

# 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.