

CHAPTER 366

AN ACT concerning insurance holding company systems and amending P.L.1970, c.22.

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

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

C.17:27A-1 Definitions.

1. Definitions.

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

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

b. The term "commissioner" shall mean the Commissioner of Banking and Insurance or the commissioner's deputies.

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

d. An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer. A mutual holding company system resulting from a mutualization and reorganization of a health service corporation pursuant to section 5 of P.L.2020, c.145 (C.17:48E-46.5), shall be an insurance holding company system pursuant to P.L.1970, c. 22 (C.17:27A-1 et seq.).

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

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

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

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

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

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

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

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

m. "Group Capital Calculation instructions" means the Group Capital Calculation instructions as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures.

n. "NAIC" means the National Association of Insurance Commissioners.

o. "NAIC Liquidity Stress Test Framework" means the separate NAIC publication, which includes a history of the NAIC's development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year, the scope criteria, instructions and reporting template being as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

p. "Scope criteria" means the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC Liquidity Stress Test Framework for that data year.

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

C.17:27A-2 Acquisition of control of or merger with domestic insurer.

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

a. (1) Filing requirements. No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, a statement

containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) An agreement by the person required to file the statement referred to in subsection a. of this section that it will provide the annual enterprise risk report, specified in paragraph (1) of subsection k. of section 3 of P.L.1970, c.22 (C.17:27A-3), so long as control exists.

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

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

If the person required to file the statement referred to in subsection a. is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by paragraphs (1) through (14) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection a. is a

corporation, the commissioner may require that the information called for by paragraphs (1) through (14) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

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

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

d. Approval by commissioner; hearings.

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

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

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

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

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

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

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

(iv) The financial condition of any acquiring party is such that:

(a) the acquiring party has not been financially solvent on a generally accepted accounting principles basis, or if an insurer, on a statutory accounting basis, for the most recent three fiscal years immediately prior to the date of the proposed acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence);

(b) the acquiring party has not generated net before-tax profits from its normal business operations for the latest two fiscal years immediately prior to the date of acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); or

(c) the acquisition debt of the acquiring party exceeds 50% of the purchase price of the insurer;

(v) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its

business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

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

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

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

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

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

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

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

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

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

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

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

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

h. Jurisdiction; consent to service of process.

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

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

C.17:27A-3 Registration of insurers.

3. Registration of insurers.

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

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

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

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

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

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

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

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

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

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

(f) Reinsurance agreements;

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

(h) Consolidated tax allocation agreements;

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

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

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

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

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

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

c. **Materiality.** No information need be disclosed on the registration statement filed pursuant to subsection b. of this section if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees or other contingent obligations involving 1/2 of 1% or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section. The definition of materiality provided in this subsection shall not apply for purposes of the Group Capital Calculation or the NAIC Liquidity Stress Test Framework.

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

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

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

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

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

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

j. Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within 30 days following receipt of a complete disclaimer, notifies the filing party in writing that the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request a hearing. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

k. Enterprise risk filings.

(1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(2) Group Capital Calculation. Except as provided below, the ultimate controlling person of an insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the NAIC Group Capital Calculation Instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC. Insurance holding company systems described below are exempt from filing the group capital calculation:

(a) An insurance holding company system that has only one insurer within its holding company structure, that only writes business and is only licensed in its domestic state, and assumes no business from any other insurer;

(b) An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board. The lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing;

(c) An insurance holding company system whose non-U.S. group-wide supervisor is located within a reciprocal jurisdiction as described in subsection e. of section 2 of P.L.1993, c.243 (C.17:51B-2) that recognizes the U.S. state regulatory approach to group supervision and group capital;

(d) An insurance holding company system:

(i) That provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook, and

(ii) Whose non-U.S. group-wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified by the commissioner in regulation, the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction;

(e) Notwithstanding the provisions of subparagraphs (c) and (d) of paragraph (2) of subsection k. of section 3 of P.L.1970, c.22 (C.17:27A-3), a lead state commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

(f) Notwithstanding the exemptions from filing the group capital calculation stated in subparagraphs (a) through (d) of paragraph (2) of subsection k. of section 3 of P.L.1970, c.22 (C.17:27A-3), the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in regulation.

(g) If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.

(3) Liquidity Stress Test. The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific year's Liquidity Stress Test. The filing shall be made to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners:

(a) The NAIC Liquidity Stress Test Framework includes Scope Criteria applicable to a specific data year. These Scope Criteria are reviewed at least annually by the Financial Stability Task Force or its successor. Any change to the NAIC Liquidity Stress Test Framework or to the data year for which the Scope Criteria are to be measured shall be effective on January 1 of the year following the calendar year when the changes are adopted. Insurers meeting at least one threshold of the Scope Criteria are considered scoped into the NAIC Liquidity Stress Test Framework for the specified data year unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the Framework for that data year. Similarly, insurers that do not trigger at least one threshold of the Scope Criteria are considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the Framework for that data year.

Regulators wish to avoid having insurers scoped in and out of the NAIC Liquidity Stress Test Framework on a frequent basis. The lead state insurance commissioner, in consultation with the Financial Stability Task Force or its successor, shall assess this concern as part of the determination for an insurer.

(b) The performance of, and filing of the results from, a specific year's Liquidity Stress Test shall comply with the NAIC Liquidity Stress Test Framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations, in consultation with the Financial Stability Task Force or its successor, provided within the Framework.

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

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

C.17:27A-6 Confidential treatment.

6. Confidential treatment.

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

(1) For purposes of the information reported and provided to the Department of Banking and Insurance pursuant to paragraph (2) of subsection k. of section 3 of P.L.1970, c.22 (C.17:27A-3), the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any US group wide supervisor.

(2) For purposes of the information reported and provided to the Department of Banking and Insurance pursuant to paragraph (3) of subsection k. of section 3 of P.L.1970, c.22 (C.17:27A-3), the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-US group wide supervisors.

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

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

(1) May, upon request, be required to share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection a. of this section, including proprietary and trade secret documents and materials with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners (NAIC), and with any third-party consultants designated by the commissioner, with state, federal, and international law enforcement authorities, including members of any supervisory college described in section 7 of P.L.2014, c.81 (C.17:27A-5.1), provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.

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

(3) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, including propriety and trade-secret information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(4) Shall enter into written agreements with the NAIC and any third-party consultants designated by the commissioner governing the sharing and use of information provided pursuant to P.L.2014, c.81 (C.17:27A-5.1 et al.) consistent with this subsection that shall:

(a) specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant designated by the commissioner pursuant to P.L.2014, c.81 (C.17:27A-5.1 et al.), including procedures and protocols for sharing by the NAIC with other state, federal or international regulators. The agreement shall

provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials or other information and has verified in writing the legal authority to maintain that confidentiality;

(b) specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this subsection remains with the commissioner and the use by the NAIC of the information or the use of a third-party consultant, as designated by the commissioner, is subject to the direction of the commissioner;

(c) excluding documents, materials or information reported pursuant to paragraph (3) of subsection k. of section 3 of P.L.1970, c.22 (C.17:27A-3), prohibit the NAIC or third-party consultant designated by the commissioner from storing the information shared pursuant to P.L.1970, c.22 (C.17:27A-1 et seq.) in a permanent database after the underlying analysis is completed;

(d) require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant designated by the commissioner pursuant to P.L.2014, c.81 (C.17:27A-5.1 et al.) is subject to a request or subpoena to the NAIC or a third-party consultant designated by the commissioner for disclosure or production;

(e) require the NAIC or a third-party consultant designated by the commissioner to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant designated by the commissioner may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant designated by the commissioner pursuant to P.L.1970, c.22 (C.17:27A-1 et seq.), including with respect to the participation in supervisory colleges in accordance with section 7 of P.L.2014, c.81 (C.17:27A-5.1); and

(f) for documents, material or information reporting pursuant to paragraph (3) of subsection k. of section 3 of P.L.1970, c.22 (C.17:27A-3), in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurer.

d. The sharing of information by the commissioner pursuant to this section shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of P.L.2014, c.81 (C.17:27A-5.1 et al.).

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

f. Documents, materials or other information in the possession or control of the NAIC or a third-party consultant designated by the commissioner pursuant to P.L.2014, c.81 (C.17:27A-5.1 et al.) shall be confidential by law and privileged, shall not be subject to P.L.1963, c.73 (C.47:1A-1 et seq.), shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

g. The group capital calculation and resulting group capital ratio required pursuant to paragraph (2) of subsection k. of section 3 of P.L.1970, c.22 (C.17:27A-3), and the liquidity stress test along with its results and supporting disclosures required pursuant to paragraph (3) of subsection k. of section 3 of P.L.1970, c.22 (C.17:27A-3), are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of P.L.1970, c.22 (C.17:27A-1 et seq.), the making, publishing, disseminating, circulating or placing before the public, or causing directly

or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of the statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

5. This act shall be effective immediately upon enactment.

Approved January 10, 2022.