is a party shall be subject to the following
27 standards:

28 (a) The terms shall be fair and reasonable;

29 (b) Agreements for cost sharing services and management shall
30 include such provisions as required by rules and regulations adopted
31 by the commissioner;

32 (c) Charges or fees for services performed shall be reasonable;

33 **【c】** (d) Expenses incurred and payment received shall be
34 allocated to the insurer in conformity with customary insurance
35 accounting practices consistently applied;

36 **【d】** (e) The books, accounts and records of each party to all such
37 transactions shall be so maintained as to clearly and accurately
38 disclose the precise nature and details of the transactions, including
39 such accounting information as is necessary to support the
40 reasonableness of the charges or fees to the respective parties; and

41 **【e】** (f) The insurer's surplus as regards policyholders following
42 any transaction with affiliates or dividends or distributions to
43 shareholder affiliates shall be reasonable in relation to the insurer's
44 outstanding liabilities and adequate to its financial needs.

45 (2) The following transactions, set forth in subparagraphs (a)
46 through (g) of this paragraph (2) involving a domestic insurer and
47 any person in its insurance holding company system, including
48 amendments or modifications of affiliate agreements previously

1 filed pursuant to this section, which are subject to any materiality
2 standards contained in subparagraphs (a) through (g) of this
3 paragraph (2) may not be entered into unless the insurer has notified
4 the commissioner in writing of its intention to enter into that
5 transaction at least 30 days prior thereto, or such shorter period as
6 the commissioner may permit, and the commissioner has not
7 disapproved it within that 30-day period . The notice for
8 amendments or modifications shall include the reasons for the
9 change and the financial impact on the domestic insurer. Informal
10 notice shall be reported, within 30 days after a termination of a
11 previously filed agreement, to the commissioner for determination
12 of the type of filing required.

13 (a) Sales, purchases, exchanges, loans or extensions of credit,
14 guarantees or other contingent obligations, investments, or loans
15 collateralized by the stock of a subsidiary or affiliate, provided such
16 transactions equal or exceed: (i) with respect to insurers other than
17 life insurers, the lesser of 3% of the insurer's admitted assets or 25%
18 of surplus as regards policyholders, as of December 31 next
19 preceding; (ii) with respect to life insurers, 3% of the insurer's
20 admitted assets, as of December 31 next preceding;

21 (b) Loans or extensions of credit to any person who is not an
22 affiliate, in which the insurer makes such loans or extensions of
23 credit with the agreement or understanding that the proceeds of
24 such transactions, in whole or in substantial part, are to be used to
25 make loans or extensions of credit to, to purchase assets of, or to
26 make investments in, any affiliate of the insurer making those loans
27 or extensions of credit, provided those transactions are equal to or
28 exceed: (i) with respect to insurers other than life insurers, the
29 lesser of 3% of the insurer's admitted assets or 25% of surplus as
30 regards policyholders, as of December 31 next preceding; (ii) with
31 respect to life insurers, 3% of the insurer's admitted assets, as of
32 December 31 next preceding;

33 (c) Reinsurance agreements or modifications thereto, including:
34 (i) All reinsurance pooling agreements; and
35 (ii) Agreements in which the reinsurance premium or a change
36 in the insurer's liabilities, or the projected reinsurance premium or a
37 change in the insurer's liabilities in any of the next three years,
38 equals or exceeds 5% of the insurer's surplus as regards
39 policyholders, as of December 31 next preceding, including those
40 agreements which may require as consideration the transfer of
41 assets from an insurer to a non-affiliate if an agreement or
42 understanding exists between the insurer and non-affiliate that any
43 portion of those assets will be transferred to one or more affiliates
44 of the insurer;

45 (d) All management agreements, service contracts, tax
46 allocation agreements, and all cost-sharing arrangements; [and]

47 (e) Guarantees when made by a domestic insurer; provided,
48 however, that a guarantee which is quantifiable as to amount shall

1 not be subject to the notice requirements of this paragraph unless it
2 exceeds the lesser of one-half of one percent (.5%) of the insurer's
3 admitted assets or ten percent (10%) of surplus as regards
4 policyholders as of the 31st day of December next preceding.
5 Further, all guarantees which are not quantifiable as to amount shall
6 be subject to the notice requirements of this paragraph;

7 (f) Direct or indirect acquisitions or investments in a person that
8 controls the insurer or in an affiliate of the insurer in an amount
9 which, together with its present holdings in such investments,
10 exceeds two and one-half percent (2.5%) of the insurer's surplus to
11 policyholders. Direct or indirect acquisitions in insurance affiliates
12 that are subject to section 2 of P.L. 1970, c. 22 (C.17:27A-2), shall
13 be exempt from this requirement; and

14 (g) Any material transactions, specified by regulation, which the
15 commissioner determines may adversely affect the interests of the
16 insurer's policyholders. Nothing herein contained shall be deemed
17 to authorize or permit any transactions which, in the case of an
18 insurer which is not a member of the same insurance holding
19 company system, would be otherwise contrary to law.

20 (3) A domestic insurer may not enter into transactions which are
21 part of a plan or series of like transactions with persons within the
22 insurance holding company system if the purpose of those separate
23 transactions is to avoid the statutory threshold amount and thus
24 avoid the review that would otherwise occur. If the commissioner
25 determines that such separate transactions were entered into over
26 any 12-month period for that purpose, he may exercise his authority
27 under section 8 of P.L.1993, c.241 (C.17:27A-9.1).

28 (4) The commissioner, in reviewing transactions pursuant to
29 paragraph (2) of this subsection, shall consider whether the
30 transactions comply with the standards set forth in paragraph (1) of
31 this subsection and whether they may adversely affect the interests
32 of policyholders.

33 (5) The commissioner shall be notified within 30 days of any
34 investment of the domestic insurer in any one corporation if the
35 total investment in that corporation by the insurance holding
36 company system exceeds 10% of that corporation's voting
37 securities.

38 (6) The commissioner may by regulation specify certain types of
39 transactions that need not be submitted for review under this
40 subsection if he determines that those transactions would not have a
41 significant impact on the financial condition or methods of
42 operation of the insurer.

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

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

1 property, whose fair market value together with that of other
2 dividends or distributions made within the preceding 12 months
3 exceeds the greater of (i) 10% of such insurer's surplus as regards
4 policyholders as of December 31 next preceding, or (ii) the net gain
5 from operations of such insurer, if such insurer is a life insurer, or
6 the net income, if such insurer is not a life insurer, not including
7 realized capital gains, for the 12-month period ending December 31
8 next preceding, but shall not include pro rata distributions of any
9 class of the insurer's own securities.

10 (c) Notwithstanding any other provision of law, a domestic
11 insurer may declare an extraordinary dividend or distribution which
12 is conditional upon the commissioner's approval thereof, and such a
13 declaration shall confer no rights upon **【policyholders】**
14 shareholders until (i) 30 days after the commissioner has received
15 notice of the declaration thereof and has not within such period
16 disapproved such payment, or (ii) the commissioner shall have
17 approved such payment within such 30-day period.

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

26 d. Management of domestic insurers subject to registration.

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

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

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

1 (4) The board of directors of a domestic insurer shall establish
2 one or more committees comprised solely of directors who are not
3 officers or employees of the insurer or of any entity controlling,
4 controlled by, or under common control with, the insurer and who
5 are not beneficial owners of a controlling interest in the voting
6 securities of the insurer or any such entity. The committee shall be
7 responsible for recommending the selection of independent certified
8 public accountants, reviewing the insurer's financial condition, the
9 scope and results of the independent audit and any internal audit,
10 nominating candidates for director for election by shareholders or
11 policyholders, evaluating the performance of officers deemed to be
12 principal officers of the insurer and recommending to the board of
13 directors the selection and compensation, including bonuses or
14 other special payments, of the principal officers.

15 (5) The provisions of paragraphs (3) and (4) of this subsection d.
16 shall not apply to a domestic insurer if the person controlling the
17 insurer, such as an insurer, a mutual insurance holding company, or
18 a publicly held corporation, is an entity having a board of directors
19 and committees thereof that substantially meet the requirements of
20 those paragraphs.

21 (6) An insurer may make application to the commissioner for a
22 waiver from the requirements of this subsection, if the insurer's
23 annual direct written and assumed premium, excluding premiums
24 reinsured with the Federal Crop Insurance Corporation and National
25 Flood Insurance Program, is less than \$300,000,000. An insurer
26 may also make application to the commissioner for a waiver from
27 the requirements of this subsection based upon unique
28 circumstances. The commissioner may consider various factors
29 including, but not limited to, the type of business entity, volume of
30 business written, availability of qualified board members, or the
31 ownership or organizational structure of the entity.

32 (cf: P.L.1995, c.338, s.2)

33

34 5. Section 7 of P.L.1993, c.241 (C.17:27A-4.1) is amended to
35 read as follows:

36 7. a. As used in this section only:

37 "Acquisition" means any agreement, arrangement or activity, the
38 consummation of which results in a person acquiring, directly or
39 indirectly, the control of another person, and includes but is not
40 limited to the acquisition of voting securities, the acquisition of
41 assets, bulk reinsurance and mergers.

42 An "involved insurer" includes an insurer which either acquires
43 or is acquired, is affiliated with an insurer which is an acquirer or is
44 acquired, or is the result of a merger.

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

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

1 (a) ~~【An acquisition subject to approval or disapproval by the~~
2 ~~commissioner pursuant to section 2 of P.L.1970, c.22 (C.17:27A-~~
3 ~~2);】 Deleted by amendment P.L. _____, c. _____) (pending before~~
4 ~~the Legislature as this bill)~~

5 (b) A purchase of securities solely for investment purposes, so
6 long as those securities are not used by voting or otherwise to cause
7 or attempt to cause the substantial lessening of competition in any
8 insurance market in this State. If a purchase of securities results in
9 a presumption of control as defined in subsection c. of section 1 of
10 P.L.1970, c.22 (C.17:27A-1), it is not solely for investment
11 purposes unless the commissioner or other appropriate official of
12 the insurer's state of domicile accepts a disclaimer of control or
13 affirmatively finds that control does not exist and such disclaimer
14 action or affirmative finding is communicated by the domiciliary
15 commissioner or official to the commissioner of this State;

16 (c) The acquisition of already affiliated persons;

17 (d) An acquisition if, as an immediate result of the acquisition,
18 the combined market share of the involved insurers would not
19 exceed five percent of the total market, there would be no increase
20 in the market, or

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

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

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

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

32 (f) An acquisition of an insurer whose domiciliary
33 commissioner or other appropriate official affirmatively finds that:
34 the insurer is in failing condition; there is a lack of feasible
35 alternatives to improving that condition; the public benefits of
36 improving that insurer's condition through the acquisition exceed
37 the public benefits that would arise from not lessening competition;
38 and such findings are communicated by the domiciliary
39 commissioner or official to the commissioner of this State.

40 (g) The acquisition of a person by another person when both
41 persons are neither directly nor through affiliates primarily engaged
42 in the business of insurance, if pre-acquisition notification is filed
43 with the commissioner in accordance with paragraph (1) of
44 subsection c. of this section 30 days prior to the proposed effective
45 date of the acquisition. Such pre-acquisition notification is not
46 required for exclusion from this section if the acquisition would
47 otherwise be excluded from this section by any other paragraph of
48 this subsection.

1 c. An acquisition covered by subsection b. of this section shall
 2 be subject to an order pursuant to subsection e. of this section
 3 unless the acquiring person files a pre-acquisition notification and
 4 the waiting period has expired. The acquired person may file a pre-
 5 acquisition notification. The commissioner shall give confidential
 6 treatment to information submitted under this subsection in the
 7 same manner as provided in section 6 of P.L.1970, c.22 (C.17:27A-
 8 6).

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

19 (2) The waiting period required shall begin on the date of
 20 receipt by the commissioner of pre-acquisition notification and shall
 21 end on the earlier of the 30th day after the date of that notification,
 22 or termination of the waiting period by the commissioner. Prior to
 23 the end of the waiting period, the commissioner on a one-time basis
 24 may require the submission of additional needed information
 25 relevant to the proposed acquisition, in which event the waiting
 26 period shall end on the earlier of the 30th day after receipt of that
 27 additional information by the commissioner or termination of the
 28 waiting period by the commissioner.

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

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

38 (a) Any acquisition covered under subsection b. involving two
 39 or more insurers competing in the same market shall be prima facie
 40 evidence of violation of the competitive standard if the market is
 41 highly concentrated and the involved insurers possess the following
 42 shares of the market:

43		
44	Insurer A	Insurer B
45	4%	4% or more
46	10%	2% or more
47	15%	1% or more

1 or, if the market is not highly concentrated and the involved
2 insurers possess the following shares of the market:

3		
4	Insurer A	Insurer B
5	5%	5% or more
6	10%	4% or more
7		
8	Insurer A	Insurer B
9	15%	3% or more
10	19%	1% or more
11		

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

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

31 (i) there is a significant trend toward increased concentration in
32 the market;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (i) there is a hearing,

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

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

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

1 the aspects of the acquisition causing a violation of the standards of
2 this section may be remedied and the order vacated or modified.

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

5 (2) Any person who violates a cease and desist order of the
6 commissioner under paragraph (1) while such order is in effect,
7 may after notice and hearing, be subject to a penalty of up to
8 \$10,000 for each day of violation, or suspension or revocation of
9 that person's license, or both.

10 (3) Any insurer or other person who fails to make any filing
11 required by this section shall be required to pay a penalty of up to
12 \$5,000 per violation.

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

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

20 (cf: P.L.1993, c.241, s.7)

21

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

24 5. Examination.

25 a. Power of commissioner. In addition to the powers which the
26 commissioner has under other sections of Title 17 of the Revised
27 Statutes and Title 17B of the New Jersey Statutes relating to the
28 examination of insurers, the commissioner shall **also** have the
29 power to examine any insurer registered under section 3 of
30 P.L.1970, c.22 (C.17:27A-3) and its affiliates to ascertain the
31 financial condition of the insurer, including the enterprise risk to the
32 insurer by the ultimate controlling party, or by any entity or
33 combination of entities within the insurance holding company
34 system, or by the insurance holding company system on a
35 consolidated basis.

36 The commissioner shall also have the power to order any insurer
37 registered under section 3 to produce such records, books, or other
38 information papers in the possession of the insurer or its affiliates as
39 shall be necessary to ascertain the financial condition of the insurer
40 or to determine compliance with P.L.1970, c.22 (C.17:27A-1 et
41 seq.). In the event such insurer fails to comply with such order, the
42 commissioner shall have the power to examine such affiliates to
43 obtain such information.

44 In addition, to determine compliance with this section, the
45 commissioner may order any insurer registered under section 3 of
46 P.L.1970, c.22 (C.17:27A-3) to produce information not in the
47 possession of the insurer if the insurer can obtain access to that
48 information pursuant to contractual relationships, statutory

1 obligations, or other method. In the event the insurer cannot obtain
2 the information requested by the commissioner, the insurer shall
3 provide to the commissioner a detailed explanation of the reason
4 that the insurer cannot obtain the information and the identity of the
5 holder of the information. Whenever it appears to the commissioner
6 that the detailed explanation is without merit, the commissioner
7 may require the insurer, after notice and opportunity for a hearing,
8 to pay a penalty of up to \$5,000 for each day's delay, or may
9 suspend or revoke the insurer's certificate of authority.

10 b. (Deleted by amendment, P.L.1993, c.241.)

11 c. Use of consultants. The commissioner may retain at the
12 registered insurer's expense such attorneys, actuaries, accountants
13 and other persons as shall be necessary to assist in the conduct of
14 the examination under subsection a. above. Any persons so retained
15 shall be under the direction and control of the commissioner and
16 shall act in a purely advisory capacity.

17 d. Expenses. The reasonable expenses of the examination
18 pursuant to subsection a. above shall be fixed and determined by the
19 commissioner, and he shall collect them from the insurer examined,
20 which shall pay them on presentation of an accounting of the
21 expenses.

22 e. Compelling production. In the event the insurer fails to
23 comply with an order issued pursuant to this section, the
24 commissioner shall have the power to examine the affiliates to
25 obtain the information. The commissioner shall also have the power
26 to issue subpoenas, to administer oaths, and to examine under oath
27 any person for purposes of determining compliance with this
28 section. Upon the failure or refusal of any person to obey a
29 subpoena, the commissioner may petition a court of competent
30 jurisdiction, and upon proper showing, the court may enter an order
31 compelling the witness to appear and testify or produce
32 documentary evidence. Failure to obey the court order shall be
33 punishable as contempt of court. Every person shall be obliged to
34 attend as a witness at the place specified in the subpoena, when
35 subpoenaed, anywhere within the State. He or she shall be entitled
36 to the same fees and mileage, if claimed, as a witness in the
37 Superior Court of New Jersey, which fees, mileage, and actual
38 expense, if any, necessarily incurred in securing the attendance of
39 witnesses, and their testimony, shall be itemized and charged
40 against, and be paid by, the company being examined.

41 (cf: P.L.1995, c.338, s.2)

42
43 7. (New section) a. Power of commissioner. With respect to
44 any insurer registered under section 3 of P.L.1970, c.22 (C.17:27A-
45 3), and in accordance with subsection c. of this section, the
46 commissioner shall also have the power to participate in a
47 supervisory college for any domestic insurer that is part of an
48 insurance holding company system with international operations in

1 order to determine compliance by the insurer with P.L. , c.
2 (C.) (pending before the Legislature as this bill). The powers of
3 the commissioner with respect to supervisory colleges include, but
4 are not limited to, the following:

- 5 (1) Initiating the establishment of a supervisory college;
- 6 (2) Clarifying the membership and participation of other
7 supervisors in the supervisory college;
- 8 (3) Clarifying the functions of the supervisory college and the
9 role of other regulators, including the establishment of a group-wide
10 supervisor;
- 11 (4) Coordinating the ongoing activities of the supervisory
12 college, including planning meetings, supervisory activities, and
13 processes for information sharing; and
- 14 (5) Establishing a crisis management plan.

15 b. Expenses. Each registered insurer subject to this section
16 shall be liable for and shall pay the reasonable expenses of the
17 commissioner's participation in a supervisory college in accordance
18 with subsection c. of this section, including reasonable travel
19 expenses. For purposes of this section, a supervisory college may be
20 convened as either a temporary or permanent forum for
21 communication and cooperation between the regulators charged
22 with the supervision of the insurer or its affiliates, and the
23 commissioner may establish a regular assessment to the insurer for
24 the payment of these expenses.

25 c. Supervisory college. In order to assess the business strategy,
26 financial position, legal and regulatory position, risk exposure, risk
27 management and governance processes, and as part of the
28 examination of individual insurers in accordance with section 5 of
29 P.L.1970, c.22 (C.17:27A-5), the commissioner may participate in a
30 supervisory college with other regulators charged with supervision
31 of the insurer or its affiliates, including other state, federal and
32 international regulatory agencies. The commissioner may enter into
33 agreements in accordance with subsection c. of section 6 of
34 P.L.1970, c.22, (C.17:27A-6) providing the basis for cooperation
35 between the commissioner and the other regulatory agencies, and
36 the activities of the supervisory college. Nothing in this section
37 shall delegate to the supervisory college the authority of the
38 commissioner to regulate or supervise the insurer or its affiliates
39 within its jurisdiction.

40

41 8. (New section) Group-wide supervision for international
42 insurance groups

43 a. As used in this section, the following terms shall have the
44 respective meanings hereinafter set forth, unless the context clearly
45 indicates otherwise:

46 "Group-wide supervisor" means the chief insurance regulatory
47 official authorized to engage in conducting and coordinating group-
48 wide supervision activities who is from the jurisdiction determined

1 or acknowledged by the commissioner under subsection c. of this
2 section to have sufficient significant contacts with the international
3 insurance group.

4 “International insurance group” means an insurance group
5 operating internationally that includes an insurer registered under
6 section 3 of P.L.1970, c.22 (C.17:27A-3).

7 b. The commissioner is authorized to act as the group-wide
8 supervisor for any international insurance group if the international
9 insurance group's ultimate controlling person is domiciled in this
10 State. The commissioner may otherwise acknowledge another
11 jurisdiction as the group-wide supervisor whenever the international
12 insurance group:

13 (1) Does not have substantial insurance operations in the United
14 States;

15 (2) Has substantial insurance operations in the United States,
16 but not in this State; or

17 (3) Has substantial insurance operations in the United States and
18 this State, but the department has determined pursuant to the factors
19 set forth in subsections c. and f. of this section that the other
20 jurisdiction is the appropriate group supervisor.

21 c. In cooperation with other supervisors, the commissioner may
22 determine that the commissioner is the appropriate group-wide
23 supervisor for an international insurance group with substantial
24 operations concentrated in this State or in insurance operations
25 conducted by subsidiary insurance companies domiciled in this
26 State, where the ultimate controlling person is domiciled outside of
27 this State, or the commissioner may acknowledge that another chief
28 insurance regulatory official is the appropriate group-wide
29 supervisor for the international insurance group. The commissioner
30 shall consider the following factors and the relative scale of each
31 when making a determination or acknowledgment under this
32 subsection:

33 (1) The location where the international insurance group is
34 based or the place of domicile of the ultimate controlling person of
35 the international insurance group.

36 (2) The locations of the international insurance group's
37 executive offices.

38 (3) The locations of origin of the insurance business of the
39 international insurance group.

40 (4) The locations of the assets and liabilities of the international
41 insurance group.

42 (5) The locations of the business operations and activities of the
43 international insurance group.

44 (6) Whether another chief insurance regulatory official is acting
45 or seeking to act as the lead group-wide supervisor under a
46 regulatory system that the commissioner determines to be:

47 (a) substantially similar to that provided under the insurance
48 laws of this State; or

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

4 (7) Whether a chief insurance regulatory official acting or
5 seeking to act as the lead group-wide supervisor provides the
6 commissioner with reasonably reciprocal recognition and
7 cooperation.

8 d. Pursuant to section 5 of P.L.1970, c.22 (C.17:27A-5), the
9 commissioner is authorized to collect from any insurer registered
10 pursuant to section 3 of P.L.1970, c.22 (C.17:27A-3) all
11 information necessary to determine whether the commissioner may
12 act as the group-wide supervisor or if the commissioner may
13 acknowledge another insurance regulatory official to act as the
14 group-wide supervisor. Prior to issuing a determination that an
15 international insurance group is subject to group-wide supervision
16 by the commissioner, the commissioner shall notify the insurer
17 registered pursuant to section 3 of P.L.1970, c.22 (C.17:27A-3) and
18 the ultimate controlling person within the international insurance
19 group. The international insurance group shall have not less than 30
20 days to provide the commissioner with additional information
21 pertinent to the pending determination. The commissioner shall
22 publish on the Department of Banking and Insurance website the
23 identity of international insurance groups that the commissioner has
24 determined are subject to its group-wide supervision.

25 e. If the commissioner is the group-wide supervisor for an
26 international insurance group, the commissioner is authorized to
27 engage in conducting and coordinating any of the following group-
28 wide supervision activities:

29 (1) Assess the enterprise risks within the international insurance
30 group, pursuant to section 5 of P.L.1970, c.22 (C.17:27A-5), to
31 ensure that:

32 (a) The material financial condition and liquidity risks to the
33 members of the international insurance group which are engaged in
34 the business of insurance are identified by management.

35 (b) Reasonable and effective mitigation measures are in place.

36 (2) Request, from any member of an international insurance
37 group subject to the commissioner's supervision, information
38 necessary and appropriate to assess enterprise risk, including, but
39 not limited to, information about the members of the international
40 insurance group regarding:

41 (a) Governance, risk assessment and management.

42 (b) Capital adequacy.

43 (c) Material intercompany transactions.

44 (3) Compel development and implementation of reasonable
45 measures designed to assure that the international insurance group
46 is able to timely recognize and mitigate material risks to members
47 that are engaged in the business of insurance.

1 (4) Communicate with other insurance regulatory officials for
2 members within the international insurance group and share
3 relevant information subject to the confidentiality provisions of
4 section 6 of P.L.1970, c.22 (C.17:27A-6), through supervisory
5 colleges as set forth in section 7 of P.L. c. (C.) (pending
6 before the Legislature as this bill) or otherwise.

7 (5) Enter into agreements with or obtain documentation from
8 any insurer registered under section 3 of P.L.1970, c.22 (C.17:27A-
9 3), any member of the international insurance group and any other
10 chief insurance regulatory officials for members, providing the
11 basis for or otherwise clarifying the commissioner's role as group
12 supervisor, including provisions for resolving disputes with other
13 relevant supervisory authorities. Such agreements or documentation
14 shall not serve as evidence in any proceeding that any insurer or
15 person within an insurance holding company system not
16 incorporated in this State is doing business in this State or is
17 otherwise subject to jurisdiction in this State.

18 (6) Other group-wide supervisory activities as considered
19 appropriate by the commissioner.

20 f. If the commissioner acknowledges that a regulatory official
21 from a jurisdiction which is not accredited by the National
22 Association of Insurance Commissioners (NAIC) is the group-wide
23 supervisor, the commissioner is authorized to reasonably cooperate,
24 through supervisory colleges or otherwise, with group supervision
25 undertaken by the group-wide supervisor, provided that:

26 (1) The commissioner's cooperation is in compliance with the
27 insurance laws of this State.

28 (2) The regulator also recognizes and cooperates with the
29 commissioner's activities as a group-wide supervisor for other
30 international insurance groups where applicable. Whenever such
31 recognition and cooperation is not reasonably reciprocal, the
32 commissioner is authorized to refuse recognition and cooperation.

33 g. The commissioner is authorized to enter into agreements
34 with or obtain documentation from any insurer registered under
35 section 3 of P.L.1970, c.22 (C.17:27A-3), any affiliate of the insurer
36 and other regulatory officials for members of the insurance group,
37 which provide the basis for or otherwise clarify a regulatory
38 official's role as group supervisor.

39 h. The commissioner may promulgate regulations pursuant to
40 the Administrative Procedure Act, P.L. 1968, c. 410 (C.52:14B-1 et
41 seq.) necessary for the administration of this section. In
42 determining whether to promulgate a regulation, the commissioner
43 shall give appropriate consideration to model laws, model
44 regulations and definitions or guidelines pertaining to group-wide
45 supervision, if any, promulgated by the NAIC or other recognized
46 insurance regulatory bodies or associations.

47 i. A registered insurer subject to this section shall be liable for
48 and shall pay the reasonable expenses of the commissioner's

1 participation in the administration of this section, including the
2 engagement of attorneys, actuaries and any other professionals and
3 all reasonable travel expenses.

4

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

7 6. Confidential treatment. **【**All information, documents and
8 copies thereof obtained by or disclosed to the commissioner or any
9 other person in the course of an examination or investigation made
10 pursuant to section 5 of P.L.1970, c.22 (C.17:27A-5) and all
11 information reported pursuant to section 3 and section 4 of
12 P.L.1970, c.22 (C.17:27A-3 and 17:27A-4) shall be given
13 confidential treatment and shall not be subject to subpoena and shall
14 not be made public by the commissioner or any other person, except
15 to insurance departments of other states, without the prior written
16 consent of the insurer to which it pertains unless the commissioner,
17 after giving the insurer, and its affiliates who would be affected
18 thereby, notice and opportunity to be heard, determines that the
19 interests of policyholders, shareholders or the public will be served
20 by the publication thereof, in which event he may publish all or any
21 part thereof in such manner as he may deem appropriate.**】**

22 a. Documents, materials or other information in the possession
23 or control of the department that are obtained by or disclosed to the
24 commissioner or any other person in the course of an examination
25 or investigation made pursuant to section 5 of P.L.1970, c.22
26 (C.17:27A-5) and all information reported pursuant to paragraphs
27 (12) and (13) of subsection b. of section 2 of P.L.1970, c.22 (C.
28 17:27A-2), section 3 and section 4 of P.L.1970, c.22 (C.17:27A-3
29 and 17:27A-4) shall be confidential by law and privileged, shall not
30 be subject to P.L.1963, c.73 (C.47:1A-1 et seq.), shall not be subject
31 to subpoena, and shall not be subject to discovery or admissible in
32 evidence in any private civil action. The commissioner is authorized
33 to use the documents, materials or other information in the
34 furtherance of any regulatory or legal action brought as a part of the
35 commissioner's official duties. The commissioner shall not
36 otherwise make the documents, materials or other information
37 public without the prior written consent of the insurer to which it
38 pertains unless the commissioner, after giving the insurer and its
39 affiliates who would be affected thereby notice and opportunity to
40 be heard, determines that the interest of policyholders, shareholders
41 or the public will be served by the publication thereof, in which
42 event the commissioner may publish all or any part in such manner
43 as may be deemed appropriate.

44 b. Neither the commissioner nor any person who received
45 documents, materials or other information while acting under the
46 authority of the commissioner or with whom such documents,
47 materials or other information are shared pursuant to P.L.1970, c.22
48 (C.17:27A-1 et seq.) shall be permitted or required to testify in any

1 private civil action concerning any confidential documents,
2 materials, or information subject to subsection a. of this section.

3 c. In order to assist in the performance of the commissioner's
4 duties, the commissioner:

5 (1) May, upon request, be required to share documents,
6 materials or other information, including the confidential and
7 privileged documents, materials or information subject to
8 subsection a. of this section, with other state, federal and
9 international regulatory agencies, with the National Association of
10 Insurance Commissioners (NAIC) and its affiliates and subsidiaries,
11 and with state, federal, and international law enforcement
12 authorities, including members of any supervisory college described
13 in section 7 of P.L. , c. (C.) (pending before the Legislature
14 as this bill), provided that the recipient agrees in writing to maintain
15 the confidentiality and privileged status of the document, material
16 or other information, and has verified in writing the legal authority
17 to maintain confidentiality.

18 (2) Notwithstanding paragraph (1) of this subsection c., the
19 commissioner may only share confidential and privileged
20 documents, material, or information reported pursuant to subsection
21 k. of section 3 of P.L.1970, c.22 (C.17:27A-3) with commissioners
22 of states having statutes or regulations substantially similar to
23 subsection a. of this section and who have agreed in writing not to
24 disclose that information.

25 (3) May receive documents, materials or information, including
26 otherwise confidential and privileged documents, materials or
27 information from the NAIC and its affiliates and subsidiaries and
28 from regulatory and law enforcement officials of other foreign or
29 domestic jurisdictions, and shall maintain as confidential or
30 privileged any document, material or information received with
31 notice or the understanding that it is confidential or privileged
32 under the laws of the jurisdiction that is the source of the document,
33 material or information; and

34 (4) Shall enter into written agreements with the NAIC governing
35 the sharing and use of information provided pursuant to P.L. , c.
36 (C.) (pending before the Legislature as this bill) consistent with
37 this subsection that shall:

38 (a) specify procedures and protocols regarding the
39 confidentiality and security of information shared with the NAIC
40 and its affiliates and subsidiaries pursuant to P.L. , c. (C.)
41 (pending before the Legislature as this bill), including procedures
42 and protocols for sharing by the NAIC with other state, federal or
43 international regulators;

44 (b) specify that ownership of information shared with the NAIC
45 and its affiliates and subsidiaries pursuant to this subsection
46 remains with the commissioner and the use by the NAIC of the
47 information is subject to the direction of the commissioner;

1 (c) require prompt notice to be given to an insurer whose
2 confidential information in the possession of the NAIC pursuant to
3 P.L. , c. (C.) (pending before the Legislature as this bill)
4 is subject to a request or subpoena to the NAIC for disclosure or
5 production; and

6 (d) require the NAIC and its affiliates and subsidiaries to
7 consent to intervention by an insurer in any judicial or
8 administrative action in which the NAIC and its affiliates and
9 subsidiaries may be required to disclose confidential information
10 about the insurer shared with the NAIC and its affiliates and
11 subsidiaries pursuant to P.L.1970 c.22 (C.17:27A-1 et seq.),
12 including with respect to the participation in supervisory colleges in
13 accordance with section 7 of P.L. , c. (C.) (pending before
14 the Legislature as this bill).

15 d. The sharing of information by the commissioner pursuant to
16 this section shall not constitute a delegation of regulatory authority
17 or rulemaking, and the commissioner is solely responsible for the
18 administration, execution and enforcement of the provisions of P.L.,
19 c. (C.) (pending before the Legislature as this bill).

20 e. No waiver of any applicable privilege or claim of
21 confidentiality in the documents, materials or information shall
22 occur as a result of disclosure to the commissioner under this
23 section or as a result of sharing as authorized in subsection c. of this
24 section.

25 f. Documents, materials or other information in the possession
26 or control of the NAIC pursuant to P.L. , c. (C.) (pending
27 before the Legislature as this bill) shall be confidential by law and
28 privileged, shall not be subject to P.L.1963, c.73 (C.47:1A-1 et
29 seq.), shall not be subject to subpoena, and shall not be subject to
30 discovery or admissible in evidence in any private civil action.
31 (cf: P.L.1993, c.241, s.6)

32
33 10. Section 8 of P.L.1993, c.241 (C.17:27A-9.1) is amended to
34 read as follows:

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

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

47 c. Whenever it appears to the commissioner that any insurer
48 subject to P.L.1970, c.22 (C.17:27A-1 et seq.) or any director,

1 officer, employee or agent thereof has engaged in any transaction or
2 entered into a contract which is subject to section 4 of P.L.1970,
3 c.22 (C.17:27A-4) and which would not have been approved had
4 such approval been requested, the commissioner may order the
5 insurer to cease and desist immediately any further activity under
6 that transaction or contract. After notice and hearing the
7 commissioner may also order the insurer to void any such contracts
8 and restore the status quo if such action is in the best interest of the
9 policyholders, creditors or the public.

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

21 e. Any officer, director, or employee of an insurance holding
22 company system who willfully and knowingly subscribes to or
23 makes or causes to be made any false statements or false reports or
24 false filings with the intent to deceive the commissioner in the
25 performance of his duties under P.L.1970, c.22 (C.17:27A-1 et
26 seq.), upon conviction thereof, may be imprisoned for not less than
27 one year and not more than three years or fined up to \$10,000 per
28 violation, or both. Any fines imposed shall be paid by the officer,
29 director, or employee in his individual capacity, if legally liable, or
30 the insurer.

31 f. Whenever it appears to the commissioner that any person
32 has committed a violation of section 2 of P.L.1970, c.22 (C.
33 17:27A-2), which violation prevents the full understanding of the
34 enterprise risk to the insurer by affiliates or by the insurance
35 holding company system, the violation may serve as an independent
36 basis for disapproving dividends or distributions and for placing the
37 insurer under an order of supervision in accordance with P.L.1993,
38 c.245 (C.17:51A-1 et seq.).

39 (cf: P.L.1993, c.241, s.8)

40

41 11. (New section) As used in sections 11 through 15 of P.L. ,

42 c. (C.) (pending before the Legislature as this bill):

43 “Commissioner” means the Commissioner of Banking and
44 Insurance.

45 “Hospital service corporation” means an entity authorized to
46 transact business in this State pursuant to P.L.1938, c.366 (C.17:48-
47 1 et seq.).

1 12. (New section) The commissioner may increase the amount
2 of capital or surplus required of a hospital service corporation, or
3 subsequently revise or redetermine that increase, using appropriate
4 methods and procedures established by rules and regulations
5 adopted by the commissioner, in order to provide adequate
6 protection against risks affecting the hospital service corporation's
7 financial condition that are not adequately or fully covered by its
8 reserves or other assets, but under no circumstances shall a hospital
9 service corporation's capital or surplus be less than the capital or
10 surplus required pursuant to regulation as prescribed by the
11 commissioner; provided, however, that any increase required by a
12 subsequent revision or redetermination pursuant to this section,
13 shall be made only after a departmental hearing, unless that hearing
14 is waived by the affected hospital service corporation. All matters
15 pertaining to a hearing or to an increase in capital or surplus
16 pursuant to this section shall be confidential and not subject to
17 subpoena or public inspection, except to the extent that the
18 commissioner finds release of that information necessary to protect
19 the public. The hearing shall be initiated within 20 days after
20 written notice to the hospital service corporation. Any declaration
21 regarding an increase required by a subsequent revision or
22 redetermination shall contain findings specifying the factors
23 deemed significant in regard to the particular hospital service
24 corporation, and shall set forth the reasons supporting the increase
25 of capital or surplus ordered by the commissioner. In determining
26 any increase, revision or redetermination in the amount of capital or
27 surplus, the commissioner shall consider the risks of:

28 a. Increases or decreases in the frequency and severity of losses
29 under normal operating conditions, as well as increases or decreases
30 in those values, above or below the levels contemplated by the rates
31 that the hospital service corporation charged for coverage and above
32 or below those reasonably expected under normal conditions;

33 b. Increases or decreases in expenses under normal operating
34 conditions, as well as increases or decreases in those values, above
35 or below the levels contemplated by the rates the hospital service
36 corporation charged for coverage and above or below those
37 reasonably expected under normal conditions;

38 c. Increases or decreases in the value of, or return on, invested
39 assets under normal operating conditions, as well as increases or
40 decreases in those values, above or below those levels anticipated
41 under normal conditions;

42 d. Changes in economic, social or market conditions that could
43 adversely or favorably affect the financial condition of the hospital
44 service corporation, including conditions that would make liquidity
45 more or less important than contemplated and would prevent or
46 facilitate timely investments or force or prohibit untimely sales of
47 assets; and

1 e. Any other contingencies, including reinsurance and
2 unfunded or extra contractual obligations, which may affect the
3 hospital service corporation's financial condition.

4
5 13. (New section) In determining any increase, revision or
6 redetermination in the capital or surplus of a hospital service
7 corporation pursuant to the provisions of section 12 of P.L. , c.
8 (C.) (pending before the Legislature as this bill) the
9 commissioner shall take into account the following factors:

10 a. Methods and techniques used to measure risk exposure and
11 variability;

12 b. The information available relating to the magnitude of the
13 various risks described in section 12 of P.L. , c. (C.)
14 (pending before the Legislature as this bill);

15 c. The extent to which risks described in section 12 of P.L. ,
16 c. (C.) (pending before the Legislature as this bill) are
17 independent or interrelated, and whether any dependency is direct
18 or inverse;

19 d. The extent to which the hospital service corporation has
20 provided protection against contingencies in ways other than the
21 establishment of surplus, including, but not limited to: redundancy
22 of premiums; margin in reserves and liabilities; adjustability of
23 contracts pursuant to the terms of the contracts; voluntary or
24 mandatory investment valuation reserves; reinsurance; the use of
25 conservative actuarial assumptions to provide a margin of security;
26 reserve adjustments after rate increases for policies written at earlier
27 and less adequate rates; contingency or catastrophe reserves; and
28 diversification of assets and underwriting risk; and

29 e. Any other relevant factors, including the National
30 Association of Insurance Commissioners' reports and independent
31 judgments of the soundness of the hospital service corporation's
32 financial condition, as evidenced by the rating and reports of
33 reliable professional financial services.

34
35 14. (New Section) The commissioner may suspend or revoke the
36 authority to do business in this State of any hospital service
37 corporation that does not comply with the provisions of sections 11
38 through 15 of P.L. , c. (C.) (pending before the Legislature
39 as this bill).

40
41 15. (New section) The commissioner may promulgate
42 regulations pursuant to the "Administrative Procedure Act,"
43 P.L.1968, c.410 (C. 52:14B-1 et seq.) necessary to effectuate the
44 purposes of sections 11 through 15 of P.L. , c. (C.)
45 (pending before the Legislature as this bill). Such rules and
46 regulations shall be consistent with the standards for risk based
47 capital for health organizations adopted by the National Association
48 of Insurance Commissioners.

1 16. (New section) As used in sections 16 through 20 of P.L. ,
2 c. (C.) (pending before the Legislature as this bill):

3 “Commissioner” means the Commissioner of Banking and
4 Insurance.

5 “Medical service corporation” means an entity authorized to
6 transact business in this State pursuant to P.L. 1940, c. 74 (C.
7 17:48A-1 et seq.).

8
9 17. (New section) The commissioner may increase the amount
10 of capital or surplus required of a medical service corporation, or
11 subsequently revise or redetermine that increase, using appropriate
12 methods and procedures established by rules and regulations
13 adopted by the commissioner, in order to provide adequate
14 protection against risks affecting the medical service corporation's
15 financial condition that are not adequately or fully covered by its
16 reserves or other assets, but under no circumstances shall a medical
17 service corporation's capital or surplus be less than the capital or
18 surplus required pursuant to regulation as prescribed by the
19 commissioner; provided, however, that any increase required by a
20 subsequent revision or redetermination pursuant to this section,
21 shall be made only after a departmental hearing, unless that hearing
22 is waived by the affected medical service corporation. All matters
23 pertaining to a hearing or to an increase in capital or surplus
24 pursuant to this section shall be confidential and not subject to
25 subpoena or public inspection, except to the extent that the
26 commissioner finds release of that information necessary to protect
27 the public. The hearing shall be initiated within 20 days after
28 written notice to the medical service corporation. Any declaration
29 regarding an increase required by a subsequent revision or
30 redetermination shall contain findings specifying the factors
31 deemed significant in regard to the particular medical service
32 corporation, and shall set forth the reasons supporting the increase
33 of capital or surplus ordered by the commissioner. In determining
34 any increase, revision or redetermination in the amount of capital or
35 surplus, the commissioner shall consider the risks of:

36 a. Increases or decreases in the frequency and severity of losses
37 under normal operating conditions, as well as increases or decreases
38 in those values, above or below the levels contemplated by the rates
39 that the medical service corporation charged for coverage and above
40 or below those reasonably expected under normal conditions;

41 b. Increases or decreases in expenses under normal operating
42 conditions, as well as increases or decreases in those values, above
43 or below the levels contemplated by the rates the medical service
44 corporation charged for coverage and above or below those
45 reasonably expected under normal conditions;

46 c. Increases or decreases in the value of, or return on, invested
47 assets under normal operating conditions, as well as increases or

1 decreases in those values, above or below those levels anticipated
2 under normal conditions;

3 d. Changes in economic, social or market conditions that could
4 adversely or favorably affect the financial condition of the medical
5 service corporation, including conditions that would make liquidity
6 more or less important than contemplated and would prevent or
7 facilitate timely investments or force or prohibit untimely sales of
8 assets; and

9 e. Any other contingencies, including reinsurance and
10 unfunded or extra contractual obligations, which may affect the
11 medical service corporation's financial condition.

12

13 18. (New section) In determining any increase, revision or
14 redetermination in the capital or surplus of a medical service
15 corporation pursuant to the provisions of section 17 of P.L. , c.
16 (C.) (pending before the Legislature as this bill) the
17 commissioner shall take into account the following factors:

18 a. Methods and techniques used to measure risk exposure and
19 variability;

20 b. The information available relating to the magnitude of the
21 various risks described in section 17 of P.L. , c. (C.)
22 (pending before the Legislature as this bill);

23 c. The extent to which risks described in section 17 of P.L. ,
24 c. (C.) (pending before the Legislature as this bill) are
25 independent or interrelated, and whether any dependency is direct
26 or inverse;

27 d. The extent to which the medical service corporation has
28 provided protection against contingencies in ways other than the
29 establishment of surplus, including, but not limited to: redundancy
30 of premiums; margin in reserves and liabilities; adjustability of
31 contracts pursuant to the terms of the contracts; voluntary or
32 mandatory investment valuation reserves; reinsurance; the use of
33 conservative actuarial assumptions to provide a margin of security;
34 reserve adjustments after rate increases for policies written at earlier
35 and less adequate rates; contingency or catastrophe reserves; and
36 diversification of assets and underwriting risk; and

37 e. Any other relevant factors, including the National
38 Association of Insurance Commissioners' reports and independent
39 judgments of the soundness of the medical service corporation's
40 financial condition, as evidenced by the rating and reports of
41 reliable professional financial services.

42

43 19. (New Section) The commissioner may suspend or revoke the
44 authority to do business in this State of any medical service
45 corporation that does not comply with the provisions of sections 16
46 through 20 of P.L. , c. (C.) (pending before the
47 Legislature as this bill).

1 20. (New section) The commissioner may promulgate
2 regulations pursuant to the "Administrative Procedure Act,"
3 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
4 purposes of sections 16 through 20 of P.L. , c. (C.)
5 (pending before the Legislature as this bill). Such rules and
6 regulations shall be consistent with the standards for risk based
7 capital for health organizations adopted by the National Association
8 of Insurance Commissioners.

9
10 21. (New section) As used in sections 21 through 25 of P.L. ,
11 c. (C.) (pending before the Legislature as this bill):

12 "Commissioner" means the Commissioner of Banking and
13 Insurance.

14 "Dental service corporation" means an entity authorized to
15 transact business in this State pursuant to P.L. 1968, c. 305 (C.
16 17:48C-1 et seq.).

17
18 22. (New section) The commissioner may increase the amount
19 of capital or surplus required of a dental service corporation, or
20 subsequently revise or redetermine that increase, using appropriate
21 methods and procedures established by rules and regulations
22 adopted by the commissioner, in order to provide adequate
23 protection against risks affecting the dental service corporation's
24 financial condition that are not adequately or fully covered by its
25 reserves or other assets, but under no circumstances shall a dental
26 service corporation 's capital or surplus be less than the capital or
27 surplus required pursuant to regulation as prescribed by the
28 commissioner; provided, however, that any increase required by a
29 subsequent revision or redetermination pursuant to this section shall
30 be made only after a departmental hearing, unless that hearing is
31 waived by the affected dental service corporation. All matters
32 pertaining to a hearing or to an increase in capital or surplus
33 pursuant to this section shall be confidential and not subject to
34 subpoena or public inspection, except to the extent that the
35 commissioner finds release of that information necessary to protect
36 the public. The hearing shall be initiated within 20 days after
37 written notice to the dental service corporation. Any declaration
38 regarding an increase required by a subsequent revision or
39 redetermination shall contain findings specifying the factors
40 deemed significant in regard to the particular dental service
41 corporation, and shall set forth the reasons supporting the increase
42 of capital or surplus ordered by the commissioner. In determining
43 any increase, revision or redetermination in the amount of capital or
44 surplus, the commissioner shall consider the risks of:

45 a. Increases or decreases in the frequency and severity of losses
46 under normal operating conditions, as well as increases or decreases
47 in those values, above or below the levels contemplated by the rates

- 1 that the dental service corporation charged for coverage and above
2 or below those reasonably expected under normal conditions;
- 3 b. Increases or decreases in expenses under normal operating
4 conditions, as well as increases or decreases in those values, above
5 or below the levels contemplated by the rates the dental service
6 corporation charged for coverage and above or below those
7 reasonably expected under normal conditions;
- 8 c. Increases or decreases in the value of, or return on, invested
9 assets under normal operating conditions, as well as increases or
10 decreases in those values, above or below those levels anticipated
11 under normal conditions;
- 12 d. Changes in economic, social or market conditions that could
13 adversely or favorably affect the financial condition of the dental
14 service corporation, including conditions that would make liquidity
15 more or less important than contemplated and would prevent or
16 facilitate timely investments or force or prohibit untimely sales of
17 assets; and
- 18 e. Any other contingencies, including reinsurance and
19 unfunded or extra contractual obligations, which may affect the
20 dental service corporation's financial condition.
- 21
- 22 23. (New section) In determining any increase, revision or
23 redetermination in the capital or surplus of a dental service
24 corporation pursuant to the provisions of section 22 of P.L. , c.
25 (C.) (pending before the Legislature as this bill) the
26 commissioner shall take into account the following factors:
- 27 a. Methods and techniques used to measure risk exposure and
28 variability;
- 29 b. The information available relating to the magnitude of the
30 various risks described in section 22 of P.L. , c. (C.)
31 (pending before the Legislature as this bill);
- 32 c. The extent to which risks described in section 22 of P.L. ,
33 c. (C.) (pending before the Legislature as this bill) are
34 independent or interrelated, and whether any dependency is direct
35 or inverse;
- 36 d. The extent to which the dental service corporation has
37 provided protection against contingencies in ways other than the
38 establishment of surplus, including, but not limited to: redundancy
39 of premiums; margin in reserves and liabilities; adjustability of
40 contracts pursuant to the terms of the contracts; voluntary or
41 mandatory investment valuation reserves; reinsurance; the use of
42 conservative actuarial assumptions to provide a margin of security;
43 reserve adjustments after rate increases for policies written at earlier
44 and less adequate rates; contingency or catastrophe reserves; and
45 diversification of assets and underwriting risk; and
- 46 e. Any other relevant factors, including the National
47 Association of Insurance Commissioners' reports and independent
48 judgments of the soundness of the dental service corporation's

1 financial condition, as evidenced by the rating and reports of
2 reliable professional financial services.

3

4 24. (New Section) The commissioner may suspend or revoke
5 the authority to do business in this State of any dental service
6 corporation that does not comply with the provisions of sections 21
7 through 25 of P.L. , c. (C.) (pending before the
8 Legislature as this bill).

9

10 25. (New section) The commissioner may promulgate
11 regulations pursuant to the "Administrative Procedure Act,"
12 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
13 purposes of sections 21 through 25 of P.L. , c. (C.)
14 (pending before the Legislature as this bill). Such rules and
15 regulations shall be consistent with the standards for risk based
16 capital for health organizations adopted by the National Association
17 of Insurance Commissioners.

18

19 26. (New section) As used in sections 26 through 30 of P.L. ,
20 c. (C.) (pending before the Legislature as this bill):

21 "Commissioner" means the Commissioner of Banking and
22 Insurance.

23 "Dental plan organization" means an entity authorized to transact
24 business in this State pursuant to P.L. 1979, c. 478 (C. 17:48D-1 et
25 seq.).

26

27 27. (New section) The commissioner may increase the amount
28 of capital or surplus required of a dental plan organization, or
29 subsequently revise or redetermine that increase, using appropriate
30 methods and procedures established by rules and regulations
31 adopted by the commissioner, in order to provide adequate
32 protection against risks affecting the dental plan organization's
33 financial condition that are not adequately or fully covered by its
34 reserves or other assets, but under no circumstances shall a dental
35 plan organization's capital or surplus be less than the capital or
36 surplus required pursuant to regulation as prescribed by the
37 commissioner; provided, however, that any increase required by a
38 subsequent revision or redetermination pursuant to this section shall
39 be made only after a departmental hearing, unless that hearing is
40 waived by the affected dental plan organization. All matters
41 pertaining to a hearing or to an increase in capital or surplus
42 pursuant to this section shall be confidential and not subject to
43 subpoena or public inspection, except to the extent that the
44 commissioner finds release of that information necessary to protect
45 the public. The hearing shall be initiated within 20 days after
46 written notice to the dental plan organization. Any declaration
47 regarding an increase required by a subsequent revision or
48 redetermination shall contain findings specifying the factors

1 deemed significant in regard to the particular dental plan
2 organization, and shall set forth the reasons supporting the increase
3 of capital or surplus ordered by the commissioner. In determining
4 any increase, revision or redetermination in the amount of capital or
5 surplus, the commissioner shall consider the risks of:

6 a. Increases or decreases in the frequency and severity of losses
7 under normal operating conditions, as well as increases or decreases
8 in those values, above or below the levels contemplated by the rates
9 that the dental plan organization charged for coverage and above or
10 below those reasonably expected under normal conditions;

11 b. Increases or decreases in expenses under normal operating
12 conditions, as well as increases or decreases in those values, above
13 or below the levels contemplated by the rates the dental plan
14 organization charged for coverage and above or below those
15 reasonably expected under normal conditions;

16 c. Increases or decreases in the value of, or return on, invested
17 assets under normal operating conditions, as well as increases or
18 decreases in those values, above or below those levels anticipated
19 under normal conditions;

20 d. Changes in economic, social or market conditions that could
21 adversely or favorably affect the financial condition of the dental
22 plan organization, including conditions that would make liquidity
23 more or less important than contemplated and would prevent or
24 facilitate timely investments or force or prohibit untimely sales of
25 assets; and

26 e. Any other contingencies, including reinsurance and
27 unfunded or extra contractual obligations, which may affect the
28 dental plan organization's financial condition.

29

30 28. (New section) In determining any increase, revision or
31 redetermination in the capital or surplus of a dental plan
32 organization pursuant to the provisions of section 27 of P.L. , c.
33 (C.) (pending before the Legislature as this bill) the
34 commissioner shall take into account the following factors:

35 a. Methods and techniques used to measure risk exposure and
36 variability;

37 b. The information available relating to the magnitude of the
38 various risks described in section 27 of P.L. , c. (C.)
39 (pending before the Legislature as this bill);

40 c. The extent to which risks described in section 27 of P.L. ,
41 c. (C.) (pending before the Legislature as this bill) are
42 independent or interrelated, and whether any dependency is direct
43 or inverse;

44 d. The extent to which the dental plan organization has
45 provided protection against contingencies in ways other than the
46 establishment of surplus, including, but not limited to: redundancy
47 of premiums; margin in reserves and liabilities; adjustability of
48 contracts pursuant to the terms of the contracts; voluntary or

1 mandatory investment valuation reserves; reinsurance; the use of
2 conservative actuarial assumptions to provide a margin of security;
3 reserve adjustments after rate increases for policies written at earlier
4 and less adequate rates; contingency or catastrophe reserves; and
5 diversification of assets and underwriting risk; and
6 e. Any other relevant factors, including the National
7 Association of Insurance Commissioners' reports and independent
8 judgments of the soundness of the dental plan organization's
9 financial condition, as evidenced by the rating and reports of
10 reliable professional financial services.

11
12 29. (New section) The commissioner may suspend or revoke the
13 authority to do business in this State of any dental plan organization
14 that does not comply with the provisions of sections 26 through 30
15 of P.L. , c. (C.) (pending before the Legislature as this
16 bill).

17
18 30. (New section) The commissioner may promulgate
19 regulations pursuant to the "Administrative Procedure Act,"
20 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
21 purposes of sections 26 through 30 of P.L. , c. (C.)
22 (pending before the Legislature as this bill). Such rules and
23 regulations shall be consistent with the standards for risk based
24 capital for health organizations adopted by the National Association
25 of Insurance Commissioners.

26
27 31. (New section) As used in sections 31 through 35 of P.L. ,
28 c. (C.) (pending before the Legislature as this bill):

29 "Commissioner" means the Commissioner of Banking and
30 Insurance.

31 "Health service corporation" means an entity authorized to
32 transact business in this State pursuant to P.L. 1985, c. 236 (C.
33 17:48E-1 et seq.).

34
35 32. (New section) The commissioner may increase the amount
36 of capital or surplus required of a health service corporation, or
37 subsequently revise or redetermine that increase, using appropriate
38 methods and procedures established by rules and regulations
39 adopted by the commissioner, in order to provide adequate
40 protection against risks affecting the health service corporation's
41 financial condition that are not adequately or fully covered by its
42 reserves or other assets, but under no circumstances shall a health
43 service corporation's capital or surplus be less than the capital or
44 surplus required pursuant to regulation as prescribed by the
45 commissioner; provided, however, that any increase required by a
46 subsequent revision or redetermination pursuant to this section shall
47 be made only after a departmental hearing, unless that hearing is
48 waived by the affected health service corporation. All matters

1 pertaining to a hearing or to an increase in capital or surplus
2 pursuant to this section shall be confidential and not subject to
3 subpoena or public inspection, except to the extent that the
4 commissioner finds release of that information necessary to protect
5 the public. The hearing shall be initiated within 20 days after
6 written notice to the health service corporation. Any declaration
7 regarding an increase required by a subsequent revision or
8 redetermination shall contain findings specifying the factors
9 deemed significant in regard to the particular health service
10 corporation, and shall set forth the reasons supporting the increase
11 of capital or surplus ordered by the commissioner. In determining
12 any increase, revision or redetermination in the amount of capital or
13 surplus, the commissioner shall consider the risks of:

14 a. Increases or decreases in the frequency and severity of losses
15 under normal operating conditions, as well as increases or decreases
16 in those values, above or below the levels contemplated by the rates
17 that the health service corporation charged for coverage and above
18 or below those reasonably expected under normal conditions;

19 b. Increases or decreases in expenses under normal operating
20 conditions, as well as increases or decreases in those values, above
21 or below the levels contemplated by the rates the health service
22 corporation charged for coverage and above or below those
23 reasonably expected under normal conditions;

24 c. Increases or decreases in the value of, or return on, invested
25 assets under normal operating conditions, as well as increases or
26 decreases in those values, above or below those levels anticipated
27 under normal conditions;

28 d. Changes in economic, social or market conditions that could
29 adversely or favorably affect the financial condition of the health
30 service corporation, including conditions that would make liquidity
31 more or less important than contemplated and would prevent or
32 facilitate timely investments or force or prohibit untimely sales of
33 assets; and

34 e. Any other contingencies, including reinsurance and
35 unfunded or extra contractual obligations, which may affect the
36 health service corporation's financial condition.

37

38 33. (New section) In determining any increase, revision or
39 redetermination in the capital or surplus of a health service
40 corporation pursuant to the provisions of section 32 of P.L. , c.
41 (C.) (pending before the Legislature as this bill) the
42 commissioner shall take into account the following factors:

43 a. Methods and techniques used to measure risk exposure and
44 variability;

45 b. The information available relating to the magnitude of the
46 various risks described in section 32 of P.L. , c. (C.)
47 (pending before the Legislature as this bill);

1 c. The extent to which risks described in section 32 of P.L. ,
2 c. (C.) (pending before the Legislature as this bill) are
3 independent or interrelated, and whether any dependency is direct
4 or inverse;

5 d. The extent to which the health service corporation has
6 provided protection against contingencies in ways other than the
7 establishment of surplus, including, but not limited to: redundancy
8 of premiums; margin in reserves and liabilities; adjustability of
9 contracts pursuant to the terms of the contracts; voluntary or
10 mandatory investment valuation reserves; reinsurance; the use of
11 conservative actuarial assumptions to provide a margin of security;
12 reserve adjustments after rate increases for policies written at earlier
13 and less adequate rates; contingency or catastrophe reserves; and
14 diversification of assets and underwriting risk; and

15 e. Any other relevant factors, including the National
16 Association of Insurance Commissioners' reports and independent
17 judgments of the soundness of the health service corporation's
18 financial condition, as evidenced by the rating and reports of
19 reliable professional financial services.

20

21 34. (New Section) The commissioner may suspend or revoke the
22 authority to do business in this State of any health service
23 corporation that does not comply with the provisions of sections 31
24 through 35 of P.L. , c. (C.) (pending before the Legislature
25 as this bill).

26

27 35. (New section) The commissioner may promulgate
28 regulations pursuant to the "Administrative Procedure Act,"
29 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
30 purposes of sections 31 through 35 of P.L. , c. (C.)
31 (pending before the Legislature as this bill). Such rules and
32 regulations shall be consistent with the standards for risk based
33 capital for health organizations adopted by the National Association
34 of Insurance Commissioners.

35

36 36. (New section) As used in sections 36 through 40 of P.L. ,
37 c. (C.) (pending before the Legislature as this bill):

38 "Commissioner" means the Commissioner of Banking and
39 Insurance.

40 "Prepaid prescription service organization" means an entity
41 authorized to transact business in this State pursuant to P.L.1997,
42 c.380 (C.17:48F-1 et seq.).

43

44 37. (New section) The commissioner may increase the amount
45 of capital or surplus required of a prepaid prescription service
46 organization, or subsequently revise or redetermine that increase,
47 using appropriate methods and procedures established by rules and
48 regulations adopted by the commissioner, in order to provide

1 adequate protection against risks affecting the prepaid prescription
2 service organization's financial condition that are not adequately or
3 fully covered by its reserves or other assets, but under no
4 circumstances shall a prepaid prescription service organization's
5 capital or surplus be less than the capital or surplus required
6 pursuant to regulation as prescribed by the commissioner; provided,
7 however, that any increase required by a subsequent revision or
8 redetermination pursuant to this section shall be made only after a
9 departmental hearing, unless that hearing is waived by the affected
10 prepaid prescription service organization. All matters pertaining to
11 a hearing or to an increase in capital or surplus pursuant to this
12 section shall be confidential and not subject to subpoena or public
13 inspection, except to the extent that the commissioner finds release
14 of that information necessary to protect the public. The hearing
15 shall be initiated within 20 days after written notice to the prepaid
16 prescription service organization. Any declaration regarding an
17 increase required by a subsequent revision or redetermination shall
18 contain findings specifying the factors deemed significant in regard
19 to the particular prepaid prescription service organization, and shall
20 set forth the reasons supporting the increase of capital or surplus
21 ordered by the commissioner. In determining any increase, revision
22 or redetermination in the amount of capital or surplus, the
23 commissioner shall consider the risks of:

24 a. Increases or decreases in the frequency and severity of losses
25 under normal operating conditions, as well as increases or decreases
26 in those values, above or below the levels contemplated by the rates
27 that the prepaid prescription service organization charged for
28 coverage and above or below those reasonably expected under
29 normal conditions;

30 b. Increases or decreases in expenses under normal operating
31 conditions, as well as increases or decreases in those values, above
32 or below the levels contemplated by the rates the prepaid
33 prescription service organization charged for coverage and above or
34 below those reasonably expected under normal conditions;

35 c. Increases or decreases in the value of, or return on, invested
36 assets under normal operating conditions, as well as increases or
37 decreases in those values, above or below those levels anticipated
38 under normal conditions;

39 d. Changes in economic, social or market conditions that could
40 adversely or favorably affect the financial condition of the prepaid
41 prescription service organization, including conditions that would
42 make liquidity more or less important than contemplated and would
43 prevent or facilitate timely investments or force or prohibit
44 untimely sales of assets; and

45 e. Any other contingencies, including reinsurance and
46 unfunded or extra contractual obligations, which may affect the
47 prepaid prescription service organization's financial condition.

1 38. (New section) In determining any increase, revision or
2 redetermination in the capital or surplus of a prepaid prescription
3 service organization pursuant to the provisions of section 37 of
4 P.L., c. (C.) (pending before the Legislature as this bill) the
5 commissioner shall take into account the following factors:

6 a. Methods and techniques used to measure risk exposure and
7 variability;

8 b. The information available relating to the magnitude of the
9 various risks described in section 37 of P.L. , c. (C.)
10 (pending before the Legislature as this bill);

11 c. The extent to which risks described in section 37 of P.L. ,
12 c. (C.) (pending before the Legislature as this bill) are
13 independent or interrelated, and whether any dependency is direct
14 or inverse;

15 d. The extent to which the prepaid prescription services
16 organization has provided protection against contingencies in ways
17 other than the establishment of surplus, including, but not limited
18 to: redundancy of premiums; margin in reserves and liabilities;
19 adjustability of contracts pursuant to the terms of the contracts;
20 voluntary or mandatory investment valuation reserves; reinsurance;
21 the use of conservative actuarial assumptions to provide a margin of
22 security; reserve adjustments after rate increases for policies written
23 at earlier and less adequate rates; contingency or catastrophe
24 reserves; and diversification of assets and underwriting risk; and

25 e. Any other relevant factors, including the National
26 Association of Insurance Commissioners' reports and independent
27 judgments of the soundness of the prepaid prescription service
28 organization's financial condition, as evidenced by the rating and
29 reports of reliable professional financial services.

30
31 39. (New section) The commissioner may suspend or revoke the
32 authority to do business in this State of any prepaid prescription
33 services organization that does not comply with the provisions of
34 sections 36 through 40 of P.L. , c. (C.) (pending before the
35 Legislature as this bill).

36
37 40. (New section) The commissioner may promulgate
38 regulations pursuant to the "Administrative Procedure Act,"
39 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
40 purposes of sections 36 through 40 of P.L. , c. (C.)
41 (pending before the Legislature as this bill). Such rules and
42 regulations shall be consistent with the standards for risk based
43 capital for health organizations adopted by the National Association
44 of Insurance Commissioners.

45
46 41. (New section) As used in sections 41 through 45 of P.L. ,
47 c. (C.) (pending before the Legislature as this bill):

1 “Commissioner” means the Commissioner of Banking and
2 Insurance.

3 “Licensed organized delivery system” means an entity authorized
4 to transact business in this State as a licensed organized delivery
5 system pursuant to P.L.1999, c.409 (C.17:48H-1 et seq.).
6

7 42. (New section) The commissioner may increase the amount
8 of capital or surplus required of a licensed organized delivery
9 system, or subsequently revise or redetermine that increase, using
10 appropriate methods and procedures established by rules and
11 regulations adopted by the commissioner, in order to provide
12 adequate protection against risks affecting the licensed organized
13 delivery system's financial condition that are not adequately or fully
14 covered by its reserves or other assets, but under no circumstances
15 shall a licensed organized delivery system's capital or surplus be
16 less than the capital or surplus required pursuant to regulation as
17 prescribed by the commissioner; provided, however, that any
18 increase required by a subsequent revision or redetermination
19 pursuant to this section shall be made only after a departmental
20 hearing, unless that hearing is waived by the affected licensed
21 organized delivery system. All matters pertaining to a hearing or to
22 an increase in capital or surplus pursuant to this section shall be
23 confidential and not subject to subpoena or public inspection,
24 except to the extent that the commissioner finds release of that
25 information necessary to protect the public. The hearing shall be
26 initiated within 20 days after written notice to the licensed
27 organized delivery system. Any declaration regarding an increase
28 required by a subsequent revision or redetermination shall contain
29 findings specifying the factors deemed significant in regard to the
30 particular licensed organized delivery system, and shall set forth the
31 reasons supporting the increase of capital or surplus ordered by the
32 commissioner. In determining any increase, revision or
33 redetermination in the amount of capital or surplus, the
34 commissioner shall consider the risks of:

35 a. Increases or decreases in the frequency and severity of losses
36 under normal operating conditions, as well as increases or decreases
37 in those values, above or below the levels contemplated by the rates
38 that the licensed organized delivery system charged for coverage
39 and above or below those reasonably expected under normal
40 conditions;

41 b. Increases or decreases in expenses under normal operating
42 conditions, as well as increases or decreases in those values, above
43 or below the levels contemplated by the rates the licensed organized
44 delivery system charged for coverage and above or below those
45 reasonably expected under normal conditions;

46 c. Increases or decreases in the value of, or return on, invested
47 assets under normal operating conditions, as well as increases or

1 decreases in those values, above or below those levels anticipated
2 under normal conditions;

3 d. Changes in economic, social or market conditions that could
4 adversely or favorably affect the financial condition of the licensed
5 organized delivery system, including conditions that would make
6 liquidity more or less important than contemplated and would
7 prevent or facilitate timely investments or force or prohibit
8 untimely sales of assets; and

9 e. Any other contingencies, including reinsurance and
10 unfunded or extra contractual obligations, which may affect the
11 licensed organized delivery system's financial condition.

12

13 43. (New section) In determining any increase, revision or
14 redetermination in the capital or surplus of a licensed organized
15 delivery system pursuant to the provisions of section 42 of P.L. ,
16 c. (C.) (pending before the Legislature as this bill) the
17 commissioner shall take into account the following factors:

18 a. Methods and techniques used to measure risk exposure and
19 variability;

20 b. The information available relating to the magnitude of the
21 various risks described in section 42 of P.L. , c. (C.)
22 (pending before the Legislature as this bill);

23 c. The extent to which risks described in section 42 of P.L. ,
24 c. (C.) (pending before the Legislature as this bill) are
25 independent or interrelated, and whether any dependency is direct
26 or inverse;

27 d. The extent to which the licensed organized delivery system
28 has provided protection against contingencies in ways other than the
29 establishment of surplus, including, but not limited to: redundancy
30 of premiums; margin in reserves and liabilities; adjustability of
31 contracts pursuant to the terms of the contracts; voluntary or
32 mandatory investment valuation reserves; reinsurance; the use of
33 conservative actuarial assumptions to provide a margin of security;
34 reserve adjustments after rate increases for policies written at earlier
35 and less adequate rates; contingency or catastrophe reserves; and
36 diversification of assets and underwriting risk; and

37 e. Any other relevant factors, including the National
38 Association of Insurance Commissioners' reports and independent
39 judgments of the soundness of the licensed organized delivery
40 system's financial condition, as evidenced by the rating and reports
41 of reliable professional financial services.

42

43 44. (New section) The commissioner may suspend or revoke the
44 authority to do business in this State of any licensed organized
45 delivery system that does not comply with the provisions of
46 sections 41 through 45 of P.L. , c. (C.) (pending before
47 the Legislature as this bill).

1 45. (New section) The commissioner may promulgate
2 regulations pursuant to the "Administrative Procedure Act,"
3 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
4 purposes of sections 41 through 45 of P.L. , c. (C.)
5 (pending before the Legislature as this bill). Such rules and
6 regulations shall be consistent with the standards for risk based
7 capital for health organizations adopted by the National Association
8 of Insurance Commissioners.

9
10 46. (New section) a. The purpose of sections 46 through 56 of
11 P.L. , c. (C.) (pending before the Legislature as this bill)
12 is to provide the requirements for maintaining a risk management
13 framework and completing an Own Risk and Solvency Assessment
14 (ORSA) and provide guidance and instructions for filing an ORSA
15 Summary Report with the Commissioner of Banking and Insurance.

16 b. The requirements of sections 46 through 56 of P.L. , c.
17 (C.) (pending before the Legislature as this bill) shall apply to all
18 insurers domiciled in this State unless exempt pursuant to section
19 51 of P.L. , c. (C.) (pending before the Legislature as this
20 bill).

21 c. The Legislature finds and declares that the ORSA Summary
22 Report shall contain confidential and sensitive information related
23 to an insurer or insurance group's identification of risks material
24 and relevant to the insurer or insurance group filing the report. This
25 information will include proprietary and trade secret information
26 that has the potential for harm and competitive disadvantage to the
27 insurer or insurance group if the information is made public. It is
28 the intent of this Legislature that, notwithstanding any other law to
29 the contrary, the ORSA Summary Report shall be a confidential
30 document filed with the commissioner, that the ORSA Summary
31 Report shall be shared only as stated herein and to assist the
32 commissioner in the performance of his or her duties, and that in no
33 event shall the ORSA Summary Report be subject to public
34 disclosure.

35
36 47. (New section) For the purposes of sections 46 through 56 of
37 P.L. , c. (C.) (pending before the Legislature as this bill):
38 "Commissioner" means the Commissioner of Banking and
39 Insurance.

40 "Insurance group" for the purpose of conducting an ORSA,
41 means those insurers and affiliates included within an insurance
42 holding company system as defined in P.L.1970, c.22 (C.17:27A-1
43 et seq.).

44 "Insurer" shall have the same meaning as set forth in section 2 of
45 P.L.1993, c.236 (C.17:23-21), except that it shall not include
46 agencies, authorities or instrumentalities of the United States, its
47 possessions and territories, the Commonwealth of Puerto Rico, the
48 District of Columbia, or a state or political subdivision of a state.

1 “Own Risk and Solvency Assessment” or “ORSA” means a
2 confidential internal assessment, appropriate to the nature, scale and
3 complexity of an insurer or insurance group, conducted by that
4 insurer or insurance group of the material and relevant risks
5 associated with the insurer or insurance group’s current business
6 plan, and the sufficiency of capital resources to support those risks.

7 “ORSA Guidance Manual” means the current version of the *Own*
8 *Risk and Solvency Assessment Guidance Manual* developed and
9 adopted by the National Association of Insurance Commissioners
10 (NAIC) and as amended from time to time. A change in the ORSA
11 Guidance Manual shall be effective on the January 1 following the
12 calendar year in which the changes have been adopted by the NAIC.

13 “ORSA Summary Report” means a confidential high-level
14 summary of an insurer or insurance group’s ORSA.

15
16 48. (New section) An insurer shall maintain a risk management
17 framework to assist the insurer with identifying, assessing,
18 monitoring, managing and reporting on its material and relevant
19 risks. This requirement may be satisfied if the insurance group of
20 which the insurer is a member maintains a risk management
21 framework applicable to the operations of the insurer.

22
23 49. (New section) Except as provided in section 51 of P.L. ,
24 c. (C.) (pending before the Legislature as this bill), an
25 insurer, or the insurance group of which the insurer is a member,
26 shall regularly conduct an ORSA consistent with a process
27 comparable to the ORSA Guidance Manual. The ORSA shall be
28 conducted no less than annually but also at any time when there are
29 significant changes to the risk profile of the insurer or the insurance
30 group of which the insurer is a member.

31
32 50. (New section) a. Upon the commissioner’s request, and no
33 more than once each year, an insurer shall submit to the
34 commissioner an ORSA Summary Report or any combination of
35 reports that together contain the information described in the ORSA
36 Guidance Manual applicable to the insurer or the insurance group of
37 which it is a member. Notwithstanding any request from the
38 commissioner, if the insurer is a member of an insurance group, the
39 insurer shall submit the report or reports required by this subsection
40 if the commissioner is the lead state commissioner of the insurance
41 group as determined by the procedures within the Financial
42 Analysis Handbook adopted by the National Association of
43 Insurance Commissioners.

44 b. The report or reports shall include a signature of the insurer
45 or insurance group’s chief risk officer or other executive having
46 responsibility for the oversight of the insurer’s enterprise risk
47 management process attesting to the best of the individual’s belief
48 and knowledge that the insurer applies the enterprise risk

1 management process described in the ORSA Summary Report and
2 that a copy of the report has been provided to the insurer's board of
3 directors or the appropriate committee thereof.

4 c. An insurer may comply with subsection a. of this section by
5 providing the most recent and substantially similar report or reports
6 provided by the insurer or another member of an insurance group of
7 which the insurer is a member to the commissioner of another state
8 or to a supervisor or regulator of a foreign jurisdiction, if that report
9 provides information that is comparable to the information
10 described in the ORSA Guidance Manual. Any such report in a
11 language other than English must be accompanied by a translation
12 of that report into the English language.

13

14 51. (New section) a. An insurer shall be exempt from the
15 requirements of sections 46 through 56 of P.L. , c. (C.)
16 (pending before the Legislature as this bill), if:

17 (1) The insurer has annual direct written and unaffiliated
18 assumed premium, including international direct and assumed
19 premium but excluding premiums reinsured with the Federal Crop
20 Insurance Corporation and National Flood Insurance Program, less
21 than \$500,000,000; and

22 (2) The insurance group of which the insurer is a member has
23 annual direct written and unaffiliated assumed premium including
24 international direct and assumed premium, but excluding premiums
25 reinsured with the Federal Crop Insurance Corporation and National
26 Flood Insurance Program, less than \$1,000,000,000.

27 b. If an insurer qualifies for exemption pursuant to paragraph
28 (1) of subsection a. of this section, but the insurance group of which
29 the insurer is a member does not qualify for exemption pursuant to
30 paragraph (2) of subsection a. of this section, then the ORSA
31 Summary Report that may be required pursuant to section 50 of
32 P.L. c. (C.) (pending before the Legislature as this bill),
33 shall include every insurer within the insurance group. This
34 requirement may be satisfied by the submission of more than one
35 ORSA Summary Report for any combination of insurers so long as
36 any combination of reports includes every insurer within the
37 insurance group.

38 c. If an insurer does not qualify for exemption pursuant to
39 paragraph (1) of subsection a. of this section, but the insurance
40 group of which it is a member qualifies for exemption pursuant to
41 paragraph (2) of subsection a. of this section, then the only ORSA
42 Summary Report that may be required pursuant section 50 of P.L. ,
43 c. (C.) (pending before the Legislature as this bill) shall be
44 the report applicable to that insurer.

45 d. An insurer that does not qualify for exemption pursuant to
46 subsection a. of this section may apply to the commissioner for a
47 waiver from the requirements of sections 46 through 56 of P.L. ,
48 c. (C.) (pending before the Legislature as this bill) based

1 upon unique circumstances. In deciding whether to grant the
2 insurer's request for waiver, the commissioner may consider the
3 type and volume of business written, ownership and organizational
4 structure, and any other factor the commissioner considers relevant
5 to the insurer or insurance group of which the insurer is a member.
6 If the insurer is part of an insurance group with insurers domiciled
7 in more than one state, the commissioner shall coordinate with the
8 lead state commissioner and with the other domiciliary
9 commissioners in considering whether to grant the insurer's request
10 for a waiver.

11 e. Notwithstanding the exemptions stated in this section:

12 (1) The commissioner may require that an insurer maintain a
13 risk management framework, conduct an ORSA and file an ORSA
14 Summary Report based on unique circumstances including, but not
15 limited to, the type and volume of business written, ownership and
16 organizational structure, federal agency requests, and international
17 supervisor requests.

18 (2) The commissioner may require that an insurer maintain a
19 risk management framework, conduct an ORSA and file an ORSA
20 Summary Report if:

21 (a) the insurer has risk-based capital for company action level
22 event as set forth in applicable regulations of this State governing
23 risk-based capital;

24 (b) meets one or more of the standards of an insurer deemed to
25 be in hazardous financial condition as defined in applicable
26 regulations of this State defining standards and commissioner's
27 authority over companies deemed to be in hazardous financial
28 condition; or

29 (c) otherwise exhibits qualities of a troubled insurer as
30 determined by the commissioner.

31 f. If an insurer that qualifies for an exemption pursuant to
32 subsection a. of this section subsequently no longer qualifies for
33 that exemption due to changes in premium as reflected in the
34 insurer's most recent annual statement or in the most recent annual
35 statements of the insurers within the insurance group of which the
36 insurer is a member, the insurer shall have one year following the
37 year in which the threshold is exceeded to comply with the
38 requirements of sections 46 through 56 of P.L. , c. (C.)
39 (pending before the Legislature as this bill).

40

41 52. (New section) a. The ORSA Summary Report shall be
42 prepared consistent with the ORSA Guidance Manual, subject to the
43 requirements of subsection b. of this section. Documentation and
44 supporting information shall be maintained and made available
45 upon examination or upon request of the commissioner.

46 b. The review of the ORSA Summary Report, and any
47 additional requests for information, shall be made using similar

1 procedures currently used in the analysis and examination of multi-
2 state or global insurers and insurance groups.

3
4 53. (New section) a. Documents, materials or other
5 information, including the ORSA Summary Report, in the
6 possession of or control of the Department of Banking and
7 Insurance that are obtained by, created by or disclosed to the
8 commissioner or any other person pursuant to sections 46 through
9 56 of P.L. , c. (C.) (pending before the Legislature as this
10 bill), shall be recognized by this State as being proprietary and to
11 contain trade secrets. All such documents, materials or other
12 information shall be confidential by law and privileged, shall not be
13 subject to P.L.1963, c.71 (C.47:1A-1 et seq.), shall not be subject to
14 subpoena, and shall not be subject to discovery or admissible in
15 evidence in any private civil action. However, the commissioner is
16 authorized to use the documents, materials or other information in
17 the furtherance of any regulatory or legal action brought as a part of
18 the commissioner's official duties. The commissioner shall not
19 otherwise make the documents, materials or other information
20 public without the prior written consent of the insurer.

21 b. Neither the commissioner nor any person who received
22 documents, materials or other ORSA-related information, through
23 examination or otherwise, while acting under the authority of the
24 commissioner or with whom such documents, materials or other
25 information are shared pursuant to sections 46 through 56 of P.L. ,
26 c. (C.) (pending before the Legislature as this bill) shall be
27 permitted or required to testify in any private civil action
28 concerning any confidential documents, materials, or information
29 subject to subsection a. of this section.

30 c. In order to assist in the performance of the commissioner's
31 regulatory duties, the commissioner:

32 (1) May, upon request, share documents, materials or other
33 ORSA-related information, including the confidential and
34 privileged documents, materials or information subject to
35 subsection a. of this section, including proprietary and trade secret
36 documents and materials with other state, federal and international
37 financial regulatory agencies, including members of any
38 supervisory college as defined in section 7 of P.L. , c. (C.)
39 (pending before the Legislature as this bill), with the National
40 Association of Insurance Commissioners (NAIC) and with any
41 third-party consultants designated by the commissioner, provided
42 that the recipient agrees in writing to maintain the confidentiality
43 and privileged status of the ORSA-related documents, materials or
44 other information and has verified in writing the legal authority to
45 maintain confidentiality; and

46 (2) May receive documents, materials or other ORSA-related
47 information, including otherwise confidential and privileged
48 documents, materials or information, including proprietary and

1 trade-secret information or documents, from regulatory officials of
2 other foreign or domestic jurisdictions, including members of any
3 supervisory college as defined in section 7 of P.L. , c. (C.)
4 (pending before the Legislature as this bill), and from the NAIC,
5 and shall maintain as confidential or privileged any documents,
6 materials or information received with notice or the understanding
7 that it is confidential or privileged under the laws of the jurisdiction
8 that is the source of the document, material or information.

9 (3) Shall enter into a written agreement with the NAIC or a
10 third-party consultant governing sharing and use of information
11 provided pursuant to sections 46 through 56 of P.L. , c. (C.)
12 (pending before the Legislature as this bill), consistent with this
13 subsection c. that shall:

14 (a) Specify procedures and protocols regarding the
15 confidentiality and security of information shared with the NAIC or
16 a third-party consultant pursuant to sections 46 through 56 of P.L. ,
17 c. (C.) (pending before the Legislature as this bill), including
18 procedures and protocols for sharing by the NAIC with other state
19 regulators from states in which the insurance group has domiciled
20 insurers. The agreement shall provide that the recipient agrees in
21 writing to maintain the confidentiality and privileged status of the
22 ORSA-related documents, materials or other information and has
23 verified in writing the legal authority to maintain confidentiality;

24 (b) Specify that ownership of information shared with the NAIC
25 or a third-party consultant pursuant to sections 46 through 56 of
26 P.L. , c. (C.) (pending before the Legislature as this bill)
27 remains with the commissioner, and the NAIC's or a third-party
28 consultant's use of the information is subject to the direction of the
29 commissioner;

30 (c) Prohibit the NAIC or third-party consultant from storing the
31 information shared pursuant to sections 46 through 56 of P.L. ,
32 c. (C.) (pending before the Legislature as this bill) in a
33 permanent database after the underlying analysis is completed;

34 (d) Require prompt notice to be given to an insurer whose
35 confidential information in the possession of the NAIC or a third-
36 party consultant pursuant to sections 46 through 56 of P.L. , c.
37 (C.) (pending before the Legislature as this bill) is subject to a
38 request or subpoena to the NAIC or a third-party consultant for
39 disclosure or production;

40 (e) Require the NAIC or a third-party consultant to consent to
41 intervention by an insurer in any judicial or administrative action in
42 which the NAIC or a third-party consultant may be required to
43 disclose confidential information about the insurer shared with the
44 NAIC or a third-party consultant pursuant to sections 46 through
45 56 of P.L. , c. (C.) (pending before the Legislature as this
46 bill); and

47 (f) In the case of an agreement involving a third-party
48 consultant, provide for the insurer's written consent.

1 d. The sharing of information and documents by the
2 commissioner pursuant to sections 46 through 56 of P.L. , c.
3 (C.) (pending before the Legislature as this bill) shall not
4 constitute a delegation of regulatory authority or rulemaking, and
5 the commissioner is solely responsible for the administration,
6 execution and enforcement of the provisions of sections 46 through
7 56 of P.L. , c. (C.) (pending before the Legislature as this
8 bill).

9 e. No waiver of any applicable privilege or claim of
10 confidentiality in the documents, proprietary and trade-secret
11 materials or other ORSA-related information shall occur as a result
12 of disclosure of such ORSA-related information or documents to
13 the commissioner pursuant to this section or as a result of sharing as
14 authorized in sections 46 through 56 of P.L. , c. (C.)
15 (pending before the Legislature as this bill).

16 f. Documents, materials or other information in the possession
17 or control of the NAIC or a third-party consultants pursuant to
18 sections 46 through 56 of P.L. , c. (C.) (pending before the
19 Legislature as this bill) shall be confidential by law and privileged,
20 shall not be subject to P.L.1963, c.71 (C.47:1A-1 et seq.), shall not
21 be subject to subpoena, and shall not be subject to discovery or
22 admissible in evidence in any private civil action.

23

24 54. (New section) Any insurer failing, without just cause, to
25 timely file the ORSA Summary Report as required in sections 46
26 through 56 of P.L. , c. (C.) (pending before the
27 Legislature as this bill) shall be required, after notice and
28 opportunity for a hearing, to pay a penalty of up to \$5,000 for each
29 day's delay, to be recovered by the commissioner and the penalty so
30 recovered shall be paid into the General Fund of this State.

31

32 55. (New section) If any provision of sections 46 through 56 of
33 P.L. , c. (C.) (pending before the Legislature as this bill),
34 or the application thereof to any person or circumstance, is held
35 invalid, such determination shall not affect the provisions or
36 applications of sections 46 through 56 of P.L. , c. (C.)
37 (pending before the Legislature as this bill) which can be given
38 effect without the invalid provision or application, and to that end
39 the provisions of sections 46 through 56 of P.L. , c. (C.)
40 (pending before the Legislature as this bill) are severable.

41

42 56. (New section) The first filing of the ORSA Summary Report
43 shall be in 2015 pursuant to section 50 of P.L. , c. (C.)
44 (pending before the Legislature as this bill).

- 1 57. Section 6 of P.L.1996, c45 (C. 17:1-15) is amended to read
2 as follows:
- 3 6. The commissioner, as administrator and chief executive
4 **【office】** officer of the department, shall:
- 5 a. Administer the work of the department;
- 6 b. Appoint and remove officers and other personnel employed
7 within the department, subject to the provisions of Title 11A of the
8 New Jersey Statutes, and other applicable statutes, except as
9 otherwise specifically provided;
- 10 c. Perform, exercise and discharge the functions, powers and
11 duties of the department through those divisions established by law
12 or as the commissioner deems necessary;
- 13 d. Organize the work of the department pursuant to the
14 structure or organizational units the commissioner determines to be
15 necessary for efficient and effective operation, and which are not
16 inconsistent with the provisions of this 1996 amendatory and
17 supplementary act;
- 18 e. Formulate, adopt, issue and promulgate, pursuant to the
19 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
20 seq.), in the name of the department, rules and regulations
21 authorized by law for the efficient conduct of the work and general
22 administration of the department, and the appropriate regulation of
23 the institutions, companies, agencies, boards, commissions, and
24 other entities within its jurisdiction, including licensees, officers
25 and employees as authorized by law;
- 26 f. Determine all matters of policy within the commissioner's
27 jurisdiction;
- 28 g. Institute or cause to be instituted the legal proceedings or
29 processes necessary to enforce properly and give effect to any of the
30 commissioner's powers or duties;
- 31 h. Make a report each year to the Governor and to the
32 Legislature of the department's operations for the preceding fiscal
33 year, and render such other reports as the Governor shall from time
34 to time request, or as may be required by law;
- 35 i. Appoint advisory committees which may be desirable to
36 advise and assist the department or a division in carrying out its
37 functions and duties;
- 38 j. Have the power, in addition to any powers prescribed by
39 law, to order any person violating any provision of Title 17 of the
40 Revised Statutes or Title 17B of the New Jersey Statutes to cease
41 and desist from engaging in such conduct;
- 42 k. Perform such other functions as may be prescribed by law in
43 this act or by any other law; and
- 44 **【k.】** l. Maintain suitable headquarters for the department and
45 such other quarters as the commissioner shall deem necessary to the
46 proper functioning of the department.
- 47 (cf: P.L.1996, c.45, s.6)

1 58. (New section) For the purposes of chapter 19 of Title 17B
2 of the New Jersey Statutes, N.J.S.17B:25-19, and sections 58, 60,
3 63, 64, 65 and 66 of P.L. , c. (C.) (pending before the
4 Legislature as this bill) the following definitions shall apply on or
5 after the operative date of the valuation manual:

6 “Accident and health insurance” means a contract that
7 incorporates morbidity risk and provides protection against
8 economic loss resulting from accident, sickness, or medical
9 conditions and as may be specified in the valuation manual.

10 “Appointed actuary” means a qualified actuary who is appointed
11 in accordance with the valuation manual to prepare the actuarial
12 opinion required in subsection e. of section 2 of P.L.1995, c.339
13 (C.17B:19-10).

14 “Company” means an entity, which:

15 (1) has written, issued, or reinsured life insurance contracts,
16 accident and health insurance contracts, or deposit-type contracts in
17 this State and has at least one such policy in force or on claim; or

18 (2) has written, issued, or reinsured life insurance contracts,
19 accident and health insurance contracts, or deposit-type contracts in
20 any state and is required to hold a certificate of authority to write
21 life insurance, accident and health insurance, or deposit-type
22 contracts in this State.

23 “Deposit-type contract” means contracts that do not incorporate
24 mortality or morbidity risks and as may be specified in the
25 valuation manual.

26 “Life insurance” means contracts that incorporate mortality risk,
27 including annuity and pure endowment contracts, and as may be
28 specified in the valuation manual.

29 “NAIC” means the National Association of Insurance
30 Commissioners.

31 “Policyholder behavior” means any action a policyholder,
32 contract holder or any other person with the right to elect options,
33 such as a certificate holder, may take under a policy or contract
34 subject to sections 58, 60, 63, 64, 65 and 66 of P.L. , c. (C.)
35 (pending before the Legislature as this bill) including, but not
36 limited to, lapse, withdrawal, transfer, deposit, premium payment,
37 loan, annuitization, or benefit elections prescribed by the policy or
38 contract but excluding events of mortality or morbidity that result in
39 benefits prescribed in their essential aspects by the terms of the
40 policy or contract.

41 “Principle-based valuation” means a reserve valuation that uses
42 one or more methods or one or more assumptions determined by the
43 insurer and is required to comply with section 64 of P.L. , c. (C.)
44 (pending before the Legislature as this bill) as specified in the
45 valuation manual.

46 “Qualified actuary” means an individual who is qualified to sign
47 the applicable statement of actuarial opinion in accordance with the
48 American Academy of Actuaries qualification standards for

1 actuaries signing such statements and who meets the requirements
2 specified in the valuation manual.

3 “Tail risk” means a risk that occurs either where the frequency of
4 low probability events is higher than expected under a normal
5 probability distribution or where there are observed events of very
6 significant size or magnitude.

7 “Valuation manual” means the manual of valuation instructions
8 adopted by the NAIC as specified in sections 58, 60, 63, 64, 65 and
9 66 of P.L. , c. (C.) (pending before the Legislature as this
10 bill) or as subsequently amended.

11

12 59. N.J.S.17B:19-2 is amended to read as follows:

13 17B:19-2. The commissioner shall annually value, or cause to be
14 valued, the reserve liabilities (hereinafter called reserves) for all
15 outstanding life insurance policies and annuity and pure endowment
16 contracts of every life insurer doing business in this State issued
17 prior to the operative date of the valuation manual, except that in
18 the case of an alien insurer, such valuation shall be limited to its
19 United States business, and may certify the amount of any such
20 reserves, specifying the mortality table or tables, rate or rates of
21 interest and methods (net level premium method or other) used in
22 the calculation of such reserves. All valuations made by him or by
23 his authority shall be upon the net premium basis or such
24 modifications thereof as are provided by law. In calculating such
25 reserves, he may use group methods and approximate averages for
26 fractions of a year or otherwise and, with the concurrence of the
27 insurer, make classifications of benefits by years of issue according
28 to such relevant factors as the date as of which the rated age of the
29 insured is determined, the date as of which the benefits have been
30 provided or the premium rates have been changed, or, for policies
31 under which premium rates are guaranteed for a limited period of
32 time, the most recent date as of which the insurer had the right to
33 modify those premium rates. In lieu of the valuation of the reserves
34 herein required of any foreign or alien insurer, he may accept any
35 valuation made, or caused to be made, by the insurance supervisory
36 official of any state or other jurisdiction when such valuation
37 complies with the minimum standards provided by law and if the
38 official of such state or jurisdiction accepts as sufficient and valid
39 for all legal purposes the certificate of valuation of the
40 commissioner when such certificate states the valuation to have
41 been made in a specified manner according to which the aggregate
42 reserves would be at least as large as if they had been computed in
43 the manner prescribed by the law of that state or jurisdiction.

44 Any such insurer which at any time shall have adopted any
45 standard of valuation producing greater aggregate reserves than
46 those calculated according to the minimum standards provided by
47 law may, with the approval of the commissioner, adopt any lower

1 standard of valuation, but not lower than the minimum standards so
2 provided.

3 Except in the case of policies for which the reserve liabilities are
4 valued on the basis of the provisions of the standard valuation law
5 contained in **[section]** N.J.S.17B:19-8 or policies issued on or after
6 the operative date of the valuation manual, all valuations made by
7 the commissioner or by his authority shall be upon the net premium
8 basis, or such modification thereof as hereinafter expressly
9 provided; and all policies issued prior to January 1, 1901, shall be
10 valued according to the actuaries' table of mortality, with compound
11 interest at the rate of 4% per annum, except in cases where a life
12 insurer elects or has elected to have the policies or any class thereof
13 valued according to the American Experience table of mortality, or
14 according to the American Men Ultimate table of mortality, with
15 compound interest at the rate of either 3% or 3 1/2 % per annum or
16 with the approval of the commissioner at a rate of less than 3% per
17 annum; and all policies issued on or after January 1, 1901, shall be
18 valued according to the American Experience table of mortality,
19 with compound interest at the rate of 3 1/2 % per annum, except in
20 cases where a life insurer elects or has elected to have such policies
21 or any class thereof valued according to the American Experience
22 table of mortality with compound interest at a rate of less than 3 1/2
23 % per annum but not less than 3% per annum or with the approval
24 of the commissioner at a rate of less than 3% per annum; and except
25 in cases where any life insurer with the approval of the
26 commissioner may elect or shall have elected to have its ordinary
27 policies or any class thereof valued according to the American Men
28 Ultimate table of mortality, with compound interest at a rate which
29 is not more than 3 1/2 % per annum. The minimum standard for the
30 valuation of group term insurance policies under which premium
31 rates are not guaranteed for a period in excess of 5 years shall be
32 the American Men Ultimate table of mortality with interest at 3 1/2
33 % per annum. The commissioner may vary the standards of interest
34 and mortality in the case of annuities and industrial policies and of
35 invalid lives and other extra hazards. When the actual premium
36 charged for an insurance policy is less than the net premium for the
37 insurance, computed according to the table of mortality, and the rate
38 of interest prescribed herein, the value of the policy shall be
39 increased by the value of an annuity, the amount of which shall
40 equal the difference between the premiums and the term of which in
41 years shall equal the number of future annual payments receivable
42 on the insurance after the date of valuation.

43 Reserves for all policies and contracts to which the foregoing
44 standards apply may be calculated, at the option of the insurer,
45 according to any standards which produce greater aggregate
46 reserves for all such policies and contracts than the minimum
47 reserves required by this section.

48 (cf: P.L.1981, c.285, s.1)

1 60. (New section) The commissioner shall annually value, or
2 cause to be valued, the reserve liabilities (hereinafter called
3 reserves) for all outstanding life insurance contracts, annuity and
4 pure endowment contracts, accident and health contracts, and
5 deposit-type contracts of every company issued on or after the
6 operative date of the valuation manual. In lieu of the valuation of
7 the reserves required of a foreign or alien company, the
8 commissioner may accept a valuation made, or caused to be made,
9 by the insurance supervisory official of any State or other
10 jurisdiction when the valuation complies with the minimum
11 standard provided in sections 58, 60, 63, 64, 65 and 66 of P.L. , c.
12 (C.) (pending before the Legislature as this bill). The provisions
13 set forth in sections 63 and 64 of P.L. , c. (C.) (pending
14 before the Legislature as this bill) shall apply to all policies and
15 contracts issued on or after the operative date of the valuation
16 manual.

17

18 61. N.J.S.17B:19-5 is amended to read as follows:

19 17B:19-5. The commissioner shall annually make or cause to be
20 made or shall annually require the insurer to make calculations of
21 policy and loss reserves for accident and health insurance written by
22 insurers authorized to write accident and health insurance in this
23 State as defined in N.J.S.17B:17-4. The commissioner shall
24 promulgate regulations establishing the minimum standards
25 applicable to the valuation of accident and health insurance
26 reserves.

27 (cf: P.L.2001, c.2, s.3)

28

29 62. Section 2 of P.L.1995, c.339 (C.17B:19-10) is amended to
30 read as follows:

31 2. a. **【Every】** For years ending prior to the operative date of
32 the valuation manual every, insurer authorized to transact life,
33 health or annuity business and every fraternal benefit society doing
34 business in this State shall annually submit the opinion of a
35 qualified actuary as to whether the reserves and related actuarial
36 items held in support of the policies and contracts specified by the
37 commissioner by regulation are: computed appropriately; based on
38 assumptions which satisfy contractual provisions; and consistent
39 with prior reported amounts and comply with applicable laws of this
40 State. The commissioner shall define by regulation the specifics of
41 this opinion and add such other items deemed to be necessary to its
42 scope.

43 b. (1) Every insurer authorized to transact life, health or
44 annuity business and every fraternal benefit society, except as
45 exempted by the commissioner by regulation, shall also annually
46 include in the opinion required pursuant to subsection a. of this
47 section, an opinion of the same qualified actuary as to whether the
48 reserves and related actuarial items held in support of the policies

1 and contracts specified by the commissioner by regulation, when
2 considered in light of the assets held by the insurer or society with
3 respect to the reserves and related actuarial items, including, but not
4 limited to, the investment earnings on the assets and the
5 considerations anticipated to be received and retained under the
6 policies and contracts, make adequate provision for the insurer's or
7 society's obligations under the policies and contracts, including, but
8 not limited to, the benefits under and expenses associated with the
9 policies and contracts.

10 (2) The commissioner may provide by regulation for a transition
11 period for establishing any higher reserves which the qualified
12 actuary may deem necessary in order to render the opinion required
13 by this section.

14 c. Each opinion required pursuant to subsection b. of this
15 section shall be governed by the following provisions:

16 (1) A memorandum, in form and substance acceptable to the
17 commissioner as specified by regulation, shall be prepared to
18 support each actuarial opinion.

19 (2) If the insurer or society fails to provide a supporting
20 memorandum at the request of the commissioner within a period
21 specified by regulation, or the commissioner determines that the
22 supporting memorandum provided by the insurer or society fails to
23 meet the standards prescribed by regulation or is otherwise
24 unacceptable to the commissioner, the commissioner may engage a
25 qualified actuary at the expense of the insurer or society to review
26 the opinion and the basis for the opinion and prepare such
27 supporting memorandum as is required by the commissioner.

28 d. Every opinion shall be governed by the following
29 provisions:

30 (1) The opinion shall be submitted with the annual statement
31 reflecting the valuation of reserves for each year ending on or after
32 December 31, 1995.

33 (2) The opinion shall apply to all policies or contracts in force,
34 including individual and group health insurance plans, in form and
35 substance acceptable to the commissioner as specified by
36 regulation.

37 (3) The opinion shall be based on standards adopted from time
38 to time by the Actuarial Standards Board and on such additional
39 standards as the commissioner may by regulation prescribe.

40 (4) In the case of an opinion required to be submitted by a
41 foreign or alien insurer or fraternal benefit society, the
42 commissioner may accept the opinion filed by that insurer or
43 society with the insurance supervisory official of another state or
44 jurisdiction if the commissioner determines that the opinion
45 reasonably meets the requirements applicable to an insurer or
46 society domiciled in this State.

47 (5) **[**For the purpose of this section, "qualified actuary" means a
48 member in good standing of the American Academy of Actuaries

1 who meets the requirements set forth in those regulations.】 (Deleted
2 by amendment, P.L. _____, c. _____ (pending before the Legislature as
3 this bill)

4 (6) Except in cases of fraud or willful misconduct, the qualified
5 actuary shall not be liable for damages to any person, other than the
6 insurer, the fraternal benefit society and the commissioner, for any
7 act, error, omission, decision or conduct with respect to the
8 actuary's opinion.

9 (7) Disciplinary action by the commissioner against the insurer,
10 fraternal benefit society or the qualified actuary shall be defined in
11 regulation by the commissioner.

12 (8) **【Any memorandum in support of the opinion, and any other**
13 **material provided by the insurer or fraternal benefit society to the**
14 **commissioner in connection therewith, shall be kept confidential by**
15 **the commissioner and shall not be made public and shall not be**
16 **subject to subpoena, other than for the purpose of defending an**
17 **action seeking damages from any person by reason of any action**
18 **required by this section or by regulations promulgated hereunder;**
19 **provided, however, that the memorandum or other material may**
20 **otherwise be released by the commissioner (a) with the written**
21 **consent of the insurer or fraternal benefit society or (b) to the**
22 **American Academy of Actuaries upon request stating that the**
23 **memorandum or other material is required for the purpose of**
24 **professional disciplinary proceedings and setting forth procedures**
25 **satisfactory to the commissioner for preserving the confidentiality**
26 **of the memorandum or other material. Once any portion of the**
27 **confidential memorandum is cited by the insurer or fraternal benefit**
28 **society in its marketing or is cited before any governmental agency**
29 **other than a state insurance department or is released by the insurer**
30 **or fraternal benefit society to the news media, all portions of the**
31 **confidential memorandum shall no longer be confidential.】**
32 (Deleted by amendment, P.L. _____, c. _____ (pending before the
33 Legislature as this bill)

34 e. On or after the operative date of the valuation manual, every
35 company with outstanding life insurance contracts, accident and
36 health insurance contracts or deposit-type contracts in this State and
37 subject to regulation by the commissioner shall annually submit the
38 opinion of the appointed actuary as to whether the reserves and
39 related actuarial items held in support of the policies and contracts
40 are computed appropriately, are based on assumptions that satisfy
41 contractual provisions, are consistent with prior reported amounts
42 and comply with applicable laws of this State. The valuation
43 manual will prescribe the specifics of this opinion including any
44 items deemed to be necessary to its scope.

45 f. Every company with outstanding life insurance contracts,
46 accident and health insurance contracts or deposit-type contracts in
47 this State and subject to regulation by the commissioner, except as
48 exempted in the valuation manual, shall also annually include in the

1 opinion required by subsection e. of this section, an opinion of the
2 same appointed actuary as to whether the reserves and related
3 actuarial items held in support of the policies and contracts
4 specified in the valuation manual, when considered in light of the
5 assets held by the company with respect to the reserves and related
6 actuarial items, including but not limited to the investment earnings
7 on the assets and the considerations anticipated to be received and
8 retained under the policies and contracts, make adequate provision
9 for the company's obligations under the policies and contracts,
10 including but not limited to the benefits under and expenses
11 associated with the policies and contracts.

12 g. Each opinion required by subsection e. of this section shall
13 be governed by the following provisions:

14 (1) A memorandum, in form and substance as specified in the
15 valuation manual, and acceptable to the commissioner, shall be
16 prepared to support each actuarial opinion.

17 (2) If the insurer fails to provide a supporting memorandum at
18 the request of the commissioner within a period specified in the
19 valuation manual or the commissioner determines that the
20 supporting memorandum provided by the insurer fails to meet the
21 standards prescribed by the valuation manual or is otherwise
22 unacceptable to the commissioner, the commissioner may engage a
23 qualified actuary at the expense of the company to review the
24 opinion and the basis for the opinion and prepare the supporting
25 memorandum required by the commissioner.

26 h. Every opinion required by subsection e. of this section shall
27 be governed by the following provisions:

28 (1) The opinion shall be in form and substance as specified in
29 the valuation manual and acceptable to the commissioner.

30 (2) The opinion shall be submitted with the annual statement
31 reflecting the valuation of such reserve liabilities for each year
32 ending on or after the operative date of the valuation manual.

33 (3) The opinion shall apply to all policies and contracts subject
34 to subsection f. of this section, plus other actuarial liabilities as may
35 be specified in the valuation manual.

36 (4) The opinion shall be based on standards adopted from time
37 to time by the Actuarial Standards Board or its successor, and on
38 such additional standards as may be prescribed in the valuation
39 manual.

40 (5) In the case of an opinion required to be submitted by a
41 foreign or alien company, the commissioner may accept the opinion
42 filed by that company with the insurance supervisory official of
43 another state if the commissioner determines that the opinion
44 reasonably meets the requirements applicable to a company
45 domiciled in this State.

46 (6) Except in cases of fraud or willful misconduct, the appointed
47 actuary shall not be liable for damages to any person, other than the
48 insurance company and the commissioner, for any act, error,

1 omission, decision or conduct with respect to the appointed
2 actuary's opinion.

3 (7) Disciplinary action by the commissioner against the
4 company or the appointed actuary shall be prescribed and defined in
5 regulations by the commissioner.

6 (cf: P.L.1995, c.339, s.2)

7

8 63. (New section) a. For policies issued on or after the operative
9 date of the valuation manual, the standard prescribed in the
10 valuation manual is the minimum standard of valuation required
11 under section 60 of P.L. c. (c.) (pending before the
12 Legislature as this bill) except as provided under subsections e. or
13 g. of this section.

14 b. The operative date of the valuation manual is January 1 of
15 the first calendar year following the first July 1 as of which all of
16 the following have occurred:

17 (1) The valuation manual has been adopted by the NAIC by an
18 affirmative vote of at least 42 members, or three-fourths of the
19 members voting, whichever is greater.

20 (2) The NAIC Model Standard Valuation Law, as amended by
21 the NAIC in 2009, or legislation including substantially similar
22 terms and provisions, has been enacted by States representing
23 greater than 75% of the direct premiums written as reported in the
24 following annual statements submitted for 2008: life, accident and
25 health annual statements; health annual statements; or fraternal
26 annual statements.

27 (3) The NAIC Model Standard Valuation Law, as amended by
28 the NAIC in 2009, or legislation including substantially similar
29 terms and provisions, has been enacted by at least 42 of the
30 following 55 jurisdictions: The 50 States of the United States,
31 American Samoa, the American Virgin Islands, the District of
32 Columbia, Guam, and Puerto Rico.

33 c. Unless a change in the valuation manual specifies a later
34 effective date, changes to the valuation manual shall be effective on
35 January 1 following the date when all of the following have
36 occurred:

37 (1) The change to the valuation manual has been adopted by the
38 NAIC by an affirmative vote representing:

39 (a) At least three-fourths (3/4) of the members of the NAIC
40 voting, but not less than a majority of the total membership, and

41 (b) Members of the NAIC representing jurisdictions totaling
42 greater than 75% of the direct premiums written as reported in the
43 following annual statements most recently available prior to the
44 vote in subparagraph (a) of paragraph (1) of this subsection: life,
45 accident and health annual statements, health annual statements, or
46 fraternal annual statements.

47 (2) No later than 30 days before the operative date of the
48 valuation manual or any changes thereto adopted by the NAIC, the

1 commissioner shall by order notify all companies as defined in
2 section 58 of P.L. , c. (C.)(pending before the Legislature
3 as this bill) of the adoption and its operative date. Failure to
4 provide this notice shall not delay the operative date of the
5 valuation manual or any changes thereto.

6 d. The valuation manual must specify all of the following:

7 (1) Minimum valuation standards for and definitions of the
8 policies or contracts subject to section 60 of P.L. , c. (C.)
9 (pending before the Legislature as this bill). Such minimum
10 valuation standards shall be:

11 (a) The commissioner's reserve valuation method for life
12 insurance contracts, other than annuity contracts, subject to section
13 60 of P.L. , c. (C.) (pending before the Legislature as this
14 bill);

15 (b) The commissioner's annuity reserve valuation method for
16 annuity contracts subject to section 60 of P.L. , c. (C.)
17 (pending before the Legislature as this bill); and

18 (c) Minimum reserves for all other policies or contracts subject
19 to section 60 of P.L. , c. (C.) (pending before the
20 Legislature as this bill);

21 (2) Which policies or contracts or types of policies or contracts
22 that are subject to the requirements of a principle-based valuation in
23 subsection a. of section 64 of P.L. , c. (C.) (pending before
24 the Legislature as this bill) and the minimum valuation standards
25 consistent with those requirements;

26 (3) For policies and contracts subject to a principle-based
27 valuation under section 64 of P.L. , c. (C.) (pending before
28 the Legislature as this bill):

29 (a) Requirements for the format of reports to the commissioner
30 under paragraph 3 of subsection b. of section 64 of P.L. , c. (C.)
31 (pending before the Legislature as this bill) and which shall include
32 information necessary to determine if the valuation is appropriate
33 and in compliance with sections 58, 60, 63, 64, 65 and 66 of P.L. ,
34 (C.) (pending before the Legislature as this bill);

35 (b) Assumptions shall be prescribed for risks over which the
36 company does not have significant control or influence.

37 (c) Procedures for corporate governance and oversight of the
38 actuarial function, and a process for appropriate waiver or
39 modification of such procedures.

40 (4) For policies not subject to a principle-based valuation under
41 section 64 of P.L. , c. (C.) (pending before the Legislature
42 as this bill) the minimum valuation standard shall either:

43 (a) Be consistent with the minimum standard of valuation prior
44 to the operative date of the valuation manual; or

45 (b) Develop reserves that quantify the benefits and guarantees,
46 and the funding, associated with the contracts and their risks at a
47 level of conservatism that reflects conditions that include
48 unfavorable events that have a reasonable probability of occurring;

1 (5) Other requirements, including, but not limited to, those
2 relating to reserve methods, models for measuring risk, generation
3 of economic scenarios, assumptions, margins, use of company
4 experience, risk measurement, disclosure, certifications, reports,
5 actuarial opinions and memorandums, transition rules and internal
6 controls; and

7 (6) The data and form of the data required under section 65 of
8 P.L. , c. (C.) (pending before the Legislature as this bill),
9 with whom the data must be submitted, and may specify other
10 requirements, including data analyses and reporting of analyses.

11 e. In the absence of a specific valuation requirement or if a
12 specific valuation requirement in the valuation manual is not, in the
13 opinion of the commissioner, in compliance with sections 58, 60,
14 63, 64, 65 and 66 of P.L. c. (C.) (pending before the
15 Legislature as this bill), then the company shall, with respect to
16 such requirements, comply with minimum valuation standards
17 prescribed by the commissioner by regulation.

18 f. The commissioner may engage a qualified actuary, at the
19 expense of the company, to perform an actuarial examination of the
20 company and opine on the appropriateness of any reserve
21 assumption or method used by the company, or to review and opine
22 on a company's compliance with any requirement set forth in
23 sections 58, 60, 63, 64, 65 and 66 of P.L. c. (C.) (pending
24 before the Legislature as this bill). The commissioner may rely
25 upon the opinion, regarding provisions contained within sections
26 58, 60, 63, 64, 65 and 66 of P.L. c. (C.) (pending before the
27 Legislature as this bill), of a qualified actuary engaged by the
28 commissioner of another state, district or territory of the United
29 States.

30 As used in this subsection f., the term "engage" includes
31 employment and contracting.

32 g. The commissioner may require a company to change any
33 assumption or method that in the opinion of the commissioner is
34 necessary in order to comply with the requirements of the valuation
35 manual or sections 58, 60, 63, 64, 65 and 66 of P.L. c. (C.)
36 (pending before the Legislature as this bill); and the company shall
37 adjust the reserves as required by the commissioner. The
38 commissioner may suspend or revoke the authority to do business in
39 this State of any company and impose a fine, after notice and a
40 hearing, pursuant to the "Administrative Procedure Act," P.L.1968,
41 c.410 (C.52:14B-1 et seq.) if it fails to comply with any provision
42 of law obligatory upon it under sections 58, 60, 63, 64, 65 and 66 of
43 P.L. , c. (C.) (pending before the Legislature as this bill).

44
45 64. (New section) a. A company shall establish reserves using
46 a principle-based valuation that meets the following conditions for
47 policies or contracts as specified in the valuation manual:

- 1 (1) Quantify the benefits and guarantees, and the funding,
2 associated with the contracts and their risks at a level of
3 conservatism that reflects conditions that include unfavorable
4 events that have a reasonable probability of occurring during the
5 lifetime of the contracts. For policies or contracts with significant
6 tail risk, reflects conditions appropriately adverse to quantify the
7 tail risk.
- 8 (2) Incorporate assumptions, risk analysis methods and financial
9 models and management techniques that are consistent with, but not
10 necessarily identical to, those utilized within the company's overall
11 risk assessment process, while recognizing potential differences in
12 financial reporting structures and any prescribed assumptions or
13 methods.
- 14 (3) Incorporate assumptions that are derived in one of the
15 following manners:
 - 16 (a) The assumption is prescribed in the valuation manual.
 - 17 (b) For assumptions that are not prescribed, the assumptions
18 shall:
 - 19 (i) Be established utilizing the company's available experience,
20 to the extent it is relevant and statistically credible; or
 - 21 (ii) To the extent that company data is not available, relevant, or
22 statistically credible, be established utilizing other relevant,
23 statistically credible experience.
- 24 (4) Provide margins for uncertainty including adverse deviation
25 and estimation error, such that the greater the uncertainty the larger
26 the margin and resulting reserve.
 - 27 b. A company using a principle-based valuation for one or
28 more policies or contracts subject to this section as specified in the
29 valuation manual shall:
 - 30 (1) Establish procedures for corporate governance and oversight
31 of the actuarial valuation function consistent with those described in
32 the valuation manual.
 - 33 (2) Provide to the commissioner and the board of directors an
34 annual certification of the effectiveness of the internal controls with
35 respect to the principle-based valuation. Such controls shall be
36 designed to assure that all material risks inherent in the liabilities
37 and associated assets subject to such valuation are included in the
38 valuation, and that valuations are made in accordance with the
39 valuation manual. The certification shall be based on the controls in
40 place as of the end of the preceding calendar year.
 - 41 (3) Develop, and file with the commissioner upon request, a
42 principle-based valuation report that complies with standards
43 prescribed in the valuation manual.
 - 44 c. A principle-based valuation may include a prescribed
45 formulaic reserve component.

1 65. (New section) A company shall submit mortality, morbidity,
2 policyholder behavior, or expense experience and other data as
3 prescribed in the valuation manual.

4

5 66. (New section) a. For purposes of this section “confidential
6 information” means:

7 (1) A memorandum in support of an opinion submitted under
8 section 2 of P.L.1995, c.339 (C.17B:19-10) and any other
9 documents, materials and other information, including, but not
10 limited to, all working papers, and copies thereof, created, produced
11 or obtained by or disclosed to the commissioner or any other person
12 in connection with such a memorandum;

13 (2) All documents, materials and other information, including,
14 but not limited to, all working papers, and copies thereof, created,
15 produced or obtained by or disclosed to the commissioner or any
16 other person in the course of an examination made under subsection
17 f. of section 63 of P.L. , c. (C.) (pending before the
18 Legislature as this bill); provided, however, that if an examination
19 report or other material prepared in connection with an examination
20 made under N.J.S.17B:21-1 is not held as private and confidential
21 information under N.J.S.17B:21-1, an examination report or other
22 material prepared in connection with an examination made under
23 subsection f. of section 63 of P.L. , c. (C.) (pending before
24 the Legislature as this bill) shall not be confidential information to
25 the same extent as if such examination report or other material had
26 been prepared under N.J.S. 17B:21-1;

27 (3) Any reports, documents, materials and other information
28 developed by a company in support of, or in connection with, an
29 annual certification by the company under subsection b. of section
30 64 of P.L. , c. (C.) (pending before the Legislature as this
31 bill) evaluating the effectiveness of the company’s internal controls
32 with respect to a principle-based valuation and any other
33 documents, materials and other information, including, but not
34 limited to, all working papers, and copies thereof, created, produced
35 or obtained by or disclosed to the commissioner or any other person
36 in connection with such reports, documents, materials and other
37 information;

38 (4) Any principle-based valuation report developed under
39 paragraph 3 of subsection b. of section 64 of P.L. , c. (C.)
40 (pending before the Legislature as this bill) and any other
41 documents, materials and other information, including, but not
42 limited to, all working papers, and copies thereof, created, produced
43 or obtained by or disclosed to the commissioner or any other person
44 in connection with that report; and

45 (5) Any documents, materials, data and other information
46 submitted by a company under section 65 of P.L. , c. (C.)
47 (pending before the Legislature as this bill), collectively,
48 “experience data,” and any other documents, materials, data and

1 other information, including, but not limited to, all working papers,
2 and copies thereof, created or produced in connection with such
3 experience data, in each case that include any potentially company-
4 identifying or personally identifiable information, that is provided
5 to or obtained by the commissioner, together with any “experience
6 data,” the “experience materials,” and any other documents,
7 materials, data and other information, including, but not limited to,
8 all working papers, and copies thereof, created, produced or
9 obtained by or disclosed to the commissioner or any other person in
10 connection with such experience materials.

11 b. (1) Except as provided in this section, a company’s
12 confidential information is confidential by law and privileged, and
13 shall not be subject to P.L.1963, c.73 (C.47:1A-1 et seq.), shall not
14 be subject to subpoena and shall not be subject to discovery or
15 admissible in evidence in any private civil action; provided,
16 however, that the commissioner is authorized to use the confidential
17 information in the furtherance of any regulatory or legal action
18 brought against the company as a part of the commissioner’s
19 official duties.

20 (2) Neither the commissioner nor any person who received
21 confidential information while acting under the authority of the
22 commissioner shall be permitted or required to testify in any private
23 civil action concerning any confidential information.

24 (3) In order to assist in the performance of the commissioner’s
25 duties, the commissioner may share confidential information: (a)
26 with other state, federal and international regulatory agencies and
27 with the National Association of Insurance Commissioners (NAIC)
28 and its affiliates and subsidiaries; and (b) in the case of confidential
29 information specified in paragraphs (1) and (2) of subsection a. of
30 this section only, with the Actuarial Board for Counseling and
31 Discipline or its successor upon request stating that the confidential
32 information is required for the purpose of professional disciplinary
33 proceedings; and (c) with state, federal and international law
34 enforcement officials; in the case of (a) and (b), provided that such
35 recipient agrees, and has the legal authority to agree, to maintain the
36 confidentiality and privileged status of such documents, materials,
37 data and other information in the same manner and to the same
38 extent as required for the commissioner.

39 (4) The commissioner may receive documents, materials, data
40 and other information, including otherwise confidential and
41 privileged documents, materials, data or information, from the
42 NAIC and its affiliates and subsidiaries, from regulatory or law
43 enforcement officials of other foreign or domestic jurisdictions and
44 from the Actuarial Board for Counseling and Discipline or its
45 successor and shall maintain as confidential or privileged any
46 document, material, data or other information received with notice
47 or the understanding that it is confidential or privileged under the

1 laws of the jurisdiction that is the source of the document, material
2 or other information.

3 (5) The commissioner may enter into agreements governing
4 sharing and use of information consistent with this section.

5 (6) No waiver of any applicable privilege or claim of
6 confidentiality in the confidential information shall occur as a result
7 of disclosure to the commissioner under this section or as a result of
8 sharing as authorized in paragraph (3) of this subsection b.

9 (7) A privilege established under the law of any state or
10 jurisdiction that is substantially similar to the privilege established
11 under this subsection shall be available and enforced in any
12 proceeding in, and in any court of, this State.

13 (8) For purposes of this section “regulatory agency,” “law
14 enforcement agency” and the “NAIC” shall include, but shall not be
15 limited to, their employees, agents, consultants and contractors.

16 c. Notwithstanding subsection b. of this section, any
17 confidential information specified in paragraphs (1) and (4) of
18 subsection a. of this section:

19 (1) May be subject to subpoena for the purpose of defending an
20 action seeking damages from the appointed actuary submitting the
21 related memorandum in support of an opinion submitted under
22 section 2 of P.L.1995, c.339 (C.17B:19-10) or principle-based
23 valuation report developed under subsection b. of section 64 of
24 P.L., c. (C.) (pending before the Legislature as this bill) by
25 reason of an action required by sections 58, 60, 63, 64, 65 and 66 of
26 P.L., c. (C.) (pending before the Legislature as this bill) or
27 by regulations promulgated hereunder;

28 (2) May otherwise be released by the commissioner with the
29 written consent of the company; and

30 (3) Once any portion of a memorandum in support of an opinion
31 submitted under section 2 of P.L.1995, c.339 (C.17B:19-10) or a
32 principle-based valuation report developed under subsection b. of
33 section 64 of P.L., c. (C.) (pending before the Legislature
34 as this bill) is cited by the company in its marketing or is publicly
35 volunteered to or before a governmental agency other than a state
36 insurance department or is released by the company to the news
37 media, all portions of such memorandum or report shall no longer
38 be confidential.

39

40 67. N.J.S.17B:25-19 is amended to read as follows:

41 7B:25-19. This section shall be known as the standard
42 nonforfeiture law for life insurance.

43 a. No policy of life insurance, except as stated in subsection l.,
44 shall be delivered or issued for delivery in this State unless it shall
45 contain in substance the following provisions, or corresponding
46 provisions which in the opinion of the commissioner are at least as
47 favorable to the defaulting or surrendering policyholder as are the

1 minimum requirements hereinafter specified and are essentially in
2 compliance with subsection k. of this section:

3 (1) That, in the event of default in any premium payment, the
4 insurer will grant, upon proper request not later than 60 days after
5 the due date of the premium in default, a paid-up nonforfeiture
6 benefit on a plan stipulated in the policy, effective as of such due
7 date, of such amount as may be hereinafter specified. In lieu of such
8 stipulated paid-up nonforfeiture benefit, the insurer may substitute,
9 upon proper request not later than 60 days after the due date of the
10 premium in default, an actuarially equivalent alternative paid-up
11 nonforfeiture benefit which provides a greater amount or longer
12 period of death benefits or, if applicable, a greater amount or earlier
13 payment of endowment benefits.

14 (2) That, upon surrender of the policy within 60 days after the
15 due date of any premium payment in default after premiums have
16 been paid for at least 3 full years in the case of ordinary insurance
17 or 5 full years in the case of industrial insurance, the insurer will
18 pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender
19 value of such amount as may be hereinafter specified.

20 (3) That a specified paid-up nonforfeiture benefit shall become
21 effective as specified in the policy unless the person entitled to
22 make such election elects another available option not later than 60
23 days after the due date of the premium in default.

24 (4) That, if the policy shall have become paid up by completion
25 of all premium payments or if it is continued under any paid-up
26 nonforfeiture benefit which became effective on or after the third
27 policy anniversary in the case of ordinary insurance or the fifth
28 policy anniversary in the case of industrial insurance, the insurer
29 will pay, upon surrender of the policy within 30 days after any
30 policy anniversary, a cash surrender value of such amount as may
31 be hereinafter specified.

32 (5) In the case of policies which cause on a basis guaranteed in
33 the policy unscheduled changes in benefits or premiums, or which
34 provide an option for changes in benefits or premiums other than a
35 change to a new policy, a statement of the mortality table, interest
36 rate, and method used in calculating cash surrender values and the
37 paid-up nonforfeiture benefits available under the policy. In the
38 case of all other policies, a statement of the mortality tables and
39 interest rates used in calculating the cash surrender values and the
40 mortality tables and interest rates used in calculating the paid-up
41 nonforfeiture benefits available under the policy, together with a
42 table showing the cash surrender value, if any, and paid-up
43 nonforfeiture benefit, if any, available under the policy on each
44 policy anniversary either during the first 20 policy years or during
45 the term of the policy, whichever is shorter, such values and
46 benefits to be calculated upon the assumption that there are no
47 dividends or paid-up additions credited to the policy and that there
48 is no indebtedness to the insurer on the policy.

1 (6) A statement that the cash surrender values and the paid-up
2 nonforfeiture benefits available under the policy are not less than
3 the minimum values and benefits required by or pursuant to the
4 insurance law of the state in which the policy is delivered; an
5 explanation of the manner in which the cash surrender values and
6 the paid-up nonforfeiture benefits are altered by the existence of
7 any paid-up additions credited to the policy or any indebtedness to
8 the insurer on the policy; if a detailed statement of the method of
9 computation of the cash surrender values and paid-up nonforfeiture
10 benefits shown in the policy is not stated therein, a statement that
11 such method of computation has been filed with the insurance
12 supervisory official of the state in which the policy is delivered; and
13 a statement of the method to be used in calculating the cash
14 surrender value and paid-up nonforfeiture benefit available under
15 the policy on any policy anniversary beyond the last anniversary for
16 which such values and benefits are consecutively shown in the
17 policy.

18 Any of the foregoing provisions or portions thereof not
19 applicable by reason of the plan of insurance may, to the extent
20 inapplicable, be omitted from the policy.

21 The insurer shall reserve the right to defer the payment of any
22 cash surrender value for a period of 6 months after demand therefor
23 with surrender of the policy.

24 b. (Deleted by amendment; P.L.1981, c.285.)

25 c. Any cash surrender value available under any policy referred
26 to in subsection a. in the event of default in a premium payment due
27 on any policy anniversary, whether or not required by subsection a.,
28 shall be an amount not less than the excess, if any, of the present
29 value, on such anniversary, of the future guaranteed benefits which
30 would have been provided for by the policy, including any existing
31 paid-up additions, if there had been no default, over the sum of (1)
32 the then present value of the adjusted premiums as defined in
33 subsection g., corresponding to premiums which would have fallen
34 due on and after such anniversary, and (2) the amount of any
35 indebtedness to the insurer on the policy.

36 Provided, however, that for any policy issued on or after the
37 operative date provided for in paragraph (xi) of subsection h. of
38 N.J.S.17B:25-19, which provides supplemental life insurance or
39 annuity benefits at the option of the insured and for an identifiable
40 additional premium by rider or supplemental policy provision, the
41 cash surrender value referred to in the first paragraph of this
42 subsection shall be an amount not less than the sum of the cash
43 surrender value as defined in that paragraph for an otherwise similar
44 policy issued at the same age without such rider or supplemental
45 policy provision and the cash surrender value as defined in that
46 paragraph for a policy which provides only the benefits otherwise
47 provided by such rider or supplemental policy provision.

1 Provided, further, that for any family policy issued on or after
2 the operative date provided for in paragraph (xi) of subsection h.,
3 which defines a primary insured and provides term insurance on the
4 life of the spouse of the primary insured expiring before the
5 spouse's age 71, the cash surrender value referred to in the first
6 paragraph of this subsection shall be an amount not less than the
7 sum of the cash surrender value as defined in that paragraph for an
8 otherwise similar policy issued at the same age without such term
9 insurance on the life of the spouse and the cash surrender value as
10 defined in that paragraph for a policy which provides only the
11 benefits otherwise provided by such term insurance on the life of
12 the spouse.

13 Any cash surrender value available within 30 days after any
14 policy anniversary under any policy paid up by completion of all
15 premium payments or any policy continued under any paid-up
16 nonforfeiture benefit, whether or nor required by subsection a., shall
17 be an amount not less than the present value, on such anniversary,
18 of the future guaranteed benefits provided for by the policy,
19 including any existing paid-up additions, decreased by any
20 indebtedness to the insurer on the policy.

21 d. Any paid-up nonforfeiture benefit available under any policy
22 referred to in subsection a. in the event of default in a premium
23 payment due on any policy anniversary shall be such that its present
24 value as of such anniversary shall be at least equal to the cash
25 surrender value then provided for by the policy or, if none is
26 provided for, that cash surrender value which would have been
27 required by this section in the absence of the condition that
28 premiums shall have been paid for at least a specified period.

29 e. (Deleted by amendment; P.L.1981, c.285.)

30 f. (Deleted by amendment; P.L.1981, c.285.)

31 g. This subsection shall not apply to policies issued on or after
32 the operative date of subsection h. as defined therein. Except as
33 provided in the third paragraph of this subsection, the adjusted
34 premiums for any policy referred to in subsection a. shall be
35 calculated on an annual basis and shall be such uniform percentage
36 of the respective premiums specified in the policy for each policy
37 year, excluding any extra premiums charged because of
38 impairments or special hazards, that the present value, at the date of
39 issue of the policy, of all such adjusted premiums shall be equal to
40 the sum of (1) the then present value of the future guaranteed
41 benefits provided for by the policy; (2) 2% of the amount of
42 insurance, if the insurance be uniform in amount or of the
43 equivalent uniform amount, as hereinafter defined, if the amount of
44 insurance varies with duration of the policy; (3) 40% of the adjusted
45 premium for the first policy year; (4) 25% of either the adjusted
46 premium for the first policy year or the adjusted premium for a
47 whole life policy of the same uniform or equivalent uniform amount
48 with uniform premiums for the whole of life issued at the same age

1 for the same amount of insurance, whichever is less; provided,
2 however, that in applying the percentages specified in (3) and (4)
3 above, no adjusted premium shall be deemed to exceed 4% of the
4 amount of insurance or uniform amount equivalent thereto. The date
5 of issue of a policy for the purpose of this subsection shall be the
6 date as of which the rated age of the insured is determined.

7 In the case of a policy providing an amount of insurance varying
8 with duration of the policy, the equivalent uniform amount thereof
9 for the purpose of this subsection shall be deemed to be the uniform
10 amount of insurance provided by an otherwise similar policy,
11 containing the same endowment benefit or benefits, if any, issued at
12 the same age and for the same term, the amount of which does not
13 vary with duration, and the benefits under which have the same
14 present value at the date of issue as the benefits under the policy;
15 provided, however, that in the case of a policy providing a varying
16 amount of insurance issued on the life of a child under age 10, the
17 equivalent uniform amount may be computed as though the amount
18 of insurance provided by the policy prior to the attainment of age 10
19 were the amount provided by such policy at age 10.

20 The adjusted premiums for any policy providing term insurance
21 benefits by rider or supplemental policy provision shall be equal to
22 (a) the adjusted premiums for an otherwise similar policy issued at
23 the same age without such term insurance benefits, increased,
24 during the period for which premiums for such term insurance
25 benefits are payable, by (b) the adjusted premiums for such term
26 insurance, the foregoing items (a) and (b) being calculated
27 separately and as specified in the first two paragraphs of this
28 subsection except that, for the purpose of (2), (3) and (4) of the first
29 such paragraph, the amount of insurance or equivalent uniform
30 amount of insurance used in the calculation of the adjusted
31 premiums referred to in (b) shall be equal to the excess of the
32 corresponding amount determined for the entire policy over the
33 amount used in the calculation of the adjusted premiums in (a).

34 All adjusted premiums and present values referred to in this
35 subsection shall for all policies of ordinary insurance be calculated
36 on the basis of the Commissioners 1958 Standard Ordinary
37 Mortality Table. Notwithstanding this provision, for any category of
38 ordinary insurance such calculations may be made, at the option of
39 the insurer, on the basis of the Approved Standard Ordinary
40 Mortality Table; provided, further, that for any category of ordinary
41 insurance issued on female risks adjusted premiums and present
42 values may be calculated, at the option of the insurer with approval
43 of the commissioner, according to an age not more than 6 years
44 younger than the actual age of the insured. Such calculations for all
45 policies of industrial insurance shall be made on the basis of the
46 Commissioners 1961 Standard Industrial Mortality Table.

47 All calculations shall be made on the basis of the applicable rates
48 of interest specified in the policy for calculating cash surrender

1 values and paid-up nonforfeiture benefits not exceeding 5 1/2 % per
2 annum. Provided, however, that in calculating the present value of
3 any paid-up term insurance with accompanying pure endowment, if
4 any, offered as a nonforfeiture benefit, the rates of mortality
5 assumed may be not more than the rates shown in the
6 Commissioners 1958 Extended Term Insurance Table if the
7 adjusted premiums for the policy are calculated on the basis of the
8 Commissioners 1958 Standard Ordinary Mortality Table, may be
9 not more than 130% of the rates shown in the Approved Standard
10 Ordinary Mortality Table if the adjusted premiums for the policy
11 are calculated on the basis of said table, and may be not more than
12 the rates shown in the Commissioners 1961 Industrial Extended
13 Term Insurance Table if the adjusted premiums for the policy are
14 calculated on the basis of the Commissioners 1961 Standard
15 Industrial Mortality Table. Provided, further, that for insurance
16 issued on a substandard basis, the calculation of any such adjusted
17 premiums and present values may be based on such other table of
18 mortality as may be specified by the insurer and approved by the
19 commissioner.

20 h. (i) This subsection h. shall apply to all policies issued on or
21 after the operative date established by paragraph (xi) of this
22 subsection h. Except as provided in paragraph (vii) of this
23 subsection, the adjusted premiums for any policy shall be calculated
24 on an annual basis and shall be such uniform percentage of the
25 respective premiums specified in the policy for each policy year,
26 excluding amounts payable as extra premiums to cover impairments
27 or special hazards and also excluding any uniform annual contract
28 charge or policy fee specified in the policy in a statement of the
29 method to be used in calculating the cash surrender values and paid-
30 up nonforfeiture benefits, that the present value, at the date of the
31 policy, of all adjusted premiums shall be equal to the sum of (A) the
32 then present value of the future guaranteed benefits provided for by
33 the policy; (B) 1% of either the amount of insurance, if the
34 insurance be uniform in amount, or the average amount of insurance
35 at the beginning of each of the first 10 policy years; and (C) 125%
36 of the nonforfeiture net level premium as defined in paragraph (ii).
37 Provided, however, that in applying the percentage specified in (C)
38 above no nonforfeiture net level premium shall be deemed to
39 exceed 4% of either the amount of insurance, if the insurance be
40 uniform in amount, or the average amount of insurance at the
41 beginning of each of the first 10 policy years. The date of issue of a
42 policy for the purpose of this section shall be the date as of which
43 the rated age of the insured is determined.

44 (ii) The nonforfeiture net level premium shall be equal to the
45 present value, at the date of issue of the policy, of the guaranteed
46 benefits provided for by the policy divided by the present value, at
47 the date of issue of the policy, of an annuity of one per annum

1 payable on the date of issue of the policy and on each anniversary
2 of such policy on which a premium falls due.

3 (iii) In the case of policies which cause on a basis guaranteed in
4 the policy unscheduled changes in benefits or premiums, or which
5 provide an option for changes in benefits or premiums other than a
6 change to a new policy, the adjusted premiums and present values
7 shall initially be calculated on the assumption that future benefits
8 and premiums do not change from those stipulated at the date of
9 issue of the policy. At the time of any such change in the benefits or
10 premiums the future adjusted premiums, nonforfeiture net level
11 premiums and present values shall be recalculated on the
12 assumption that future benefits and premiums do not change from
13 those stipulated by the policy immediately after the change.

14 (iv) Except as otherwise provided in paragraph (vii) of this
15 subsection, the recalculated future adjusted premiums for any such
16 policy shall be such uniform percentage of the respective future
17 premiums specified in the policy for each policy year, excluding
18 amounts payable as extra premiums to cover impairments and
19 special hazards, and also excluding any uniform annual contract
20 charge or policy fee specified in the policy in a statement of the
21 method to be used in calculating the cash surrender values and paid-
22 up nonforfeiture benefits, that the present value, at the time of
23 change to the newly defined benefits or premiums, of all such future
24 adjusted premiums shall be equal to the excess of the sum of the
25 then present value of the then future guaranteed benefits provided
26 for by the policy and the additional expense allowance, if any, over
27 the then cash surrender value, if any, or present value of any paid-
28 up nonforfeiture benefit under the policy.

29 (v) The additional expense allowance, at the time of the change
30 to the newly defined benefits or premiums, shall be the sum of 1%
31 of the excess of the average amount of insurance at the beginning of
32 each of the first 10 policy years subsequent to the change over the
33 average amount of insurance prior to the change at the beginning of
34 each of the first 10 policy years subsequent to the time of the most
35 recent previous change, or, if there has been no previous change,
36 the date of issue of the policy; and 125% of the increase, if positive,
37 in the nonforfeiture net level premium.

38 (vi) The recalculated nonforfeiture net level premium shall be
39 equal to the result obtained by dividing (A) by (B) where

40 (A) equals the sum of the nonforfeiture net level premium
41 applicable prior to the change times the present value of an annuity
42 of one per annum payable on each anniversary of the policy on or
43 subsequent to the date of the change on which a premium would
44 have fallen due had the change not occurred, and the present value
45 of the increase in future guaranteed benefits provided for by the
46 policy, and

1 (B) equals the present value of an annuity of one per annum
2 payable on each anniversary of the policy on or subsequent to the
3 date or change on which a premium falls due.

4 (vii) Notwithstanding any other provisions of this subsection to
5 the contrary, in the case of a policy issued on a substandard basis
6 which provides reduced graded amounts of insurance so that, in
7 each policy year, such policy has the same tabular mortality cost as
8 an otherwise similar policy issued on the standard basis which
9 provides higher uniform amounts of insurance, adjusted premiums
10 and present values for such substandard policy may be calculated as
11 if it were issued to provide such higher uniform amounts of
12 insurance on the standard basis.

13 (viii) For purposes of this subsection, the term “operative date of
14 the valuation manual” means the January 1 of the first calendar year
15 that the valuation manual as defined in section 58 of P.L. , c.
16 (C.) (pending before the Legislature as this bill) is effective. All
17 adjusted premiums and present values referred to in this subsection
18 shall for all policies of ordinary insurance be calculated on the basis
19 of the Commissioners 1980 Standard Ordinary Mortality Table or at
20 the election of the insurer for any one or more specified plans of life
21 insurance, the Commissioners 1980 Standard Ordinary Mortality
22 Table with 10-Year Select Mortality Factors; shall for all policies of
23 industrial insurance be calculated on the basis of the Commissioners
24 1961 Standard Industrial Mortality Table; and shall for all policies
25 issued in a particular calendar year be calculated on the basis of a
26 rate of interest not exceeding the nonforfeiture interest rate as
27 defined in paragraph (ix) of this subsection for policies issued in
28 that calendar year. Provided, however, that:

29 At the option of the insurer, calculations for all policies
30 issued in a particular calendar year may be made on the basis
31 of a rate of interest not exceeding the nonforfeiture interest
32 rate, as defined in this section, for policies issued in the
33 immediately preceding calendar year.

34 Under any paid-up nonforfeiture benefit, including any
35 paid-up dividend additions, any cash surrender value
36 available, whether or not required by subsection a., shall be
37 calculated on the basis of the mortality table and rate of
38 interest used in determining the amount of such paid-up
39 nonforfeiture benefit and paid-up dividend additions, if any.

40 An insurer may calculate the amount of any guaranteed
41 paid-up nonforfeiture benefit including any paid-up
42 additions under the policy on the basis of an interest rate not
43 lower than that specified in the policy for calculating cash
44 surrender values.

45 In calculating the present value of any paid-up term
46 insurance with accompanying pure endowment, if any,
47 offered as a nonforfeiture benefit, the rates of mortality
48 assumed may be not more than those shown in the

1 Commissioners 1980 Extended Term Insurance for policies
2 of ordinary insurance and not more than the Commissioners
3 1961 Industrial Extended Term Insurance Table for policies
4 of industrial insurance.

5 For insurance issued on a substandard basis, the
6 calculation of such adjusted premiums and present values
7 may be based on appropriate modifications of the
8 aforementioned tables.

9 **【Any】** For policies issued prior to the operative date of
10 the valuation manual, any Commissioners Standard ordinary
11 mortality tables, adopted after 1980 by the National
12 Association of Insurance Commissioners, that are approved
13 by regulation promulgated by the **【Commissioner】**
14 commissioner for use in determining the minimum
15 nonforfeiture standard may be substituted for the
16 Commissioners 1980 Standard Ordinary Mortality Table
17 with or without 10-Year Select Mortality Factors or for the
18 Commissioners 1980 Extended Term Insurance Table.

19 **【Any】** For policies issued on or after the operative date
20 of the valuation manual, the valuation manual shall provide
21 the Commissioners Standard mortality table for use in
22 determining the minimum nonforfeiture standard that may be
23 substituted for the Commissioners 1980 Standard Ordinary
24 Mortality Table with or without Ten-Year Select Mortality
25 Factors or for the Commissioners 1980 Extended Term
26 Insurance Table. If the commissioner approves by regulation
27 any Commissioners Standard ordinary mortality table
28 adopted by the National Association of Insurance
29 Commissioners for use in determining the minimum
30 nonforfeiture standard for policies issued on or after the
31 operative date of the valuation manual, then that minimum
32 nonforfeiture standard supersedes the minimum
33 nonforfeiture standard provided by the valuation manual.

34 For policies issued prior to the operative date of the
35 valuation manual, any Commissioners Standard industrial
36 mortality tables, adopted after 1980 by the National
37 Association of Insurance Commissioners, that are approved
38 by regulation promulgated by the commissioner for use in
39 determining the minimum nonforfeiture standard may be
40 substituted for the Commissioners 1961 Standard Industrial
41 Mortality Table or the Commissioners 1961 Industrial
42 Extended Term Insurance Table.

43 For policies issued on or after the operative date of the
44 valuation manual the valuation manual shall provide the
45 Commissioners Standard mortality table for use in
46 determining the minimum nonforfeiture standard that may be
47 substituted for the Commissioners 1961 Standard Industrial
48 Mortality Table or the Commissioners 1961 Industrial

1 Extended Term Insurance Table. If the commissioner
2 approves by regulation any Commissioners Standard
3 industrial mortality table adopted by the National
4 Association of Insurance Commissioners for use in
5 determining the minimum nonforfeiture standard for policies
6 issued on or after the operative date of the valuation manual
7 then that minimum nonforfeiture standard supersedes the
8 minimum nonforfeiture standard provided by the valuation
9 manual.

10 (ix) **【The】** For purposes of this subsection, the term “operative
11 date of the valuation manual” means the January 1 of the first
12 calendar year that the valuation manual as defined in section 58 of
13 P.L. , c. (C.) (pending before the Legislature as this bill) is
14 effective.

15 The nonforfeiture interest rate is defined below:

16 (1) For policies issued prior to the operative date of the
17 valuation manual, the nonforfeiture interest rate per annum for any
18 policy issued in a particular calendar year shall be equal to 125% of
19 the calendar year statutory valuation interest rate for such policy as
20 defined in the standard valuation law, paragraph (x) of subsection
21 17B:19-8a., rounded to nearer 1/4 of 1%.

22 (2) For policies issued on or after the operative date of the
23 valuation manual the nonforfeiture interest rate per annum for any
24 policy issued in a particular calendar year shall be provided by the
25 valuation manual.

26 (x) Notwithstanding any other provisions in this code (Title
27 17B) to the contrary, any refiling of nonforfeiture values or their
28 methods of computation for any previously approved policy forms
29 which involves only a change in the interest rate or mortality table
30 used to compute nonforfeiture values shall not require refiling of
31 any other provisions of that policy form.

32 (xi) After the effective date of this subsection, any insurer may
33 file with the commissioner a written notice of its election to
34 comply, with respect to any category of insurance, with the
35 provisions of this subsection after a specified date before January 1,
36 1989, which shall be the operative date of this subsection for that
37 category of insurance for such insurer. If an insurer makes no such
38 election with respect to any category of insurance, the operative
39 date of this subsection for that category of insurance issued by such
40 insurer shall be January 1, 1989.

41 i. In the case of any plan of life insurance which provides for
42 future premium determination, the amounts of which are to be
43 determined by the insurer based on then estimates of future
44 experience, or in the case of any plan of life insurance which is of
45 such a nature that minimum values cannot be determined by the
46 methods described in the preceding subsections of this section,
47 then:

1 the commissioner must be satisfied that the benefits
2 provided under the plan are substantially as favorable to
3 policyholders and insureds as the minimum benefits
4 otherwise required by the preceding subsections of this
5 section;

6 the commissioner must be satisfied that the benefits and
7 the pattern of premiums of that plan are not such as to
8 mislead prospective policyholders or insureds;

9 the cash surrender values and paid-up nonforfeiture
10 benefits provided by such plan must not be less than the
11 minimum values and benefits required for the plan computed
12 by a method consistent with the principles of this standard
13 nonforfeiture law for life insurance, as determined by
14 regulations promulgated by the commissioner.

15 j. Any cash surrender value and any paid-up nonforfeiture
16 benefit, available under the policy in the event of default in a
17 premium payment due at any time other than on the policy
18 anniversary, shall be calculated with allowance for the lapse of time
19 and the payment of fractional premiums beyond the last preceding
20 policy or contract anniversary. All values referred to in subsections
21 c., d., g., h. and i. may be calculated upon the assumption that any
22 death benefit is payable at the end of the policy year of death. The
23 net value of any paid-up additions, other than paid-up term
24 additions, shall be not less than the amounts used to provide such
25 additions. Notwithstanding the provisions of subsection c.,
26 additional benefits payable (1) in the event of death or
27 dismemberment by accident or accidental means, (2) in the event of
28 total and permanent disability, (3) as reversionary annuity or
29 deferred reversionary annuity benefits, (4) as term insurance
30 benefits provided by a rider or supplemental policy provision to
31 which, if issued as a separate policy, this section would not apply,
32 (5) as term insurance on the life of a child or on the lives of children
33 provided in a policy on the life of a parent of the child, if such term
34 insurance expires before the child's age is 26, is uniform in amount
35 after the child's age is one, and has not become paid-up by reason of
36 the death of a parent of the child, and (6) as other policy benefits
37 additional to life insurance and endowment benefits, and premiums
38 for all such additional benefits, shall be disregarded in ascertaining
39 cash surrender values and nonforfeiture benefits required by this
40 section, and no such additional benefits shall be required to be
41 included in any paid-up nonforfeiture benefits. Notwithstanding the
42 provisions of subsection c., additional benefits providing the
43 privilege to purchase additional insurance benefits at some future
44 time without furnishing evidence of insurability, and premiums
45 therefor, may, with the consent of the commissioner, be disregarded
46 in ascertaining cash surrender values and nonforfeiture benefits
47 required by this section, and no such additional benefits shall be
48 required to be included in any paid-up nonforfeiture benefits.

1 k. This subsection shall apply to all policies issued on or after
2 January 1, 1985. Any cash surrender value available under the
3 policy in the event of default in a premium payment due on any
4 policy anniversary shall be in an amount which does not differ by
5 more than $\frac{2}{10}$ of 1% of either the amount of insurance, if the
6 insurance be uniform in amount, or the average amount of insurance
7 at the beginning of each of the first 10 policy years, from the sum of
8 (a) the greater of zero and the basic cash value hereinafter specified
9 and (b) the present value of any existing paid-up additions less the
10 amount of any indebtedness to the insurer under the policy.

11 The basic cash value shall be equal to the present value, on such
12 anniversary, of the future guaranteed benefits which would have
13 been provided by the policy, excluding any existing paid-up
14 additions and before deduction of any indebtedness to the insurer, if
15 there had been no default, less the then present value of the
16 nonforfeiture factors, as hereinafter defined, corresponding to
17 premiums which would have fallen due on and after such
18 anniversary. Provided, however, that the effects on the basic cash
19 value of supplemental life insurance or annuity benefits or of family
20 coverage, as described in subsection c. or subsection g., whichever
21 is applicable shall be the same as are the effects specified in
22 subsection c. or subsection g., whichever is applicable on the cash
23 surrender values defined therein.

24 The nonforfeiture factor for each policy year shall be an amount
25 equal to a percentage of the adjusted premium for the policy year,
26 as defined in subsection g. or h., whichever is applicable. Except as
27 required by the next succeeding sentence of this paragraph, such
28 percentage:

29 shall be the same percentage for each policy year
30 between the second policy anniversary and the later of the
31 fifth policy anniversary and the first policy anniversary at
32 which there is available under the policy a cash surrender
33 value in an amount, before including any paid-up additions
34 and before deducting any indebtedness, of at least $\frac{2}{10}$ of
35 1% of either the amount of insurance, if the insurance be
36 uniform in amount, or the average amount of insurance at
37 the beginning of each of the first 10 policy years; and

38 shall be such that no percentage after the later of the two
39 policy anniversaries specified in the preceding item may
40 apply to fewer than 5 consecutive policy years.

41 Provided, that no basic cash value may be less than the value
42 which would be obtained if the adjusted premiums for the policy, as
43 defined in subsection g., or h., whichever is applicable, were
44 substituted for the nonforfeiture factors in the calculation of the
45 basic cash value.

46 All adjusted premiums and present values referred to in this
47 subsection shall for a particular policy be calculated on the same
48 mortality and interest bases as are used in demonstrating the

1 policy's compliance with the other sections of this amendatory and
2 supplementary act. The cash surrender values referred to in this
3 subsection shall include any endowment benefits provided for by
4 the policy.

5 Any cash surrender value available other than in the event of
6 default in a premium payment due on a policy anniversary, and the
7 amount of any paid-up nonforfeiture benefit available under the
8 policy in the event of default in a premium payment shall be
9 determined in a manner consistent with that specified for
10 determining the appropriate minimum amounts in subsections a., c.,
11 d., g., h. and i. The amounts of any cash surrender values and of any
12 paid-up nonforfeiture benefits granted in connection with additional
13 benefits such as those listed as items (1) through (6) in subsection j.
14 shall conform with the principles of this subsection.

15 l. This section shall not apply to any of the following:

- 16 • reinsurance,
- 17 • group insurance,
- 18 • annuity contract,
- 19 • single premium pure endowment contract or single premium
20 reversionary annuity contract,
- 21 • term policy of uniform amount, which provides no
22 guaranteed nonforfeiture or endowment benefits, or renewal
23 thereof, of 20 years or less expiring before age 71, for which
24 uniform premiums are payable during the entire term of the
25 policy,
- 26 • term policy of decreasing amount which provides no
27 guaranteed nonforfeiture or endowment benefits, on which
28 each adjusted premium, calculated as specified in
29 subsections g. and h. is less than the adjusted premium so
30 calculated on a term policy of uniform amount, or renewal
31 thereof, which provides no guaranteed nonforfeiture
32 endowment benefits, issued at the same age and for the same
33 initial amount of insurance and for a term of 20 years or less
34 expiring before age 71, for which uniform premiums are
35 payable during the entire term of the policy,
- 36 • policy which provides no guaranteed nonforfeiture or
37 endowment benefits, for which no cash surrender value, if
38 any, or present value of any paid-up nonforfeiture benefit, at
39 the beginning of any policy year, calculated as specified in
40 subsections c., g., and h. exceeds 2 1/2 % of the amount of
41 insurance at the beginning of the same policy year,
- 42 • policy which shall be delivered outside this State through an
43 agent or other representative of the insurer issuing the
44 policy.

45 For the purposes of determining the applicability of this section,
46 the age at expiry for a joint term life insurance policy shall be the
47 age at expiry of the oldest life.

48 (cf: P.L.1981, c.285, s.4)

1 organization's business risks. The methods and procedures for
2 determining any increase will be established by regulation based on
3 the risk based capital ("RBC") standards adopted by the NAIC for
4 health organizations, including the exemptions for small, single
5 state writers. Similar provisions already apply to property and
6 casualty insurers and to life and health insurers and health
7 maintenance organizations. Application of the NAIC RBC
8 standards to all health organizations is required for a state insurance
9 department to maintain accreditation by the NAIC beginning
10 January 1, 2015.

11 Under the bill, any increase of capital or surplus or revision or
12 redetermination of any such increase will be made only after a
13 formal departmental hearing unless such a hearing is waived by the
14 affected health organization. All matters relating to the hearing or
15 increase of capital or surplus are not subject to subpoena or public
16 inspection, unless the commissioner determines that release of this
17 information is necessary to protect the public.

18 The bill enumerates the risks that the commissioner must
19 consider in determining any increase, revision or determination in
20 the amount of capital or surplus including, but not limited to: (1)
21 increases or decreases in the frequency or severity of losses above
22 levels contemplated by rates charged by the health organization for
23 coverage; (2) increases or decreases in expenses above or below
24 those contemplated by the rates charged by the health organization
25 for coverage; (3) increases or decreases in the value of or return on
26 invested assets above or below those anticipated; (4) changes in
27 economic, social and market conditions that could adversely or
28 favorably affect the financial condition of the health organization;
29 and (5) any other contingencies which may affect the health
30 organization's financial condition.

31 The bill also requires the commissioner to take into account
32 various factors in determining any increase, revision or
33 redetermination of a health organization's capital or surplus,
34 including methods and techniques used to measure risk exposure
35 and variability; available information relating to the magnitude of
36 the various risks that the commissioner must consider in
37 determining any increase, revision or determination; the health
38 organization's financial history and projections of profits or losses;
39 and any other relevant factors.

40 The bill also provides for the Risk Management and Own Risk
41 and Solvency Assessment (ORSA) to be performed by domestic
42 insurers/insurer groups. The bill reflects the Risk Management and
43 Own Risk and Solvency Assessment Model Act adopted by the
44 NAIC in 2012. The ORSA Summary Report must be filed by
45 insurers upon request of the commissioner. If an insurer is a
46 member of an insurance group, a report must be filed with the lead
47 state insurance regulator.

1 The ORSA allows the commissioner access to information to
2 improve understanding of the insurer/insurance group and the
3 material risks to which the insurer/insurance group is exposed,
4 thereby benefitting solvency regulation of these entities. The
5 ORSA will provide group-level perspective on risk and capital, as a
6 supplement to the current reviews.

7 The bill also expressly provides that the commissioner may, in
8 addition to any powers prescribed by law, order any person
9 violating any provision of Title 17 of the Revised Statutes or 17B of
10 the New Jersey Statutes, to cease and desist from engaging in that
11 conduct. The commissioner currently possesses this authority,
12 either express or implied, in certain circumstances. This bill
13 confirms the commissioner's authority to order a person engaging
14 in conduct in violation of the New Jersey banking and insurance
15 statutes to cease and desist from engaging in that activity, in
16 addition to any other powers provided by law.

17 Finally, the bill incorporates the Principles-Based Reserving
18 (PBR) Model Act adopted by the NAIC and includes new sections
19 and amendments to New Jersey's Standard Valuation and Standard
20 Non-Forfeiture Laws, N.J.S. 17B:19-1 et seq., and N.J.S. 17B:25-
21 19, and modernizes the approach to calculating the proper amount
22 of reserves life insurance companies must set aside to pay expected
23 future insurance claims. PBR includes changes to these laws and a
24 new Valuation Manual. The NAIC adopted a revised Standard
25 Valuation Law in 2009, a revised Standard Non-Forfeiture Law in
26 2012, and a Valuation Manual in 2012. PBR will become effective
27 only after the adoption of the Valuation Manual and will apply only
28 to life insurance sold after the date of implementation. Changes to
29 the Standard Non-Forfeiture Law for Life Insurance are intended as
30 a package with the SVL changes so that mortality and interest rate
31 assumptions are coordinated. The Valuation Manual will continue
32 to be updated annually as part of an ongoing maintenance process
33 by the states through the NAIC.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3271

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 18, 2014

The Assembly Financial Institutions and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 3271.

The bill, as amended, addresses financial modernization of the regulation of insurers by the Department of Banking and Insurance in order for the department to maintain accreditation by the National Association of Insurance Commissioners (NAIC) beginning in 2015. The bill is based on model laws developed by the NAIC and provides the department with additional information and tools to protect policyholders through the monitoring of insurer financial solvency.

Firstly, the bill amends and supplements P.L.1970, c.22 (C.17:27A-1 et seq.) concerning insurance holding company systems, to reflect current requirements of the Model Insurance Holding Company System Regulatory Act adopted by the NAIC in 2010. The purpose of these provisions of the bill is to promote the reliability and financial strength of insurance institutions. These revisions to the law will provide additional supervisory powers that are necessary to meet the changing realities of the insurance market. Moreover, by complying with the national standard, New Jersey will be able to maintain a level playing field in insurance regulation with other states and hold companies to a uniform standard of financial solvency. Preliminary information gathered during the development of the model act indicates that the cost to implement these new amendments will be manageable both for compliance by insurance companies and enforcement by the department. The revisions include the following: disclosure of enterprise risk reporting within the holding company system, reimbursement for participation in supervisory colleges, modifications to the requirements for transactions within an insurance holding company system, clarifications with regard to the commissioner's authority to access books and records, and enhancements to the requirements for divestiture and disclaimers. This bill also revises provisions governing confidentiality of

documents filed and the sharing of otherwise confidential information with other state or federal regulators or the NAIC.

This bill also authorizes the Commissioner of Banking and Insurance (“commissioner”) to increase the amount of capital and surplus required, or subsequently revise or redetermine the amount of any increase for hospital service corporations, medical service corporations, dental service corporations, dental plan organizations, health service corporations, prepaid prescription service organizations and licensed organized delivery systems (collectively, “health organizations”) operating in the State based on the health organization's business risks. The methods and procedures for determining any increase will be established by regulation based on the risk based capital (“RBC”) standards adopted by the NAIC for health organizations, including the exemptions for small, single state writers. Similar provisions already apply to property and casualty insurers and to life and health insurers and health maintenance organizations. Application of the NAIC RBC standards to all health organizations is required for a state insurance department to maintain accreditation by the NAIC beginning January 1, 2015.

Under the bill, any increase of capital or surplus or revision or redetermination of any such increase will be made only after a formal departmental hearing unless such a hearing is waived by the affected health organization. All matters relating to the hearing or increase of capital or surplus are not subject to subpoena or public inspection, unless the commissioner determines that release of this information is necessary to protect the public.

The bill enumerates the risks that the commissioner must consider in determining any increase, revision or determination in the amount of capital or surplus including, but not limited to: (1) increases or decreases in the frequency or severity of losses above levels contemplated by rates charged by the health organization for coverage; (2) increases or decreases in expenses above or below those contemplated by the rates charged by the health organization for coverage; (3) increases or decreases in the value of or return on invested assets above or below those anticipated; (4) changes in economic, social and market conditions that could adversely or favorably affect the financial condition of the health organization; and (5) any other contingencies which may affect the health organization's financial condition.

The bill also requires the commissioner to take into account various factors in determining any increase, revision or redetermination of a health organization's capital or surplus, including methods and techniques used to measure risk exposure and variability; available information relating to the magnitude of the various risks that the commissioner must consider in determining any increase, revision or determination; the health organization's financial history and projections of profits or losses; and any other relevant factors.

The bill also provides for the Risk Management and Own Risk and Solvency Assessment (ORSA) to be performed by domestic insurers/insurer groups. The bill reflects the Risk Management and Own Risk and Solvency Assessment Model Act adopted by the NAIC in 2012. The ORSA Summary Report must be filed by insurers upon request of the commissioner. If an insurer is a member of an insurance group, a report must be filed with the lead state insurance regulator.

The ORSA allows the commissioner access to information to improve understanding of the insurer/insurance group and the material risks to which the insurer/insurance group is exposed, thereby benefitting solvency regulation of these entities. The ORSA will provide group-level perspective on risk and capital, as a supplement to the current reviews.

The bill also expressly provides that the commissioner may, in addition to any powers prescribed by law, order any person violating any provision of Title 17 of the Revised Statutes or 17B of the New Jersey Statutes, to cease and desist from engaging in that conduct. The commissioner currently possesses this authority, either express or implied, in certain circumstances. This bill confirms the commissioner's authority to order a person engaging in conduct in violation of the New Jersey banking and insurance statutes to cease and desist from engaging in that activity, in addition to any other powers provided by law.

Finally, the bill incorporates the Principles-Based Reserving (PBR) Model Act adopted by the NAIC and includes new sections and amendments to New Jersey's Standard Valuation and Standard Non-Forfeiture Laws, N.J.S. 17B:19-1 et seq., and N.J.S. 17B:25-19, and modernizes the approach to calculating the proper amount of reserves life insurance companies must set aside to pay expected future insurance claims. PBR includes changes to these laws and a new Valuation Manual. The NAIC adopted a revised Standard Valuation Law in 2009, a revised Standard Non-Forfeiture Law in 2012, and a Valuation Manual in 2012. PBR will become effective only after the adoption of the Valuation Manual and will apply only to life insurance sold after the date of implementation. Changes to the Standard Non-Forfeiture Law for Life Insurance are intended as a package with the SVL changes so that mortality and interest rate assumptions are coordinated. The Valuation Manual will continue to be updated annually as part of an ongoing maintenance process by the states through the NAIC.

COMMITTEE AMENDMENTS

The committee amended the bill to revise the criteria the commissioner uses to determine whether another chief insurance regulatory official is the appropriate group-wide supervisor for an international insurance group.

Under the amendments, the commissioner will consider whether the jurisdiction of the other regulatory official:

- (1) provides the commissioner with reasonably reciprocal recognition and cooperation; and
- (2) is accredited by the NAIC or otherwise has laws substantially similar to the laws of New Jersey.

However, when another chief insurance regulatory official is currently acting as the lead group-wide supervisor, the commissioner shall defer to that designation unless certain significant material changes have occurred in the international insurance group.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3271

STATE OF NEW JERSEY

DATED: DECEMBER 8, 2014

The Senate Commerce Committee reports favorably Assembly Bill No. 3271 (1R).

This bill addresses financial modernization of the regulation of insurers by the Department of Banking and Insurance in order for the department to maintain accreditation by the National Association of Insurance Commissioners (NAIC) beginning in 2015. The bill is based on model laws developed by the NAIC and provides the department with additional information and tools to protect policyholders through the monitoring of insurer financial solvency.

Firstly, the bill amends and supplements P.L.1970, c.22 (C.17:27A-1 et seq.) concerning insurance holding company systems, to reflect current requirements of the Model Insurance Holding Company System Regulatory Act adopted by the NAIC in 2010. The purpose of these provisions of the bill is to promote the reliability and financial strength of insurance institutions. These revisions to the law will provide additional supervisory powers that are necessary to meet the changing realities of the insurance market. Moreover, by complying with the national standard, New Jersey will be able to maintain a level playing field in insurance regulation with other states and hold companies to a uniform standard of financial solvency. Preliminary information gathered during the development of the model act indicates that the cost to implement these new amendments will be manageable both for compliance by insurance companies and enforcement by the department. The revisions include the following: disclosure of enterprise risk reporting within the holding company system, reimbursement for participation in supervisory colleges, modifications to the requirements for transactions within an insurance holding company system, clarifications with regard to the commissioner's authority to access books and records, and enhancements to the requirements for divestiture and disclaimers. This bill also revises provisions governing confidentiality of documents filed and the sharing of otherwise confidential information with other state or federal regulators or the NAIC.

This bill also authorizes the Commissioner of Banking and Insurance ("commissioner") to increase the amount of capital and surplus required, or subsequently revise or redetermine the amount of

any increase for hospital service corporations, medical service corporations, dental service corporations, dental plan organizations, health service corporations, prepaid prescription service organizations and licensed organized delivery systems (collectively, “health organizations”) operating in the State based on the health organization's business risks. The methods and procedures for determining any increase will be established by regulation based on the risk based capital (“RBC”) standards adopted by the NAIC for health organizations, including the exemptions for small, single state writers. Similar provisions already apply to property and casualty insurers and to life and health insurers and health maintenance organizations. Application of the NAIC RBC standards to all health organizations is required for a state insurance department to maintain accreditation by the NAIC beginning January 1, 2015.

Under the bill, any increase of capital or surplus or revision or redetermination of any such increase will be made only after a formal departmental hearing unless such a hearing is waived by the affected health organization. All matters relating to the hearing or increase of capital or surplus are not subject to subpoena or public inspection, unless the commissioner determines that release of this information is necessary to protect the public.

The bill enumerates the risks that the commissioner must consider in determining any increase, revision or determination in the amount of capital or surplus including, but not limited to: (1) increases or decreases in the frequency or severity of losses above levels contemplated by rates charged by the health organization for coverage; (2) increases or decreases in expenses above or below those contemplated by the rates charged by the health organization for coverage; (3) increases or decreases in the value of or return on invested assets above or below those anticipated; (4) changes in economic, social and market conditions that could adversely or favorably affect the financial condition of the health organization; and (5) any other contingencies which may affect the health organization's financial condition.

The bill also requires the commissioner to take into account various factors in determining any increase, revision or redetermination of a health organization's capital or surplus, including methods and techniques used to measure risk exposure and variability; available information relating to the magnitude of the various risks that the commissioner must consider in determining any increase, revision or determination; the health organization's financial history and projections of profits or losses; and any other relevant factors.

The bill also provides for the Risk Management and Own Risk and Solvency Assessment (ORSA) to be performed by domestic insurers/insurer groups. The bill reflects the Risk Management and Own Risk and Solvency Assessment Model Act adopted by the NAIC in 2012. The ORSA Summary Report must be filed by insurers upon request of the commissioner. If an insurer is a member of an insurance group, a report must be filed with the lead state insurance regulator.

The ORSA allows the commissioner access to information to improve understanding of the insurer/insurance group and the material risks to which the insurer/insurance group is exposed, thereby benefitting solvency regulation of these entities. The ORSA will provide group-level perspective on risk and capital, as a supplement to the current reviews.

The bill also expressly provides that the commissioner may, in addition to any powers prescribed by law, order any person violating any provision of Title 17 of the Revised Statutes or 17B of the New Jersey Statutes, to cease and desist from engaging in that conduct. The commissioner currently possesses this authority, either express or implied, in certain circumstances. This bill confirms the commissioner's authority to order a person engaging in conduct in violation of the New Jersey banking and insurance statutes to cease and desist from engaging in that activity, in addition to any other powers provided by law.

Finally, the bill incorporates the Principles-Based Reserving (PBR) Model Act adopted by the NAIC and includes new sections and amendments to New Jersey's Standard Valuation and Standard Non-Forfeiture Laws, N.J.S. 17B:19-1 et seq., and N.J.S. 17B:25-19, and modernizes the approach to calculating the proper amount of reserves life insurance companies must set aside to pay expected future insurance claims. PBR includes changes to these laws and a new Valuation Manual. The NAIC adopted a revised Standard Valuation Law in 2009, a revised Standard Non-Forfeiture Law in 2012, and a Valuation Manual in 2012. PBR will become effective only after the adoption of the Valuation Manual and will apply only to life insurance sold after the date of implementation. Changes to the Standard Non-Forfeiture Law for Life Insurance are intended as a package with the SVL changes so that mortality and interest rate assumptions are coordinated. The Valuation Manual will continue to be updated annually as part of an ongoing maintenance process by the states through the NAIC.

SENATE, No. 2579

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED DECEMBER 1, 2014

Sponsored by:
Senator NIA H. GILL
District 34 (Essex and Passaic)

SYNOPSIS

Increases and modernizes solvency requirements for certain insurers and authority of DOBI Commissioner to regulate insurer solvency.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the modernization of the financial solvency
2 regulation of insurers and amending and supplementing various
3 parts of statutory law.

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

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

10 1. Definitions.

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

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

18 b. The term "commissioner" shall mean the Commissioner of
19 Banking and Insurance or the commissioner's deputies~~],~~ except that
20 when a health maintenance organization is the subject of an
21 acquisition of control or merger, the commissioner shall consult
22 with the Commissioner of Health on matters relating to quality of,
23 and access to, health care services~~].~~

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

44 d. An "insurance holding company system" consists of two or
45 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.

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

9 f. A "person" is an individual, a corporation, a limited liability
10 company, partnership, an association, a joint stock company, a
11 trust, an unincorporated organization, any similar entity or any
12 combination of the foregoing acting in concert.

13 g. (Deleted by amendment, P.L.1993, c.241).

14 h. A "subsidiary" of a specified person is an affiliate controlled
15 by such person directly, or indirectly through one or more
16 intermediaries.

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

19 j. "Acquisition" means any agreement, arrangement or activity,
20 the consummation of which results in a person acquiring directly or
21 indirectly the control of another person, and includes but is not
22 limited to the acquisition of voting securities, and assets, and bulk
23 reinsurance and mergers.

24 k. "Health maintenance organization" means any person
25 operating under a certificate of authority issued pursuant to
26 P.L.1973, c.337 (C.26:2J-1 et seq.).

27 l. "Enterprise risk" means any activity, circumstance, event or
28 series of events involving one or more affiliates of an insurer that, if
29 not remedied promptly, is likely to have a material adverse effect
30 upon the financial condition or liquidity of the insurer or its
31 insurance holding company system as a whole, including, but not
32 limited to, anything that would cause the insurer's Risk-Based
33 Capital to fall into company action level as set forth in
34 administrative rules adopted by the commissioner which reflect the
35 standards set forth in the Risk-Based Capital For Insurers Model
36 Act adopted by the National Association of Insurance
37 Commissioners or would cause the insurer to be in hazardous
38 financial condition as defined in administrative rules adopted by the
39 commissioner which reflect the standards set forth in the Model
40 Regulation adopted by the National Association of Insurance
41 Commissioners to define standards and the commissioner's
42 authority over companies deemed to be in a hazardous financial
43 condition.

44 (cf: P.L.2012, c.17, s.30)

45

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

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

1 a. (1) Filing requirements. No person other than the issuer
2 shall make a tender offer for or a request or invitation for tenders
3 of, or enter into any agreement to exchange securities for, seek to
4 acquire, or acquire, in the open market or otherwise, any voting
5 security of a domestic insurer if, after the consummation thereof,
6 such person would, directly or indirectly (or by conversion or by
7 exercise of any right to acquire) be in control of such insurer, and
8 no person shall enter into an agreement to merge with or otherwise
9 to acquire control of a domestic insurer unless, at the time any such
10 offer, request, or invitation is made or any such agreement is
11 entered into, or prior to the acquisition of such securities if no offer
12 or agreement is involved, such person has filed with the
13 commissioner and has sent to such insurer, a statement containing
14 the information required by this section and such offer, request,
15 invitation, agreement or acquisition has been approved by the
16 commissioner in the manner hereinafter prescribed.

17 For purposes of this subsection, a domestic insurer shall include
18 any other person controlling a domestic insurer.

19 (2) For purposes of this subsection, any controlling person of a
20 domestic insurer seeking to divest its controlling interest in the
21 domestic insurer, in any manner, shall file with the commissioner,
22 with a copy to the insurer, confidential notice of its proposed
23 divestiture at least 30 days prior to the cessation of control. The
24 commissioner shall by regulation determine those instances in
25 which the party seeking to divest or to acquire a controlling interest
26 in an insurer will be required to file for and obtain approval of the
27 transaction. The information shall remain confidential until the
28 conclusion of the transaction unless the commissioner, in his or her
29 discretion, determines that confidential treatment will interfere with
30 enforcement of this subsection a. If the statement referred to in
31 paragraph (1) of this subsection a. is otherwise filed, this paragraph
32 (2) regarding notice of divestiture or acquisition shall not apply.

33 (3) With respect to a transaction subject to this subsection a., the
34 acquiring person shall also file a pre-acquisition notification with
35 the commissioner, which shall contain the information set forth in
36 section 7 of P.L.1993, c.241 (C.17:27A-4.1). A failure to file the
37 notification may be subject to penalties specified in paragraph 3 of
38 subsection e. of section 7 of P.L.1993, c.241 (C.17:27A-4.1).

39 b. Content of statement. The statement to be filed with the
40 commissioner hereunder shall be made under oath or affirmation
41 and shall contain the following **[information]**:

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

46 (i) If such person is an individual, his principal occupation and
47 all offices and positions held during the past five years, and any

1 conviction of crimes other than minor traffic violations during the
2 past 10 years;

3 (ii) If such person is not an individual, a report of the nature of
4 its business operations during the past five years or for such lesser
5 period as such person and any predecessors thereof shall have been
6 in existence; an informative description of the business intended to
7 be done by such person and such person's subsidiaries; and a list of
8 all individuals who are or who have been selected to become
9 directors or executive officers of such person, or who perform or
10 will perform functions appropriate to such positions. Such list shall
11 include for each such individual the information required by
12 subparagraph (i) of this paragraph.

13 (2) The source, nature and amount of the consideration used or
14 to be used in effecting the merger or other acquisition of control, a
15 description of any transaction wherein funds were or are to be
16 obtained for any such purpose (including any pledge of the insurer's
17 stock, or the stock of any of its subsidiaries or controlling
18 affiliates), and the identity of persons furnishing such consideration,
19 provided, however, that where a source of such consideration is a
20 loan made in the lender's ordinary course of business, the identity of
21 the lender shall remain confidential, if the person filing such
22 statement so requests.

23 (3) Fully audited financial information as to the earnings and
24 financial condition of each acquiring party for the preceding five
25 fiscal years of each such acquiring party (or for such lesser period
26 as such acquiring party and any predecessors thereof shall have
27 been in existence), and similar unaudited information as of a date
28 not earlier than 90 days prior to the filing of the statement.

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

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

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

41 (7) A full description of any contracts, arrangements or
42 understandings with respect to any security referred to in subsection
43 a. in which any acquiring party is involved, including but not
44 limited to transfer of any of the securities, joint ventures, loan or
45 option arrangements, puts or calls, guarantees of loans, guarantees
46 against loss or guarantees of profits, division of losses or profits, or
47 the giving or withholding of proxies. Such description shall

1 identify the persons with whom such contracts, arrangements or
2 understandings have been entered into.

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

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

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

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

22 (12) An agreement by the person required to file the statement
23 referred to in subsection a. of this section that it will provide the
24 annual enterprise risk report, specified in subsection k. of section 3
25 of P.L.1970, c.22 (C.17:27A-3), so long as control exists.

26 (13) An acknowledgement by the person required to file the
27 statement referred to in subsection a. of this section that the person
28 and all subsidiaries within its control in the insurance holding
29 company system will provide information to the commissioner upon
30 request as necessary to evaluate enterprise risk to the insurer.

31 (14) Such additional information as the commissioner may by
32 rule or regulation prescribe as necessary or appropriate for the
33 protection of policyholders of the insurer or in the public interest.

34 If the person required to file the statement referred to in
35 subsection a. is a partnership, limited partnership, syndicate or other
36 group, the commissioner may require that the information called for
37 by paragraphs (1) through **[(12)] (14)** shall be given with respect to
38 each partner of such partnership or limited partnership, each
39 member of such syndicate or group, and each person who controls
40 such partner or member. If any such partner, member or person is a
41 corporation or the person required to file the statement referred to in
42 subsection a. is a corporation, the commissioner may require that
43 the information called for by paragraphs (1) through **[(12)] (14)**
44 shall be given with respect to such corporation, each officer and
45 director of such corporation, and each person who is directly or
46 indirectly the beneficial owner of more than 10% of the outstanding
47 voting securities of such corporation.

1 If any material change occurs in the facts set forth in the
2 statement filed with the commissioner and sent to such insurer
3 pursuant to this section, an amendment setting forth such change,
4 together with copies of all documents and other material relevant to
5 such change, shall be filed with the commissioner and sent to such
6 insurer within two business days after the person learns of such
7 change.

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

18 d. Approval by commissioner; hearings.

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

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

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

30 (a) The informational requirements of paragraph (1) of
31 subsection c. and paragraph (2) of subsection d. of section 7 of
32 P.L.1993, c.241 (C.17:27A-4.1) shall apply;

33 (b) The merger or other acquisition shall not be disapproved if
34 the commissioner finds that any of the situations meeting the
35 criteria provided by paragraph (3) of subsection d. of section 7 of
36 P.L.1993, c.241 (C.17:27A-4.1) exist; and

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

40 (iii) The financial condition of any acquiring party is such as
41 might jeopardize the financial stability of the insurer, or prejudice
42 the interest of its policyholders;

43 (iv) The financial condition of any acquiring party is such that
44 (a) the acquiring party has not been financially solvent on a
45 generally accepted accounting principles basis, or if an insurer, on a
46 statutory accounting basis, for the most recent three fiscal years
47 immediately prior to the date of the proposed acquisition (or for the
48 whole of such lesser period as such acquiring party and any

1 predecessors thereof shall have been in existence); (b) the acquiring
2 party has not generated net before-tax profits from its normal
3 business operations for the latest two fiscal years immediately prior
4 to the date of acquisition (or for the whole of such lesser period as
5 such acquiring party and any predecessors thereof shall have been
6 in existence); or (c) the acquisition debt of the acquiring party
7 exceeds 50% of the purchase price of the insurer;

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

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

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

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

43 (3) If the proposed acquisition of control requires the approval
44 of more than one commissioner, the public hearing referred to in
45 paragraph (2) may be held on a consolidated basis upon request of
46 the person filing the statement referred to in subsection a. of this
47 section. That person shall file the statement referred to in subsection
48 a. of this section with the National Association of Insurance

1 Commissioners within five days of making the request for a public
2 hearing. A commissioner may opt out of a consolidated hearing, and
3 shall provide notice to the applicant of the decision to opt out
4 within 10 days of the receipt of the statement referred to in
5 subsection a. of this section. A hearing conducted on a consolidated
6 basis shall be public, if not conducted on the documents filed in
7 accordance with the applicable state's procedures for such hearings,
8 and shall be held within the United States in accordance with the
9 rules and procedures of the state hosting the consolidated hearing
10 before the commissioners of the states in which the insurers are
11 domiciled. The commissioners shall hear and receive evidence. A
12 commissioner may attend the hearing, in person or by
13 telecommunication.

14 (4) The commissioner may retain, at the acquiring person's
15 expense, any attorneys, actuaries, accountants and other persons as
16 may be reasonably necessary to assist the commissioner in
17 reviewing the proposed acquisition of control.

18 e. (Deleted by amendment, P.L.1993, c.241.)

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

21 (1) Any transaction which is subject to the provisions of
22 R.S.17:27-1 et seq. or N.J.S.17B:18-60 et seq., concerning the
23 merger or consolidation of two or more insurers; and

24 (2) Any offer, request, invitation, agreement or acquisition
25 which the commissioner by order shall exempt therefrom as (a) not
26 having been made or entered into for the purpose and not having the
27 effect of changing or influencing the control of a domestic insurer,
28 or (b) as otherwise not comprehended within the purposes of this
29 section.

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

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

33 (2) Subject to subsection f., the effectuation of, or any attempt
34 to effectuate, an acquisition of control of, divestiture of, or merger
35 with, a domestic insurer unless the commissioner has given his
36 approval thereto.

37 h. Jurisdiction; consent to service of process.

38 The courts of this State are hereby vested with jurisdiction over
39 every person not resident, domiciled, or authorized to do business in
40 this State who files a statement with the commissioner under this
41 section, and over all actions involving such person arising out of
42 violations of this section, and each such person shall be deemed to
43 have performed acts equivalent to and constituting an appointment
44 by such a person of the commissioner to be his true and lawful
45 attorney upon whom may be served all lawful process in any action,
46 suit or proceeding arising out of violations of this section. Copies
47 of all such lawful process shall be served on the commissioner and

1 transmitted by registered or certified mail by the commissioner to
2 such person at his last known address.

3 (cf: P.L.1993, c.241, s.2)

4

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

7 3. Registration of insurers.

8 a. Registration. Every insurer which is authorized to do
9 business in this State and which is a member of an insurance
10 holding company system shall register with the commissioner,
11 except a foreign insurer subject to disclosure requirements and
12 standards adopted by statute or regulation in the jurisdiction of its
13 domicile which are substantially similar to those contained in: this
14 section; paragraph (1) of subsection a. and subsections b. and c. of
15 section 4 of P.L.1970, c.22 (C.17:27A-4); and either paragraph (2)
16 of subsection a. of section 4 of P.L.1970, c.22 (C.17:27A-4) or a
17 substantially similar provision which requires that each registered
18 insurer shall keep current the information required to be disclosed
19 in its registration statement by reporting all material changes or
20 additions, including change of or additions to ownership, within 15
21 days after the end of each month in which it learns of each such
22 change or addition. Any insurer which is subject to registration
23 under this section shall register within 60 days after the effective
24 date of P.L.1993, c.241 or 15 days after it becomes subject to
25 registration, whichever is later, and annually thereafter by April 1
26 of each year for the previous calendar year, unless the
27 commissioner for good cause shown extends the time for
28 registration, and then within such extended time. The commissioner
29 may require any authorized insurer which is a member of **[a]** an
30 insurance holding company system which is not subject to
31 registration under this section to furnish a copy of the registration
32 statement or other information filed by such insurance company
33 with the insurance regulatory authority of domiciliary jurisdiction.

34 b. Information and form required. Every insurer subject to
35 registration shall file a registration statement and a summary of the
36 registration statement with the commissioner on a form provided by
37 the commissioner, which shall contain current information about:

38 (1) The capital structure, general financial condition, ownership
39 and management of the insurer and any person controlling the
40 insurer;

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

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

46 (a) Loans, other investments, or purchases, sales or exchanges
47 of securities of the affiliates by the insurer or of the insurer by its
48 affiliates;

- 1 (b) Purchases, sales, or exchanges of assets;
- 2 (c) Transactions not in the ordinary course of business;
- 3 (d) Guarantees or undertakings for the benefit of an affiliate
4 which result in an actual contingent exposure of the insurer's assets
5 to liability, other than insurance contracts entered into in the
6 ordinary course of the insurer's business;
- 7 (e) All management agreements, service contracts and all cost-
8 sharing arrangements;
- 9 (f) Reinsurance agreements;
- 10 (g) Dividends and other distributions to shareholders, including
11 the declarations and authorizations thereof; and
- 12 (h) Consolidated tax allocation agreements;
- 13 (4) Any pledge of the insurer's stock, including stock of any
14 subsidiary or controlling affiliate, for a loan made to any member of
15 the insurance holding company system; **[or]**
- 16 (5) Financial statements of or within an insurance holding
17 company system, including all affiliates, if requested by the
18 commissioner. Financial statements shall include, but are not
19 limited to, annual audited financial statements filed with the U.S.
20 Securities and Exchange Commission (SEC) pursuant to the
21 Securities Act of 1933, 15 U.S.C. s.77a et seq., or the Securities
22 Exchange Act of 1934, 15 U.S.C. s.78a et seq. An insurer required
23 to file financial statements pursuant to this paragraph may satisfy
24 the request by providing the commissioner with the most recently
25 filed parent corporation financial statements that have been filed
26 with the SEC;
- 27 (6) Other matters concerning transactions between registered
28 insurers and any affiliates as may be included from time to time in
29 any registration forms adopted or approved by the commissioner;
- 30 (7) Statements that the insurer's board of directors is responsible
31 for and oversees corporate governance and internal controls and that
32 the insurer's officers or senior management have approved,
33 implemented, and continue to maintain and monitor corporate
34 governance and internal control procedures; and
- 35 (8) Any other information required by the commissioner by rule
36 or regulation .
- 37 All registration statements shall contain a summary outlining all
38 items in the current registration statement representing changes
39 from the prior registration statement.
- 40 c. Materiality. No information need be disclosed on the
41 registration statement filed pursuant to subsection b. of this section
42 if such information is not material for the purposes of this section.
43 Unless the commissioner by rule, regulation or order provides
44 otherwise, sales, purchases, exchanges, loans or extensions of
45 credit, investments, or guarantees or other contingent obligations
46 involving 1/2 of 1% or less of an insurer's admitted assets as of
47 December 31 next preceding shall not be deemed material for
48 purposes of this section.

1 d. Amendments to registration statements. Each registered
2 insurer shall keep current the information required to be disclosed
3 in its registration statement by reporting all material changes or
4 additions on amendment forms provided by the commissioner
5 within 15 days after the end of the month in which it learns of each
6 such change or addition.

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

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

15 g. Consolidated filing. The commissioner may require or allow
16 two or more affiliated insurers subject to registration hereunder to
17 file a consolidated registration statement or consolidated reports
18 amending their consolidated registration statement or their
19 individual registration statements.

20 h. Alternative registration. The commissioner may allow an
21 insurer which is authorized to do business in this State and which is
22 part of an insurance holding company system to register on behalf
23 of any affiliated insurer which is required to register under
24 subsection a. and to file all information and material required to be
25 filed under this section.

26 i. Exemptions. The provisions of this section shall not apply
27 to any insurer, information or transaction if and to the extent that
28 the commissioner by rule, regulation, or order shall exempt the
29 same from the provisions of this section.

30 j. Disclaimer. Any person may file with the commissioner a
31 disclaimer of affiliation with any authorized insurer or such a
32 disclaimer may be filed by such insurer or any member of an
33 insurance holding company system. The disclaimer shall fully
34 disclose all material relationships and bases for affiliation between
35 such person and such insurer as well as the basis for disclaiming
36 such affiliation. **【After a disclaimer has been filed, the insurer shall
37 be relieved of any duty to register or report under this section which
38 may arise out of the insurer's relationship with such person unless
39 and until the commissioner disallows such a disclaimer. The
40 commissioner shall disallow such a disclaimer only after furnishing
41 all parties in interest with notice and opportunity to be heard and
42 after making specific findings of fact to support such
43 disallowance.】** A disclaimer of affiliation shall be deemed to have
44 been granted unless the commissioner, within 30 days following
45 receipt of a complete disclaimer, notifies the filing party in writing
46 that the disclaimer is disallowed. In the event of disallowance, the
47 disclaiming party may request a hearing. The disclaiming party
48 shall be relieved of its duty to register under this section if approval

1 of the disclaimer has been granted by the commissioner, or if the
2 disclaimer is deemed to have been approved.

3 k. Enterprise risk filing. The ultimate controlling person of
4 every insurer subject to registration shall also file an annual
5 enterprise risk report. The report shall, to the best of the ultimate
6 controlling person's knowledge and belief, identify the material
7 risks within the insurance holding company system that could pose
8 enterprise risk to the insurer. The report shall be filed with the lead
9 state commissioner of the insurance holding company system as
10 determined by the procedures within the Financial Analysis
11 Handbook adopted by the National Association of Insurance
12 Commissioners.

13 l. Violations. The failure to file a registration statement or any
14 amendment thereto or enterprise risk filing required by this section
15 within the time specified for such filing shall be a violation of this
16 section.

17 (cf: P.L.1995, c.338, s.1)

18

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

21 4. Standards

22 a. Transactions **【with affiliates】** within an insurance holding
23 company system.

24 (1) Transactions **【by registered insurers with their affiliates】**
25 within an insurance holding company system to which an insurer
26 subject to registration is a party shall be subject to the following
27 standards:

28 (a) The terms shall be fair and reasonable;

29 (b) Agreements for cost sharing services and management shall
30 include such provisions as required by rules and regulations adopted
31 by the commissioner;

32 (c) Charges or fees for services performed shall be reasonable;

33 **【c】** (d) Expenses incurred and payment received shall be
34 allocated to the insurer in conformity with customary insurance
35 accounting practices consistently applied;

36 **【d】** (e) The books, accounts and records of each party to all such
37 transactions shall be so maintained as to clearly and accurately
38 disclose the precise nature and details of the transactions, including
39 such accounting information as is necessary to support the
40 reasonableness of the charges or fees to the respective parties; and

41 **【e】** (f) The insurer's surplus as regards policyholders following
42 any transaction with affiliates or dividends or distributions to
43 shareholder affiliates shall be reasonable in relation to the insurer's
44 outstanding liabilities and adequate to its financial needs.

45 (2) The following transactions, set forth in subparagraphs (a)
46 through (g) of this paragraph (2) involving a domestic insurer and
47 any person in its insurance holding company system, including
48 amendments or modifications of affiliate agreements previously

1 filed pursuant to this section, which are subject to any materiality
2 standards contained in subparagraphs (a) through (g) of this
3 paragraph (2) may not be entered into unless the insurer has notified
4 the commissioner in writing of its intention to enter into that
5 transaction at least 30 days prior thereto, or such shorter period as
6 the commissioner may permit, and the commissioner has not
7 disapproved it within that 30-day period. The notice for
8 amendments or modifications shall include the reasons for the
9 change and the financial impact on the domestic insurer. Informal
10 notice shall be reported, within 30 days after a termination of a
11 previously filed agreement, to the commissioner for determination
12 of the type of filing required.

13 (a) Sales, purchases, exchanges, loans or extensions of credit,
14 guarantees or other contingent obligations, investments, or loans
15 collateralized by the stock of a subsidiary or affiliate, provided such
16 transactions equal or exceed: (i) with respect to insurers other than
17 life insurers, the lesser of 3% of the insurer's admitted assets or 25%
18 of surplus as regards policyholders, as of December 31 next
19 preceding; (ii) with respect to life insurers, 3% of the insurer's
20 admitted assets, as of December 31 next preceding;

21 (b) Loans or extensions of credit to any person who is not an
22 affiliate, in which the insurer makes such loans or extensions of
23 credit with the agreement or understanding that the proceeds of
24 such transactions, in whole or in substantial part, are to be used to
25 make loans or extensions of credit to, to purchase assets of, or to
26 make investments in, any affiliate of the insurer making those loans
27 or extensions of credit, provided those transactions are equal to or
28 exceed: (i) with respect to insurers other than life insurers, the
29 lesser of 3% of the insurer's admitted assets or 25% of surplus as
30 regards policyholders, as of December 31 next preceding; (ii) with
31 respect to life insurers, 3% of the insurer's admitted assets, as of
32 December 31 next preceding;

33 (c) Reinsurance agreements or modifications thereto, including:
34 (i) All reinsurance pooling agreements; and
35 (ii) Agreements in which the reinsurance premium or a change
36 in the insurer's liabilities, or the projected reinsurance premium or a
37 change in the insurer's liabilities in any of the next three years,
38 equals or exceeds 5% of the insurer's surplus as regards
39 policyholders, as of December 31 next preceding, including those
40 agreements which may require as consideration the transfer of
41 assets from an insurer to a non-affiliate if an agreement or
42 understanding exists between the insurer and non-affiliate that any
43 portion of those assets will be transferred to one or more affiliates
44 of the insurer;

45 (d) All management agreements, service contracts, tax
46 allocation agreements, and all cost-sharing arrangements; [and]

47 (e) Guarantees when made by a domestic insurer; provided,
48 however, that a guarantee which is quantifiable as to amount shall

1 not be subject to the notice requirements of this paragraph unless it
2 exceeds the lesser of one-half of one percent (.5%) of the insurer's
3 admitted assets or ten percent (10%) of surplus as regards
4 policyholders as of the 31st day of December next preceding.
5 Further, all guarantees which are not quantifiable as to amount shall
6 be subject to the notice requirements of this paragraph;

7 (f) Direct or indirect acquisitions or investments in a person that
8 controls the insurer or in an affiliate of the insurer in an amount
9 which, together with its present holdings in such investments,
10 exceeds two and one-half percent (2.5%) of the insurer's surplus to
11 policyholders. Direct or indirect acquisitions in insurance affiliates
12 that are subject to section 2 of P.L.1970, c.22 (C.17:27A-2), shall
13 be exempt from this requirement; and

14 (g) Any material transactions, specified by regulation, which the
15 commissioner determines may adversely affect the interests of the
16 insurer's policyholders. Nothing herein contained shall be deemed
17 to authorize or permit any transactions which, in the case of an
18 insurer which is not a member of the same insurance holding
19 company system, would be otherwise contrary to law.

20 (3) A domestic insurer may not enter into transactions which are
21 part of a plan or series of like transactions with persons within the
22 insurance holding company system if the purpose of those separate
23 transactions is to avoid the statutory threshold amount and thus
24 avoid the review that would otherwise occur. If the commissioner
25 determines that such separate transactions were entered into over
26 any 12-month period for that purpose, he may exercise his authority
27 under section 8 of P.L.1993, c.241 (C.17:27A-9.1).

28 (4) The commissioner, in reviewing transactions pursuant to
29 paragraph (2) of this subsection, shall consider whether the
30 transactions comply with the standards set forth in paragraph (1) of
31 this subsection and whether they may adversely affect the interests
32 of policyholders.

33 (5) The commissioner shall be notified within 30 days of any
34 investment of the domestic insurer in any one corporation if the
35 total investment in that corporation by the insurance holding
36 company system exceeds 10% of that corporation's voting
37 securities.

38 (6) The commissioner may by regulation specify certain types of
39 transactions that need not be submitted for review under this
40 subsection if he determines that those transactions would not have a
41 significant impact on the financial condition or methods of
42 operation of the insurer.

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

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

1 property, whose fair market value together with that of other
2 dividends or distributions made within the preceding 12 months
3 exceeds the greater of (i) 10% of such insurer's surplus as regards
4 policyholders as of December 31 next preceding, or (ii) the net gain
5 from operations of such insurer, if such insurer is a life insurer, or
6 the net income, if such insurer is not a life insurer, not including
7 realized capital gains, for the 12-month period ending December 31
8 next preceding, but shall not include pro rata distributions of any
9 class of the insurer's own securities.

10 (c) Notwithstanding any other provision of law, a domestic
11 insurer may declare an extraordinary dividend or distribution which
12 is conditional upon the commissioner's approval thereof, and such a
13 declaration shall confer no rights upon **【policyholders】**
14 shareholders until (i) 30 days after the commissioner has received
15 notice of the declaration thereof and has not within such period
16 disapproved such payment, or (ii) the commissioner shall have
17 approved such payment within such 30-day period.

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

26 d. Management of domestic insurers subject to registration.

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

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

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

1 (4) The board of directors of a domestic insurer shall establish
2 one or more committees comprised solely of directors who are not
3 officers or employees of the insurer or of any entity controlling,
4 controlled by, or under common control with, the insurer and who
5 are not beneficial owners of a controlling interest in the voting
6 securities of the insurer or any such entity. The committee shall be
7 responsible for recommending the selection of independent certified
8 public accountants, reviewing the insurer's financial condition, the
9 scope and results of the independent audit and any internal audit,
10 nominating candidates for director for election by shareholders or
11 policyholders, evaluating the performance of officers deemed to be
12 principal officers of the insurer and recommending to the board of
13 directors the selection and compensation, including bonuses or
14 other special payments, of the principal officers.

15 (5) The provisions of paragraphs (3) and (4) of this subsection d.
16 shall not apply to a domestic insurer if the person controlling the
17 insurer, such as an insurer, a mutual insurance holding company, or
18 a publicly held corporation, is an entity having a board of directors
19 and committees thereof that substantially meet the requirements of
20 those paragraphs.

21 (6) An insurer may make application to the commissioner for a
22 waiver from the requirements of this subsection, if the insurer's
23 annual direct written and assumed premium, excluding premiums
24 reinsured with the Federal Crop Insurance Corporation and National
25 Flood Insurance Program, is less than \$300,000,000. An insurer
26 may also make application to the commissioner for a waiver from
27 the requirements of this subsection based upon unique
28 circumstances. The commissioner may consider various factors
29 including, but not limited to, the type of business entity, volume of
30 business written, availability of qualified board members, or the
31 ownership or organizational structure of the entity.

32 (cf: P.L.1995, c.338, s.2)

33

34 5. Section 7 of P.L.1993, c.241 (C.17:27A-4.1) is amended to
35 read as follows:

36 7. a. As used in this section only:

37 "Acquisition" means any agreement, arrangement or activity, the
38 consummation of which results in a person acquiring, directly or
39 indirectly, the control of another person, and includes but is not
40 limited to the acquisition of voting securities, the acquisition of
41 assets, bulk reinsurance and mergers.

42 An "involved insurer" includes an insurer which either acquires
43 or is acquired, is affiliated with an insurer which is an acquirer or is
44 acquired, or is the result of a merger.

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

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

1 (a) ~~【An acquisition subject to approval or disapproval by the~~
2 ~~commissioner pursuant to section 2 of P.L.1970, c.22 (C.17:27A-~~
3 ~~2);】 Deleted by amendment P.L. _____, c. _____) (pending before~~
4 ~~the Legislature as this bill)~~

5 (b) A purchase of securities solely for investment purposes, so
6 long as those securities are not used by voting or otherwise to cause
7 or attempt to cause the substantial lessening of competition in any
8 insurance market in this State. If a purchase of securities results in
9 a presumption of control as defined in subsection c. of section 1 of
10 P.L.1970, c.22 (C.17:27A-1), it is not solely for investment
11 purposes unless the commissioner or other appropriate official of
12 the insurer's state of domicile accepts a disclaimer of control or
13 affirmatively finds that control does not exist and such disclaimer
14 action or affirmative finding is communicated by the domiciliary
15 commissioner or official to the commissioner of this State;

16 (c) The acquisition of already affiliated persons;

17 (d) An acquisition if, as an immediate result of the acquisition,
18 the combined market share of the involved insurers would not
19 exceed five percent of the total market, there would be no increase
20 in the market, or

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

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

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

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

32 (f) An acquisition of an insurer whose domiciliary
33 commissioner or other appropriate official affirmatively finds that:
34 the insurer is in failing condition; there is a lack of feasible
35 alternatives to improving that condition; the public benefits of
36 improving that insurer's condition through the acquisition exceed
37 the public benefits that would arise from not lessening competition;
38 and such findings are communicated by the domiciliary
39 commissioner or official to the commissioner of this State.

40 (g) The acquisition of a person by another person when both
41 persons are neither directly nor through affiliates primarily engaged
42 in the business of insurance, if pre-acquisition notification is filed
43 with the commissioner in accordance with paragraph (1) of
44 subsection c. of this section 30 days prior to the proposed effective
45 date of the acquisition. Such pre-acquisition notification is not
46 required for exclusion from this section if the acquisition would
47 otherwise be excluded from this section by any other paragraph of
48 this subsection.

1 c. An acquisition covered by subsection b. of this section shall
 2 be subject to an order pursuant to subsection e. of this section
 3 unless the acquiring person files a pre-acquisition notification and
 4 the waiting period has expired. The acquired person may file a pre-
 5 acquisition notification. The commissioner shall give confidential
 6 treatment to information submitted under this subsection in the
 7 same manner as provided in section 6 of P.L.1970, c.22 (C.17:27A-
 8 6).

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

19 (2) The waiting period required shall begin on the date of
 20 receipt by the commissioner of pre-acquisition notification and shall
 21 end on the earlier of the 30th day after the date of that notification,
 22 or termination of the waiting period by the commissioner. Prior to
 23 the end of the waiting period, the commissioner on a one-time basis
 24 may require the submission of additional needed information
 25 relevant to the proposed acquisition, in which event the waiting
 26 period shall end on the earlier of the 30th day after receipt of that
 27 additional information by the commissioner or termination of the
 28 waiting period by the commissioner.

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

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

38 (a) Any acquisition covered under subsection b. involving two
 39 or more insurers competing in the same market shall be prima facie
 40 evidence of violation of the competitive standard if the market is
 41 highly concentrated and the involved insurers possess the following
 42 shares of the market:

43		
44	Insurer A	Insurer B
45	4%	4% or more
46	10%	2% or more
47	15%	1% or more

1 or, if the market is not highly concentrated and the involved
2 insurers possess the following shares of the market:

3

4	Insurer A	Insurer B
5	5%	5% or more
6	10%	4% or more

7

8	Insurer A	Insurer B
9	15%	3% or more
10	19%	1% or more

11

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

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

31 (i) there is a significant trend toward increased concentration in
32 the market;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (i) there is a hearing,

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

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

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

1 the aspects of the acquisition causing a violation of the standards of
2 this section may be remedied and the order vacated or modified.

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

5 (2) Any person who violates a cease and desist order of the
6 commissioner under paragraph (1) while such order is in effect,
7 may after notice and hearing, be subject to a penalty of up to
8 \$10,000 for each day of violation, or suspension or revocation of
9 that person's license, or both.

10 (3) Any insurer or other person who fails to make any filing
11 required by this section shall be required to pay a penalty of up to
12 \$5,000 per violation.

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

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

20 (cf: P.L.1993, c.241, s.7)

21

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

24 5. Examination.

25 a. Power of commissioner. In addition to the powers which the
26 commissioner has under other sections of Title 17 of the Revised
27 Statutes and Title 17B of the New Jersey Statutes relating to the
28 examination of insurers, the commissioner shall **【also】** have the
29 power to examine any insurer registered under section 3 of
30 P.L.1970, c.22 (C.17:27A-3) and its affiliates to ascertain the
31 financial condition of the insurer, including the enterprise risk to the
32 insurer by the ultimate controlling party, or by any entity or
33 combination of entities within the insurance holding company
34 system, or by the insurance holding company system on a
35 consolidated basis.

36 The commissioner shall also have the power to order any insurer
37 registered under section 3 to produce such records, books, or other
38 information papers in the possession of the insurer or its affiliates as
39 shall be necessary to ascertain the financial condition of the insurer
40 or to determine compliance with P.L.1970, c.22 (C.17:27A-1 et
41 seq.). In the event such insurer fails to comply with such order, the
42 commissioner shall have the power to examine such affiliates to
43 obtain such information.

44 In addition, to determine compliance with this section, the
45 commissioner may order any insurer registered under section 3 of
46 P.L.1970, c.22 (C.17:27A-3) to produce information not in the
47 possession of the insurer if the insurer can obtain access to that
48 information pursuant to contractual relationships, statutory

1 obligations, or other method. In the event the insurer cannot obtain
2 the information requested by the commissioner, the insurer shall
3 provide to the commissioner a detailed explanation of the reason
4 that the insurer cannot obtain the information and the identity of the
5 holder of the information. Whenever it appears to the commissioner
6 that the detailed explanation is without merit, the commissioner
7 may require the insurer, after notice and opportunity for a hearing,
8 to pay a penalty of up to \$5,000 for each day's delay, or may
9 suspend or revoke the insurer's certificate of authority.

10 b. (Deleted by amendment, P.L.1993, c.241.)

11 c. Use of consultants. The commissioner may retain at the
12 registered insurer's expense such attorneys, actuaries, accountants
13 and other persons as shall be necessary to assist in the conduct of
14 the examination under subsection a. above. Any persons so retained
15 shall be under the direction and control of the commissioner and
16 shall act in a purely advisory capacity.

17 d. Expenses. The reasonable expenses of the examination
18 pursuant to subsection a. above shall be fixed and determined by the
19 commissioner, and he shall collect them from the insurer examined,
20 which shall pay them on presentation of an accounting of the
21 expenses.

22 e. Compelling production. In the event the insurer fails to
23 comply with an order issued pursuant to this section, the
24 commissioner shall have the power to examine the affiliates to
25 obtain the information. The commissioner shall also have the power
26 to issue subpoenas, to administer oaths, and to examine under oath
27 any person for purposes of determining compliance with this
28 section. Upon the failure or refusal of any person to obey a
29 subpoena, the commissioner may petition a court of competent
30 jurisdiction, and upon proper showing, the court may enter an order
31 compelling the witness to appear and testify or produce
32 documentary evidence. Failure to obey the court order shall be
33 punishable as contempt of court. Every person shall be obliged to
34 attend as a witness at the place specified in the subpoena, when
35 subpoenaed, anywhere within the State. He or she shall be entitled
36 to the same fees and mileage, if claimed, as a witness in the
37 Superior Court of New Jersey, which fees, mileage, and actual
38 expense, if any, necessarily incurred in securing the attendance of
39 witnesses, and their testimony, shall be itemized and charged
40 against, and be paid by, the company being examined.

41 (cf: P.L.1995, c.338, s.3)

42
43 7. (New section) a. Power of commissioner. With respect to
44 any insurer registered under section 3 of P.L.1970, c.22 (C.17:27A-
45 3), and in accordance with subsection c. of this section, the
46 commissioner shall also have the power to participate in a
47 supervisory college for any domestic insurer that is part of an
48 insurance holding company system with international operations in

1 order to determine compliance by the insurer with P.L. ,
2 c. (C.) (pending before the Legislature as this bill). The
3 powers of the commissioner with respect to supervisory colleges
4 include, but are not limited to, the following:

- 5 (1) Initiating the establishment of a supervisory college;
- 6 (2) Clarifying the membership and participation of other
7 supervisors in the supervisory college;
- 8 (3) Clarifying the functions of the supervisory college and the
9 role of other regulators, including the establishment of a group-wide
10 supervisor;
- 11 (4) Coordinating the ongoing activities of the supervisory
12 college, including planning meetings, supervisory activities, and
13 processes for information sharing; and
- 14 (5) Establishing a crisis management plan.

15 b. Expenses. Each registered insurer subject to this section
16 shall be liable for and shall pay the reasonable expenses of the
17 commissioner's participation in a supervisory college in accordance
18 with subsection c. of this section, including reasonable travel
19 expenses. For purposes of this section, a supervisory college may be
20 convened as either a temporary or permanent forum for
21 communication and cooperation between the regulators charged
22 with the supervision of the insurer or its affiliates, and the
23 commissioner may establish a regular assessment to the insurer for
24 the payment of these expenses.

25 c. Supervisory college. In order to assess the business strategy,
26 financial position, legal and regulatory position, risk exposure, risk
27 management and governance processes, and as part of the
28 examination of individual insurers in accordance with section 5 of
29 P.L.1970, c.22 (C.17:27A-5), the commissioner may participate in a
30 supervisory college with other regulators charged with supervision
31 of the insurer or its affiliates, including other state, federal and
32 international regulatory agencies. The commissioner may enter into
33 agreements in accordance with subsection c. of section 6 of
34 P.L.1970, c.22, (C.17:27A-6) providing the basis for cooperation
35 between the commissioner and the other regulatory agencies, and
36 the activities of the supervisory college. Nothing in this section
37 shall delegate to the supervisory college the authority of the
38 commissioner to regulate or supervise the insurer or its affiliates
39 within its jurisdiction.

40
41 8. (New section) Group-wide supervision for international
42 insurance groups

43 a. As used in this section, the following terms shall have the
44 respective meanings hereinafter set forth, unless the context clearly
45 indicates otherwise:

46 "Group-wide supervisor" means the chief insurance regulatory
47 official authorized to engage in conducting and coordinating group-
48 wide supervision activities who is from the jurisdiction determined

1 or acknowledged by the commissioner under this section to have
2 sufficient significant contacts with the international insurance
3 group.

4 “International insurance group” means an insurance group
5 operating internationally that includes an insurer registered under
6 section 3 of P.L.1970, c.22 (C.17:27A-3).

7 b. The commissioner is authorized to act as the group-wide
8 supervisor for any international insurance group if the international
9 insurance group's ultimate controlling person is domiciled in this
10 State. The commissioner may otherwise acknowledge another
11 jurisdiction as the group-wide supervisor pursuant to the factors set
12 forth in subsections c. and f. of this section whenever the
13 international insurance group:

14 (1) Does not have substantial insurance operations in the United
15 States;

16 (2) Has substantial insurance operations in the United States,
17 but not in this State; or

18 (3) Has substantial insurance operations in the United States and
19 this State, but the commissioner has determined that another
20 jurisdiction is the appropriate group-wide supervisor.

21 c. In cooperation with other supervisors, the commissioner may
22 determine that the commissioner is the appropriate group-wide
23 supervisor for an international insurance group with substantial
24 operations concentrated in this State or with substantial insurance
25 operations conducted by subsidiary insurance companies domiciled
26 in this State, where the ultimate controlling person is domiciled
27 outside of this State, or the commissioner may acknowledge that
28 another chief insurance regulatory official is the appropriate group-
29 wide supervisor for the international insurance group. The
30 commissioner shall consider the following factors and the relative
31 scale of each when making a determination or acknowledgment
32 under this subsection:

33 (1) The location where the international insurance group is
34 based or the place of domicile of the ultimate controlling person of
35 the international insurance group;

36 (2) The locations of the international insurance group's
37 executive offices;

38 (3) The locations of origin of the insurance business of the
39 international insurance group;

40 (4) The locations of the assets and liabilities of the international
41 insurance group;

42 (5) The locations of the business operations and activities of the
43 international insurance group; and

44 (6) If another chief insurance regulatory official is seeking to act
45 as the lead group-wide supervisor whether that jurisdiction:

46 (a) provides the commissioner with reasonably reciprocal
47 recognition and cooperation; and

1 (b) is accredited by the National Association of Insurance
2 Commissioners (NAIC) or has substantially similar laws when
3 compared to the insurance laws of this State, especially with regard
4 to the provision of group-wide supervision, enterprise risk analysis
5 and cooperation with other chief insurance regulatory officials.

6 However, when another chief insurance regulatory official is
7 currently acting as the lead group-wide supervisor of an
8 international insurance group and is acknowledged as such in the
9 National Association of Insurance Commissioners (NAIC) Lead
10 State Summary Report, the commissioner shall defer to that lead
11 group-wide supervisor designation unless the commissioner
12 determines that there has been a significant material change in the
13 international insurance group that:

14 (i) results in the group's insurers domiciled in this State holding
15 the majority of the group's assets or liabilities;

16 (ii) materially alters the operations or ownership of the group's
17 insurers domiciled in this State; or

18 (iii) makes this State the jurisdiction with the group's largest
19 premium volume or insured exposures.

20 In the event of a dispute as to the proper jurisdiction to act as
21 lead group-wide supervisor, a determination by the commissioner
22 not to defer to the current lead group-wide supervisor shall be made
23 only after notice and a hearing, and such determination shall be
24 accompanied by specific findings of fact and conclusions of law.

25 d. Pursuant to section 5 of P.L.1970, c.22 (C.17:27A-5), the
26 commissioner is authorized to collect from any insurer registered
27 pursuant to section 3 of P.L.1970, c.22 (C.17:27A-3) all
28 information necessary to determine whether the commissioner may
29 act as the group-wide supervisor or if the commissioner may
30 acknowledge another insurance regulatory official to act as the
31 group-wide supervisor. Prior to issuing a determination that an
32 international insurance group is subject to group-wide supervision
33 by the commissioner, the commissioner shall notify the insurer
34 registered pursuant to section 3 of P.L.1970, c.22 (C.17:27A-3) and
35 the ultimate controlling person within the international insurance
36 group. The international insurance group shall have not less than 30
37 days to provide the commissioner with additional information
38 pertinent to the pending determination. The commissioner shall
39 publish on the Department of Banking and Insurance website the
40 identity of international insurance groups that the commissioner has
41 determined are subject to its group-wide supervision.

42 e. If the commissioner is the group-wide supervisor for an
43 international insurance group, the commissioner is authorized to
44 engage in conducting and coordinating any of the following group-
45 wide supervision activities:

46 (1) Assess the enterprise risks within the international insurance
47 group, pursuant to section 5 of P.L.1970, c.22 (C.17:27A-5), to
48 ensure that:

- 1 (a) The material financial condition and liquidity risks to the
2 members of the international insurance group which are engaged in
3 the business of insurance are identified by management.
- 4 (b) Reasonable and effective mitigation measures are in place.
- 5 (2) Request, from any member of an international insurance
6 group subject to the commissioner's supervision, information
7 necessary and appropriate to assess enterprise risk, including, but
8 not limited to, information about the members of the international
9 insurance group regarding:
- 10 (a) Governance, risk assessment and management.
- 11 (b) Capital adequacy.
- 12 (c) Material intercompany transactions.
- 13 (3) Compel development and implementation of reasonable
14 measures designed to assure that the international insurance group
15 is able to timely recognize and mitigate material risks to members
16 that are engaged in the business of insurance.
- 17 (4) Communicate with other insurance regulatory officials for
18 members within the international insurance group and share
19 relevant information subject to the confidentiality provisions of
20 section 6 of P.L.1970, c.22 (C.17:27A-6), through supervisory
21 colleges as set forth in section 7 of P.L. c. (C.) (pending
22 before the Legislature as this bill) or otherwise.
- 23 (5) Enter into agreements with or obtain documentation from
24 any insurer registered under section 3 of P.L.1970, c.22 (C.17:27A-
25 3), any member of the international insurance group and any other
26 chief insurance regulatory officials for members, providing the
27 basis for or otherwise clarifying the commissioner's role as group
28 supervisor, including provisions for resolving disputes with other
29 relevant supervisory authorities. Such agreements or documentation
30 shall not serve as evidence in any proceeding that any insurer or
31 person within an insurance holding company system not
32 incorporated in this State is doing business in this State or is
33 otherwise subject to jurisdiction in this State.
- 34 (6) Other group-wide supervisory activities as considered
35 appropriate by the commissioner.
- 36 f. If the commissioner acknowledges that a regulatory official
37 from a jurisdiction which is not accredited by the National
38 Association of Insurance Commissioners (NAIC) is the group-wide
39 supervisor, the commissioner is authorized to reasonably cooperate,
40 through supervisory colleges or otherwise, with group supervision
41 undertaken by the group-wide supervisor, provided that:
- 42 (1) The commissioner's cooperation is in compliance with the
43 insurance laws of this State.
- 44 (2) The regulator also recognizes and cooperates with the
45 commissioner's activities as a group-wide supervisor for other
46 international insurance groups where applicable. Whenever such
47 recognition and cooperation is not reasonably reciprocal, the
48 commissioner is authorized to refuse recognition and cooperation.

1 g. The commissioner is authorized to enter into agreements
2 with or obtain documentation from any insurer registered under
3 section 3 of P.L.1970, c.22 (C.17:27A-3), any affiliate of the insurer
4 and other regulatory officials for members of the insurance group,
5 which provide the basis for or otherwise clarify a regulatory
6 official's role as group supervisor.

7 h. The commissioner may promulgate regulations pursuant to
8 the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et
9 seq.) necessary for the administration of this section. In
10 determining whether to promulgate a regulation, the commissioner
11 shall give appropriate consideration to model laws, model
12 regulations and definitions or guidelines pertaining to group-wide
13 supervision, if any, promulgated by the NAIC or other recognized
14 insurance regulatory bodies or associations.

15 i. A registered insurer subject to this section shall be liable for
16 and shall pay the reasonable expenses of the commissioner's
17 participation in the administration of this section, including the
18 engagement of attorneys, actuaries and any other professionals and
19 all reasonable travel expenses.

20
21 9. Section 6 of P.L.1970, c.22 (C.17:27A-6) is amended to read
22 as follows:

23 6. Confidential treatment. **【All information, documents and**
24 **copies thereof obtained by or disclosed to the commissioner or any**
25 **other person in the course of an examination or investigation made**
26 **pursuant to section 5 of P.L.1970, c.22 (C.17:27A-5) and all**
27 **information reported pursuant to section 3 and section 4 of**
28 **P.L.1970, c.22 (C.17:27A-3 and 17:27A-4) shall be given**
29 **confidential treatment and shall not be subject to subpoena and shall**
30 **not be made public by the commissioner or any other person, except**
31 **to insurance departments of other states, without the prior written**
32 **consent of the insurer to which it pertains unless the commissioner,**
33 **after giving the insurer, and its affiliates who would be affected**
34 **thereby, notice and opportunity to be heard, determines that the**
35 **interests of policyholders, shareholders or the public will be served**
36 **by the publication thereof, in which event he may publish all or any**
37 **part thereof in such manner as he may deem appropriate.】**

38 a. Documents, materials or other information in the possession
39 or control of the department that are obtained by or disclosed to the
40 commissioner or any other person in the course of an examination
41 or investigation made pursuant to section 5 of P.L.1970, c.22
42 (C.17:27A-5) and all information reported pursuant to paragraphs
43 (12) and (13) of subsection b. of section 2 of P.L.1970, c.22
44 (C.17:27A-2), section 3 and section 4 of P.L.1970, c.22 (C.17:27A-
45 3 and 17:27A-4) shall be confidential by law and privileged, shall
46 not be subject to P.L.1963, c.73 (C.47:1A-1 et seq.), shall not be
47 subject to subpoena, and shall not be subject to discovery or
48 admissible in evidence in any private civil action. The

1 commissioner is authorized to use the documents, materials or other
2 information in the furtherance of any regulatory or legal action
3 brought as a part of the commissioner's official duties. The
4 commissioner shall not otherwise make the documents, materials or
5 other information public without the prior written consent of the
6 insurer to which it pertains unless the commissioner, after giving
7 the insurer and its affiliates who would be affected thereby notice
8 and opportunity to be heard, determines that the interest of
9 policyholders, shareholders or the public will be served by the
10 publication thereof, in which event the commissioner may publish
11 all or any part in such manner as may be deemed appropriate.

12 b. Neither the commissioner nor any person who received
13 documents, materials or other information while acting under the
14 authority of the commissioner or with whom such documents,
15 materials or other information are shared pursuant to P.L.1970, c.22
16 (C.17:27A-1 et seq.) shall be permitted or required to testify in any
17 private civil action concerning any confidential documents,
18 materials, or information subject to subsection a. of this section.

19 c. In order to assist in the performance of the commissioner's
20 duties, the commissioner:

21 (1) May, upon request, be required to share documents,
22 materials or other information, including the confidential and
23 privileged documents, materials or information subject to
24 subsection a. of this section, with other state, federal and
25 international regulatory agencies, with the National Association of
26 Insurance Commissioners (NAIC) and its affiliates and subsidiaries,
27 and with state, federal, and international law enforcement
28 authorities, including members of any supervisory college described
29 in section 7 of P.L. , c. (C.) (pending before the Legislature
30 as this bill), provided that the recipient agrees in writing to maintain
31 the confidentiality and privileged status of the document, material
32 or other information, and has verified in writing the legal authority
33 to maintain confidentiality.

34 (2) Notwithstanding paragraph (1) of this subsection c., the
35 commissioner may only share confidential and privileged
36 documents, material, or information reported pursuant to subsection
37 k. of section 3 of P.L.1970, c.22 (C.17:27A-3) with commissioners
38 of states having statutes or regulations substantially similar to
39 subsection a. of this section and who have agreed in writing not to
40 disclose that information.

41 (3) May receive documents, materials or information, including
42 otherwise confidential and privileged documents, materials or
43 information from the NAIC and its affiliates and subsidiaries and
44 from regulatory and law enforcement officials of other foreign or
45 domestic jurisdictions, and shall maintain as confidential or
46 privileged any document, material or information received with
47 notice or the understanding that it is confidential or privileged

1 under the laws of the jurisdiction that is the source of the document,
2 material or information; and

3 (4) Shall enter into written agreements with the NAIC governing
4 the sharing and use of information provided pursuant to P.L. _____,
5 c. _____ (C. _____) (pending before the Legislature as this bill) consistent
6 with this subsection that shall:

7 (a) specify procedures and protocols regarding the
8 confidentiality and security of information shared with the NAIC
9 and its affiliates and subsidiaries pursuant to P.L. _____, c. _____ (C. _____)
10 (pending before the Legislature as this bill), including procedures
11 and protocols for sharing by the NAIC with other state, federal or
12 international regulators;

13 (b) specify that ownership of information shared with the NAIC
14 and its affiliates and subsidiaries pursuant to this subsection
15 remains with the commissioner and the use by the NAIC of the
16 information is subject to the direction of the commissioner;

17 (c) require prompt notice to be given to an insurer whose
18 confidential information in the possession of the NAIC pursuant to
19 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this bill)
20 is subject to a request or subpoena to the NAIC for disclosure or
21 production; and

22 (d) require the NAIC and its affiliates and subsidiaries to
23 consent to intervention by an insurer in any judicial or
24 administrative action in which the NAIC and its affiliates and
25 subsidiaries may be required to disclose confidential information
26 about the insurer shared with the NAIC and its affiliates and
27 subsidiaries pursuant to P.L.1970 c.22 (C.17:27A-1 et seq.),
28 including with respect to the participation in supervisory colleges in
29 accordance with section 7 of P.L. _____, c. _____ (C. _____) (pending before
30 the Legislature as this bill).

31 d. The sharing of information by the commissioner pursuant to
32 this section shall not constitute a delegation of regulatory authority
33 or rulemaking, and the commissioner is solely responsible for the
34 administration, execution and enforcement of the provisions of P.L.,
35 c. _____ (C. _____) (pending before the Legislature as this bill).

36 e. No waiver of any applicable privilege or claim of
37 confidentiality in the documents, materials or information shall
38 occur as a result of disclosure to the commissioner under this
39 section or as a result of sharing as authorized in subsection c. of this
40 section.

41 f. Documents, materials or other information in the possession
42 or control of the NAIC pursuant to P.L. _____, c. _____ (C. _____) (pending
43 before the Legislature as this bill) shall be confidential by law and
44 privileged, shall not be subject to P.L.1963, c.73 (C.47:1A-1 et
45 seq.), shall not be subject to subpoena, and shall not be subject to
46 discovery or admissible in evidence in any private civil action.
47 (cf: P.L.1993, c.241, s.6)

1 10. Section 8 of P.L.1993, c.241 (C.17:27A-9.1) is amended to
2 read as follows:

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

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

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

26 d. Whenever it appears to the commissioner that any insurer or
27 any director, officer, employee or agent thereof has committed a
28 willful violation of P.L.1970, c.22 (C.17:27A-1 et seq.), the
29 commissioner may cause criminal proceedings to be instituted in
30 the Superior Court against that insurer or the responsible director,
31 officer, employee or agent thereof. An insurer which willfully
32 violates that act may be fined up to \$10,000 per violation. Any
33 individual who willfully violates P.L.1970, c.22 (C.17:27A-1 et
34 seq.) may be fined in his individual capacity up to \$10,000 per
35 violation or, be imprisoned for not less than one year and not more
36 than three years, or both.

37 e. Any officer, director, or employee of an insurance holding
38 company system who willfully and knowingly subscribes to or
39 makes or causes to be made any false statements or false reports or
40 false filings with the intent to deceive the commissioner in the
41 performance of his duties under P.L.1970, c.22 (C.17:27A-1 et
42 seq.), upon conviction thereof, may be imprisoned for not less than
43 one year and not more than three years or fined up to \$10,000 per
44 violation, or both. Any fines imposed shall be paid by the officer,
45 director, or employee in his individual capacity, if legally liable, or
46 the insurer.

47 f. Whenever it appears to the commissioner that any person
48 has committed a violation of section 2 of P.L.1970, c.22

1 (C.17:27A-2), which violation prevents the full understanding of
2 the enterprise risk to the insurer by affiliates or by the insurance
3 holding company system, the violation may serve as an independent
4 basis for disapproving dividends or distributions and for placing the
5 insurer under an order of supervision in accordance with P.L.1993,
6 c.245 (C.17:51A-1 et seq.).
7 (cf: P.L.1993, c.241, s.8)

8
9 11. (New section) As used in sections 11 through 15 of P.L. ,
10 c. (C.) (pending before the Legislature as this bill):

11 "Commissioner" means the Commissioner of Banking and
12 Insurance.

13 "Hospital service corporation" means an entity authorized to
14 transact business in this State pursuant to P.L.1938, c.366 (C.17:48-
15 1 et seq.).

16
17 12. (New section) The commissioner may increase the amount
18 of capital or surplus required of a hospital service corporation, or
19 subsequently revise or redetermine that increase, using appropriate
20 methods and procedures established by rules and regulations
21 adopted by the commissioner, in order to provide adequate
22 protection against risks affecting the hospital service corporation's
23 financial condition that are not adequately or fully covered by its
24 reserves or other assets, but under no circumstances shall a hospital
25 service corporation's capital or surplus be less than the capital or
26 surplus required pursuant to regulation as prescribed by the
27 commissioner; provided, however, that any increase required by a
28 subsequent revision or redetermination pursuant to this section,
29 shall be made only after a departmental hearing, unless that hearing
30 is waived by the affected hospital service corporation. All matters
31 pertaining to a hearing or to an increase in capital or surplus
32 pursuant to this section shall be confidential and not subject to
33 subpoena or public inspection, except to the extent that the
34 commissioner finds release of that information necessary to protect
35 the public. The hearing shall be initiated within 20 days after
36 written notice to the hospital service corporation. Any declaration
37 regarding an increase required by a subsequent revision or
38 redetermination shall contain findings specifying the factors
39 deemed significant in regard to the particular hospital service
40 corporation, and shall set forth the reasons supporting the increase
41 of capital or surplus ordered by the commissioner. In determining
42 any increase, revision or redetermination in the amount of capital or
43 surplus, the commissioner shall consider the risks of:

44 a. Increases or decreases in the frequency and severity of losses
45 under normal operating conditions, as well as increases or decreases
46 in those values, above or below the levels contemplated by the rates
47 that the hospital service corporation charged for coverage and above
48 or below those reasonably expected under normal conditions;

- 1 b. Increases or decreases in expenses under normal operating
2 conditions, as well as increases or decreases in those values, above
3 or below the levels contemplated by the rates the hospital service
4 corporation charged for coverage and above or below those
5 reasonably expected under normal conditions;
- 6 c. Increases or decreases in the value of, or return on, invested
7 assets under normal operating conditions, as well as increases or
8 decreases in those values, above or below those levels anticipated
9 under normal conditions;
- 10 d. Changes in economic, social or market conditions that could
11 adversely or favorably affect the financial condition of the hospital
12 service corporation, including conditions that would make liquidity
13 more or less important than contemplated and would prevent or
14 facilitate timely investments or force or prohibit untimely sales of
15 assets; and
- 16 e. Any other contingencies, including reinsurance and
17 unfunded or extra contractual obligations, which may affect the
18 hospital service corporation's financial condition.
- 19
- 20 13. (New section) In determining any increase, revision or
21 redetermination in the capital or surplus of a hospital service
22 corporation pursuant to the provisions of section 12 of P.L. ,
23 c. (C.) (pending before the Legislature as this bill) the
24 commissioner shall take into account the following factors:
- 25 a. Methods and techniques used to measure risk exposure and
26 variability;
- 27 b. The information available relating to the magnitude of the
28 various risks described in section 12 of P.L. , c. (C.)
29 (pending before the Legislature as this bill);
- 30 c. The extent to which risks described in section 12 of P.L. ,
31 c. (C.) (pending before the Legislature as this bill) are
32 independent or interrelated, and whether any dependency is direct
33 or inverse;
- 34 d. The extent to which the hospital service corporation has
35 provided protection against contingencies in ways other than the
36 establishment of surplus, including, but not limited to: redundancy
37 of premiums; margin in reserves and liabilities; adjustability of
38 contracts pursuant to the terms of the contracts; voluntary or
39 mandatory investment valuation reserves; reinsurance; the use of
40 conservative actuarial assumptions to provide a margin of security;
41 reserve adjustments after rate increases for policies written at earlier
42 and less adequate rates; contingency or catastrophe reserves; and
43 diversification of assets and underwriting risk; and
- 44 e. Any other relevant factors, including the National
45 Association of Insurance Commissioners' reports and independent
46 judgments of the soundness of the hospital service corporation's
47 financial condition, as evidenced by the rating and reports of
48 reliable professional financial services.

1 14. (New Section) The commissioner may suspend or revoke the
2 authority to do business in this State of any hospital service
3 corporation that does not comply with the provisions of sections 11
4 through 15 of P.L. , c. (C.) (pending before the Legislature
5 as this bill).

6
7 15. (New section) The commissioner may promulgate
8 regulations pursuant to the "Administrative Procedure Act,"
9 P.L.1968, c.410 (C. 52:14B-1 et seq.) necessary to effectuate the
10 purposes of sections 11 through 15 of P.L. , c. (C.)
11 (pending before the Legislature as this bill). Such rules and
12 regulations shall be consistent with the standards for risk based
13 capital for health organizations adopted by the National Association
14 of Insurance Commissioners.

15
16 16. (New section) As used in sections 16 through 20 of P.L. ,
17 c. (C.) (pending before the Legislature as this bill):

18 "Commissioner" means the Commissioner of Banking and
19 Insurance.

20 "Medical service corporation" means an entity authorized to
21 transact business in this State pursuant to P.L.1940, c.74
22 (C.17:48A-1 et seq.).

23
24 17. (New section) The commissioner may increase the amount
25 of capital or surplus required of a medical service corporation, or
26 subsequently revise or redetermine that increase, using appropriate
27 methods and procedures established by rules and regulations
28 adopted by the commissioner, in order to provide adequate
29 protection against risks affecting the medical service corporation's
30 financial condition that are not adequately or fully covered by its
31 reserves or other assets, but under no circumstances shall a medical
32 service corporation's capital or surplus be less than the capital or
33 surplus required pursuant to regulation as prescribed by the
34 commissioner; provided, however, that any increase required by a
35 subsequent revision or redetermination pursuant to this section,
36 shall be made only after a departmental hearing, unless that hearing
37 is waived by the affected medical service corporation. All matters
38 pertaining to a hearing or to an increase in capital or surplus
39 pursuant to this section shall be confidential and not subject to
40 subpoena or public inspection, except to the extent that the
41 commissioner finds release of that information necessary to protect
42 the public. The hearing shall be initiated within 20 days after
43 written notice to the medical service corporation. Any declaration
44 regarding an increase required by a subsequent revision or
45 redetermination shall contain findings specifying the factors
46 deemed significant in regard to the particular medical service
47 corporation, and shall set forth the reasons supporting the increase
48 of capital or surplus ordered by the commissioner. In determining

1 any increase, revision or redetermination in the amount of capital or
2 surplus, the commissioner shall consider the risks of:

3 a. Increases or decreases in the frequency and severity of losses
4 under normal operating conditions, as well as increases or decreases
5 in those values, above or below the levels contemplated by the rates
6 that the medical service corporation charged for coverage and above
7 or below those reasonably expected under normal conditions;

8 b. Increases or decreases in expenses under normal operating
9 conditions, as well as increases or decreases in those values, above
10 or below the levels contemplated by the rates the medical service
11 corporation charged for coverage and above or below those
12 reasonably expected under normal conditions;

13 c. Increases or decreases in the value of, or return on, invested
14 assets under normal operating conditions, as well as increases or
15 decreases in those values, above or below those levels anticipated
16 under normal conditions;

17 d. Changes in economic, social or market conditions that could
18 adversely or favorably affect the financial condition of the medical
19 service corporation, including conditions that would make liquidity
20 more or less important than contemplated and would prevent or
21 facilitate timely investments or force or prohibit untimely sales of
22 assets; and

23 e. Any other contingencies, including reinsurance and
24 unfunded or extra contractual obligations, which may affect the
25 medical service corporation's financial condition.

26

27 18. (New section) In determining any increase, revision or
28 redetermination in the capital or surplus of a medical service
29 corporation pursuant to the provisions of section 17 of P.L. ,
30 c. (C.) (pending before the Legislature as this bill) the
31 commissioner shall take into account the following factors:

32 a. Methods and techniques used to measure risk exposure and
33 variability;

34 b. The information available relating to the magnitude of the
35 various risks described in section 17 of P.L. , c. (C.)
36 (pending before the Legislature as this bill);

37 c. The extent to which risks described in section 17 of P.L. ,
38 c. (C.) (pending before the Legislature as this bill) are
39 independent or interrelated, and whether any dependency is direct
40 or inverse;

41 d. The extent to which the medical service corporation has
42 provided protection against contingencies in ways other than the
43 establishment of surplus, including, but not limited to: redundancy
44 of premiums; margin in reserves and liabilities; adjustability of
45 contracts pursuant to the terms of the contracts; voluntary or
46 mandatory investment valuation reserves; reinsurance; the use of
47 conservative actuarial assumptions to provide a margin of security;
48 reserve adjustments after rate increases for policies written at earlier

1 and less adequate rates; contingency or catastrophe reserves; and
2 diversification of assets and underwriting risk; and

3 e. Any other relevant factors, including the National
4 Association of Insurance Commissioners' reports and independent
5 judgments of the soundness of the medical service corporation's
6 financial condition, as evidenced by the rating and reports of
7 reliable professional financial services.

8

9 19. (New Section) The commissioner may suspend or revoke the
10 authority to do business in this State of any medical service
11 corporation that does not comply with the provisions of sections 16
12 through 20 of P.L. , c. (C.) (pending before the
13 Legislature as this bill).

14

15 20. (New section) The commissioner may promulgate
16 regulations pursuant to the "Administrative Procedure Act,"
17 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
18 purposes of sections 16 through 20 of P.L. , c. (C.)
19 (pending before the Legislature as this bill). Such rules and
20 regulations shall be consistent with the standards for risk based
21 capital for health organizations adopted by the National Association
22 of Insurance Commissioners.

23

24 21. (New section) As used in sections 21 through 25 of P.L. ,
25 c. (C.) (pending before the Legislature as this bill):

26 "Commissioner" means the Commissioner of Banking and
27 Insurance.

28 "Dental service corporation" means an entity authorized to
29 transact business in this State pursuant to P.L.1968, c.305
30 (C.17:48C-1 et seq.).

31

32 22. (New section) The commissioner may increase the amount
33 of capital or surplus required of a dental service corporation, or
34 subsequently revise or redetermine that increase, using appropriate
35 methods and procedures established by rules and regulations
36 adopted by the commissioner, in order to provide adequate
37 protection against risks affecting the dental service corporation's
38 financial condition that are not adequately or fully covered by its
39 reserves or other assets, but under no circumstances shall a dental
40 service corporation 's capital or surplus be less than the capital or
41 surplus required pursuant to regulation as prescribed by the
42 commissioner; provided, however, that any increase required by a
43 subsequent revision or redetermination pursuant to this section shall
44 be made only after a departmental hearing, unless that hearing is
45 waived by the affected dental service corporation. All matters
46 pertaining to a hearing or to an increase in capital or surplus
47 pursuant to this section shall be confidential and not subject to
48 subpoena or public inspection, except to the extent that the

1 commissioner finds release of that information necessary to protect
2 the public. The hearing shall be initiated within 20 days after
3 written notice to the dental service corporation. Any declaration
4 regarding an increase required by a subsequent revision or
5 redetermination shall contain findings specifying the factors
6 deemed significant in regard to the particular dental service
7 corporation, and shall set forth the reasons supporting the increase
8 of capital or surplus ordered by the commissioner. In determining
9 any increase, revision or redetermination in the amount of capital or
10 surplus, the commissioner shall consider the risks of:

11 a. Increases or decreases in the frequency and severity of losses
12 under normal operating conditions, as well as increases or decreases
13 in those values, above or below the levels contemplated by the rates
14 that the dental service corporation charged for coverage and above
15 or below those reasonably expected under normal conditions;

16 b. Increases or decreases in expenses under normal operating
17 conditions, as well as increases or decreases in those values, above
18 or below the levels contemplated by the rates the dental service
19 corporation charged for coverage and above or below those
20 reasonably expected under normal conditions;

21 c. Increases or decreases in the value of, or return on, invested
22 assets under normal operating conditions, as well as increases or
23 decreases in those values, above or below those levels anticipated
24 under normal conditions;

25 d. Changes in economic, social or market conditions that could
26 adversely or favorably affect the financial condition of the dental
27 service corporation, including conditions that would make liquidity
28 more or less important than contemplated and would prevent or
29 facilitate timely investments or force or prohibit untimely sales of
30 assets; and

31 e. Any other contingencies, including reinsurance and
32 unfunded or extra contractual obligations, which may affect the
33 dental service corporation's financial condition.

34

35 23. (New section) In determining any increase, revision or
36 redetermination in the capital or surplus of a dental service
37 corporation pursuant to the provisions of section 22 of P.L. ,

38 c. (C.) (pending before the Legislature as this bill) the
39 commissioner shall take into account the following factors:

40 a. Methods and techniques used to measure risk exposure and
41 variability;

42 b. The information available relating to the magnitude of the
43 various risks described in section 22 of P.L. , c. (C.)
44 (pending before the Legislature as this bill);

45 c. The extent to which risks described in section 22 of P.L. ,
46 c. (C.) (pending before the Legislature as this bill) are
47 independent or interrelated, and whether any dependency is direct
48 or inverse;

1 d. The extent to which the dental service corporation has
2 provided protection against contingencies in ways other than the
3 establishment of surplus, including, but not limited to: redundancy
4 of premiums; margin in reserves and liabilities; adjustability of
5 contracts pursuant to the terms of the contracts; voluntary or
6 mandatory investment valuation reserves; reinsurance; the use of
7 conservative actuarial assumptions to provide a margin of security;
8 reserve adjustments after rate increases for policies written at earlier
9 and less adequate rates; contingency or catastrophe reserves; and
10 diversification of assets and underwriting risk; and

11 e. Any other relevant factors, including the National
12 Association of Insurance Commissioners' reports and independent
13 judgments of the soundness of the dental service corporation's
14 financial condition, as evidenced by the rating and reports of
15 reliable professional financial services.

16

17 24. (New Section) The commissioner may suspend or revoke
18 the authority to do business in this State of any dental service
19 corporation that does not comply with the provisions of sections 21
20 through 25 of P.L. , c. (C.) (pending before the
21 Legislature as this bill).

22

23 25. (New section) The commissioner may promulgate
24 regulations pursuant to the "Administrative Procedure Act,"
25 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
26 purposes of sections 21 through 25 of P.L. , c. (C.)
27 (pending before the Legislature as this bill). Such rules and
28 regulations shall be consistent with the standards for risk based
29 capital for health organizations adopted by the National Association
30 of Insurance Commissioners.

31

32 26. (New section) As used in sections 26 through 30 of P.L. ,
33 c. (C.) (pending before the Legislature as this bill):

34 "Commissioner" means the Commissioner of Banking and
35 Insurance.

36 "Dental plan organization" means an entity authorized to transact
37 business in this State pursuant to P.L.1979, c.478 (C.17:48D-1 et
38 seq.).

39

40 27. (New section) The commissioner may increase the amount
41 of capital or surplus required of a dental plan organization, or
42 subsequently revise or redetermine that increase, using appropriate
43 methods and procedures established by rules and regulations
44 adopted by the commissioner, in order to provide adequate
45 protection against risks affecting the dental plan organization's
46 financial condition that are not adequately or fully covered by its
47 reserves or other assets, but under no circumstances shall a dental
48 plan organization's capital or surplus be less than the capital or

1 surplus required pursuant to regulation as prescribed by the
2 commissioner; provided, however, that any increase required by a
3 subsequent revision or redetermination pursuant to this section shall
4 be made only after a departmental hearing, unless that hearing is
5 waived by the affected dental plan organization. All matters
6 pertaining to a hearing or to an increase in capital or surplus
7 pursuant to this section shall be confidential and not subject to
8 subpoena or public inspection, except to the extent that the
9 commissioner finds release of that information necessary to protect
10 the public. The hearing shall be initiated within 20 days after
11 written notice to the dental plan organization. Any declaration
12 regarding an increase required by a subsequent revision or
13 redetermination shall contain findings specifying the factors
14 deemed significant in regard to the particular dental plan
15 organization, and shall set forth the reasons supporting the increase
16 of capital or surplus ordered by the commissioner. In determining
17 any increase, revision or redetermination in the amount of capital or
18 surplus, the commissioner shall consider the risks of:

19 a. Increases or decreases in the frequency and severity of losses
20 under normal operating conditions, as well as increases or decreases
21 in those values, above or below the levels contemplated by the rates
22 that the dental plan organization charged for coverage and above or
23 below those reasonably expected under normal conditions;

24 b. Increases or decreases in expenses under normal operating
25 conditions, as well as increases or decreases in those values, above
26 or below the levels contemplated by the rates the dental plan
27 organization charged for coverage and above or below those
28 reasonably expected under normal conditions;

29 c. Increases or decreases in the value of, or return on, invested
30 assets under normal operating conditions, as well as increases or
31 decreases in those values, above or below those levels anticipated
32 under normal conditions;

33 d. Changes in economic, social or market conditions that could
34 adversely or favorably affect the financial condition of the dental
35 plan organization, including conditions that would make liquidity
36 more or less important than contemplated and would prevent or
37 facilitate timely investments or force or prohibit untimely sales of
38 assets; and

39 e. Any other contingencies, including reinsurance and
40 unfunded or extra contractual obligations, which may affect the
41 dental plan organization's financial condition.

42

43 28. (New section) In determining any increase, revision or
44 redetermination in the capital or surplus of a dental plan
45 organization pursuant to the provisions of section 27 of P.L. ,
46 c. (C.) (pending before the Legislature as this bill) the
47 commissioner shall take into account the following factors:

- 1 a. Methods and techniques used to measure risk exposure and
2 variability;
- 3 b. The information available relating to the magnitude of the
4 various risks described in section 27 of P.L. , c. (C)
5 (pending before the Legislature as this bill);
- 6 c. The extent to which risks described in section 27 of P.L. ,
7 c. (C.) (pending before the Legislature as this bill) are
8 independent or interrelated, and whether any dependency is direct
9 or inverse;
- 10 d. The extent to which the dental plan organization has
11 provided protection against contingencies in ways other than the
12 establishment of surplus, including, but not limited to: redundancy
13 of premiums; margin in reserves and liabilities; adjustability of
14 contracts pursuant to the terms of the contracts; voluntary or
15 mandatory investment valuation reserves; reinsurance; the use of
16 conservative actuarial assumptions to provide a margin of security;
17 reserve adjustments after rate increases for policies written at earlier
18 and less adequate rates; contingency or catastrophe reserves; and
19 diversification of assets and underwriting risk; and
- 20 e. Any other relevant factors, including the National
21 Association of Insurance Commissioners' reports and independent
22 judgments of the soundness of the dental plan organization's
23 financial condition, as evidenced by the rating and reports of
24 reliable professional financial services.
- 25
- 26 29. (New section) The commissioner may suspend or revoke the
27 authority to do business in this State of any dental plan organization
28 that does not comply with the provisions of sections 26 through 30
29 of P.L. , c. (C.) (pending before the Legislature as this
30 bill).
- 31
- 32 30. (New section) The commissioner may promulgate
33 regulations pursuant to the "Administrative Procedure Act,"
34 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
35 purposes of sections 26 through 30 of P.L. , c. (C.)
36 (pending before the Legislature as this bill). Such rules and
37 regulations shall be consistent with the standards for risk based
38 capital for health organizations adopted by the National Association
39 of Insurance Commissioners.
- 40
- 41 31. (New section) As used in sections 31 through 35 of P.L. ,
42 c. (C.) (pending before the Legislature as this bill):
- 43 "Commissioner" means the Commissioner of Banking and
44 Insurance.
- 45 "Health service corporation" means an entity authorized to
46 transact business in this State pursuant to P.L.1985, c.236
47 (C. 17:48E-1 et seq.).

1 32. (New section) The commissioner may increase the amount
2 of capital or surplus required of a health service corporation, or
3 subsequently revise or redetermine that increase, using appropriate
4 methods and procedures established by rules and regulations
5 adopted by the commissioner, in order to provide adequate
6 protection against risks affecting the health service corporation's
7 financial condition that are not adequately or fully covered by its
8 reserves or other assets, but under no circumstances shall a health
9 service corporation's capital or surplus be less than the capital or
10 surplus required pursuant to regulation as prescribed by the
11 commissioner; provided, however, that any increase required by a
12 subsequent revision or redetermination pursuant to this section shall
13 be made only after a departmental hearing, unless that hearing is
14 waived by the affected health service corporation. All matters
15 pertaining to a hearing or to an increase in capital or surplus
16 pursuant to this section shall be confidential and not subject to
17 subpoena or public inspection, except to the extent that the
18 commissioner finds release of that information necessary to protect
19 the public. The hearing shall be initiated within 20 days after
20 written notice to the health service corporation. Any declaration
21 regarding an increase required by a subsequent revision or
22 redetermination shall contain findings specifying the factors
23 deemed significant in regard to the particular health service
24 corporation, and shall set forth the reasons supporting the increase
25 of capital or surplus ordered by the commissioner. In determining
26 any increase, revision or redetermination in the amount of capital or
27 surplus, the commissioner shall consider the risks of:

28 a. Increases or decreases in the frequency and severity of losses
29 under normal operating conditions, as well as increases or decreases
30 in those values, above or below the levels contemplated by the rates
31 that the health service corporation charged for coverage and above
32 or below those reasonably expected under normal conditions;

33 b. Increases or decreases in expenses under normal operating
34 conditions, as well as increases or decreases in those values, above
35 or below the levels contemplated by the rates the health service
36 corporation charged for coverage and above or below those
37 reasonably expected under normal conditions;

38 c. Increases or decreases in the value of, or return on, invested
39 assets under normal operating conditions, as well as increases or
40 decreases in those values, above or below those levels anticipated
41 under normal conditions;

42 d. Changes in economic, social or market conditions that could
43 adversely or favorably affect the financial condition of the health
44 service corporation, including conditions that would make liquidity
45 more or less important than contemplated and would prevent or
46 facilitate timely investments or force or prohibit untimely sales of
47 assets; and

1 e. Any other contingencies, including reinsurance and
2 unfunded or extra contractual obligations, which may affect the
3 health service corporation's financial condition.

4
5 33. (New section) In determining any increase, revision or
6 redetermination in the capital or surplus of a health service
7 corporation pursuant to the provisions of section 32 of P.L. ,
8 c. (C.) (pending before the Legislature as this bill) the
9 commissioner shall take into account the following factors:

10 a. Methods and techniques used to measure risk exposure and
11 variability;

12 b. The information available relating to the magnitude of the
13 various risks described in section 32 of P.L. , c. (C.)
14 (pending before the Legislature as this bill);

15 c. The extent to which risks described in section 32 of P.L. ,
16 c. (C.) (pending before the Legislature as this bill) are
17 independent or interrelated, and whether any dependency is direct
18 or inverse;

19 d. The extent to which the health service corporation has
20 provided protection against contingencies in ways other than the
21 establishment of surplus, including, but not limited to: redundancy
22 of premiums; margin in reserves and liabilities; adjustability of
23 contracts pursuant to the terms of the contracts; voluntary or
24 mandatory investment valuation reserves; reinsurance; the use of
25 conservative actuarial assumptions to provide a margin of security;
26 reserve adjustments after rate increases for policies written at earlier
27 and less adequate rates; contingency or catastrophe reserves; and
28 diversification of assets and underwriting risk; and

29 e. Any other relevant factors, including the National
30 Association of Insurance Commissioners' reports and independent
31 judgments of the soundness of the health service corporation's
32 financial condition, as evidenced by the rating and reports of
33 reliable professional financial services.

34
35 34. (New Section) The commissioner may suspend or revoke the
36 authority to do business in this State of any health service
37 corporation that does not comply with the provisions of sections 31
38 through 35 of P.L. , c. (C.) (pending before the Legislature
39 as this bill).

40
41 35. (New section) The commissioner may promulgate
42 regulations pursuant to the "Administrative Procedure Act,"
43 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
44 purposes of sections 31 through 35 of P.L. , c. (C.)
45 (pending before the Legislature as this bill). Such rules and
46 regulations shall be consistent with the standards for risk based
47 capital for health organizations adopted by the National Association
48 of Insurance Commissioners.

1 36. (New section) As used in sections 36 through 40 of P.L. ,
2 c. (C.) (pending before the Legislature as this bill):

3 “Commissioner” means the Commissioner of Banking and
4 Insurance.

5 “Prepaid prescription service organization” means an entity
6 authorized to transact business in this State pursuant to P.L.1997,
7 c.380 (C.17:48F-1 et seq.).

8
9 37. (New section) The commissioner may increase the amount
10 of capital or surplus required of a prepaid prescription service
11 organization, or subsequently revise or redetermine that increase,
12 using appropriate methods and procedures established by rules and
13 regulations adopted by the commissioner, in order to provide
14 adequate protection against risks affecting the prepaid prescription
15 service organization's financial condition that are not adequately or
16 fully covered by its reserves or other assets, but under no
17 circumstances shall a prepaid prescription service organization's
18 capital or surplus be less than the capital or surplus required
19 pursuant to regulation as prescribed by the commissioner; provided,
20 however, that any increase required by a subsequent revision or
21 redetermination pursuant to this section shall be made only after a
22 departmental hearing, unless that hearing is waived by the affected
23 prepaid prescription service organization. All matters pertaining to
24 a hearing or to an increase in capital or surplus pursuant to this
25 section shall be confidential and not subject to subpoena or public
26 inspection, except to the extent that the commissioner finds release
27 of that information necessary to protect the public. The hearing
28 shall be initiated within 20 days after written notice to the prepaid
29 prescription service organization. Any declaration regarding an
30 increase required by a subsequent revision or redetermination shall
31 contain findings specifying the factors deemed significant in regard
32 to the particular prepaid prescription service organization, and shall
33 set forth the reasons supporting the increase of capital or surplus
34 ordered by the commissioner. In determining any increase, revision
35 or redetermination in the amount of capital or surplus, the
36 commissioner shall consider the risks of:

37 a. Increases or decreases in the frequency and severity of losses
38 under normal operating conditions, as well as increases or decreases
39 in those values, above or below the levels contemplated by the rates
40 that the prepaid prescription service organization charged for
41 coverage and above or below those reasonably expected under
42 normal conditions;

43 b. Increases or decreases in expenses under normal operating
44 conditions, as well as increases or decreases in those values, above
45 or below the levels contemplated by the rates the prepaid
46 prescription service organization charged for coverage and above or
47 below those reasonably expected under normal conditions;

1 c. Increases or decreases in the value of, or return on, invested
2 assets under normal operating conditions, as well as increases or
3 decreases in those values, above or below those levels anticipated
4 under normal conditions;

5 d. Changes in economic, social or market conditions that could
6 adversely or favorably affect the financial condition of the prepaid
7 prescription service organization, including conditions that would
8 make liquidity more or less important than contemplated and would
9 prevent or facilitate timely investments or force or prohibit
10 untimely sales of assets; and

11 e. Any other contingencies, including reinsurance and
12 unfunded or extra contractual obligations, which may affect the
13 prepaid prescription service organization's financial condition.

14

15 38. (New section) In determining any increase, revision or
16 redetermination in the capital or surplus of a prepaid prescription
17 service organization pursuant to the provisions of section 37 of
18 P.L., c. (C.) (pending before the Legislature as this bill) the
19 commissioner shall take into account the following factors:

20 a. Methods and techniques used to measure risk exposure and
21 variability;

22 b. The information available relating to the magnitude of the
23 various risks described in section 37 of P.L. , c. (C.)
24 (pending before the Legislature as this bill);

25 c. The extent to which risks described in section 37 of P.L. ,
26 c. (C.) (pending before the Legislature as this bill) are
27 independent or interrelated, and whether any dependency is direct
28 or inverse;

29 d. The extent to which the prepaid prescription services
30 organization has provided protection against contingencies in ways
31 other than the establishment of surplus, including, but not limited
32 to: redundancy of premiums; margin in reserves and liabilities;
33 adjustability of contracts pursuant to the terms of the contracts;
34 voluntary or mandatory investment valuation reserves; reinsurance;
35 the use of conservative actuarial assumptions to provide a margin of
36 security; reserve adjustments after rate increases for policies written
37 at earlier and less adequate rates; contingency or catastrophe
38 reserves; and diversification of assets and underwriting risk; and

39 e. Any other relevant factors, including the National
40 Association of Insurance Commissioners' reports and independent
41 judgments of the soundness of the prepaid prescription service
42 organization's financial condition, as evidenced by the rating and
43 reports of reliable professional financial services.

44

45 39. (New section) The commissioner may suspend or revoke the
46 authority to do business in this State of any prepaid prescription
47 services organization that does not comply with the provisions of

1 sections 36 through 40 of P.L. , c. (C.) (pending before the
2 Legislature as this bill).

3

4 40. (New section) The commissioner may promulgate
5 regulations pursuant to the "Administrative Procedure Act,"
6 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
7 purposes of sections 36 through 40 of P.L. , c. (C.)
8 (pending before the Legislature as this bill). Such rules and
9 regulations shall be consistent with the standards for risk based
10 capital for health organizations adopted by the National Association
11 of Insurance Commissioners.

12

13 41. (New section) As used in sections 41 through 45 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill):

15 "Commissioner" means the Commissioner of Banking and
16 Insurance.

17 "Licensed organized delivery system" means an entity authorized
18 to transact business in this State as a licensed organized delivery
19 system pursuant to P.L.1999, c.409 (C.17:48H-1 et seq.).

20

21 42. (New section) The commissioner may increase the amount
22 of capital or surplus required of a licensed organized delivery
23 system, or subsequently revise or redetermine that increase, using
24 appropriate methods and procedures established by rules and
25 regulations adopted by the commissioner, in order to provide
26 adequate protection against risks affecting the licensed organized
27 delivery system's financial condition that are not adequately or fully
28 covered by its reserves or other assets, but under no circumstances
29 shall a licensed organized delivery system's capital or surplus be
30 less than the capital or surplus required pursuant to regulation as
31 prescribed by the commissioner; provided, however, that any
32 increase required by a subsequent revision or redetermination
33 pursuant to this section shall be made only after a departmental
34 hearing, unless that hearing is waived by the affected licensed
35 organized delivery system. All matters pertaining to a hearing or to
36 an increase in capital or surplus pursuant to this section shall be
37 confidential and not subject to subpoena or public inspection,
38 except to the extent that the commissioner finds release of that
39 information necessary to protect the public. The hearing shall be
40 initiated within 20 days after written notice to the licensed
41 organized delivery system. Any declaration regarding an increase
42 required by a subsequent revision or redetermination shall contain
43 findings specifying the factors deemed significant in regard to the
44 particular licensed organized delivery system, and shall set forth the
45 reasons supporting the increase of capital or surplus ordered by the
46 commissioner. In determining any increase, revision or
47 redetermination in the amount of capital or surplus, the
48 commissioner shall consider the risks of:

- 1 a. Increases or decreases in the frequency and severity of losses
2 under normal operating conditions, as well as increases or decreases
3 in those values, above or below the levels contemplated by the rates
4 that the licensed organized delivery system charged for coverage
5 and above or below those reasonably expected under normal
6 conditions;
 - 7 b. Increases or decreases in expenses under normal operating
8 conditions, as well as increases or decreases in those values, above
9 or below the levels contemplated by the rates the licensed organized
10 delivery system charged for coverage and above or below those
11 reasonably expected under normal conditions;
 - 12 c. Increases or decreases in the value of, or return on, invested
13 assets under normal operating conditions, as well as increases or
14 decreases in those values, above or below those levels anticipated
15 under normal conditions;
 - 16 d. Changes in economic, social or market conditions that could
17 adversely or favorably affect the financial condition of the licensed
18 organized delivery system, including conditions that would make
19 liquidity more or less important than contemplated and would
20 prevent or facilitate timely investments or force or prohibit
21 untimely sales of assets; and
 - 22 e. Any other contingencies, including reinsurance and
23 unfunded or extra contractual obligations, which may affect the
24 licensed organized delivery system's financial condition.
25
- 26 43. (New section) In determining any increase, revision or
27 redetermination in the capital or surplus of a licensed organized
28 delivery system pursuant to the provisions of section 42 of P.L. ,
29 c. (C.) (pending before the Legislature as this bill) the
30 commissioner shall take into account the following factors:
- 31 a. Methods and techniques used to measure risk exposure and
32 variability;
 - 33 b. The information available relating to the magnitude of the
34 various risks described in section 42 of P.L. , c. (C.)
35 (pending before the Legislature as this bill);
 - 36 c. The extent to which risks described in section 42 of P.L. ,
37 c. (C.) (pending before the Legislature as this bill) are
38 independent or interrelated, and whether any dependency is direct
39 or inverse;
 - 40 d. The extent to which the licensed organized delivery system
41 has provided protection against contingencies in ways other than the
42 establishment of surplus, including, but not limited to: redundancy
43 of premiums; margin in reserves and liabilities; adjustability of
44 contracts pursuant to the terms of the contracts; voluntary or
45 mandatory investment valuation reserves; reinsurance; the use of
46 conservative actuarial assumptions to provide a margin of security;
47 reserve adjustments after rate increases for policies written at earlier

1 and less adequate rates; contingency or catastrophe reserves; and
2 diversification of assets and underwriting risk; and

3 e. Any other relevant factors, including the National
4 Association of Insurance Commissioners' reports and independent
5 judgments of the soundness of the licensed organized delivery
6 system's financial condition, as evidenced by the rating and reports
7 of reliable professional financial services.

8

9 44. (New section) The commissioner may suspend or revoke the
10 authority to do business in this State of any licensed organized
11 delivery system that does not comply with the provisions of
12 sections 41 through 45 of P.L. , c. (C.) (pending before
13 the Legislature as this bill).

14

15 45. (New section) The commissioner may promulgate
16 regulations pursuant to the "Administrative Procedure Act,"
17 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
18 purposes of sections 41 through 45 of P.L. , c. (C.)
19 (pending before the Legislature as this bill). Such rules and
20 regulations shall be consistent with the standards for risk based
21 capital for health organizations adopted by the National Association
22 of Insurance Commissioners.

23

24 46. (New section) a. The purpose of sections 46 through 56 of
25 P.L. , c. (C.) (pending before the Legislature as this bill)
26 is to provide the requirements for maintaining a risk management
27 framework and completing an Own Risk and Solvency Assessment
28 (ORSA) and provide guidance and instructions for filing an ORSA
29 Summary Report with the Commissioner of Banking and Insurance.

30 b. The requirements of sections 46 through 56 of P.L. ,
31 c. (C.) (pending before the Legislature as this bill) shall apply
32 to all insurers domiciled in this State unless exempt pursuant to
33 section 51 of P.L. , c. (C.) (pending before the
34 Legislature as this bill).

35 c. The Legislature finds and declares that the ORSA Summary
36 Report shall contain confidential and sensitive information related
37 to an insurer or insurance group's identification of risks material
38 and relevant to the insurer or insurance group filing the report. This
39 information will include proprietary and trade secret information
40 that has the potential for harm and competitive disadvantage to the
41 insurer or insurance group if the information is made public. It is
42 the intent of this Legislature that, notwithstanding any other law to
43 the contrary, the ORSA Summary Report shall be a confidential
44 document filed with the commissioner, that the ORSA Summary
45 Report shall be shared only as stated herein and to assist the
46 commissioner in the performance of his or her duties, and that in no
47 event shall the ORSA Summary Report be subject to public
48 disclosure.

1 47. (New section) For the purposes of sections 46 through 56 of
2 P.L. , c. (C.) (pending before the Legislature as this bill):
3 “Commissioner” means the Commissioner of Banking and
4 Insurance.

5 “Insurance group” for the purpose of conducting an ORSA,
6 means those insurers and affiliates included within an insurance
7 holding company system as defined in P.L.1970, c.22 (C.17:27A-1
8 et seq.).

9 “Insurer” shall have the same meaning as set forth in section 2 of
10 P.L.1993, c.236 (C.17:23-21), except that it shall not include
11 agencies, authorities or instrumentalities of the United States, its
12 possessions and territories, the Commonwealth of Puerto Rico, the
13 District of Columbia, or a state or political subdivision of a state.

14 “Own Risk and Solvency Assessment” or “ORSA” means a
15 confidential internal assessment, appropriate to the nature, scale and
16 complexity of an insurer or insurance group, conducted by that
17 insurer or insurance group of the material and relevant risks
18 associated with the insurer or insurance group’s current business
19 plan, and the sufficiency of capital resources to support those risks.

20 “ORSA Guidance Manual” means the current version of the *Own*
21 *Risk and Solvency Assessment Guidance Manual* developed and
22 adopted by the National Association of Insurance Commissioners
23 (NAIC) and as amended from time to time. A change in the ORSA
24 Guidance Manual shall be effective on the January 1 following the
25 calendar year in which the changes have been adopted by the NAIC.

26 “ORSA Summary Report” means a confidential high-level
27 summary of an insurer or insurance group’s ORSA.
28

29 48. (New section) An insurer shall maintain a risk management
30 framework to assist the insurer with identifying, assessing,
31 monitoring, managing and reporting on its material and relevant
32 risks. This requirement may be satisfied if the insurance group of
33 which the insurer is a member maintains a risk management
34 framework applicable to the operations of the insurer.
35

36 49. (New section) Except as provided in section 51 of P.L. ,
37 c. (C.) (pending before the Legislature as this bill), an
38 insurer, or the insurance group of which the insurer is a member,
39 shall regularly conduct an ORSA consistent with a process
40 comparable to the ORSA Guidance Manual. The ORSA shall be
41 conducted no less than annually but also at any time when there are
42 significant changes to the risk profile of the insurer or the insurance
43 group of which the insurer is a member.
44

45 50. (New section) a. Upon the commissioner’s request, and no
46 more than once each year, an insurer shall submit to the
47 commissioner an ORSA Summary Report or any combination of
48 reports that together contain the information described in the ORSA

1 Guidance Manual applicable to the insurer or the insurance group of
2 which it is a member. Notwithstanding any request from the
3 commissioner, if the insurer is a member of an insurance group, the
4 insurer shall submit the report or reports required by this subsection
5 if the commissioner is the lead state commissioner of the insurance
6 group as determined by the procedures within the Financial
7 Analysis Handbook adopted by the National Association of
8 Insurance Commissioners.

9 b. The report or reports shall include a signature of the insurer
10 or insurance group's chief risk officer or other executive having
11 responsibility for the oversight of the insurer's enterprise risk
12 management process attesting to the best of the individual's belief
13 and knowledge that the insurer applies the enterprise risk
14 management process described in the ORSA Summary Report and
15 that a copy of the report has been provided to the insurer's board of
16 directors or the appropriate committee thereof.

17 c. An insurer may comply with subsection a. of this section by
18 providing the most recent and substantially similar report or reports
19 provided by the insurer or another member of an insurance group of
20 which the insurer is a member to the commissioner of another state
21 or to a supervisor or regulator of a foreign jurisdiction, if that report
22 provides information that is comparable to the information
23 described in the ORSA Guidance Manual. Any such report in a
24 language other than English must be accompanied by a translation
25 of that report into the English language.

26

27 51. (New section) a. An insurer shall be exempt from the
28 requirements of sections 46 through 56 of P.L. , c. (C.)
29 (pending before the Legislature as this bill), if:

30 (1) The insurer has annual direct written and unaffiliated
31 assumed premium, including international direct and assumed
32 premium but excluding premiums reinsured with the Federal Crop
33 Insurance Corporation and National Flood Insurance Program, less
34 than \$500,000,000; and

35 (2) The insurance group of which the insurer is a member has
36 annual direct written and unaffiliated assumed premium including
37 international direct and assumed premium, but excluding premiums
38 reinsured with the Federal Crop Insurance Corporation and National
39 Flood Insurance Program, less than \$1,000,000,000.

40 b. If an insurer qualifies for exemption pursuant to paragraph
41 (1) of subsection a. of this section, but the insurance group of which
42 the insurer is a member does not qualify for exemption pursuant to
43 paragraph (2) of subsection a. of this section, then the ORSA
44 Summary Report that may be required pursuant to section 50 of
45 P.L. c. (C.) (pending before the Legislature as this bill),
46 shall include every insurer within the insurance group. This
47 requirement may be satisfied by the submission of more than one
48 ORSA Summary Report for any combination of insurers so long as

1 any combination of reports includes every insurer within the
2 insurance group.

3 c. If an insurer does not qualify for exemption pursuant to
4 paragraph (1) of subsection a. of this section, but the insurance
5 group of which it is a member qualifies for exemption pursuant to
6 paragraph (2) of subsection a. of this section, then the only ORSA
7 Summary Report that may be required pursuant section 50 of P.L. ,
8 c. (C.) (pending before the Legislature as this bill) shall be
9 the report applicable to that insurer.

10 d. An insurer that does not qualify for exemption pursuant to
11 subsection a. of this section may apply to the commissioner for a
12 waiver from the requirements of sections 46 through 56 of P.L. ,
13 c. (C.) (pending before the Legislature as this bill) based
14 upon unique circumstances. In deciding whether to grant the
15 insurer's request for waiver, the commissioner may consider the
16 type and volume of business written, ownership and organizational
17 structure, and any other factor the commissioner considers relevant
18 to the insurer or insurance group of which the insurer is a member.
19 If the insurer is part of an insurance group with insurers domiciled
20 in more than one state, the commissioner shall coordinate with the
21 lead state commissioner and with the other domiciliary
22 commissioners in considering whether to grant the insurer's request
23 for a waiver.

24 e. Notwithstanding the exemptions stated in this section:

25 (1) The commissioner may require that an insurer maintain a
26 risk management framework, conduct an ORSA and file an ORSA
27 Summary Report based on unique circumstances including, but not
28 limited to, the type and volume of business written, ownership and
29 organizational structure, federal agency requests, and international
30 supervisor requests.

31 (2) The commissioner may require that an insurer maintain a
32 risk management framework, conduct an ORSA and file an ORSA
33 Summary Report if:

34 (a) the insurer has risk-based capital for company action level
35 event as set forth in applicable regulations of this State governing
36 risk-based capital;

37 (b) meets one or more of the standards of an insurer deemed to
38 be in hazardous financial condition as defined in applicable
39 regulations of this State defining standards and commissioner's
40 authority over companies deemed to be in hazardous financial
41 condition; or

42 (c) otherwise exhibits qualities of a troubled insurer as
43 determined by the commissioner.

44 f. If an insurer that qualifies for an exemption pursuant to
45 subsection a. of this section subsequently no longer qualifies for
46 that exemption due to changes in premium as reflected in the
47 insurer's most recent annual statement or in the most recent annual
48 statements of the insurers within the insurance group of which the

1 insurer is a member, the insurer shall have one year following the
2 year in which the threshold is exceeded to comply with the
3 requirements of sections 46 through 56 of P.L. , c. (C.)
4 (pending before the Legislature as this bill).

5
6 52. (New section) a. The ORSA Summary Report shall be
7 prepared consistent with the ORSA Guidance Manual, subject to the
8 requirements of subsection b. of this section. Documentation and
9 supporting information shall be maintained and made available
10 upon examination or upon request of the commissioner.

11 b. The review of the ORSA Summary Report, and any
12 additional requests for information, shall be made using similar
13 procedures currently used in the analysis and examination of multi-
14 state or global insurers and insurance groups.

15
16 53. (New section) a. Documents, materials or other
17 information, including the ORSA Summary Report, in the
18 possession of or control of the Department of Banking and
19 Insurance that are obtained by, created by or disclosed to the
20 commissioner or any other person pursuant to sections 46 through
21 56 of P.L. , c. (C.) (pending before the Legislature as this
22 bill), shall be recognized by this State as being proprietary and to
23 contain trade secrets. All such documents, materials or other
24 information shall be confidential by law and privileged, shall not be
25 subject to P.L.1963, c.71 (C.47:1A-1 et seq.), shall not be subject to
26 subpoena, and shall not be subject to discovery or admissible in
27 evidence in any private civil action. However, the commissioner is
28 authorized to use the documents, materials or other information in
29 the furtherance of any regulatory or legal action brought as a part of
30 the commissioner's official duties. The commissioner shall not
31 otherwise make the documents, materials or other information
32 public without the prior written consent of the insurer.

33 b. Neither the commissioner nor any person who received
34 documents, materials or other ORSA-related information, through
35 examination or otherwise, while acting under the authority of the
36 commissioner or with whom such documents, materials or other
37 information are shared pursuant to sections 46 through 56 of P.L. ,
38 c. (C.) (pending before the Legislature as this bill) shall be
39 permitted or required to testify in any private civil action
40 concerning any confidential documents, materials, or information
41 subject to subsection a. of this section.

42 c. In order to assist in the performance of the commissioner's
43 regulatory duties, the commissioner:

44 (1) May, upon request, share documents, materials or other
45 ORSA-related information, including the confidential and
46 privileged documents, materials or information subject to
47 subsection a. of this section, including proprietary and trade secret
48 documents and materials with other state, federal and international

1 financial regulatory agencies, including members of any
2 supervisory college as defined in section 7 of P.L. , c. (C.)
3 (pending before the Legislature as this bill), with the National
4 Association of Insurance Commissioners (NAIC) and with any
5 third-party consultants designated by the commissioner, provided
6 that the recipient agrees in writing to maintain the confidentiality
7 and privileged status of the ORSA-related documents, materials or
8 other information and has verified in writing the legal authority to
9 maintain confidentiality; and

10 (2) May receive documents, materials or other ORSA-related
11 information, including otherwise confidential and privileged
12 documents, materials or information, including proprietary and
13 trade-secret information or documents, from regulatory officials of
14 other foreign or domestic jurisdictions, including members of any
15 supervisory college as defined in section 7 of P.L. , c. (C.)
16 (pending before the Legislature as this bill), and from the NAIC,
17 and shall maintain as confidential or privileged any documents,
18 materials or information received with notice or the understanding
19 that it is confidential or privileged under the laws of the jurisdiction
20 that is the source of the document, material or information.

21 (3) Shall enter into a written agreement with the NAIC or a
22 third-party consultant governing sharing and use of information
23 provided pursuant to sections 46 through 56 of P.L. , c. (C.)
24 (pending before the Legislature as this bill), consistent with this
25 subsection c. that shall:

26 (a) Specify procedures and protocols regarding the
27 confidentiality and security of information shared with the NAIC or
28 a third-party consultant pursuant to sections 46 through 56 of P.L. ,
29 c. (C.) (pending before the Legislature as this bill), including
30 procedures and protocols for sharing by the NAIC with other state
31 regulators from states in which the insurance group has domiciled
32 insurers. The agreement shall provide that the recipient agrees in
33 writing to maintain the confidentiality and privileged status of the
34 ORSA-related documents, materials or other information and has
35 verified in writing the legal authority to maintain confidentiality;

36 (b) Specify that ownership of information shared with the NAIC
37 or a third-party consultant pursuant to sections 46 through 56 of
38 P.L. , c. (C.) (pending before the Legislature as this bill)
39 remains with the commissioner, and the NAIC's or a third-party
40 consultant's use of the information is subject to the direction of the
41 commissioner;

42 (c) Prohibit the NAIC or third-party consultant from storing the
43 information shared pursuant to sections 46 through 56 of P.L. ,
44 c. (C.) (pending before the Legislature as this bill) in a
45 permanent database after the underlying analysis is completed;

46 (d) Require prompt notice to be given to an insurer whose
47 confidential information in the possession of the NAIC or a third-
48 party consultant pursuant to sections 46 through 56 of P.L. ,

1 c. (C.) (pending before the Legislature as this bill) is subject to a
2 request or subpoena to the NAIC or a third-party consultant for
3 disclosure or production;

4 (e) Require the NAIC or a third-party consultant to consent to
5 intervention by an insurer in any judicial or administrative action in
6 which the NAIC or a third-party consultant may be required to
7 disclose confidential information about the insurer shared with the
8 NAIC or a third-party consultant pursuant to sections 46 through
9 56 of P.L. , c. (C.) (pending before the Legislature as this
10 bill); and

11 (f) In the case of an agreement involving a third-party
12 consultant, provide for the insurer's written consent.

13 d. The sharing of information and documents by the
14 commissioner pursuant to sections 46 through 56 of P.L. ,
15 c. (C.) (pending before the Legislature as this bill) shall not
16 constitute a delegation of regulatory authority or rulemaking, and
17 the commissioner is solely responsible for the administration,
18 execution and enforcement of the provisions of sections 46 through
19 56 of P.L. , c. (C.) (pending before the Legislature as this
20 bill).

21 e. No waiver of any applicable privilege or claim of
22 confidentiality in the documents, proprietary and trade-secret
23 materials or other ORSA-related information shall occur as a result
24 of disclosure of such ORSA-related information or documents to
25 the commissioner pursuant to this section or as a result of sharing as
26 authorized in sections 46 through 56 of P.L. , c. (C.)
27 (pending before the Legislature as this bill).

28 f. Documents, materials or other information in the possession
29 or control of the NAIC or a third-party consultants pursuant to
30 sections 46 through 56 of P.L. , c. (C.) (pending before the
31 Legislature as this bill) shall be confidential by law and privileged,
32 shall not be subject to P.L.1963, c.71 (C.47:1A-1 et seq.), shall not
33 be subject to subpoena, and shall not be subject to discovery or
34 admissible in evidence in any private civil action.

35
36 54. (New section) Any insurer failing, without just cause, to
37 timely file the ORSA Summary Report as required in sections 46
38 through 56 of P.L. , c. (C.) (pending before the
39 Legislature as this bill) shall be required, after notice and
40 opportunity for a hearing, to pay a penalty of up to \$5,000 for each
41 day's delay, to be recovered by the commissioner and the penalty so
42 recovered shall be paid into the General Fund of this State.

43
44 55. (New section) If any provision of sections 46 through 56 of
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 or the application thereof to any person or circumstance, is held
47 invalid, such determination shall not affect the provisions or
48 applications of sections 46 through 56 of P.L. , c. (C.)

1 (pending before the Legislature as this bill) which can be given
2 effect without the invalid provision or application, and to that end
3 the provisions of sections 46 through 56 of P.L. , c. (C.)
4 (pending before the Legislature as this bill) are severable.

5
6 56. (New section) The first filing of the ORSA Summary Report
7 shall be in 2015 pursuant to section 50 of P.L. , c. (C.)
8 (pending before the Legislature as this bill).

9
10 57. Section 6 of P.L.1996, c.45 (C.17:1-15) is amended to read
11 as follows:

12 6. The commissioner, as administrator and chief executive
13 **office** officer of the department, shall:

14 a. Administer the work of the department;

15 b. Appoint and remove officers and other personnel employed
16 within the department, subject to the provisions of Title 11A of the
17 New Jersey Statutes, and other applicable statutes, except as
18 otherwise specifically provided;

19 c. Perform, exercise and discharge the functions, powers and
20 duties of the department through those divisions established by law
21 or as the commissioner deems necessary;

22 d. Organize the work of the department pursuant to the
23 structure or organizational units the commissioner determines to be
24 necessary for efficient and effective operation, and which are not
25 inconsistent with the provisions of this 1996 amendatory and
26 supplementary act;

27 e. Formulate, adopt, issue and promulgate, pursuant to the
28 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
29 seq.), in the name of the department, rules and regulations
30 authorized by law for the efficient conduct of the work and general
31 administration of the department, and the appropriate regulation of
32 the institutions, companies, agencies, boards, commissions, and
33 other entities within its jurisdiction, including licensees, officers
34 and employees as authorized by law;

35 f. Determine all matters of policy within the commissioner's
36 jurisdiction;

37 g. Institute or cause to be instituted the legal proceedings or
38 processes necessary to enforce properly and give effect to any of the
39 commissioner's powers or duties;

40 h. Make a report each year to the Governor and to the
41 Legislature of the department's operations for the preceding fiscal
42 year, and render such other reports as the Governor shall from time
43 to time request, or as may be required by law;

44 i. Appoint advisory committees which may be desirable to
45 advise and assist the department or a division in carrying out its
46 functions and duties;

47 j. Have the power, in addition to any powers prescribed by
48 law, to order any person violating any provision of Title 17 of the

1 Revised Statutes or Title 17B of the New Jersey Statutes to cease
2 and desist from engaging in such conduct;

3 k. Perform such other functions as may be prescribed by law in
4 this act or by any other law; and

5 **[k.]** l. Maintain suitable headquarters for the department and
6 such other quarters as the commissioner shall deem necessary to the
7 proper functioning of the department.

8 (cf: P.L.1996, c.45, s.6)

9

10 58. (New section) For the purposes of chapter 19 of Title 17B
11 of the New Jersey Statutes, N.J.S.17B:25-19, and sections 58, 60,
12 63, 64, 65 and 66 of P.L. , c. (C.) (pending before the
13 Legislature as this bill) the following definitions shall apply on or
14 after the operative date of the valuation manual:

15 “Accident and health insurance” means a contract that
16 incorporates morbidity risk and provides protection against
17 economic loss resulting from accident, sickness, or medical
18 conditions and as may be specified in the valuation manual.

19 “Appointed actuary” means a qualified actuary who is appointed
20 in accordance with the valuation manual to prepare the actuarial
21 opinion required in subsection e. of section 2 of P.L.1995, c.339
22 (C.17B:19-10).

23 “Company” means an entity, which:

24 (1) has written, issued, or reinsured life insurance contracts,
25 accident and health insurance contracts, or deposit-type contracts in
26 this State and has at least one such policy in force or on claim; or

27 (2) has written, issued, or reinsured life insurance contracts,
28 accident and health insurance contracts, or deposit-type contracts in
29 any state and is required to hold a certificate of authority to write
30 life insurance, accident and health insurance, or deposit-type
31 contracts in this State.

32 “Deposit-type contract” means contracts that do not incorporate
33 mortality or morbidity risks and as may be specified in the
34 valuation manual.

35 “Life insurance” means contracts that incorporate mortality risk,
36 including annuity and pure endowment contracts, and as may be
37 specified in the valuation manual.

38 “NAIC” means the National Association of Insurance
39 Commissioners.

40 “Policyholder behavior” means any action a policyholder,
41 contract holder or any other person with the right to elect options,
42 such as a certificate holder, may take under a policy or contract
43 subject to sections 58, 60, 63, 64, 65 and 66 of P.L. , c. (C.)
44 (pending before the Legislature as this bill) including, but not
45 limited to, lapse, withdrawal, transfer, deposit, premium payment,
46 loan, annuitization, or benefit elections prescribed by the policy or
47 contract but excluding events of mortality or morbidity that result in

1 benefits prescribed in their essential aspects by the terms of the
2 policy or contract.

3 “Principle-based valuation” means a reserve valuation that uses
4 one or more methods or one or more assumptions determined by the
5 insurer and is required to comply with section 64 of P.L. , c. (C.)
6 (pending before the Legislature as this bill) as specified in the
7 valuation manual.

8 “Qualified actuary” means an individual who is qualified to sign
9 the applicable statement of actuarial opinion in accordance with the
10 American Academy of Actuaries qualification standards for
11 actuaries signing such statements and who meets the requirements
12 specified in the valuation manual.

13 “Tail risk” means a risk that occurs either where the frequency of
14 low probability events is higher than expected under a normal
15 probability distribution or where there are observed events of very
16 significant size or magnitude.

17 “Valuation manual” means the manual of valuation instructions
18 adopted by the NAIC as specified in sections 58, 60, 63, 64, 65 and
19 66 of P.L. , c. (C.) (pending before the Legislature as this
20 bill) or as subsequently amended.

21

22 59. N.J.S.17B:19-2 is amended to read as follows:

23 17B:19-2. The commissioner shall annually value, or cause to be
24 valued, the reserve liabilities (hereinafter called reserves) for all
25 outstanding life insurance policies and annuity and pure endowment
26 contracts of every life insurer doing business in this State issued
27 prior to the operative date of the valuation manual, except that in
28 the case of an alien insurer, such valuation shall be limited to its
29 United States business, and may certify the amount of any such
30 reserves, specifying the mortality table or tables, rate or rates of
31 interest and methods (net level premium method or other) used in
32 the calculation of such reserves. All valuations made by him or by
33 his authority shall be upon the net premium basis or such
34 modifications thereof as are provided by law. In calculating such
35 reserves, he may use group methods and approximate averages for
36 fractions of a year or otherwise and, with the concurrence of the
37 insurer, make classifications of benefits by years of issue according
38 to such relevant factors as the date as of which the rated age of the
39 insured is determined, the date as of which the benefits have been
40 provided or the premium rates have been changed, or, for policies
41 under which premium rates are guaranteed for a limited period of
42 time, the most recent date as of which the insurer had the right to
43 modify those premium rates. In lieu of the valuation of the reserves
44 herein required of any foreign or alien insurer, he may accept any
45 valuation made, or caused to be made, by the insurance supervisory
46 official of any state or other jurisdiction when such valuation
47 complies with the minimum standards provided by law and if the
48 official of such state or jurisdiction accepts as sufficient and valid

1 for all legal purposes the certificate of valuation of the
2 commissioner when such certificate states the valuation to have
3 been made in a specified manner according to which the aggregate
4 reserves would be at least as large as if they had been computed in
5 the manner prescribed by the law of that state or jurisdiction.

6 Any such insurer which at any time shall have adopted any
7 standard of valuation producing greater aggregate reserves than
8 those calculated according to the minimum standards provided by
9 law may, with the approval of the commissioner, adopt any lower
10 standard of valuation, but not lower than the minimum standards so
11 provided.

12 Except in the case of policies for which the reserve liabilities are
13 valued on the basis of the provisions of the standard valuation law
14 contained in **[section]** N.J.S.17B:19-8 or policies issued on or after
15 the operative date of the valuation manual, all valuations made by
16 the commissioner or by his authority shall be upon the net premium
17 basis, or such modification thereof as hereinafter expressly
18 provided; and all policies issued prior to January 1, 1901, shall be
19 valued according to the actuaries' table of mortality, with compound
20 interest at the rate of 4% per annum, except in cases where a life
21 insurer elects or has elected to have the policies or any class thereof
22 valued according to the American Experience table of mortality, or
23 according to the American Men Ultimate table of mortality, with
24 compound interest at the rate of either 3% or 3 1/2 % per annum or
25 with the approval of the commissioner at a rate of less than 3% per
26 annum; and all policies issued on or after January 1, 1901, shall be
27 valued according to the American Experience table of mortality,
28 with compound interest at the rate of 3 1/2 % per annum, except in
29 cases where a life insurer elects or has elected to have such policies
30 or any class thereof valued according to the American Experience
31 table of mortality with compound interest at a rate of less than 3 1/2
32 % per annum but not less than 3% per annum or with the approval
33 of the commissioner at a rate of less than 3% per annum; and except
34 in cases where any life insurer with the approval of the
35 commissioner may elect or shall have elected to have its ordinary
36 policies or any class thereof valued according to the American Men
37 Ultimate table of mortality, with compound interest at a rate which
38 is not more than 3 1/2 % per annum. The minimum standard for the
39 valuation of group term insurance policies under which premium
40 rates are not guaranteed for a period in excess of 5 years shall be
41 the American Men Ultimate table of mortality with interest at 3 1/2
42 % per annum. The commissioner may vary the standards of interest
43 and mortality in the case of annuities and industrial policies and of
44 invalid lives and other extra hazards. When the actual premium
45 charged for an insurance policy is less than the net premium for the
46 insurance, computed according to the table of mortality, and the rate
47 of interest prescribed herein, the value of the policy shall be
48 increased by the value of an annuity, the amount of which shall

1 equal the difference between the premiums and the term of which in
2 years shall equal the number of future annual payments receivable
3 on the insurance after the date of valuation.

4 Reserves for all policies and contracts to which the foregoing
5 standards apply may be calculated, at the option of the insurer,
6 according to any standards which produce greater aggregate
7 reserves for all such policies and contracts than the minimum
8 reserves required by this section.

9 (cf: P.L.1981, c.285, s.1)

10

11 60. (New section) The commissioner shall annually value, or
12 cause to be valued, the reserve liabilities (hereinafter called
13 reserves) for all outstanding life insurance contracts, annuity and
14 pure endowment contracts, accident and health contracts, and
15 deposit-type contracts of every company issued on or after the
16 operative date of the valuation manual. In lieu of the valuation of
17 the reserves required of a foreign or alien company, the
18 commissioner may accept a valuation made, or caused to be made,
19 by the insurance supervisory official of any State or other
20 jurisdiction when the valuation complies with the minimum
21 standard provided in sections 58, 60, 63, 64, 65 and 66 of P.L. ,
22 c. (C.) (pending before the Legislature as this bill). The
23 provisions set forth in sections 63 and 64 of P.L. , c. (C.)
24 (pending before the Legislature as this bill) shall apply to all
25 policies and contracts issued on or after the operative date of the
26 valuation manual.

27

28 61. N.J.S.17B:19-5 is amended to read as follows:

29 17B:19-5. The commissioner shall annually make or cause to be
30 made or shall annually require the insurer to make calculations of
31 policy and loss reserves for accident and health insurance written by
32 insurers authorized to write accident and health insurance in this
33 State as defined in N.J.S.17B:17-4. The commissioner shall
34 promulgate regulations establishing the minimum standards
35 applicable to the valuation of accident and health insurance
36 reserves.

37 (cf: P.L.2001, c.2, s.3)

38

39 62. Section 2 of P.L.1995, c.339 (C.17B:19-10) is amended to
40 read as follows:

41 2. a. **【Every】** For years ending prior to the operative date of
42 the valuation manual every, insurer authorized to transact life,
43 health or annuity business and every fraternal benefit society doing
44 business in this State shall annually submit the opinion of a
45 qualified actuary as to whether the reserves and related actuarial
46 items held in support of the policies and contracts specified by the
47 commissioner by regulation are: computed appropriately; based on
48 assumptions which satisfy contractual provisions; and consistent

1 with prior reported amounts and comply with applicable laws of this
2 State. The commissioner shall define by regulation the specifics of
3 this opinion and add such other items deemed to be necessary to its
4 scope.

5 b. (1) Every insurer authorized to transact life, health or
6 annuity business and every fraternal benefit society, except as
7 exempted by the commissioner by regulation, shall also annually
8 include in the opinion required pursuant to subsection a. of this
9 section, an opinion of the same qualified actuary as to whether the
10 reserves and related actuarial items held in support of the policies
11 and contracts specified by the commissioner by regulation, when
12 considered in light of the assets held by the insurer or society with
13 respect to the reserves and related actuarial items, including, but not
14 limited to, the investment earnings on the assets and the
15 considerations anticipated to be received and retained under the
16 policies and contracts, make adequate provision for the insurer's or
17 society's obligations under the policies and contracts, including, but
18 not limited to, the benefits under and expenses associated with the
19 policies and contracts.

20 (2) The commissioner may provide by regulation for a transition
21 period for establishing any higher reserves which the qualified
22 actuary may deem necessary in order to render the opinion required
23 by this section.

24 c. Each opinion required pursuant to subsection b. of this
25 section shall be governed by the following provisions:

26 (1) A memorandum, in form and substance acceptable to the
27 commissioner as specified by regulation, shall be prepared to
28 support each actuarial opinion.

29 (2) If the insurer or society fails to provide a supporting
30 memorandum at the request of the commissioner within a period
31 specified by regulation, or the commissioner determines that the
32 supporting memorandum provided by the insurer or society fails to
33 meet the standards prescribed by regulation or is otherwise
34 unacceptable to the commissioner, the commissioner may engage a
35 qualified actuary at the expense of the insurer or society to review
36 the opinion and the basis for the opinion and prepare such
37 supporting memorandum as is required by the commissioner.

38 d. Every opinion shall be governed by the following
39 provisions:

40 (1) The opinion shall be submitted with the annual statement
41 reflecting the valuation of reserves for each year ending on or after
42 December 31, 1995.

43 (2) The opinion shall apply to all policies or contracts in force,
44 including individual and group health insurance plans, in form and
45 substance acceptable to the commissioner as specified by
46 regulation.

1 (3) The opinion shall be based on standards adopted from time
2 to time by the Actuarial Standards Board and on such additional
3 standards as the commissioner may by regulation prescribe.

4 (4) In the case of an opinion required to be submitted by a
5 foreign or alien insurer or fraternal benefit society, the
6 commissioner may accept the opinion filed by that insurer or
7 society with the insurance supervisory official of another state or
8 jurisdiction if the commissioner determines that the opinion
9 reasonably meets the requirements applicable to an insurer or
10 society domiciled in this State.

11 (5) **【For the purpose of this section, "qualified actuary" means a**
12 **member in good standing of the American Academy of Actuaries**
13 **who meets the requirements set forth in those regulations.】** (Deleted
14 by amendment, P.L. _____, c. _____ (pending before the Legislature as
15 this bill)

16 (6) Except in cases of fraud or willful misconduct, the qualified
17 actuary shall not be liable for damages to any person, other than the
18 insurer, the fraternal benefit society and the commissioner, for any
19 act, error, omission, decision or conduct with respect to the
20 actuary's opinion.

21 (7) Disciplinary action by the commissioner against the insurer,
22 fraternal benefit society or the qualified actuary shall be defined in
23 regulation by the commissioner.

24 (8) **【Any memorandum in support of the opinion, and any other**
25 **material provided by the insurer or fraternal benefit society to the**
26 **commissioner in connection therewith, shall be kept confidential by**
27 **the commissioner and shall not be made public and shall not be**
28 **subject to subpoena, other than for the purpose of defending an**
29 **action seeking damages from any person by reason of any action**
30 **required by this section or by regulations promulgated hereunder;**
31 **provided, however, that the memorandum or other material may**
32 **otherwise be released by the commissioner (a) with the written**
33 **consent of the insurer or fraternal benefit society or (b) to the**
34 **American Academy of Actuaries upon request stating that the**
35 **memorandum or other material is required for the purpose of**
36 **professional disciplinary proceedings and setting forth procedures**
37 **satisfactory to the commissioner for preserving the confidentiality**
38 **of the memorandum or other material. Once any portion of the**
39 **confidential memorandum is cited by the insurer or fraternal benefit**
40 **society in its marketing or is cited before any governmental agency**
41 **other than a state insurance department or is released by the insurer**
42 **or fraternal benefit society to the news media, all portions of the**
43 **confidential memorandum shall no longer be confidential.】**
44 (Deleted by amendment, P.L. _____, c. _____ (pending before the
45 Legislature as this bill)

46 e. On or after the operative date of the valuation manual, every
47 company with outstanding life insurance contracts, accident and
48 health insurance contracts or deposit-type contracts in this State and

1 subject to regulation by the commissioner shall annually submit the
2 opinion of the appointed actuary as to whether the reserves and
3 related actuarial items held in support of the policies and contracts
4 are computed appropriately, are based on assumptions that satisfy
5 contractual provisions, are consistent with prior reported amounts
6 and comply with applicable laws of this State. The valuation
7 manual will prescribe the specifics of this opinion including any
8 items deemed to be necessary to its scope.

9 f. Every company with outstanding life insurance contracts,
10 accident and health insurance contracts or deposit-type contracts in
11 this State and subject to regulation by the commissioner, except as
12 exempted in the valuation manual, shall also annually include in the
13 opinion required by subsection e. of this section, an opinion of the
14 same appointed actuary as to whether the reserves and related
15 actuarial items held in support of the policies and contracts
16 specified in the valuation manual, when considered in light of the
17 assets held by the company with respect to the reserves and related
18 actuarial items, including but not limited to the investment earnings
19 on the assets and the considerations anticipated to be received and
20 retained under the policies and contracts, make adequate provision
21 for the company's obligations under the policies and contracts,
22 including but not limited to the benefits under and expenses
23 associated with the policies and contracts.

24 g. Each opinion required by subsection e. of this section shall
25 be governed by the following provisions:

26 (1) A memorandum, in form and substance as specified in the
27 valuation manual, and acceptable to the commissioner, shall be
28 prepared to support each actuarial opinion.

29 (2) If the insurer fails to provide a supporting memorandum at
30 the request of the commissioner within a period specified in the
31 valuation manual or the commissioner determines that the
32 supporting memorandum provided by the insurer fails to meet the
33 standards prescribed by the valuation manual or is otherwise
34 unacceptable to the commissioner, the commissioner may engage a
35 qualified actuary at the expense of the company to review the
36 opinion and the basis for the opinion and prepare the supporting
37 memorandum required by the commissioner.

38 h. Every opinion required by subsection e. of this section shall
39 be governed by the following provisions:

40 (1) The opinion shall be in form and substance as specified in
41 the valuation manual and acceptable to the commissioner.

42 (2) The opinion shall be submitted with the annual statement
43 reflecting the valuation of such reserve liabilities for each year
44 ending on or after the operative date of the valuation manual.

45 (3) The opinion shall apply to all policies and contracts subject
46 to subsection f. of this section, plus other actuarial liabilities as may
47 be specified in the valuation manual.

1 (4) The opinion shall be based on standards adopted from time
2 to time by the Actuarial Standards Board or its successor, and on
3 such additional standards as may be prescribed in the valuation
4 manual.

5 (5) In the case of an opinion required to be submitted by a
6 foreign or alien company, the commissioner may accept the opinion
7 filed by that company with the insurance supervisory official of
8 another state if the commissioner determines that the opinion
9 reasonably meets the requirements applicable to a company
10 domiciled in this State.

11 (6) Except in cases of fraud or willful misconduct, the appointed
12 actuary shall not be liable for damages to any person, other than the
13 insurance company and the commissioner, for any act, error,
14 omission, decision or conduct with respect to the appointed
15 actuary's opinion.

16 (7) Disciplinary action by the commissioner against the
17 company or the appointed actuary shall be prescribed and defined in
18 regulations by the commissioner.

19 (cf: P.L.1995, c.339, s.2)

20

21 63. (New section) a. For policies issued on or after the operative
22 date of the valuation manual, the standard prescribed in the
23 valuation manual is the minimum standard of valuation required
24 under section 60 of P.L. c. (c.) (pending before the
25 Legislature as this bill) except as provided under subsections e. or
26 g. of this section.

27 b. The operative date of the valuation manual is January 1 of
28 the first calendar year following the first July 1 as of which all of
29 the following have occurred:

30 (1) The valuation manual has been adopted by the NAIC by an
31 affirmative vote of at least 42 members, or three-fourths of the
32 members voting, whichever is greater.

33 (2) The NAIC Model Standard Valuation Law, as amended by
34 the NAIC in 2009, or legislation including substantially similar
35 terms and provisions, has been enacted by States representing
36 greater than 75% of the direct premiums written as reported in the
37 following annual statements submitted for 2008: life, accident and
38 health annual statements; health annual statements; or fraternal
39 annual statements.

40 (3) The NAIC Model Standard Valuation Law, as amended by
41 the NAIC in 2009, or legislation including substantially similar
42 terms and provisions, has been enacted by at least 42 of the
43 following 55 jurisdictions: The 50 States of the United States,
44 American Samoa, the American Virgin Islands, the District of
45 Columbia, Guam, and Puerto Rico.

46 c. Unless a change in the valuation manual specifies a later
47 effective date, changes to the valuation manual shall be effective on

1 January 1 following the date when all of the following have
2 occurred:

3 (1) The change to the valuation manual has been adopted by the
4 NAIC by an affirmative vote representing:

5 (a) At least three-fourths (3/4) of the members of the NAIC
6 voting, but not less than a majority of the total membership, and

7 (b) Members of the NAIC representing jurisdictions totaling
8 greater than 75% of the direct premiums written as reported in the
9 following annual statements most recently available prior to the
10 vote in subparagraph (a) of paragraph (1) of this subsection: life,
11 accident and health annual statements, health annual statements, or
12 fraternal annual statements.

13 (2) No later than 30 days before the operative date of the
14 valuation manual or any changes thereto adopted by the NAIC, the
15 commissioner shall by order notify all companies as defined in
16 section 58 of P.L. , c. (C.)(pending before the Legislature
17 as this bill) of the adoption and its operative date. Failure to
18 provide this notice shall not delay the operative date of the
19 valuation manual or any changes thereto.

20 d. The valuation manual must specify all of the following:

21 (1) Minimum valuation standards for and definitions of the
22 policies or contracts subject to section 60 of P.L. , c. (C.)
23 (pending before the Legislature as this bill). Such minimum
24 valuation standards shall be:

25 (a) The commissioner's reserve valuation method for life
26 insurance contracts, other than annuity contracts, subject to section
27 60 of P.L. , c. (C.) (pending before the Legislature as this
28 bill);

29 (b) The commissioner's annuity reserve valuation method for
30 annuity contracts subject to section 60 of P.L. , c. (C.)
31 (pending before the Legislature as this bill); and

32 (c) Minimum reserves for all other policies or contracts subject
33 to section 60 of P.L. , c. (C.) (pending before the
34 Legislature as this bill);

35 (2) Which policies or contracts or types of policies or contracts
36 that are subject to the requirements of a principle-based valuation in
37 subsection a. of section 64 of P.L. , c. (C.) (pending before
38 the Legislature as this bill) and the minimum valuation standards
39 consistent with those requirements;

40 (3) For policies and contracts subject to a principle-based
41 valuation under section 64 of P.L. , c. (C.) (pending before
42 the Legislature as this bill):

43 (a) Requirements for the format of reports to the commissioner
44 under paragraph 3 of subsection b. of section 64 of P.L. , c. (C.)
45 (pending before the Legislature as this bill) and which shall include
46 information necessary to determine if the valuation is appropriate
47 and in compliance with sections 58, 60, 63, 64, 65 and 66 of P.L. ,
48 (C.) (pending before the Legislature as this bill);

- 1 (b) Assumptions shall be prescribed for risks over which the
2 company does not have significant control or influence.
- 3 (c) Procedures for corporate governance and oversight of the
4 actuarial function, and a process for appropriate waiver or
5 modification of such procedures.
- 6 (4) For policies not subject to a principle-based valuation under
7 section 64 of P.L. , c. (C.) (pending before the Legislature
8 as this bill) the minimum valuation standard shall either:
- 9 (a) Be consistent with the minimum standard of valuation prior
10 to the operative date of the valuation manual; or
- 11 (b) Develop reserves that quantify the benefits and guarantees,
12 and the funding, associated with the contracts and their risks at a
13 level of conservatism that reflects conditions that include
14 unfavorable events that have a reasonable probability of occurring;
- 15 (5) Other requirements, including, but not limited to, those
16 relating to reserve methods, models for measuring risk, generation
17 of economic scenarios, assumptions, margins, use of company
18 experience, risk measurement, disclosure, certifications, reports,
19 actuarial opinions and memorandums, transition rules and internal
20 controls; and
- 21 (6) The data and form of the data required under section 65 of
22 P.L. , c. (C.) (pending before the Legislature as this bill),
23 with whom the data must be submitted, and may specify other
24 requirements, including data analyses and reporting of analyses.
- 25 e. In the absence of a specific valuation requirement or if a
26 specific valuation requirement in the valuation manual is not, in the
27 opinion of the commissioner, in compliance with sections 58, 60,
28 63, 64, 65 and 66 of P.L. c. (C.) (pending before the
29 Legislature as this bill), then the company shall, with respect to
30 such requirements, comply with minimum valuation standards
31 prescribed by the commissioner by regulation.
- 32 f. The commissioner may engage a qualified actuary, at the
33 expense of the company, to perform an actuarial examination of the
34 company and opine on the appropriateness of any reserve
35 assumption or method used by the company, or to review and opine
36 on a company's compliance with any requirement set forth in
37 sections 58, 60, 63, 64, 65 and 66 of P.L. c. (C.) (pending
38 before the Legislature as this bill). The commissioner may rely
39 upon the opinion, regarding provisions contained within sections
40 58, 60, 63, 64, 65 and 66 of P.L. c. (C.) (pending before the
41 Legislature as this bill), of a qualified actuary engaged by the
42 commissioner of another state, district or territory of the United
43 States.
- 44 As used in this subsection f., the term "engage" includes
45 employment and contracting.
- 46 g. The commissioner may require a company to change any
47 assumption or method that in the opinion of the commissioner is
48 necessary in order to comply with the requirements of the valuation

1 manual or sections 58, 60, 63, 64, 65 and 66 of P.L. c. (C.)
2 (pending before the Legislature as this bill); and the company shall
3 adjust the reserves as required by the commissioner. The
4 commissioner may suspend or revoke the authority to do business in
5 this State of any company and impose a fine, after notice and a
6 hearing, pursuant to the “Administrative Procedure Act,” P.L.1968,
7 c.410 (C.52:14B-1 et seq.) if it fails to comply with any provision
8 of law obligatory upon it under sections 58, 60, 63, 64, 65 and 66 of
9 P.L. , c. (C.) (pending before the Legislature as this bill).

10

11 64. (New section) a. A company shall establish reserves using
12 a principle-based valuation that meets the following conditions for
13 policies or contracts as specified in the valuation manual:

14 (1) Quantify the benefits and guarantees, and the funding,
15 associated with the contracts and their risks at a level of
16 conservatism that reflects conditions that include unfavorable
17 events that have a reasonable probability of occurring during the
18 lifetime of the contracts. For policies or contracts with significant
19 tail risk, reflects conditions appropriately adverse to quantify the
20 tail risk.

21 (2) Incorporate assumptions, risk analysis methods and financial
22 models and management techniques that are consistent with, but not
23 necessarily identical to, those utilized within the company’s overall
24 risk assessment process, while recognizing potential differences in
25 financial reporting structures and any prescribed assumptions or
26 methods.

27 (3) Incorporate assumptions that are derived in one of the
28 following manners:

29 (a) The assumption is prescribed in the valuation manual.

30 (b) For assumptions that are not prescribed, the assumptions
31 shall:

32 (i) Be established utilizing the company’s available experience,
33 to the extent it is relevant and statistically credible; or

34 (ii) To the extent that company data is not available, relevant, or
35 statistically credible, be established utilizing other relevant,
36 statistically credible experience.

37 (4) Provide margins for uncertainty including adverse deviation
38 and estimation error, such that the greater the uncertainty the larger
39 the margin and resulting reserve.

40 b. A company using a principle-based valuation for one or
41 more policies or contracts subject to this section as specified in the
42 valuation manual shall:

43 (1) Establish procedures for corporate governance and oversight
44 of the actuarial valuation function consistent with those described in
45 the valuation manual.

46 (2) Provide to the commissioner and the board of directors an
47 annual certification of the effectiveness of the internal controls with
48 respect to the principle-based valuation. Such controls shall be

1 designed to assure that all material risks inherent in the liabilities
2 and associated assets subject to such valuation are included in the
3 valuation, and that valuations are made in accordance with the
4 valuation manual. The certification shall be based on the controls in
5 place as of the end of the preceding calendar year.

6 (3) Develop, and file with the commissioner upon request, a
7 principle-based valuation report that complies with standards
8 prescribed in the valuation manual.

9 c. A principle-based valuation may include a prescribed
10 formulaic reserve component.

11

12 65. (New section) A company shall submit mortality, morbidity,
13 policyholder behavior, or expense experience and other data as
14 prescribed in the valuation manual.

15

16 66. (New section) a. For purposes of this section “confidential
17 information” means:

18 (1) A memorandum in support of an opinion submitted under
19 section 2 of P.L.1995, c.339 (C.17B:19-10) and any other
20 documents, materials and other information, including, but not
21 limited to, all working papers, and copies thereof, created, produced
22 or obtained by or disclosed to the commissioner or any other person
23 in connection with such a memorandum;

24 (2) All documents, materials and other information, including,
25 but not limited to, all working papers, and copies thereof, created,
26 produced or obtained by or disclosed to the commissioner or any
27 other person in the course of an examination made under subsection
28 f. of section 63 of P.L. , c. (C.) (pending before the
29 Legislature as this bill); provided, however, that if an examination
30 report or other material prepared in connection with an examination
31 made under N.J.S.17B:21-1 is not held as private and confidential
32 information under N.J.S.17B:21-1, an examination report or other
33 material prepared in connection with an examination made under
34 subsection f. of section 63 of P.L. , c. (C.) (pending before
35 the Legislature as this bill) shall not be confidential information to
36 the same extent as if such examination report or other material had
37 been prepared under N.J.S. 17B:21-1;

38 (3) Any reports, documents, materials and other information
39 developed by a company in support of, or in connection with, an
40 annual certification by the company under subsection b. of section
41 64 of P.L. , c. (C.) (pending before the Legislature as this
42 bill) evaluating the effectiveness of the company’s internal controls
43 with respect to a principle-based valuation and any other
44 documents, materials and other information, including, but not
45 limited to, all working papers, and copies thereof, created, produced
46 or obtained by or disclosed to the commissioner or any other person
47 in connection with such reports, documents, materials and other
48 information;

1 (4) Any principle-based valuation report developed under
2 paragraph 3 of subsection b. of section 64 of P.L. , c. (C.)
3 (pending before the Legislature as this bill) and any other
4 documents, materials and other information, including, but not
5 limited to, all working papers, and copies thereof, created, produced
6 or obtained by or disclosed to the commissioner or any other person
7 in connection with that report; and

8 (5) Any documents, materials, data and other information
9 submitted by a company under section 65 of P.L. , c. (C.)
10 (pending before the Legislature as this bill), collectively,
11 “experience data,” and any other documents, materials, data and
12 other information, including, but not limited to, all working papers,
13 and copies thereof, created or produced in connection with such
14 experience data, in each case that include any potentially company-
15 identifying or personally identifiable information, that is provided
16 to or obtained by the commissioner, together with any “experience
17 data,” the “experience materials,” and any other documents,
18 materials, data and other information, including, but not limited to,
19 all working papers, and copies thereof, created, produced or
20 obtained by or disclosed to the commissioner or any other person in
21 connection with such experience materials.

22 b. (1) Except as provided in this section, a company’s
23 confidential information is confidential by law and privileged, and
24 shall not be subject to P.L.1963, c.73 (C.47:1A-1 et seq.), shall not
25 be subject to subpoena and shall not be subject to discovery or
26 admissible in evidence in any private civil action; provided,
27 however, that the commissioner is authorized to use the confidential
28 information in the furtherance of any regulatory or legal action
29 brought against the company as a part of the commissioner’s
30 official duties.

31 (2) Neither the commissioner nor any person who received
32 confidential information while acting under the authority of the
33 commissioner shall be permitted or required to testify in any private
34 civil action concerning any confidential information.

35 (3) In order to assist in the performance of the commissioner’s
36 duties, the commissioner may share confidential information: (a)
37 with other state, federal and international regulatory agencies and
38 with the National Association of Insurance Commissioners (NAIC)
39 and its affiliates and subsidiaries; and (b) in the case of confidential
40 information specified in paragraphs (1) and (2) of subsection a. of
41 this section only, with the Actuarial Board for Counseling and
42 Discipline or its successor upon request stating that the confidential
43 information is required for the purpose of professional disciplinary
44 proceedings; and (c) with state, federal and international law
45 enforcement officials; in the case of (a) and (b), provided that such
46 recipient agrees, and has the legal authority to agree, to maintain the
47 confidentiality and privileged status of such documents, materials,

1 data and other information in the same manner and to the same
2 extent as required for the commissioner.

3 (4) The commissioner may receive documents, materials, data
4 and other information, including otherwise confidential and
5 privileged documents, materials, data or information, from the
6 NAIC and its affiliates and subsidiaries, from regulatory or law
7 enforcement officials of other foreign or domestic jurisdictions and
8 from the Actuarial Board for Counseling and Discipline or its
9 successor and shall maintain as confidential or privileged any
10 document, material, data or other information received with notice
11 or the understanding that it is confidential or privileged under the
12 laws of the jurisdiction that is the source of the document, material
13 or other information.

14 (5) The commissioner may enter into agreements governing
15 sharing and use of information consistent with this section.

16 (6) No waiver of any applicable privilege or claim of
17 confidentiality in the confidential information shall occur as a result
18 of disclosure to the commissioner under this section or as a result of
19 sharing as authorized in paragraph (3) of this subsection b.

20 (7) A privilege established under the law of any state or
21 jurisdiction that is substantially similar to the privilege established
22 under this subsection shall be available and enforced in any
23 proceeding in, and in any court of, this State.

24 (8) For purposes of this section “regulatory agency,” “law
25 enforcement agency” and the “NAIC” shall include, but shall not be
26 limited to, their employees, agents, consultants and contractors.

27 c. Notwithstanding subsection b. of this section, any
28 confidential information specified in paragraphs (1) and (4) of
29 subsection a. of this section:

30 (1) May be subject to subpoena for the purpose of defending an
31 action seeking damages from the appointed actuary submitting the
32 related memorandum in support of an opinion submitted under
33 section 2 of P.L.1995, c.339 (C.17B:19-10) or principle-based
34 valuation report developed under subsection b. of section 64 of
35 P.L., c. (C.) (pending before the Legislature as this bill) by
36 reason of an action required by sections 58, 60, 63, 64, 65 and 66 of
37 P.L. , c. (C.) (pending before the Legislature as this bill) or
38 by regulations promulgated hereunder;

39 (2) May otherwise be released by the commissioner with the
40 written consent of the company; and

41 (3) Once any portion of a memorandum in support of an opinion
42 submitted under section 2 of P.L.1995, c.339 (C.17B:19-10) or a
43 principle-based valuation report developed under subsection b. of
44 section 64 of P.L. , c. (C.) (pending before the Legislature
45 as this bill) is cited by the company in its marketing or is publicly
46 volunteered to or before a governmental agency other than a state
47 insurance department or is released by the company to the news

1 media, all portions of such memorandum or report shall no longer
2 be confidential.

3

4 67. N.J.S.17B:25-19 is amended to read as follows:

5 17B:25-19. This section shall be known as the standard
6 nonforfeiture law for life insurance.

7 a. No policy of life insurance, except as stated in subsection l.,
8 shall be delivered or issued for delivery in this State unless it shall
9 contain in substance the following provisions, or corresponding
10 provisions which in the opinion of the commissioner are at least as
11 favorable to the defaulting or surrendering policyholder as are the
12 minimum requirements hereinafter specified and are essentially in
13 compliance with subsection k. of this section:

14 (1) That, in the event of default in any premium payment, the
15 insurer will grant, upon proper request not later than 60 days after
16 the due date of the premium in default, a paid-up nonforfeiture
17 benefit on a plan stipulated in the policy, effective as of such due
18 date, of such amount as may be hereinafter specified. In lieu of such
19 stipulated paid-up nonforfeiture benefit, the insurer may substitute,
20 upon proper request not later than 60 days after the due date of the
21 premium in default, an actuarially equivalent alternative paid-up
22 nonforfeiture benefit which provides a greater amount or longer
23 period of death benefits or, if applicable, a greater amount or earlier
24 payment of endowment benefits.

25 (2) That, upon surrender of the policy within 60 days after the
26 due date of any premium payment in default after premiums have
27 been paid for at least 3 full years in the case of ordinary insurance
28 or 5 full years in the case of industrial insurance, the insurer will
29 pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender
30 value of such amount as may be hereinafter specified.

31 (3) That a specified paid-up nonforfeiture benefit shall become
32 effective as specified in the policy unless the person entitled to
33 make such election elects another available option not later than 60
34 days after the due date of the premium in default.

35 (4) That, if the policy shall have become paid up by completion
36 of all premium payments or if it is continued under any paid-up
37 nonforfeiture benefit which became effective on or after the third
38 policy anniversary in the case of ordinary insurance or the fifth
39 policy anniversary in the case of industrial insurance, the insurer
40 will pay, upon surrender of the policy within 30 days after any
41 policy anniversary, a cash surrender value of such amount as may
42 be hereinafter specified.

43 (5) In the case of policies which cause on a basis guaranteed in
44 the policy unscheduled changes in benefits or premiums, or which
45 provide an option for changes in benefits or premiums other than a
46 change to a new policy, a statement of the mortality table, interest
47 rate, and method used in calculating cash surrender values and the
48 paid-up nonforfeiture benefits available under the policy. In the

1 case of all other policies, a statement of the mortality tables and
2 interest rates used in calculating the cash surrender values and the
3 mortality tables and interest rates used in calculating the paid-up
4 nonforfeiture benefits available under the policy, together with a
5 table showing the cash surrender value, if any, and paid-up
6 nonforfeiture benefit, if any, available under the policy on each
7 policy anniversary either during the first 20 policy years or during
8 the term of the policy, whichever is shorter, such values and
9 benefits to be calculated upon the assumption that there are no
10 dividends or paid-up additions credited to the policy and that there
11 is no indebtedness to the insurer on the policy.

12 (6) A statement that the cash surrender values and the paid-up
13 nonforfeiture benefits available under the policy are not less than
14 the minimum values and benefits required by or pursuant to the
15 insurance law of the state in which the policy is delivered; an
16 explanation of the manner in which the cash surrender values and
17 the paid-up nonforfeiture benefits are altered by the existence of
18 any paid-up additions credited to the policy or any indebtedness to
19 the insurer on the policy; if a detailed statement of the method of
20 computation of the cash surrender values and paid-up nonforfeiture
21 benefits shown in the policy is not stated therein, a statement that
22 such method of computation has been filed with the insurance
23 supervisory official of the state in which the policy is delivered; and
24 a statement of the method to be used in calculating the cash
25 surrender value and paid-up nonforfeiture benefit available under
26 the policy on any policy anniversary beyond the last anniversary for
27 which such values and benefits are consecutively shown in the
28 policy.

29 Any of the foregoing provisions or portions thereof not
30 applicable by reason of the plan of insurance may, to the extent
31 inapplicable, be omitted from the policy.

32 The insurer shall reserve the right to defer the payment of any
33 cash surrender value for a period of 6 months after demand therefor
34 with surrender of the policy.

35 b. (Deleted by amendment; P.L.1981, c.285.)

36 c. Any cash surrender value available under any policy referred
37 to in subsection a. in the event of default in a premium payment due
38 on any policy anniversary, whether or not required by subsection a.,
39 shall be an amount not less than the excess, if any, of the present
40 value, on such anniversary, of the future guaranteed benefits which
41 would have been provided for by the policy, including any existing
42 paid-up additions, if there had been no default, over the sum of (1)
43 the then present value of the adjusted premiums as defined in
44 subsection g., corresponding to premiums which would have fallen
45 due on and after such anniversary, and (2) the amount of any
46 indebtedness to the insurer on the policy.

47 Provided, however, that for any policy issued on or after the
48 operative date provided for in paragraph (xi) of subsection h. of

1 N.J.S.17B:25-19, which provides supplemental life insurance or
2 annuity benefits at the option of the insured and for an identifiable
3 additional premium by rider or supplemental policy provision, the
4 cash surrender value referred to in the first paragraph of this
5 subsection shall be an amount not less than the sum of the cash
6 surrender value as defined in that paragraph for an otherwise similar
7 policy issued at the same age without such rider or supplemental
8 policy provision and the cash surrender value as defined in that
9 paragraph for a policy which provides only the benefits otherwise
10 provided by such rider or supplemental policy provision.

11 Provided, further, that for any family policy issued on or after
12 the operative date provided for in paragraph (xi) of subsection h.,
13 which defines a primary insured and provides term insurance on the
14 life of the spouse of the primary insured expiring before the
15 spouse's age 71, the cash surrender value referred to in the first
16 paragraph of this subsection shall be an amount not less than the
17 sum of the cash surrender value as defined in that paragraph for an
18 otherwise similar policy issued at the same age without such term
19 insurance on the life of the spouse and the cash surrender value as
20 defined in that paragraph for a policy which provides only the
21 benefits otherwise provided by such term insurance on the life of
22 the spouse.

23 Any cash surrender value available within 30 days after any
24 policy anniversary under any policy paid up by completion of all
25 premium payments or any policy continued under any paid-up
26 nonforfeiture benefit, whether or nor required by subsection a., shall
27 be an amount not less than the present value, on such anniversary,
28 of the future guaranteed benefits provided for by the policy,
29 including any existing paid-up additions, decreased by any
30 indebtedness to the insurer on the policy.

31 d. Any paid-up nonforfeiture benefit available under any policy
32 referred to in subsection a. in the event of default in a premium
33 payment due on any policy anniversary shall be such that its present
34 value as of such anniversary shall be at least equal to the cash
35 surrender value then provided for by the policy or, if none is
36 provided for, that cash surrender value which would have been
37 required by this section in the absence of the condition that
38 premiums shall have been paid for at least a specified period.

39 e. (Deleted by amendment; P.L.1981, c.285.)

40 f. (Deleted by amendment; P.L.1981, c.285.)

41 g. This subsection shall not apply to policies issued on or after
42 the operative date of subsection h. as defined therein. Except as
43 provided in the third paragraph of this subsection, the adjusted
44 premiums for any policy referred to in subsection a. shall be
45 calculated on an annual basis and shall be such uniform percentage
46 of the respective premiums specified in the policy for each policy
47 year, excluding any extra premiums charged because of
48 impairments or special hazards, that the present value, at the date of

1 issue of the policy, of all such adjusted premiums shall be equal to
2 the sum of (1) the then present value of the future guaranteed
3 benefits provided for by the policy; (2) 2% of the amount of
4 insurance, if the insurance be uniform in amount or of the
5 equivalent uniform amount, as hereinafter defined, if the amount of
6 insurance varies with duration of the policy; (3) 40% of the adjusted
7 premium for the first policy year; (4) 25% of either the adjusted
8 premium for the first policy year or the adjusted premium for a
9 whole life policy of the same uniform or equivalent uniform amount
10 with uniform premiums for the whole of life issued at the same age
11 for the same amount of insurance, whichever is less; provided,
12 however, that in applying the percentages specified in (3) and (4)
13 above, no adjusted premium shall be deemed to exceed 4% of the
14 amount of insurance or uniform amount equivalent thereto. The date
15 of issue of a policy for the purpose of this subsection shall be the
16 date as of which the rated age of the insured is determined.

17 In the case of a policy providing an amount of insurance varying
18 with duration of the policy, the equivalent uniform amount thereof
19 for the purpose of this subsection shall be deemed to be the uniform
20 amount of insurance provided by an otherwise similar policy,
21 containing the same endowment benefit or benefits, if any, issued at
22 the same age and for the same term, the amount of which does not
23 vary with duration, and the benefits under which have the same
24 present value at the date of issue as the benefits under the policy;
25 provided, however, that in the case of a policy providing a varying
26 amount of insurance issued on the life of a child under age 10, the
27 equivalent uniform amount may be computed as though the amount
28 of insurance provided by the policy prior to the attainment of age 10
29 were the amount provided by such policy at age 10.

30 The adjusted premiums for any policy providing term insurance
31 benefits by rider or supplemental policy provision shall be equal to
32 (a) the adjusted premiums for an otherwise similar policy issued at
33 the same age without such term insurance benefits, increased,
34 during the period for which premiums for such term insurance
35 benefits are payable, by (b) the adjusted premiums for such term
36 insurance, the foregoing items (a) and (b) being calculated
37 separately and as specified in the first two paragraphs of this
38 subsection except that, for the purpose of (2), (3) and (4) of the first
39 such paragraph, the amount of insurance or equivalent uniform
40 amount of insurance used in the calculation of the adjusted
41 premiums referred to in (b) shall be equal to the excess of the
42 corresponding amount determined for the entire policy over the
43 amount used in the calculation of the adjusted premiums in (a).

44 All adjusted premiums and present values referred to in this
45 subsection shall for all policies of ordinary insurance be calculated
46 on the basis of the Commissioners 1958 Standard Ordinary
47 Mortality Table. Notwithstanding this provision, for any category of
48 ordinary insurance such calculations may be made, at the option of

1 the insurer, on the basis of the Approved Standard Ordinary
2 Mortality Table; provided, further, that for any category of ordinary
3 insurance issued on female risks adjusted premiums and present
4 values may be calculated, at the option of the insurer with approval
5 of the commissioner, according to an age not more than 6 years
6 younger than the actual age of the insured. Such calculations for all
7 policies of industrial insurance shall be made on the basis of the
8 Commissioners 1961 Standard Industrial Mortality Table.

9 All calculations shall be made on the basis of the applicable rates
10 of interest specified in the policy for calculating cash surrender
11 values and paid-up nonforfeiture benefits not exceeding 5 1/2 % per
12 annum. Provided, however, that in calculating the present value of
13 any paid-up term insurance with accompanying pure endowment, if
14 any, offered as a nonforfeiture benefit, the rates of mortality
15 assumed may be not more than the rates shown in the
16 Commissioners 1958 Extended Term Insurance Table if the
17 adjusted premiums for the policy are calculated on the basis of the
18 Commissioners 1958 Standard Ordinary Mortality Table, may be
19 not more than 130% of the rates shown in the Approved Standard
20 Ordinary Mortality Table if the adjusted premiums for the policy
21 are calculated on the basis of said table, and may be not more than
22 the rates shown in the Commissioners 1961 Industrial Extended
23 Term Insurance Table if the adjusted premiums for the policy are
24 calculated on the basis of the Commissioners 1961 Standard
25 Industrial Mortality Table. Provided, further, that for insurance
26 issued on a substandard basis, the calculation of any such adjusted
27 premiums and present values may be based on such other table of
28 mortality as may be specified by the insurer and approved by the
29 commissioner.

30 h. (i) This subsection h. shall apply to all policies issued on or
31 after the operative date established by paragraph (xi) of this
32 subsection h. Except as provided in paragraph (vii) of this
33 subsection, the adjusted premiums for any policy shall be calculated
34 on an annual basis and shall be such uniform percentage of the
35 respective premiums specified in the policy for each policy year,
36 excluding amounts payable as extra premiums to cover impairments
37 or special hazards and also excluding any uniform annual contract
38 charge or policy fee specified in the policy in a statement of the
39 method to be used in calculating the cash surrender values and paid-
40 up nonforfeiture benefits, that the present value, at the date of the
41 policy, of all adjusted premiums shall be equal to the sum of (A) the
42 then present value of the future guaranteed benefits provided for by
43 the policy; (B) 1% of either the amount of insurance, if the
44 insurance be uniform in amount, or the average amount of insurance
45 at the beginning of each of the first 10 policy years; and (C) 125%
46 of the nonforfeiture net level premium as defined in paragraph (ii).
47 Provided, however, that in applying the percentage specified in (C)
48 above no nonforfeiture net level premium shall be deemed to

1 exceed 4% of either the amount of insurance, if the insurance be
2 uniform in amount, or the average amount of insurance at the
3 beginning of each of the first 10 policy years. The date of issue of a
4 policy for the purpose of this section shall be the date as of which
5 the rated age of the insured is determined.

6 (ii) The nonforfeiture net level premium shall be equal to the
7 present value, at the date of issue of the policy, of the guaranteed
8 benefits provided for by the policy divided by the present value, at
9 the date of issue of the policy, of an annuity of one per annum
10 payable on the date of issue of the policy and on each anniversary
11 of such policy on which a premium falls due.

12 (iii) In the case of policies which cause on a basis guaranteed in
13 the policy unscheduled changes in benefits or premiums, or which
14 provide an option for changes in benefits or premiums other than a
15 change to a new policy, the adjusted premiums and present values
16 shall initially be calculated on the assumption that future benefits
17 and premiums do not change from those stipulated at the date of
18 issue of the policy. At the time of any such change in the benefits or
19 premiums the future adjusted premiums, nonforfeiture net level
20 premiums and present values shall be recalculated on the
21 assumption that future benefits and premiums do not change from
22 those stipulated by the policy immediately after the change.

23 (iv) Except as otherwise provided in paragraph (vii) of this
24 subsection, the recalculated future adjusted premiums for any such
25 policy shall be such uniform percentage of the respective future
26 premiums specified in the policy for each policy year, excluding
27 amounts payable as extra premiums to cover impairments and
28 special hazards, and also excluding any uniform annual contract
29 charge or policy fee specified in the policy in a statement of the
30 method to be used in calculating the cash surrender values and paid-
31 up nonforfeiture benefits, that the present value, at the time of
32 change to the newly defined benefits or premiums, of all such future
33 adjusted premiums shall be equal to the excess of the sum of the
34 then present value of the then future guaranteed benefits provided
35 for by the policy and the additional expense allowance, if any, over
36 the then cash surrender value, if any, or present value of any paid-
37 up nonforfeiture benefit under the policy.

38 (v) The additional expense allowance, at the time of the change
39 to the newly defined benefits or premiums, shall be the sum of 1%
40 of the excess of the average amount of insurance at the beginning of
41 each of the first 10 policy years subsequent to the change over the
42 average amount of insurance prior to the change at the beginning of
43 each of the first 10 policy years subsequent to the time of the most
44 recent previous change, or, if there has been no previous change,
45 the date of issue of the policy; and 125% of the increase, if positive,
46 in the nonforfeiture net level premium.

47 (vi) The recalculated nonforfeiture net level premium shall be
48 equal to the result obtained by dividing (A) by (B) where

1 (A) equals the sum of the nonforfeiture net level premium
2 applicable prior to the change times the present value of an annuity
3 of one per annum payable on each anniversary of the policy on or
4 subsequent to the date of the change on which a premium would
5 have fallen due had the change not occurred, and the present value
6 of the increase in future guaranteed benefits provided for by the
7 policy, and

8 (B) equals the present value of an annuity of one per annum
9 payable on each anniversary of the policy on or subsequent to the
10 date or change on which a premium falls due.

11 (vii) Notwithstanding any other provisions of this subsection to
12 the contrary, in the case of a policy issued on a substandard basis
13 which provides reduced graded amounts of insurance so that, in
14 each policy year, such policy has the same tabular mortality cost as
15 an otherwise similar policy issued on the standard basis which
16 provides higher uniform amounts of insurance, adjusted premiums
17 and present values for such substandard policy may be calculated as
18 if it were issued to provide such higher uniform amounts of
19 insurance on the standard basis.

20 (viii) For purposes of this subsection, the term “operative date of
21 the valuation manual” means the January 1 of the first calendar year
22 that the valuation manual as defined in section 58 of P.L. , c.
23 (C.) (pending before the Legislature as this bill) is effective. All
24 adjusted premiums and present values referred to in this subsection
25 shall for all policies of ordinary insurance be calculated on the basis
26 of the Commissioners 1980 Standard Ordinary Mortality Table or at
27 the election of the insurer for any one or more specified plans of life
28 insurance, the Commissioners 1980 Standard Ordinary Mortality
29 Table with 10-Year Select Mortality Factors; shall for all policies of
30 industrial insurance be calculated on the basis of the Commissioners
31 1961 Standard Industrial Mortality Table; and shall for all policies
32 issued in a particular calendar year be calculated on the basis of a
33 rate of interest not exceeding the nonforfeiture interest rate as
34 defined in paragraph (ix) of this subsection for policies issued in
35 that calendar year. Provided, however, that:

36 At the option of the insurer, calculations for all policies
37 issued in a particular calendar year may be made on the basis
38 of a rate of interest not exceeding the nonforfeiture interest
39 rate, as defined in this section, for policies issued in the
40 immediately preceding calendar year.

41 Under any paid-up nonforfeiture benefit, including any
42 paid-up dividend additions, any cash surrender value
43 available, whether or not required by subsection a., shall be
44 calculated on the basis of the mortality table and rate of
45 interest used in determining the amount of such paid-up
46 nonforfeiture benefit and paid-up dividend additions, if any.

47 An insurer may calculate the amount of any guaranteed
48 paid-up nonforfeiture benefit including any paid-up

1 additions under the policy on the basis of an interest rate not
2 lower than that specified in the policy for calculating cash
3 surrender values.

4 In calculating the present value of any paid-up term
5 insurance with accompanying pure endowment, if any,
6 offered as a nonforfeiture benefit, the rates of mortality
7 assumed may be not more than those shown in the
8 Commissioners 1980 Extended Term Insurance for policies
9 of ordinary insurance and not more than the Commissioners
10 1961 Industrial Extended Term Insurance Table for policies
11 of industrial insurance.

12 For insurance issued on a substandard basis, the
13 calculation of such adjusted premiums and present values
14 may be based on appropriate modifications of the
15 aforementioned tables.

16 **【Any】** For policies issued prior to the operative date of
17 the valuation manual, any Commissioners Standard ordinary
18 mortality tables, adopted after 1980 by the National
19 Association of Insurance Commissioners, that are approved
20 by regulation promulgated by the **【Commissioner】**
21 commissioner for use in determining the minimum
22 nonforfeiture standard may be substituted for the
23 Commissioners 1980 Standard Ordinary Mortality Table
24 with or without 10-Year Select Mortality Factors or for the
25 Commissioners 1980 Extended Term Insurance Table.

26 **【Any】** For policies issued on or after the operative date
27 of the valuation manual, the valuation manual shall provide
28 the Commissioners Standard mortality table for use in
29 determining the minimum nonforfeiture standard that may be
30 substituted for the Commissioners 1980 Standard Ordinary
31 Mortality Table with or without Ten-Year Select Mortality
32 Factors or for the Commissioners 1980 Extended Term
33 Insurance Table. If the commissioner approves by regulation
34 any Commissioners Standard ordinary mortality table
35 adopted by the National Association of Insurance
36 Commissioners for use in determining the minimum
37 nonforfeiture standard for policies issued on or after the
38 operative date of the valuation manual, then that minimum
39 nonforfeiture standard supersedes the minimum
40 nonforfeiture standard provided by the valuation manual.

41 For policies issued prior to the operative date of the
42 valuation manual, any Commissioners Standard industrial
43 mortality tables, adopted after 1980 by the National
44 Association of Insurance Commissioners, that are approved
45 by regulation promulgated by the commissioner for use in
46 determining the minimum nonforfeiture standard may be
47 substituted for the Commissioners 1961 Standard Industrial

1 Mortality Table or the Commissioners 1961 Industrial
2 Extended Term Insurance Table.

3 For policies issued on or after the operative date of the
4 valuation manual the valuation manual shall provide the
5 Commissioners Standard mortality table for use in
6 determining the minimum nonforfeiture standard that may be
7 substituted for the Commissioners 1961 Standard Industrial
8 Mortality Table or the Commissioners 1961 Industrial
9 Extended Term Insurance Table. If the commissioner
10 approves by regulation any Commissioners Standard
11 industrial mortality table adopted by the National
12 Association of Insurance Commissioners for use in
13 determining the minimum nonforfeiture standard for policies
14 issued on or after the operative date of the valuation manual
15 then that minimum nonforfeiture standard supersedes the
16 minimum nonforfeiture standard provided by the valuation
17 manual.

18 (ix) **【The】** For purposes of this subsection, the term “operative
19 date of the valuation manual” means the January 1 of the first
20 calendar year that the valuation manual as defined in section 58 of
21 P.L. , c. (C.) (pending before the Legislature as this bill) is
22 effective.

23 The nonforfeiture interest rate is defined below:

24 (1) For policies issued prior to the operative date of the
25 valuation manual, the nonforfeiture interest rate per annum for any
26 policy issued in a particular calendar year shall be equal to 125% of
27 the calendar year statutory valuation interest rate for such policy as
28 defined in the standard valuation law, paragraph (x) of subsection
29 17B:19-8a., rounded to nearer 1/4 of 1%.

30 (2) For policies issued on or after the operative date of the
31 valuation manual the nonforfeiture interest rate per annum for any
32 policy issued in a particular calendar year shall be provided by the
33 valuation manual.

34 (x) Notwithstanding any other provisions in this code (Title
35 17B) to the contrary, any refiling of nonforfeiture values or their
36 methods of computation for any previously approved policy forms
37 which involves only a change in the interest rate or mortality table
38 used to compute nonforfeiture values shall not require refiling of
39 any other provisions of that policy form.

40 (xi) After the effective date of this subsection, any insurer may
41 file with the commissioner a written notice of its election to
42 comply, with respect to any category of insurance, with the
43 provisions of this subsection after a specified date before January 1,
44 1989, which shall be the operative date of this subsection for that
45 category of insurance for such insurer. If an insurer makes no such
46 election with respect to any category of insurance, the operative
47 date of this subsection for that category of insurance issued by such
48 insurer shall be January 1, 1989.

1 i. In the case of any plan of life insurance which provides for
2 future premium determination, the amounts of which are to be
3 determined by the insurer based on then estimates of future
4 experience, or in the case of any plan of life insurance which is of
5 such a nature that minimum values cannot be determined by the
6 methods described in the preceding subsections of this section,
7 then:

8 the commissioner must be satisfied that the benefits
9 provided under the plan are substantially as favorable to
10 policyholders and insureds as the minimum benefits
11 otherwise required by the preceding subsections of this
12 section;

13 the commissioner must be satisfied that the benefits and
14 the pattern of premiums of that plan are not such as to
15 mislead prospective policyholders or insureds;

16 the cash surrender values and paid-up nonforfeiture
17 benefits provided by such plan must not be less than the
18 minimum values and benefits required for the plan computed
19 by a method consistent with the principles of this standard
20 nonforfeiture law for life insurance, as determined by
21 regulations promulgated by the commissioner.

22 j. Any cash surrender value and any paid-up nonforfeiture
23 benefit, available under the policy in the event of default in a
24 premium payment due at any time other than on the policy
25 anniversary, shall be calculated with allowance for the lapse of time
26 and the payment of fractional premiums beyond the last preceding
27 policy or contract anniversary. All values referred to in subsections
28 c., d., g., h. and i. may be calculated upon the assumption that any
29 death benefit is payable at the end of the policy year of death. The
30 net value of any paid-up additions, other than paid-up term
31 additions, shall be not less than the amounts used to provide such
32 additions. Notwithstanding the provisions of subsection c.,
33 additional benefits payable (1) in the event of death or
34 dismemberment by accident or accidental means, (2) in the event of
35 total and permanent disability, (3) as reversionary annuity or
36 deferred reversionary annuity benefits, (4) as term insurance
37 benefits provided by a rider or supplemental policy provision to
38 which, if issued as a separate policy, this section would not apply,
39 (5) as term insurance on the life of a child or on the lives of children
40 provided in a policy on the life of a parent of the child, if such term
41 insurance expires before the child's age is 26, is uniform in amount
42 after the child's age is one, and has not become paid-up by reason of
43 the death of a parent of the child, and (6) as other policy benefits
44 additional to life insurance and endowment benefits, and premiums
45 for all such additional benefits, shall be disregarded in ascertaining
46 cash surrender values and nonforfeiture benefits required by this
47 section, and no such additional benefits shall be required to be
48 included in any paid-up nonforfeiture benefits. Notwithstanding the

1 provisions of subsection c., additional benefits providing the
2 privilege to purchase additional insurance benefits at some future
3 time without furnishing evidence of insurability, and premiums
4 therefor, may, with the consent of the commissioner, be disregarded
5 in ascertaining cash surrender values and nonforfeiture benefits
6 required by this section, and no such additional benefits shall be
7 required to be included in any paid-up nonforfeiture benefits.

8 k. This subsection shall apply to all policies issued on or after
9 January 1, 1985. Any cash surrender value available under the
10 policy in the event of default in a premium payment due on any
11 policy anniversary shall be in an amount which does not differ by
12 more than $\frac{2}{10}$ of 1% of either the amount of insurance, if the
13 insurance be uniform in amount, or the average amount of insurance
14 at the beginning of each of the first 10 policy years, from the sum of
15 (a) the greater of zero and the basic cash value hereinafter specified
16 and (b) the present value of any existing paid-up additions less the
17 amount of any indebtedness to the insurer under the policy.

18 The basic cash value shall be equal to the present value, on such
19 anniversary, of the future guaranteed benefits which would have
20 been provided by the policy, excluding any existing paid-up
21 additions and before deduction of any indebtedness to the insurer, if
22 there had been no default, less the then present value of the
23 nonforfeiture factors, as hereinafter defined, corresponding to
24 premiums which would have fallen due on and after such
25 anniversary. Provided, however, that the effects on the basic cash
26 value of supplemental life insurance or annuity benefits or of family
27 coverage, as described in subsection c. or subsection g., whichever
28 is applicable shall be the same as are the effects specified in
29 subsection c. or subsection g., whichever is applicable on the cash
30 surrender values defined therein.

31 The nonforfeiture factor for each policy year shall be an amount
32 equal to a percentage of the adjusted premium for the policy year,
33 as defined in subsection g. or h., whichever is applicable. Except as
34 required by the next succeeding sentence of this paragraph, such
35 percentage:

36 shall be the same percentage for each policy year
37 between the second policy anniversary and the later of the
38 fifth policy anniversary and the first policy anniversary at
39 which there is available under the policy a cash surrender
40 value in an amount, before including any paid-up additions
41 and before deducting any indebtedness, of at least $\frac{2}{10}$ of
42 1% of either the amount of insurance, if the insurance be
43 uniform in amount, or the average amount of insurance at
44 the beginning of each of the first 10 policy years; and

45 shall be such that no percentage after the later of the two
46 policy anniversaries specified in the preceding item may
47 apply to fewer than 5 consecutive policy years.

1 Provided, that no basic cash value may be less than the value
2 which would be obtained if the adjusted premiums for the policy, as
3 defined in subsection g., or h., whichever is applicable, were
4 substituted for the nonforfeiture factors in the calculation of the
5 basic cash value.

6 All adjusted premiums and present values referred to in this
7 subsection shall for a particular policy be calculated on the same
8 mortality and interest bases as are used in demonstrating the
9 policy's compliance with the other sections of this amendatory and
10 supplementary act. The cash surrender values referred to in this
11 subsection shall include any endowment benefits provided for by
12 the policy.

13 Any cash surrender value available other than in the event of
14 default in a premium payment due on a policy anniversary, and the
15 amount of any paid-up nonforfeiture benefit available under the
16 policy in the event of default in a premium payment shall be
17 determined in a manner consistent with that specified for
18 determining the appropriate minimum amounts in subsections a., c.,
19 d., g., h. and i. The amounts of any cash surrender values and of any
20 paid-up nonforfeiture benefits granted in connection with additional
21 benefits such as those listed as items (1) through (6) in subsection j.
22 shall conform with the principles of this subsection.

- 23 1. This section shall not apply to any of the following:
- 24 • reinsurance,
 - 25 • group insurance,
 - 26 • annuity contract,
 - 27 • single premium pure endowment contract or single premium
28 reversionary annuity contract,
 - 29 • term policy of uniform amount, which provides no
30 guaranteed nonforfeiture or endowment benefits, or renewal
31 thereof, of 20 years or less expiring before age 71, for which
32 uniform premiums are payable during the entire term of the
33 policy,
 - 34 • term policy of decreasing amount which provides no
35 guaranteed nonforfeiture or endowment benefits, on which
36 each adjusted premium, calculated as specified in
37 subsections g. and h. is less than the adjusted premium so
38 calculated on a term policy of uniform amount, or renewal
39 thereof, which provides no guaranteed nonforfeiture
40 endowment benefits, issued at the same age and for the same
41 initial amount of insurance and for a term of 20 years or less
42 expiring before age 71, for which uniform premiums are
43 payable during the entire term of the policy,
 - 44 • policy which provides no guaranteed nonforfeiture or
45 endowment benefits, for which no cash surrender value, if
46 any, or present value of any paid-up nonforfeiture benefit, at
47 the beginning of any policy year, calculated as specified in

1 subsections c., g., and h. exceeds 2 1/2 % of the amount of
2 insurance at the beginning of the same policy year,

- 3 • policy which shall be delivered outside this State through an
4 agent or other representative of the insurer issuing the
5 policy.

6 For the purposes of determining the applicability of this section,
7 the age at expiry for a joint term life insurance policy shall be the
8 age at expiry of the oldest life.

9 (cf: P.L.1981, c.285, s.4)

10

11 68. This act shall take effect immediately except that sections 58
12 through 67 of this act shall remain inoperative until the operative
13 date of the valuation manual as provided in those sections.

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STATEMENT

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18 The bill addresses financial modernization of the regulation of
19 insurers by the Department of Banking and Insurance in order for
20 the department to maintain accreditation by the National
21 Association of Insurance Commissioners (NAIC) beginning in
22 2015. The bill is based on model laws developed by the NAIC and
23 provides the department with additional information and tools to
24 protect policyholders through the monitoring of insurer financial
25 solvency.

26 Firstly, the bill amends and supplements P.L.1970, c.22
27 (C.17:27A-1 et seq.) concerning insurance holding company
28 systems, to reflect current requirements of the Model Insurance
29 Holding Company System Regulatory Act adopted by the NAIC in
30 2010. The purpose of these provisions of the bill is to promote the
31 reliability and financial strength of insurance institutions. These
32 revisions to the law will provide additional supervisory powers that
33 are necessary to meet the changing realities of the insurance market.
34 Moreover, by complying with the national standard, New Jersey
35 will be able to maintain a level playing field in insurance regulation
36 with other states and hold companies to a uniform standard of
37 financial solvency. Preliminary information gathered during the
38 development of the model act indicates that the cost to implement
39 these new amendments will be manageable both for compliance by
40 insurance companies and enforcement by the department. The
41 revisions include the following: disclosure of enterprise risk
42 reporting within the holding company system, reimbursement for
43 participation in supervisory colleges, modifications to the
44 requirements for transactions within an insurance holding company
45 system, clarifications with regard to the commissioner's authority to
46 access books and records, and enhancements to the requirements for
47 divestiture and disclaimers. This bill also revises provisions
48 governing confidentiality of documents filed and the sharing of

1 otherwise confidential information with other state or federal
2 regulators or the NAIC.

3 This bill also authorizes the Commissioner of Banking and
4 Insurance (“commissioner”) to increase the amount of capital and
5 surplus required, or subsequently revise or redetermine the amount
6 of any increase for hospital service corporations, medical service
7 corporations, dental service corporations, dental plan organizations,
8 health service corporations, prepaid prescription service
9 organizations and licensed organized delivery systems (collectively,
10 “health organizations”) operating in the State based on the health
11 organization's business risks. The methods and procedures for
12 determining any increase will be established by regulation based on
13 the risk based capital (“RBC”) standards adopted by the NAIC for
14 health organizations, including the exemptions for small, single
15 state writers. Similar provisions already apply to property and
16 casualty insurers and to life and health insurers and health
17 maintenance organizations. Application of the NAIC RBC
18 standards to all health organizations is required for a state insurance
19 department to maintain accreditation by the NAIC beginning
20 January 1, 2015.

21 Under the bill, any increase of capital or surplus or revision or
22 redetermination of any such increase will be made only after a
23 formal departmental hearing unless such a hearing is waived by the
24 affected health organization. All matters relating to the hearing or
25 increase of capital or surplus are not subject to subpoena or public
26 inspection, unless the commissioner determines that release of this
27 information is necessary to protect the public.

28 The bill enumerates the risks that the commissioner must
29 consider in determining any increase, revision or determination in
30 the amount of capital or surplus including, but not limited to: (1)
31 increases or decreases in the frequency or severity of losses above
32 levels contemplated by rates charged by the health organization for
33 coverage; (2) increases or decreases in expenses above or below
34 those contemplated by the rates charged by the health organization
35 for coverage; (3) increases or decreases in the value of or return on
36 invested assets above or below those anticipated; (4) changes in
37 economic, social and market conditions that could adversely or
38 favorably affect the financial condition of the health organization;
39 and (5) any other contingencies which may affect the health
40 organization's financial condition.

41 The bill also requires the commissioner to take into account
42 various factors in determining any increase, revision or
43 redetermination of a health organization's capital or surplus,
44 including methods and techniques used to measure risk exposure
45 and variability; available information relating to the magnitude of
46 the various risks that the commissioner must consider in
47 determining any increase, revision or determination; the health

1 organization's financial history and projections of profits or losses;
2 and any other relevant factors.

3 The bill also provides for the Risk Management and Own Risk
4 and Solvency Assessment (ORSA) to be performed by domestic
5 insurers/insurer groups. The bill reflects the Risk Management and
6 Own Risk and Solvency Assessment Model Act adopted by the
7 NAIC in 2012. The ORSA Summary Report must be filed by
8 insurers upon request of the commissioner. If an insurer is a
9 member of an insurance group, a report must be filed with the lead
10 state insurance regulator.

11 The ORSA allows the commissioner access to information to
12 improve understanding of the insurer/insurance group and the
13 material risks to which the insurer/insurance group is exposed,
14 thereby benefitting solvency regulation of these entities. The
15 ORSA will provide group-level perspective on risk and capital, as a
16 supplement to the current reviews.

17 The bill also expressly provides that the commissioner may, in
18 addition to any powers prescribed by law, order any person
19 violating any provision of Title 17 of the Revised Statutes or 17B of
20 the New Jersey Statutes, to cease and desist from engaging in that
21 conduct. The commissioner currently possesses this authority,
22 either express or implied, in certain circumstances. This bill
23 confirms the commissioner's authority to order a person engaging
24 in conduct in violation of the New Jersey banking and insurance
25 statutes to cease and desist from engaging in that activity, in
26 addition to any other powers provided by law.

27 Finally, the bill incorporates the Principles-Based Reserving
28 (PBR) Model Act adopted by the NAIC and includes new sections
29 and amendments to New Jersey's Standard Valuation and Standard
30 Non-Forfeiture Laws, N.J.S. 17B:19-1 et seq., and N.J.S. 17B:25-
31 19, and modernizes the approach to calculating the proper amount
32 of reserves life insurance companies must set aside to pay expected
33 future insurance claims. PBR includes changes to these laws and a
34 new Valuation Manual. The NAIC adopted a revised Standard
35 Valuation Law in 2009, a revised Standard Non-Forfeiture Law in
36 2012, and a Valuation Manual in 2012. PBR will become effective
37 only after the adoption of the Valuation Manual and will apply only
38 to life insurance sold after the date of implementation. Changes to
39 the Standard Non-Forfeiture Law for Life Insurance are intended as
40 a package with the SVL changes so that mortality and interest rate
41 assumptions are coordinated. The Valuation Manual will continue
42 to be updated annually as part of an ongoing maintenance process
43 by the states through the NAIC.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2579

STATE OF NEW JERSEY

DATED: DECEMBER 8, 2014

The Senate Commerce Committee reports favorably Senate Bill No. 2579.

The bill addresses financial modernization of the regulation of insurers by the Department of Banking and Insurance in order for the department to maintain accreditation by the National Association of Insurance Commissioners (NAIC) beginning in 2015. The bill is based on model laws developed by the NAIC and provides the department with additional information and tools to protect policyholders through the monitoring of insurer financial solvency.

Firstly, the bill amends and supplements P.L.1970, c.22 (C.17:27A-1 et seq.) concerning insurance holding company systems, to reflect current requirements of the Model Insurance Holding Company System Regulatory Act adopted by the NAIC in 2010. The purpose of these provisions of the bill is to promote the reliability and financial strength of insurance institutions. These revisions to the law will provide additional supervisory powers that are necessary to meet the changing realities of the insurance market. Moreover, by complying with the national standard, New Jersey will be able to maintain a level playing field in insurance regulation with other states and hold companies to a uniform standard of financial solvency. Preliminary information gathered during the development of the model act indicates that the cost to implement these new amendments will be manageable both for compliance by insurance companies and enforcement by the department. The revisions include the following: disclosure of enterprise risk reporting within the holding company system, reimbursement for participation in supervisory colleges, modifications to the requirements for transactions within an insurance holding company system, clarifications with regard to the commissioner's authority to access books and records, and enhancements to the requirements for divestiture and disclaimers. This bill also revises provisions governing confidentiality of documents filed and the sharing of otherwise confidential information with other state or federal regulators or the NAIC.

This bill also authorizes the Commissioner of Banking and Insurance ("commissioner") to increase the amount of capital and surplus required, or subsequently revise or redetermine the amount of any increase for hospital service corporations, medical service

corporations, dental service corporations, dental plan organizations, health service corporations, prepaid prescription service organizations and licensed organized delivery systems (collectively, “health organizations”) operating in the State based on the health organization's business risks. The methods and procedures for determining any increase will be established by regulation based on the risk based capital (“RBC”) standards adopted by the NAIC for health organizations, including the exemptions for small, single state writers. Similar provisions already apply to property and casualty insurers and to life and health insurers and health maintenance organizations. Application of the NAIC RBC standards to all health organizations is required for a state insurance department to maintain accreditation by the NAIC beginning January 1, 2015.

Under the bill, any increase of capital or surplus or revision or redetermination of any such increase will be made only after a formal departmental hearing unless such a hearing is waived by the affected health organization. All matters relating to the hearing or increase of capital or surplus are not subject to subpoena or public inspection, unless the commissioner determines that release of this information is necessary to protect the public.

The bill enumerates the risks that the commissioner must consider in determining any increase, revision or determination in the amount of capital or surplus including, but not limited to: (1) increases or decreases in the frequency or severity of losses above levels contemplated by rates charged by the health organization for coverage; (2) increases or decreases in expenses above or below those contemplated by the rates charged by the health organization for coverage; (3) increases or decreases in the value of or return on invested assets above or below those anticipated; (4) changes in economic, social and market conditions that could adversely or favorably affect the financial condition of the health organization; and (5) any other contingencies which may affect the health organization's financial condition.

The bill also requires the commissioner to take into account various factors in determining any increase, revision or redetermination of a health organization's capital or surplus, including methods and techniques used to measure risk exposure and variability; available information relating to the magnitude of the various risks that the commissioner must consider in determining any increase, revision or determination; the health organization's financial history and projections of profits or losses; and any other relevant factors.

The bill also provides for the Risk Management and Own Risk and Solvency Assessment (ORSA) to be performed by domestic insurers/insurer groups. The bill reflects the Risk Management and Own Risk and Solvency Assessment Model Act adopted by the NAIC in 2012. The ORSA Summary Report must be filed by insurers upon request of the commissioner. If an insurer is a member of an insurance group, a report must be filed with the lead state insurance regulator.

The ORSA allows the commissioner access to information to improve understanding of the insurer/insurance group and the material risks to which the insurer/insurance group is exposed, thereby benefitting solvency regulation of these entities. The ORSA will provide group-level perspective on risk and capital, as a supplement to the current reviews.

The bill also expressly provides that the commissioner may, in addition to any powers prescribed by law, order any person violating any provision of Title 17 of the Revised Statutes or 17B of the New Jersey Statutes, to cease and desist from engaging in that conduct. The commissioner currently possesses this authority, either express or implied, in certain circumstances. This bill confirms the commissioner's authority to order a person engaging in conduct in violation of the New Jersey banking and insurance statutes to cease and desist from engaging in that activity, in addition to any other powers provided by law.

Finally, the bill incorporates the Principles-Based Reserving (PBR) Model Act adopted by the NAIC and includes new sections and amendments to New Jersey's Standard Valuation and Standard Non-Forfeiture Laws, N.J.S. 17B:19-1 et seq., and N.J.S. 17B:25-19, and modernizes the approach to calculating the proper amount of reserves life insurance companies must set aside to pay expected future insurance claims. PBR includes changes to these laws and a new Valuation Manual. The NAIC adopted a revised Standard Valuation Law in 2009, a revised Standard Non-Forfeiture Law in 2012, and a Valuation Manual in 2012. PBR will become effective only after the adoption of the Valuation Manual and will apply only to life insurance sold after the date of implementation. Changes to the Standard Non-Forfeiture Law for Life Insurance are intended as a package with the SVL changes so that mortality and interest rate assumptions are coordinated. The Valuation Manual will continue to be updated annually as part of an ongoing maintenance process by the states through the NAIC.