

SENATE, No. 2579

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED DECEMBER 1, 2014

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

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

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

10 1. Definitions.

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 d. Approval by commissioner; hearings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 h. Jurisdiction; consent to service of process.

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

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

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

4
5 3. Section 3 of P.L.1970, c.22 (C.17:27A-3) is amended to read
6 as follows:

7 3. Registration of insurers.

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

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

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

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

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

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

- 1 (b) Purchases, sales, or exchanges of assets;
- 2 (c) Transactions not in the ordinary course of business;
- 3 (d) Guarantees or undertakings for the benefit of an affiliate
- 4 which result in an actual contingent exposure of the insurer's assets
- 5 to liability, other than insurance contracts entered into in the
- 6 ordinary course of the insurer's business;
- 7 (e) All management agreements, service contracts and all cost-
- 8 sharing arrangements;
- 9 (f) Reinsurance agreements;
- 10 (g) Dividends and other distributions to shareholders, including
- 11 the declarations and authorizations thereof; and
- 12 (h) Consolidated tax allocation agreements;
- 13 (4) Any pledge of the insurer's stock, including stock of any
- 14 subsidiary or controlling affiliate, for a loan made to any member of
- 15 the insurance holding company system; **[or]**
- 16 (5) Financial statements of or within an insurance holding
- 17 company system, including all affiliates, if requested by the
- 18 commissioner. Financial statements shall include, but are not
- 19 limited to, annual audited financial statements filed with the U.S.
- 20 Securities and Exchange Commission (SEC) pursuant to the
- 21 Securities Act of 1933, 15 U.S.C. s.77a et seq., or the Securities
- 22 Exchange Act of 1934, 15 U.S.C. s.78a et seq. An insurer required
- 23 to file financial statements pursuant to this paragraph may satisfy
- 24 the request by providing the commissioner with the most recently
- 25 filed parent corporation financial statements that have been filed
- 26 with the SEC;
- 27 (6) Other matters concerning transactions between registered
- 28 insurers and any affiliates as may be included from time to time in
- 29 any registration forms adopted or approved by the commissioner;
- 30 (7) Statements that the insurer's board of directors is responsible
- 31 for and oversees corporate governance and internal controls and that
- 32 the insurer's officers or senior management have approved,
- 33 implemented, and continue to maintain and monitor corporate
- 34 governance and internal control procedures; and
- 35 (8) Any other information required by the commissioner by rule
- 36 or regulation .
- 37 All registration statements shall contain a summary outlining all
- 38 items in the current registration statement representing changes
- 39 from the prior registration statement.
- 40 c. Materiality. No information need be disclosed on the
- 41 registration statement filed pursuant to subsection b. of this section
- 42 if such information is not material for the purposes of this section.
- 43 Unless the commissioner by rule, regulation or order provides
- 44 otherwise, sales, purchases, exchanges, loans or extensions of
- 45 credit, investments, or guarantees or other contingent obligations
- 46 involving 1/2 of 1% or less of an insurer's admitted assets as of
- 47 December 31 next preceding shall not be deemed material for
- 48 purposes of this section.

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

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

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

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

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

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

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

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

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

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

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

18

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

21 4. Standards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 d. Management of domestic insurers subject to registration.

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

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

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

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

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

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

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

33
34 5. Section 7 of P.L.1993, c.241 (C.17:27A-4.1) is amended to
35 read as follows:

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

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

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

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

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

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

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

16 (c) The acquisition of already affiliated persons;

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

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

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

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

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

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

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

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

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

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

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

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

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

43

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

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

3

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

11

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (i) there is a hearing,

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

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

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

1 the aspects of the acquisition causing a violation of the standards of
2 this section may be remedied and the order vacated or modified.

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

5 (2) Any person who violates a cease and desist order of the
6 commissioner under paragraph (1) while such order is in effect,
7 may after notice and hearing, be subject to a penalty of up to
8 \$10,000 for each day of violation, or suspension or revocation of
9 that person's license, or both.

10 (3) Any insurer or other person who fails to make any filing
11 required by this section shall be required to pay a penalty of up to
12 \$5,000 per violation.

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

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

20 (cf: P.L.1993, c.241, s.7)

21

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

24 5. Examination.

25 a. Power of commissioner. In addition to the powers which the
26 commissioner has under other sections of Title 17 of the Revised
27 Statutes and Title 17B of the New Jersey Statutes relating to the
28 examination of insurers, the commissioner shall **[also]** have the
29 power to examine any insurer registered under section 3 of
30 P.L.1970, c.22 (C.17:27A-3) and its affiliates to ascertain the
31 financial condition of the insurer, including the enterprise risk to the
32 insurer by the ultimate controlling party, or by any entity or
33 combination of entities within the insurance holding company
34 system, or by the insurance holding company system on a
35 consolidated basis.

36 The commissioner shall also have the power to order any insurer
37 registered under section 3 to produce such records, books, or other
38 information papers in the possession of the insurer or its affiliates as
39 shall be necessary to ascertain the financial condition of the insurer
40 or to determine compliance with P.L.1970, c.22 (C.17:27A-1 et
41 seq.). In the event such insurer fails to comply with such order, the
42 commissioner shall have the power to examine such affiliates to
43 obtain such information.

44 In addition, to determine compliance with this section, the
45 commissioner may order any insurer registered under section 3 of
46 P.L.1970, c.22 (C.17:27A-3) to produce information not in the
47 possession of the insurer if the insurer can obtain access to that
48 information pursuant to contractual relationships, statutory

1 obligations, or other method. In the event the insurer cannot obtain
2 the information requested by the commissioner, the insurer shall
3 provide to the commissioner a detailed explanation of the reason
4 that the insurer cannot obtain the information and the identity of the
5 holder of the information. Whenever it appears to the commissioner
6 that the detailed explanation is without merit, the commissioner
7 may require the insurer, after notice and opportunity for a hearing,
8 to pay a penalty of up to \$5,000 for each day's delay, or may
9 suspend or revoke the insurer's certificate of authority.

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

11 c. Use of consultants. The commissioner may retain at the
12 registered insurer's expense such attorneys, actuaries, accountants
13 and other persons as shall be necessary to assist in the conduct of
14 the examination under subsection a. above. Any persons so retained
15 shall be under the direction and control of the commissioner and
16 shall act in a purely advisory capacity.

17 d. Expenses. The reasonable expenses of the examination
18 pursuant to subsection a. above shall be fixed and determined by the
19 commissioner, and he shall collect them from the insurer examined,
20 which shall pay them on presentation of an accounting of the
21 expenses.

22 e. Compelling production. In the event the insurer fails to
23 comply with an order issued pursuant to this section, the
24 commissioner shall have the power to examine the affiliates to
25 obtain the information. The commissioner shall also have the power
26 to issue subpoenas, to administer oaths, and to examine under oath
27 any person for purposes of determining compliance with this
28 section. Upon the failure or refusal of any person to obey a
29 subpoena, the commissioner may petition a court of competent
30 jurisdiction, and upon proper showing, the court may enter an order
31 compelling the witness to appear and testify or produce
32 documentary evidence. Failure to obey the court order shall be
33 punishable as contempt of court. Every person shall be obliged to
34 attend as a witness at the place specified in the subpoena, when
35 subpoenaed, anywhere within the State. He or she shall be entitled
36 to the same fees and mileage, if claimed, as a witness in the
37 Superior Court of New Jersey, which fees, mileage, and actual
38 expense, if any, necessarily incurred in securing the attendance of
39 witnesses, and their testimony, shall be itemized and charged
40 against, and be paid by, the company being examined.

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

42
43 7. (New section) a. Power of commissioner. With respect to
44 any insurer registered under section 3 of P.L.1970, c.22 (C.17:27A-
45 3), and in accordance with subsection c. of this section, the
46 commissioner shall also have the power to participate in a
47 supervisory college for any domestic insurer that is part of an
48 insurance holding company system with international operations in

1 order to determine compliance by the insurer with P.L. ,
2 c. (C.) (pending before the Legislature as this bill). The
3 powers of the commissioner with respect to supervisory colleges
4 include, but are not limited to, the following:

- 5 (1) Initiating the establishment of a supervisory college;
- 6 (2) Clarifying the membership and participation of other
7 supervisors in the supervisory college;
- 8 (3) Clarifying the functions of the supervisory college and the
9 role of other regulators, including the establishment of a group-wide
10 supervisor;
- 11 (4) Coordinating the ongoing activities of the supervisory
12 college, including planning meetings, supervisory activities, and
13 processes for information sharing; and
- 14 (5) Establishing a crisis management plan.

15 b. Expenses. Each registered insurer subject to this section
16 shall be liable for and shall pay the reasonable expenses of the
17 commissioner's participation in a supervisory college in accordance
18 with subsection c. of this section, including reasonable travel
19 expenses. For purposes of this section, a supervisory college may be
20 convened as either a temporary or permanent forum for
21 communication and cooperation between the regulators charged
22 with the supervision of the insurer or its affiliates, and the
23 commissioner may establish a regular assessment to the insurer for
24 the payment of these expenses.

25 c. Supervisory college. In order to assess the business strategy,
26 financial position, legal and regulatory position, risk exposure, risk
27 management and governance processes, and as part of the
28 examination of individual insurers in accordance with section 5 of
29 P.L.1970, c.22 (C.17:27A-5), the commissioner may participate in a
30 supervisory college with other regulators charged with supervision
31 of the insurer or its affiliates, including other state, federal and
32 international regulatory agencies. The commissioner may enter into
33 agreements in accordance with subsection c. of section 6 of
34 P.L.1970, c.22, (C.17:27A-6) providing the basis for cooperation
35 between the commissioner and the other regulatory agencies, and
36 the activities of the supervisory college. Nothing in this section
37 shall delegate to the supervisory college the authority of the
38 commissioner to regulate or supervise the insurer or its affiliates
39 within its jurisdiction.

40

41 8. (New section) Group-wide supervision for international
42 insurance groups

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

46 "Group-wide supervisor" means the chief insurance regulatory
47 official authorized to engage in conducting and coordinating group-
48 wide supervision activities who is from the jurisdiction determined

1 or acknowledged by the commissioner under this section to have
2 sufficient significant contacts with the international insurance
3 group.

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

7 b. The commissioner is authorized to act as the group-wide
8 supervisor for any international insurance group if the international
9 insurance group's ultimate controlling person is domiciled in this
10 State. The commissioner may otherwise acknowledge another
11 jurisdiction as the group-wide supervisor pursuant to the factors set
12 forth in subsections c. and f. of this section whenever the
13 international insurance group:

14 (1) Does not have substantial insurance operations in the United
15 States;

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

18 (3) Has substantial insurance operations in the United States and
19 this State, but the commissioner has determined that another
20 jurisdiction is the appropriate group-wide supervisor.

21 c. In cooperation with other supervisors, the commissioner may
22 determine that the commissioner is the appropriate group-wide
23 supervisor for an international insurance group with substantial
24 operations concentrated in this State or with substantial insurance
25 operations conducted by subsidiary insurance companies domiciled
26 in this State, where the ultimate controlling person is domiciled
27 outside of this State, or the commissioner may acknowledge that
28 another chief insurance regulatory official is the appropriate group-
29 wide supervisor for the international insurance group. The
30 commissioner shall consider the following factors and the relative
31 scale of each when making a determination or acknowledgment
32 under this subsection:

33 (1) The location where the international insurance group is
34 based or the place of domicile of the ultimate controlling person of
35 the international insurance group;

36 (2) The locations of the international insurance group's
37 executive offices;

38 (3) The locations of origin of the insurance business of the
39 international insurance group;

40 (4) The locations of the assets and liabilities of the international
41 insurance group;

42 (5) The locations of the business operations and activities of the
43 international insurance group; and

44 (6) If another chief insurance regulatory official is seeking to act
45 as the lead group-wide supervisor whether that jurisdiction:

46 (a) provides the commissioner with reasonably reciprocal
47 recognition and cooperation; and

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

6 However, when another chief insurance regulatory official is
7 currently acting as the lead group-wide supervisor of an
8 international insurance group and is acknowledged as such in the
9 National Association of Insurance Commissioners (NAIC) Lead
10 State Summary Report, the commissioner shall defer to that lead
11 group-wide supervisor designation unless the commissioner
12 determines that there has been a significant material change in the
13 international insurance group that:

14 (i) results in the group's insurers domiciled in this State holding
15 the majority of the group's assets or liabilities;

16 (ii) materially alters the operations or ownership of the group's
17 insurers domiciled in this State; or

18 (iii) makes this State the jurisdiction with the group's largest
19 premium volume or insured exposures.

20 In the event of a dispute as to the proper jurisdiction to act as
21 lead group-wide supervisor, a determination by the commissioner
22 not to defer to the current lead group-wide supervisor shall be made
23 only after notice and a hearing, and such determination shall be
24 accompanied by specific findings of fact and conclusions of law.

25 d. Pursuant to section 5 of P.L.1970, c.22 (C.17:27A-5), the
26 commissioner is authorized to collect from any insurer registered
27 pursuant to section 3 of P.L.1970, c.22 (C.17:27A-3) all
28 information necessary to determine whether the commissioner may
29 act as the group-wide supervisor or if the commissioner may
30 acknowledge another insurance regulatory official to act as the
31 group-wide supervisor. Prior to issuing a determination that an
32 international insurance group is subject to group-wide supervision
33 by the commissioner, the commissioner shall notify the insurer
34 registered pursuant to section 3 of P.L.1970, c.22 (C.17:27A-3) and
35 the ultimate controlling person within the international insurance
36 group. The international insurance group shall have not less than 30
37 days to provide the commissioner with additional information
38 pertinent to the pending determination. The commissioner shall
39 publish on the Department of Banking and Insurance website the
40 identity of international insurance groups that the commissioner has
41 determined are subject to its group-wide supervision.

42 e. If the commissioner is the group-wide supervisor for an
43 international insurance group, the commissioner is authorized to
44 engage in conducting and coordinating any of the following group-
45 wide supervision activities:

46 (1) Assess the enterprise risks within the international insurance
47 group, pursuant to section 5 of P.L.1970, c.22 (C.17:27A-5), to
48 ensure that:

1 (a) The material financial condition and liquidity risks to the
2 members of the international insurance group which are engaged in
3 the business of insurance are identified by management.

4 (b) Reasonable and effective mitigation measures are in place.

5 (2) Request, from any member of an international insurance
6 group subject to the commissioner's supervision, information
7 necessary and appropriate to assess enterprise risk, including, but
8 not limited to, information about the members of the international
9 insurance group regarding:

10 (a) Governance, risk assessment and management.

11 (b) Capital adequacy.

12 (c) Material intercompany transactions.

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

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

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

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

36 f. If the commissioner acknowledges that a regulatory official
37 from a jurisdiction which is not accredited by the National
38 Association of Insurance Commissioners (NAIC) is the group-wide
39 supervisor, the commissioner is authorized to reasonably cooperate,
40 through supervisory colleges or otherwise, with group supervision
41 undertaken by the group-wide supervisor, provided that:

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

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

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

7 h. The commissioner may promulgate regulations pursuant to
8 the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et
9 seq.) necessary for the administration of this section. In
10 determining whether to promulgate a regulation, the commissioner
11 shall give appropriate consideration to model laws, model
12 regulations and definitions or guidelines pertaining to group-wide
13 supervision, if any, promulgated by the NAIC or other recognized
14 insurance regulatory bodies or associations.

15 i. A registered insurer subject to this section shall be liable for
16 and shall pay the reasonable expenses of the commissioner's
17 participation in the administration of this section, including the
18 engagement of attorneys, actuaries and any other professionals and
19 all reasonable travel expenses.

20
21 9. Section 6 of P.L.1970, c.22 (C.17:27A-6) is amended to read
22 as follows:

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

38 a. Documents, materials or other information in the possession
39 or control of the department that are obtained by or disclosed to the
40 commissioner or any other person in the course of an examination
41 or investigation made pursuant to section 5 of P.L.1970, c.22
42 (C.17:27A-5) and all information reported pursuant to paragraphs
43 (12) and (13) of subsection b. of section 2 of P.L.1970, c.22
44 (C.17:27A-2), section 3 and section 4 of P.L.1970, c.22 (C.17:27A-
45 3 and 17:27A-4) shall be confidential by law and privileged, shall
46 not be subject to P.L.1963, c.73 (C.47:1A-1 et seq.), shall not be
47 subject to subpoena, and shall not be subject to discovery or
48 admissible in evidence in any private civil action. The

1 commissioner is authorized to use the documents, materials or other
2 information in the furtherance of any regulatory or legal action
3 brought as a part of the commissioner's official duties. The
4 commissioner shall not otherwise make the documents, materials or
5 other information public without the prior written consent of the
6 insurer to which it pertains unless the commissioner, after giving
7 the insurer and its affiliates who would be affected thereby notice
8 and opportunity to be heard, determines that the interest of
9 policyholders, shareholders or the public will be served by the
10 publication thereof, in which event the commissioner may publish
11 all or any part in such manner as may be deemed appropriate.

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

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

21 (1) May, upon request, be required to share documents,
22 materials or other information, including the confidential and
23 privileged documents, materials or information subject to
24 subsection a. of this section, with other state, federal and
25 international regulatory agencies, with the National Association of
26 Insurance Commissioners (NAIC) and its affiliates and subsidiaries,
27 and with state, federal, and international law enforcement
28 authorities, including members of any supervisory college described
29 in section 7 of P.L. , c. (C.) (pending before the Legislature
30 as this bill), provided that the recipient agrees in writing to maintain
31 the confidentiality and privileged status of the document, material
32 or other information, and has verified in writing the legal authority
33 to maintain confidentiality.

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

41 (3) May receive documents, materials or information, including
42 otherwise confidential and privileged documents, materials or
43 information from the NAIC and its affiliates and subsidiaries and
44 from regulatory and law enforcement officials of other foreign or
45 domestic jurisdictions, and shall maintain as confidential or
46 privileged any document, material or information received with
47 notice or the understanding that it is confidential or privileged

1 under the laws of the jurisdiction that is the source of the document,
2 material or information; and

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

7 (a) specify procedures and protocols regarding the
8 confidentiality and security of information shared with the NAIC
9 and its affiliates and subsidiaries pursuant to P.L. , c. (C.)
10 (pending before the Legislature as this bill), including procedures
11 and protocols for sharing by the NAIC with other state, federal or
12 international regulators;

13 (b) specify that ownership of information shared with the NAIC
14 and its affiliates and subsidiaries pursuant to this subsection
15 remains with the commissioner and the use by the NAIC of the
16 information is subject to the direction of the commissioner;

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

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

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

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

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

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

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

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

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

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

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

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

47 f. Whenever it appears to the commissioner that any person
48 has committed a violation of section 2 of P.L.1970, c.22

1 (C.17:27A-2), which violation prevents the full understanding of
2 the enterprise risk to the insurer by affiliates or by the insurance
3 holding company system, the violation may serve as an independent
4 basis for disapproving dividends or distributions and for placing the
5 insurer under an order of supervision in accordance with P.L.1993,
6 c.245 (C.17:51A-1 et seq.).
7 (cf: P.L.1993, c.241, s.8)
8

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

11 “Commissioner” means the Commissioner of Banking and
12 Insurance.

13 “Hospital service corporation” means an entity authorized to
14 transact business in this State pursuant to P.L.1938, c.366 (C.17:48-
15 1 et seq.).
16

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

44 a. Increases or decreases in the frequency and severity of losses
45 under normal operating conditions, as well as increases or decreases
46 in those values, above or below the levels contemplated by the rates
47 that the hospital service corporation charged for coverage and above
48 or below those reasonably expected under normal conditions;

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

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

6
7 15. (New section) The commissioner may promulgate
8 regulations pursuant to the "Administrative Procedure Act,"
9 P.L.1968, c.410 (C. 52:14B-1 et seq.) necessary to effectuate the
10 purposes of sections 11 through 15 of P.L. , c. (C.)
11 (pending before the Legislature as this bill). Such rules and
12 regulations shall be consistent with the standards for risk based
13 capital for health organizations adopted by the National Association
14 of Insurance Commissioners.

15
16 16. (New section) As used in sections 16 through 20 of P.L. ,
17 c. (C.) (pending before the Legislature as this bill):

18 "Commissioner" means the Commissioner of Banking and
19 Insurance.

20 "Medical service corporation" means an entity authorized to
21 transact business in this State pursuant to P.L.1940, c.74
22 (C.17:48A-1 et seq.).

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

1 any increase, revision or redetermination in the amount of capital or
2 surplus, the commissioner shall consider the risks of:

3 a. Increases or decreases in the frequency and severity of losses
4 under normal operating conditions, as well as increases or decreases
5 in those values, above or below the levels contemplated by the rates
6 that the medical service corporation charged for coverage and above
7 or below those reasonably expected under normal conditions;

8 b. Increases or decreases in expenses under normal operating
9 conditions, as well as increases or decreases in those values, above
10 or below the levels contemplated by the rates the medical service
11 corporation charged for coverage and above or below those
12 reasonably expected under normal conditions;

13 c. Increases or decreases in the value of, or return on, invested
14 assets under normal operating conditions, as well as increases or
15 decreases in those values, above or below those levels anticipated
16 under normal conditions;

17 d. Changes in economic, social or market conditions that could
18 adversely or favorably affect the financial condition of the medical
19 service corporation, including conditions that would make liquidity
20 more or less important than contemplated and would prevent or
21 facilitate timely investments or force or prohibit untimely sales of
22 assets; and

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

26

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

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

32 a. Methods and techniques used to measure risk exposure and
33 variability;

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

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

41 d. The extent to which the medical service corporation has
42 provided protection against contingencies in ways other than the
43 establishment of surplus, including, but not limited to: redundancy
44 of premiums; margin in reserves and liabilities; adjustability of
45 contracts pursuant to the terms of the contracts; voluntary or
46 mandatory investment valuation reserves; reinsurance; the use of
47 conservative actuarial assumptions to provide a margin of security;
48 reserve adjustments after rate increases for policies written at earlier

1 and less adequate rates; contingency or catastrophe reserves; and
2 diversification of assets and underwriting risk; and

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

8
9 19. (New Section) The commissioner may suspend or revoke the
10 authority to do business in this State of any medical service
11 corporation that does not comply with the provisions of sections 16
12 through 20 of P.L. , c. (C.) (pending before the
13 Legislature as this bill).

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

23
24 21. (New section) As used in sections 21 through 25 of P.L. ,
25 c. (C.) (pending before the Legislature as this bill):

26 "Commissioner" means the Commissioner of Banking and
27 Insurance.

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

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

1 commissioner finds release of that information necessary to protect
2 the public. The hearing shall be initiated within 20 days after
3 written notice to the dental service corporation. Any declaration
4 regarding an increase required by a subsequent revision or
5 redetermination shall contain findings specifying the factors
6 deemed significant in regard to the particular dental service
7 corporation, and shall set forth the reasons supporting the increase
8 of capital or surplus ordered by the commissioner. In determining
9 any increase, revision or redetermination in the amount of capital or
10 surplus, the commissioner shall consider the risks of:

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

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

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

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

31 e. Any other contingencies, including reinsurance and
32 unfunded or extra contractual obligations, which may affect the
33 dental service corporation's financial condition.

34

35 23. (New section) In determining any increase, revision or
36 redetermination in the capital or surplus of a dental service
37 corporation pursuant to the provisions of section 22 of P.L. ,
38 c. (C.) (pending before the Legislature as this bill) the
39 commissioner shall take into account the following factors:

40 a. Methods and techniques used to measure risk exposure and
41 variability;

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

45 c. The extent to which risks described in section 22 of P.L. ,
46 c. (C.) (pending before the Legislature as this bill) are
47 independent or interrelated, and whether any dependency is direct
48 or inverse;

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

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

16
17 24. (New Section) The commissioner may suspend or revoke
18 the authority to do business in this State of any dental service
19 corporation that does not comply with the provisions of sections 21
20 through 25 of P.L. , c. (C.) (pending before the
21 Legislature as this bill).

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

31
32 26. (New section) As used in sections 26 through 30 of P.L. ,
33 c. (C.) (pending before the Legislature as this bill):

34 "Commissioner" means the Commissioner of Banking and
35 Insurance.

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

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

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

19 a. Increases or decreases in the frequency and severity of losses
20 under normal operating conditions, as well as increases or decreases
21 in those values, above or below the levels contemplated by the rates
22 that the dental plan organization charged for coverage and above or
23 below those reasonably expected under normal conditions;

24 b. Increases or decreases in expenses under normal operating
25 conditions, as well as increases or decreases in those values, above
26 or below the levels contemplated by the rates the dental plan
27 organization charged for coverage and above or below those
28 reasonably expected under normal conditions;

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

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

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

42

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

- 1 a. Methods and techniques used to measure risk exposure and
2 variability;
- 3 b. The information available relating to the magnitude of the
4 various risks described in section 27 of P.L. , c. (C)
5 (pending before the Legislature as this bill);
- 6 c. The extent to which risks described in section 27 of P.L. ,
7 c. (C.) (pending before the Legislature as this bill) are
8 independent or interrelated, and whether any dependency is direct
9 or inverse;
- 10 d. The extent to which the dental plan organization has
11 provided protection against contingencies in ways other than the
12 establishment of surplus, including, but not limited to: redundancy
13 of premiums; margin in reserves and liabilities; adjustability of
14 contracts pursuant to the terms of the contracts; voluntary or
15 mandatory investment valuation reserves; reinsurance; the use of
16 conservative actuarial assumptions to provide a margin of security;
17 reserve adjustments after rate increases for policies written at earlier
18 and less adequate rates; contingency or catastrophe reserves; and
19 diversification of assets and underwriting risk; and
- 20 e. Any other relevant factors, including the National
21 Association of Insurance Commissioners' reports and independent
22 judgments of the soundness of the dental plan organization's
23 financial condition, as evidenced by the rating and reports of
24 reliable professional financial services.
- 25
- 26 29. (New section) The commissioner may suspend or revoke the
27 authority to do business in this State of any dental plan organization
28 that does not comply with the provisions of sections 26 through 30
29 of P.L. , c. (C.) (pending before the Legislature as this
30 bill).
- 31
- 32 30. (New section) The commissioner may promulgate
33 regulations pursuant to the "Administrative Procedure Act,"
34 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
35 purposes of sections 26 through 30 of P.L. , c. (C.)
36 (pending before the Legislature as this bill). Such rules and
37 regulations shall be consistent with the standards for risk based
38 capital for health organizations adopted by the National Association
39 of Insurance Commissioners.
- 40
- 41 31. (New section) As used in sections 31 through 35 of P.L. ,
42 c. (C.) (pending before the Legislature as this bill):
- 43 "Commissioner" means the Commissioner of Banking and
44 Insurance.
- 45 "Health service corporation" means an entity authorized to
46 transact business in this State pursuant to P.L.1985, c.236
47 (C. 17:48E-1 et seq.).

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

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

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

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

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

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

4
5 33. (New section) In determining any increase, revision or
6 redetermination in the capital or surplus of a health service
7 corporation pursuant to the provisions of section 32 of P.L. ,
8 c. (C.) (pending before the Legislature as this bill) the
9 commissioner shall take into account the following factors:

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

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

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

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

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

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

40
41 35. (New section) The commissioner may promulgate
42 regulations pursuant to the "Administrative Procedure Act,"
43 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
44 purposes of sections 31 through 35 of P.L. , c. (C.)
45 (pending before the Legislature as this bill). Such rules and
46 regulations shall be consistent with the standards for risk based
47 capital for health organizations adopted by the National Association
48 of Insurance Commissioners.

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

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

5 “Prepaid prescription service organization” means an entity
6 authorized to transact business in this State pursuant to P.L.1997,
7 c.380 (C.17:48F-1 et seq.).
8

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

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

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

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

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

11 e. Any other contingencies, including reinsurance and
12 unfunded or extra contractual obligations, which may affect the
13 prepaid prescription service organization's financial condition.

14

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

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

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

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

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

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

44

45 39. (New section) The commissioner may suspend or revoke the
46 authority to do business in this State of any prepaid prescription
47 services organization that does not comply with the provisions of

1 sections 36 through 40 of P.L. , c. (C.) (pending before the
2 Legislature as this bill).

3
4 40. (New section) The commissioner may promulgate
5 regulations pursuant to the "Administrative Procedure Act,"
6 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
7 purposes of sections 36 through 40 of P.L. , c. (C.)
8 (pending before the Legislature as this bill). Such rules and
9 regulations shall be consistent with the standards for risk based
10 capital for health organizations adopted by the National Association
11 of Insurance Commissioners.

12
13 41. (New section) As used in sections 41 through 45 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill):

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

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

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

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

1 and less adequate rates; contingency or catastrophe reserves; and
2 diversification of assets and underwriting risk; and

3 e. Any other relevant factors, including the National
4 Association of Insurance Commissioners' reports and independent
5 judgments of the soundness of the licensed organized delivery
6 system's financial condition, as evidenced by the rating and reports
7 of reliable professional financial services.

8
9 44. (New section) The commissioner may suspend or revoke the
10 authority to do business in this State of any licensed organized
11 delivery system that does not comply with the provisions of
12 sections 41 through 45 of P.L. , c. (C.) (pending before
13 the Legislature as this bill).

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

23
24 46. (New section) a. The purpose of sections 46 through 56 of
25 P.L. , c. (C.) (pending before the Legislature as this bill)
26 is to provide the requirements for maintaining a risk management
27 framework and completing an Own Risk and Solvency Assessment
28 (ORSA) and provide guidance and instructions for filing an ORSA
29 Summary Report with the Commissioner of Banking and Insurance.

30 b. The requirements of sections 46 through 56 of P.L. ,
31 c. (C.) (pending before the Legislature as this bill) shall apply
32 to all insurers domiciled in this State unless exempt pursuant to
33 section 51 of P.L. , c. (C.) (pending before the
34 Legislature as this bill).

35 c. The Legislature finds and declares that the ORSA Summary
36 Report shall contain confidential and sensitive information related
37 to an insurer or insurance group's identification of risks material
38 and relevant to the insurer or insurance group filing the report. This
39 information will include proprietary and trade secret information
40 that has the potential for harm and competitive disadvantage to the
41 insurer or insurance group if the information is made public. It is
42 the intent of this Legislature that, notwithstanding any other law to
43 the contrary, the ORSA Summary Report shall be a confidential
44 document filed with the commissioner, that the ORSA Summary
45 Report shall be shared only as stated herein and to assist the
46 commissioner in the performance of his or her duties, and that in no
47 event shall the ORSA Summary Report be subject to public
48 disclosure.

1 47. (New section) For the purposes of sections 46 through 56 of
2 P.L. , c. (C.) (pending before the Legislature as this bill):
3 “Commissioner” means the Commissioner of Banking and
4 Insurance.

5 “Insurance group” for the purpose of conducting an ORSA,
6 means those insurers and affiliates included within an insurance
7 holding company system as defined in P.L.1970, c.22 (C.17:27A-1
8 et seq.).

9 “Insurer” shall have the same meaning as set forth in section 2 of
10 P.L.1993, c.236 (C.17:23-21), except that it shall not include
11 agencies, authorities or instrumentalities of the United States, its
12 possessions and territories, the Commonwealth of Puerto Rico, the
13 District of Columbia, or a state or political subdivision of a state.

14 “Own Risk and Solvency Assessment” or “ORSA” means a
15 confidential internal assessment, appropriate to the nature, scale and
16 complexity of an insurer or insurance group, conducted by that
17 insurer or insurance group of the material and relevant risks
18 associated with the insurer or insurance group’s current business
19 plan, and the sufficiency of capital resources to support those risks.

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

26 “ORSA Summary Report” means a confidential high-level
27 summary of an insurer or insurance group’s ORSA.
28

29 48. (New section) An insurer shall maintain a risk management
30 framework to assist the insurer with identifying, assessing,
31 monitoring, managing and reporting on its material and relevant
32 risks. This requirement may be satisfied if the insurance group of
33 which the insurer is a member maintains a risk management
34 framework applicable to the operations of the insurer.
35

36 49. (New section) Except as provided in section 51 of P.L. ,
37 c. (C.) (pending before the Legislature as this bill), an
38 insurer, or the insurance group of which the insurer is a member,
39 shall regularly conduct an ORSA consistent with a process
40 comparable to the ORSA Guidance Manual. The ORSA shall be
41 conducted no less than annually but also at any time when there are
42 significant changes to the risk profile of the insurer or the insurance
43 group of which the insurer is a member.
44

45 50. (New section) a. Upon the commissioner’s request, and no
46 more than once each year, an insurer shall submit to the
47 commissioner an ORSA Summary Report or any combination of
48 reports that together contain the information described in the ORSA

1 Guidance Manual applicable to the insurer or the insurance group of
2 which it is a member. Notwithstanding any request from the
3 commissioner, if the insurer is a member of an insurance group, the
4 insurer shall submit the report or reports required by this subsection
5 if the commissioner is the lead state commissioner of the insurance
6 group as determined by the procedures within the Financial
7 Analysis Handbook adopted by the National Association of
8 Insurance Commissioners.

9 b. The report or reports shall include a signature of the insurer
10 or insurance group's chief risk officer or other executive having
11 responsibility for the oversight of the insurer's enterprise risk
12 management process attesting to the best of the individual's belief
13 and knowledge that the insurer applies the enterprise risk
14 management process described in the ORSA Summary Report and
15 that a copy of the report has been provided to the insurer's board of
16 directors or the appropriate committee thereof.

17 c. An insurer may comply with subsection a. of this section by
18 providing the most recent and substantially similar report or reports
19 provided by the insurer or another member of an insurance group of
20 which the insurer is a member to the commissioner of another state
21 or to a supervisor or regulator of a foreign jurisdiction, if that report
22 provides information that is comparable to the information
23 described in the ORSA Guidance Manual. Any such report in a
24 language other than English must be accompanied by a translation
25 of that report into the English language.

26
27 51. (New section) a. An insurer shall be exempt from the
28 requirements of sections 46 through 56 of P.L. , c. (C.)
29 (pending before the Legislature as this bill), if:

30 (1) The insurer has annual direct written and unaffiliated
31 assumed premium, including international direct and assumed
32 premium but excluding premiums reinsured with the Federal Crop
33 Insurance Corporation and National Flood Insurance Program, less
34 than \$500,000,000; and

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

40 b. If an insurer qualifies for exemption pursuant to paragraph
41 (1) of subsection a. of this section, but the insurance group of which
42 the insurer is a member does not qualify for exemption pursuant to
43 paragraph (2) of subsection a. of this section, then the ORSA
44 Summary Report that may be required pursuant to section 50 of
45 P.L. c. (C.) (pending before the Legislature as this bill),
46 shall include every insurer within the insurance group. This
47 requirement may be satisfied by the submission of more than one
48 ORSA Summary Report for any combination of insurers so long as

1 any combination of reports includes every insurer within the
2 insurance group.

3 c. If an insurer does not qualify for exemption pursuant to
4 paragraph (1) of subsection a. of this section, but the insurance
5 group of which it is a member qualifies for exemption pursuant to
6 paragraph (2) of subsection a. of this section, then the only ORSA
7 Summary Report that may be required pursuant section 50 of P.L. ,
8 c. (C.) (pending before the Legislature as this bill) shall be
9 the report applicable to that insurer.

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

24 e. Notwithstanding the exemptions stated in this section:

25 (1) The commissioner may require that an insurer maintain a
26 risk management framework, conduct an ORSA and file an ORSA
27 Summary Report based on unique circumstances including, but not
28 limited to, the type and volume of business written, ownership and
29 organizational structure, federal agency requests, and international
30 supervisor requests.

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

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

37 (b) meets one or more of the standards of an insurer deemed to
38 be in hazardous financial condition as defined in applicable
39 regulations of this State defining standards and commissioner's
40 authority over companies deemed to be in hazardous financial
41 condition; or

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

44 f. If an insurer that qualifies for an exemption pursuant to
45 subsection a. of this section subsequently no longer qualifies for
46 that exemption due to changes in premium as reflected in the
47 insurer's most recent annual statement or in the most recent annual
48 statements of the insurers within the insurance group of which the

1 insurer is a member, the insurer shall have one year following the
2 year in which the threshold is exceeded to comply with the
3 requirements of sections 46 through 56 of P.L. , c. (C.)
4 (pending before the Legislature as this bill).

5
6 52. (New section) a. The ORSA Summary Report shall be
7 prepared consistent with the ORSA Guidance Manual, subject to the
8 requirements of subsection b. of this section. Documentation and
9 supporting information shall be maintained and made available
10 upon examination or upon request of the commissioner.

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

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

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

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

44 (1) May, upon request, share documents, materials or other
45 ORSA-related information, including the confidential and
46 privileged documents, materials or information subject to
47 subsection a. of this section, including proprietary and trade secret
48 documents and materials with other state, federal and international

1 financial regulatory agencies, including members of any
2 supervisory college as defined in section 7 of P.L. , c. (C.)
3 (pending before the Legislature as this bill), with the National
4 Association of Insurance Commissioners (NAIC) and with any
5 third-party consultants designated by the commissioner, provided
6 that the recipient agrees in writing to maintain the confidentiality
7 and privileged status of the ORSA-related documents, materials or
8 other information and has verified in writing the legal authority to
9 maintain confidentiality; and

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

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

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

36 (b) Specify that ownership of information shared with the NAIC
37 or a third-party consultant pursuant to sections 46 through 56 of
38 P.L. , c. (C.) (pending before the Legislature as this bill)
39 remains with the commissioner, and the NAIC's or a third-party
40 consultant's use of the information is subject to the direction of the
41 commissioner;

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

46 (d) Require prompt notice to be given to an insurer whose
47 confidential information in the possession of the NAIC or a third-
48 party consultant pursuant to sections 46 through 56 of P.L. ,

1 c. (C.) (pending before the Legislature as this bill) is subject to a
2 request or subpoena to the NAIC or a third-party consultant for
3 disclosure or production;

4 (e) Require the NAIC or a third-party consultant to consent to
5 intervention by an insurer in any judicial or administrative action in
6 which the NAIC or a third-party consultant may be required to
7 disclose confidential information about the insurer shared with the
8 NAIC or a third-party consultant pursuant to sections 46 through
9 56 of P.L. , c. (C.) (pending before the Legislature as this
10 bill); and

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

13 d. The sharing of information and documents by the
14 commissioner pursuant to sections 46 through 56 of P.L. ,
15 c. (C.) (pending before the Legislature as this bill) shall not
16 constitute a delegation of regulatory authority or rulemaking, and
17 the commissioner is solely responsible for the administration,
18 execution and enforcement of the provisions of sections 46 through
19 56 of P.L. , c. (C.) (pending before the Legislature as this
20 bill).

21 e. No waiver of any applicable privilege or claim of
22 confidentiality in the documents, proprietary and trade-secret
23 materials or other ORSA-related information shall occur as a result
24 of disclosure of such ORSA-related information or documents to
25 the commissioner pursuant to this section or as a result of sharing as
26 authorized in sections 46 through 56 of P.L. , c. (C.)
27 (pending before the Legislature as this bill).

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

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

43
44 55. (New section) If any provision of sections 46 through 56 of
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 or the application thereof to any person or circumstance, is held
47 invalid, such determination shall not affect the provisions or
48 applications of sections 46 through 56 of P.L. , c. (C.)

(pending before the Legislature as this bill) which can be given effect without the invalid provision or application, and to that end the provisions of sections 46 through 56 of P.L. , c. (C.) (pending before the Legislature as this bill) are severable.

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

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

6. The commissioner, as administrator and chief executive **[office]** officer of the department, shall:

- a. Administer the work of the department;
- b. Appoint and remove officers and other personnel employed within the department, subject to the provisions of Title 11A of the New Jersey Statutes, and other applicable statutes, except as otherwise specifically provided;
- c. Perform, exercise and discharge the functions, powers and duties of the department through those divisions established by law or as the commissioner deems necessary;
- d. Organize the work of the department pursuant to the structure or organizational units the commissioner determines to be necessary for efficient and effective operation, and which are not inconsistent with the provisions of this 1996 amendatory and supplementary act;
- e. Formulate, adopt, issue and promulgate, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in the name of the department, rules and regulations authorized by law for the efficient conduct of the work and general administration of the department, and the appropriate regulation of the institutions, companies, agencies, boards, commissions, and other entities within its jurisdiction, including licensees, officers and employees as authorized by law;
- f. Determine all matters of policy within the commissioner's jurisdiction;
- g. Institute or cause to be instituted the legal proceedings or processes necessary to enforce properly and give effect to any of the commissioner's powers or duties;
- h. Make a report each year to the Governor and to the Legislature of the department's operations for the preceding fiscal year, and render such other reports as the Governor shall from time to time request, or as may be required by law;
- i. Appoint advisory committees which may be desirable to advise and assist the department or a division in carrying out its functions and duties;
- j. Have the power, in addition to any powers prescribed by law, to order any person violating any provision of Title 17 of the

1 Revised Statutes or Title 17B of the New Jersey Statutes to cease
2 and desist from engaging in such conduct;

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

5 **【k.】** l. Maintain suitable headquarters for the department and
6 such other quarters as the commissioner shall deem necessary to the
7 proper functioning of the department.

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

9

10 58. (New section) For the purposes of chapter 19 of Title 17B
11 of the New Jersey Statutes, N.J.S.17B:25-19, and sections 58, 60,
12 63, 64, 65 and 66 of P.L. , c. (C.) (pending before the
13 Legislature as this bill) the following definitions shall apply on or
14 after the operative date of the valuation manual:

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

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

23 “Company” means an entity, which:

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

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

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

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

38 “NAIC” means the National Association of Insurance
39 Commissioners.

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

1 benefits prescribed in their essential aspects by the terms of the
2 policy or contract.

3 “Principle-based valuation” means a reserve valuation that uses
4 one or more methods or one or more assumptions determined by the
5 insurer and is required to comply with section 64 of P.L. , c. (C.)
6 (pending before the Legislature as this bill) as specified in the
7 valuation manual.

8 “Qualified actuary” means an individual who is qualified to sign
9 the applicable statement of actuarial opinion in accordance with the
10 American Academy of Actuaries qualification standards for
11 actuaries signing such statements and who meets the requirements
12 specified in the valuation manual.

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

17 “Valuation manual” means the manual of valuation instructions
18 adopted by the NAIC as specified in sections 58, 60, 63, 64, 65 and
19 66 of P.L. , c. (C.) (pending before the Legislature as this
20 bill) or as subsequently amended.

21

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

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

1 for all legal purposes the certificate of valuation of the
2 commissioner when such certificate states the valuation to have
3 been made in a specified manner according to which the aggregate
4 reserves would be at least as large as if they had been computed in
5 the manner prescribed by the law of that state or jurisdiction.

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

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

1 equal the difference between the premiums and the term of which in
2 years shall equal the number of future annual payments receivable
3 on the insurance after the date of valuation.

4 Reserves for all policies and contracts to which the foregoing
5 standards apply may be calculated, at the option of the insurer,
6 according to any standards which produce greater aggregate
7 reserves for all such policies and contracts than the minimum
8 reserves required by this section.

9 (cf: P.L.1981, c.285, s.1)

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

27
28 61. N.J.S.17B:19-5 is amended to read as follows:

29 17B:19-5. The commissioner shall annually make or cause to be
30 made or shall annually require the insurer to make calculations of
31 policy and loss reserves for accident and health insurance written by
32 insurers authorized to write accident and health insurance in this
33 State as defined in N.J.S.17B:17-4. The commissioner shall
34 promulgate regulations establishing the minimum standards
35 applicable to the valuation of accident and health insurance
36 reserves.

37 (cf: P.L.2001, c.2, s.3)

38
39 62. Section 2 of P.L.1995, c.339 (C.17B:19-10) is amended to
40 read as follows:

41 2. a. **【Every】** For years ending prior to the operative date of
42 the valuation manual every, insurer authorized to transact life,
43 health or annuity business and every fraternal benefit society doing
44 business in this State shall annually submit the opinion of a
45 qualified actuary as to whether the reserves and related actuarial
46 items held in support of the policies and contracts specified by the
47 commissioner by regulation are: computed appropriately; based on
48 assumptions which satisfy contractual provisions; and consistent

1 with prior reported amounts and comply with applicable laws of this
2 State. The commissioner shall define by regulation the specifics of
3 this opinion and add such other items deemed to be necessary to its
4 scope.

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

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

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

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

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

38 d. Every opinion shall be governed by the following
39 provisions:

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

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

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

4 (4) In the case of an opinion required to be submitted by a
5 foreign or alien insurer or fraternal benefit society, the
6 commissioner may accept the opinion filed by that insurer or
7 society with the insurance supervisory official of another state or
8 jurisdiction if the commissioner determines that the opinion
9 reasonably meets the requirements applicable to an insurer or
10 society domiciled in this State.

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

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

21 (7) Disciplinary action by the commissioner against the insurer,
22 fraternal benefit society or the qualified actuary shall be defined in
23 regulation by the commissioner.

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

46 e. On or after the operative date of the valuation manual, every
47 company with outstanding life insurance contracts, accident and
48 health insurance contracts or deposit-type contracts in this State and

1 subject to regulation by the commissioner shall annually submit the
2 opinion of the appointed actuary as to whether the reserves and
3 related actuarial items held in support of the policies and contracts
4 are computed appropriately, are based on assumptions that satisfy
5 contractual provisions, are consistent with prior reported amounts
6 and comply with applicable laws of this State. The valuation
7 manual will prescribe the specifics of this opinion including any
8 items deemed to be necessary to its scope.

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

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

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

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

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

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

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

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

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

5 (5) In the case of an opinion required to be submitted by a
6 foreign or alien company, the commissioner may accept the opinion
7 filed by that company with the insurance supervisory official of
8 another state if the commissioner determines that the opinion
9 reasonably meets the requirements applicable to a company
10 domiciled in this State.

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

16 (7) Disciplinary action by the commissioner against the
17 company or the appointed actuary shall be prescribed and defined in
18 regulations by the commissioner.

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

20
21 63. (New section) a. For policies issued on or after the operative
22 date of the valuation manual, the standard prescribed in the
23 valuation manual is the minimum standard of valuation required
24 under section 60 of P.L. c. (c.) (pending before the
25 Legislature as this bill) except as provided under subsections e. or
26 g. of this section.

27 b. The operative date of the valuation manual is January 1 of
28 the first calendar year following the first July 1 as of which all of
29 the following have occurred:

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

33 (2) The NAIC Model Standard Valuation Law, as amended by
34 the NAIC in 2009, or legislation including substantially similar
35 terms and provisions, has been enacted by States representing
36 greater than 75% of the direct premiums written as reported in the
37 following annual statements submitted for 2008: life, accident and
38 health annual statements; health annual statements; or fraternal
39 annual statements.

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

46 c. Unless a change in the valuation manual specifies a later
47 effective date, changes to the valuation manual shall be effective on

1 January 1 following the date when all of the following have
2 occurred:

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

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

7 (b) Members of the NAIC representing jurisdictions totaling
8 greater than 75% of the direct premiums written as reported in the
9 following annual statements most recently available prior to the
10 vote in subparagraph (a) of paragraph (1) of this subsection: life,
11 accident and health annual statements, health annual statements, or
12 fraternal annual statements.

13 (2) No later than 30 days before the operative date of the
14 valuation manual or any changes thereto adopted by the NAIC, the
15 commissioner shall by order notify all companies as defined in
16 section 58 of P.L. , c. (C.)(pending before the Legislature
17 as this bill) of the adoption and its operative date. Failure to
18 provide this notice shall not delay the operative date of the
19 valuation manual or any changes thereto.

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

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

25 (a) The commissioner's reserve valuation method for life
26 insurance contracts, other than annuity contracts, subject to section
27 60 of P.L. , c. (C.) (pending before the Legislature as this
28 bill);

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

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

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

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

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

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

3 (c) Procedures for corporate governance and oversight of the
4 actuarial function, and a process for appropriate waiver or
5 modification of such procedures.

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

9 (a) Be consistent with the minimum standard of valuation prior
10 to the operative date of the valuation manual; or

11 (b) Develop reserves that quantify the benefits and guarantees,
12 and the funding, associated with the contracts and their risks at a
13 level of conservatism that reflects conditions that include
14 unfavorable events that have a reasonable probability of occurring;

15 (5) Other requirements, including, but not limited to, those
16 relating to reserve methods, models for measuring risk, generation
17 of economic scenarios, assumptions, margins, use of company
18 experience, risk measurement, disclosure, certifications, reports,
19 actuarial opinions and memorandums, transition rules and internal
20 controls; and

21 (6) The data and form of the data required under section 65 of
22 P.L. , c. (C.) (pending before the Legislature as this bill),
23 with whom the data must be submitted, and may specify other
24 requirements, including data analyses and reporting of analyses.

25 e. In the absence of a specific valuation requirement or if a
26 specific valuation requirement in the valuation manual is not, in the
27 opinion of the commissioner, in compliance with sections 58, 60,
28 63, 64, 65 and 66 of P.L. c. (C.) (pending before the
29 Legislature as this bill), then the company shall, with respect to
30 such requirements, comply with minimum valuation standards
31 prescribed by the commissioner by regulation.

32 f. The commissioner may engage a qualified actuary, at the
33 expense of the company, to perform an actuarial examination of the
34 company and opine on the appropriateness of any reserve
35 assumption or method used by the company, or to review and opine
36 on a company's compliance with any requirement set forth in
37 sections 58, 60, 63, 64, 65 and 66 of P.L. c. (C.) (pending
38 before the Legislature as this bill). The commissioner may rely
39 upon the opinion, regarding provisions contained within sections
40 58, 60, 63, 64, 65 and 66 of P.L. c. (C.) (pending before the
41 Legislature as this bill), of a qualified actuary engaged by the
42 commissioner of another state, district or territory of the United
43 States.

44 As used in this subsection f., the term "engage" includes
45 employment and contracting.

46 g. The commissioner may require a company to change any
47 assumption or method that in the opinion of the commissioner is
48 necessary in order to comply with the requirements of the valuation

1 manual or sections 58, 60, 63, 64, 65 and 66 of P.L. c. (C.)
2 (pending before the Legislature as this bill); and the company shall
3 adjust the reserves as required by the commissioner. The
4 commissioner may suspend or revoke the authority to do business in
5 this State of any company and impose a fine, after notice and a
6 hearing, pursuant to the “Administrative Procedure Act,” P.L.1968,
7 c.410 (C.52:14B-1 et seq.) if it fails to comply with any provision
8 of law obligatory upon it under sections 58, 60, 63, 64, 65 and 66 of
9 P.L. , c. (C.) (pending before the Legislature as this bill).

10
11 64. (New section) a. A company shall establish reserves using
12 a principle-based valuation that meets the following conditions for
13 policies or contracts as specified in the valuation manual:

14 (1) Quantify the benefits and guarantees, and the funding,
15 associated with the contracts and their risks at a level of
16 conservatism that reflects conditions that include unfavorable
17 events that have a reasonable probability of occurring during the
18 lifetime of the contracts. For policies or contracts with significant
19 tail risk, reflects conditions appropriately adverse to quantify the
20 tail risk.

21 (2) Incorporate assumptions, risk analysis methods and financial
22 models and management techniques that are consistent with, but not
23 necessarily identical to, those utilized within the company’s overall
24 risk assessment process, while recognizing potential differences in
25 financial reporting structures and any prescribed assumptions or
26 methods.

27 (3) Incorporate assumptions that are derived in one of the
28 following manners:

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

30 (b) For assumptions that are not prescribed, the assumptions
31 shall:

32 (i) Be established utilizing the company’s available experience,
33 to the extent it is relevant and statistically credible; or

34 (ii) To the extent that company data is not available, relevant, or
35 statistically credible, be established utilizing other relevant,
36 statistically credible experience.

37 (4) Provide margins for uncertainty including adverse deviation
38 and estimation error, such that the greater the uncertainty the larger
39 the margin and resulting reserve.

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

43 (1) Establish procedures for corporate governance and oversight
44 of the actuarial valuation function consistent with those described in
45 the valuation manual.

46 (2) Provide to the commissioner and the board of directors an
47 annual certification of the effectiveness of the internal controls with
48 respect to the principle-based valuation. Such controls shall be

1 designed to assure that all material risks inherent in the liabilities
2 and associated assets subject to such valuation are included in the
3 valuation, and that valuations are made in accordance with the
4 valuation manual. The certification shall be based on the controls in
5 place as of the end of the preceding calendar year.

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

9 c. A principle-based valuation may include a prescribed
10 formulaic reserve component.

11
12 65. (New section) A company shall submit mortality, morbidity,
13 policyholder behavior, or expense experience and other data as
14 prescribed in the valuation manual.

15
16 66. (New section) a. For purposes of this section “confidential
17 information” means:

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

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

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

1 (4) Any principle-based valuation report developed under
2 paragraph 3 of subsection b. of section 64 of P.L. , c. (C.)
3 (pending before the Legislature as this bill) and any other
4 documents, materials and other information, including, but not
5 limited to, all working papers, and copies thereof, created, produced
6 or obtained by or disclosed to the commissioner or any other person
7 in connection with that report; and

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

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

31 (2) Neither the commissioner nor any person who received
32 confidential information while acting under the authority of the
33 commissioner shall be permitted or required to testify in any private
34 civil action concerning any confidential information.

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

1 data and other information in the same manner and to the same
2 extent as required for the commissioner.

3 (4) The commissioner may receive documents, materials, data
4 and other information, including otherwise confidential and
5 privileged documents, materials, data or information, from the
6 NAIC and its affiliates and subsidiaries, from regulatory or law
7 enforcement officials of other foreign or domestic jurisdictions and
8 from the Actuarial Board for Counseling and Discipline or its
9 successor and shall maintain as confidential or privileged any
10 document, material, data or other information received with notice
11 or the understanding that it is confidential or privileged under the
12 laws of the jurisdiction that is the source of the document, material
13 or other information.

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

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

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

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

27 c. Notwithstanding subsection b. of this section, any
28 confidential information specified in paragraphs (1) and (4) of
29 subsection a. of this section:

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

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

41 (3) Once any portion of a memorandum in support of an opinion
42 submitted under section 2 of P.L.1995, c.339 (C.17B:19-10) or a
43 principle-based valuation report developed under subsection b. of
44 section 64 of P.L., c. (C.) (pending before the Legislature
45 as this bill) is cited by the company in its marketing or is publicly
46 volunteered to or before a governmental agency other than a state
47 insurance department or is released by the company to the news

1 media, all portions of such memorandum or report shall no longer
2 be confidential.

3

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

5 17B:25-19. This section shall be known as the standard
6 nonforfeiture law for life insurance.

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

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

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

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

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

43 (5) In the case of policies which cause on a basis guaranteed in
44 the policy unscheduled changes in benefits or premiums, or which
45 provide an option for changes in benefits or premiums other than a
46 change to a new policy, a statement of the mortality table, interest
47 rate, and method used in calculating cash surrender values and the
48 paid-up nonforfeiture benefits available under the policy. In the

1 case of all other policies, a statement of the mortality tables and
2 interest rates used in calculating the cash surrender values and the
3 mortality tables and interest rates used in calculating the paid-up
4 nonforfeiture benefits available under the policy, together with a
5 table showing the cash surrender value, if any, and paid-up
6 nonforfeiture benefit, if any, available under the policy on each
7 policy anniversary either during the first 20 policy years or during
8 the term of the policy, whichever is shorter, such values and
9 benefits to be calculated upon the assumption that there are no
10 dividends or paid-up additions credited to the policy and that there
11 is no indebtedness to the insurer on the policy.

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

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

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

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

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

47 Provided, however, that for any policy issued on or after the
48 operative date provided for in paragraph (xi) of subsection h. of

1 N.J.S.17B:25-19, which provides supplemental life insurance or
2 annuity benefits at the option of the insured and for an identifiable
3 additional premium by rider or supplemental policy provision, the
4 cash surrender value referred to in the first paragraph of this
5 subsection shall be an amount not less than the sum of the cash
6 surrender value as defined in that paragraph for an otherwise similar
7 policy issued at the same age without such rider or supplemental
8 policy provision and the cash surrender value as defined in that
9 paragraph for a policy which provides only the benefits otherwise
10 provided by such rider or supplemental policy provision.

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

23 Any cash surrender value available within 30 days after any
24 policy anniversary under any policy paid up by completion of all
25 premium payments or any policy continued under any paid-up
26 nonforfeiture benefit, whether or not required by subsection a., shall
27 be an amount not less than the present value, on such anniversary,
28 of the future guaranteed benefits provided for by the policy,
29 including any existing paid-up additions, decreased by any
30 indebtedness to the insurer on the policy.

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

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

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

41 g. This subsection shall not apply to policies issued on or after
42 the operative date of subsection h. as defined therein. Except as
43 provided in the third paragraph of this subsection, the adjusted
44 premiums for any policy referred to in subsection a. shall be
45 calculated on an annual basis and shall be such uniform percentage
46 of the respective premiums specified in the policy for each policy
47 year, excluding any extra premiums charged because of
48 impairments or special hazards, that the present value, at the date of

1 issue of the policy, of all such adjusted premiums shall be equal to
2 the sum of (1) the then present value of the future guaranteed
3 benefits provided for by the policy; (2) 2% of the amount of
4 insurance, if the insurance be uniform in amount or of the
5 equivalent uniform amount, as hereinafter defined, if the amount of
6 insurance varies with duration of the policy; (3) 40% of the adjusted
7 premium for the first policy year; (4) 25% of either the adjusted
8 premium for the first policy year or the adjusted premium for a
9 whole life policy of the same uniform or equivalent uniform amount
10 with uniform premiums for the whole of life issued at the same age
11 for the same amount of insurance, whichever is less; provided,
12 however, that in applying the percentages specified in (3) and (4)
13 above, no adjusted premium shall be deemed to exceed 4% of the
14 amount of insurance or uniform amount equivalent thereto. The date
15 of issue of a policy for the purpose of this subsection shall be the
16 date as of which the rated age of the insured is determined.

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

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

44 All adjusted premiums and present values referred to in this
45 subsection shall for all policies of ordinary insurance be calculated
46 on the basis of the Commissioners 1958 Standard Ordinary
47 Mortality Table. Notwithstanding this provision, for any category of
48 ordinary insurance such calculations may be made, at the option of

1 the insurer, on the basis of the Approved Standard Ordinary
2 Mortality Table; provided, further, that for any category of ordinary
3 insurance issued on female risks adjusted premiums and present
4 values may be calculated, at the option of the insurer with approval
5 of the commissioner, according to an age not more than 6 years
6 younger than the actual age of the insured. Such calculations for all
7 policies of industrial insurance shall be made on the basis of the
8 Commissioners 1961 Standard Industrial Mortality Table.

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

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

1 exceed 4% of either the amount of insurance, if the insurance be
2 uniform in amount, or the average amount of insurance at the
3 beginning of each of the first 10 policy years. The date of issue of a
4 policy for the purpose of this section shall be the date as of which
5 the rated age of the insured is determined.

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

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

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

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

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

1 (A) equals the sum of the nonforfeiture net level premium
2 applicable prior to the change times the present value of an annuity
3 of one per annum payable on each anniversary of the policy on or
4 subsequent to the date of the change on which a premium would
5 have fallen due had the change not occurred, and the present value
6 of the increase in future guaranteed benefits provided for by the
7 policy, and

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

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

20 (viii) For purposes of this subsection, the term “operative date of
21 the valuation manual” means the January 1 of the first calendar year
22 that the valuation manual as defined in section 58 of P.L. , c.
23 (C.) (pending before the Legislature as this bill) is effective. All
24 adjusted premiums and present values referred to in this subsection
25 shall for all policies of ordinary insurance be calculated on the basis
26 of the Commissioners 1980 Standard Ordinary Mortality Table or at
27 the election of the insurer for any one or more specified plans of life
28 insurance, the Commissioners 1980 Standard Ordinary Mortality
29 Table with 10-Year Select Mortality Factors; shall for all policies of
30 industrial insurance be calculated on the basis of the Commissioners
31 1961 Standard Industrial Mortality Table; and shall for all policies
32 issued in a particular calendar year be calculated on the basis of a
33 rate of interest not exceeding the nonforfeiture interest rate as
34 defined in paragraph (ix) of this subsection for policies issued in
35 that calendar year. Provided, however, that:

36 At the option of the insurer, calculations for all policies
37 issued in a particular calendar year may be made on the basis
38 of a rate of interest not exceeding the nonforfeiture interest
39 rate, as defined in this section, for policies issued in the
40 immediately preceding calendar year.

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

47 An insurer may calculate the amount of any guaranteed
48 paid-up nonforfeiture benefit including any paid-up

1 additions under the policy on the basis of an interest rate not
2 lower than that specified in the policy for calculating cash
3 surrender values.

4 In calculating the present value of any paid-up term
5 insurance with accompanying pure endowment, if any,
6 offered as a nonforfeiture benefit, the rates of mortality
7 assumed may be not more than those shown in the
8 Commissioners 1980 Extended Term Insurance for policies
9 of ordinary insurance and not more than the Commissioners
10 1961 Industrial Extended Term Insurance Table for policies
11 of industrial insurance.

12 For insurance issued on a substandard basis, the
13 calculation of such adjusted premiums and present values
14 may be based on appropriate modifications of the
15 aforementioned tables.

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

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

41 For policies issued prior to the operative date of the
42 valuation manual, any Commissioners Standard industrial
43 mortality tables, adopted after 1980 by the National
44 Association of Insurance Commissioners, that are approved
45 by regulation promulgated by the commissioner for use in
46 determining the minimum nonforfeiture standard may be
47 substituted for the Commissioners 1961 Standard Industrial

1 Mortality Table or the Commissioners 1961 Industrial
2 Extended Term Insurance Table.

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

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

23 The nonforfeiture interest rate is defined below:

24 (1) For policies issued prior to the operative date of the
25 valuation manual, the nonforfeiture interest rate per annum for any
26 policy issued in a particular calendar year shall be equal to 125% of
27 the calendar year statutory valuation interest rate for such policy as
28 defined in the standard valuation law, paragraph (x) of subsection
29 17B:19-8a., rounded to nearer 1/4 of 1%.

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

34 (x) Notwithstanding any other provisions in this code (Title
35 17B) to the contrary, any refiling of nonforfeiture values or their
36 methods of computation for any previously approved policy forms
37 which involves only a change in the interest rate or mortality table
38 used to compute nonforfeiture values shall not require refiling of
39 any other provisions of that policy form.

40 (xi) After the effective date of this subsection, any insurer may
41 file with the commissioner a written notice of its election to
42 comply, with respect to any category of insurance, with the
43 provisions of this subsection after a specified date before January 1,
44 1989, which shall be the operative date of this subsection for that
45 category of insurance for such insurer. If an insurer makes no such
46 election with respect to any category of insurance, the operative
47 date of this subsection for that category of insurance issued by such
48 insurer shall be January 1, 1989.

1 i. In the case of any plan of life insurance which provides for
2 future premium determination, the amounts of which are to be
3 determined by the insurer based on then estimates of future
4 experience, or in the case of any plan of life insurance which is of
5 such a nature that minimum values cannot be determined by the
6 methods described in the preceding subsections of this section,
7 then:

8 the commissioner must be satisfied that the benefits
9 provided under the plan are substantially as favorable to
10 policyholders and insureds as the minimum benefits
11 otherwise required by the preceding subsections of this
12 section;

13 the commissioner must be satisfied that the benefits and
14 the pattern of premiums of that plan are not such as to
15 mislead prospective policyholders or insureds;

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

22 j. Any cash surrender value and any paid-up nonforfeiture
23 benefit, available under the policy in the event of default in a
24 premium payment due at any time other than on the policy
25 anniversary, shall be calculated with allowance for the lapse of time
26 and the payment of fractional premiums beyond the last preceding
27 policy or contract anniversary. All values referred to in subsections
28 c., d., g., h. and i. may be calculated upon the assumption that any
29 death benefit is payable at the end of the policy year of death. The
30 net value of any paid-up additions, other than paid-up term
31 additions, shall be not less than the amounts used to provide such
32 additions. Notwithstanding the provisions of subsection c.,
33 additional benefits payable (1) in the event of death or
34 dismemberment by accident or accidental means, (2) in the event of
35 total and permanent disability, (3) as reversionary annuity or
36 deferred reversionary annuity benefits, (4) as term insurance
37 benefits provided by a rider or supplemental policy provision to
38 which, if issued as a separate policy, this section would not apply,
39 (5) as term insurance on the life of a child or on the lives of children
40 provided in a policy on the life of a parent of the child, if such term
41 insurance expires before the child's age is 26, is uniform in amount
42 after the child's age is one, and has not become paid-up by reason of
43 the death of a parent of the child, and (6) as other policy benefits
44 additional to life insurance and endowment benefits, and premiums
45 for all such additional benefits, shall be disregarded in ascertaining
46 cash surrender values and nonforfeiture benefits required by this
47 section, and no such additional benefits shall be required to be
48 included in any paid-up nonforfeiture benefits. Notwithstanding the

1 provisions of subsection c., additional benefits providing the
2 privilege to purchase additional insurance benefits at some future
3 time without furnishing evidence of insurability, and premiums
4 therefor, may, with the consent of the commissioner, be disregarded
5 in ascertaining cash surrender values and nonforfeiture benefits
6 required by this section, and no such additional benefits shall be
7 required to be included in any paid-up nonforfeiture benefits.

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

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

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

36 shall be the same percentage for each policy year
37 between the second policy anniversary and the later of the
38 fifth policy anniversary and the first policy anniversary at
39 which there is available under the policy a cash surrender
40 value in an amount, before including any paid-up additions
41 and before deducting any indebtedness, of at least $\frac{2}{10}$ of
42 1% of either the amount of insurance, if the insurance be
43 uniform in amount, or the average amount of insurance at
44 the beginning of each of the first 10 policy years; and

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

1 Provided, that no basic cash value may be less than the value
2 which would be obtained if the adjusted premiums for the policy, as
3 defined in subsection g., or h., whichever is applicable, were
4 substituted for the nonforfeiture factors in the calculation of the
5 basic cash value.

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

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

- 23 1. This section shall not apply to any of the following:
- 24 • reinsurance,
 - 25 • group insurance,
 - 26 • annuity contract,
 - 27 • single premium pure endowment contract or single premium
28 reversionary annuity contract,
 - 29 • term policy of uniform amount, which provides no
30 guaranteed nonforfeiture or endowment benefits, or renewal
31 thereof, of 20 years or less expiring before age 71, for which
32 uniform premiums are payable during the entire term of the
33 policy,
 - 34 • term policy of decreasing amount which provides no
35 guaranteed nonforfeiture or endowment benefits, on which
36 each adjusted premium, calculated as specified in
37 subsections g. and h. is less than the adjusted premium so
38 calculated on a term policy of uniform amount, or renewal
39 thereof, which provides no guaranteed nonforfeiture
40 endowment benefits, issued at the same age and for the same
41 initial amount of insurance and for a term of 20 years or less
42 expiring before age 71, for which uniform premiums are
43 payable during the entire term of the policy,
 - 44 • policy which provides no guaranteed nonforfeiture or
45 endowment benefits, for which no cash surrender value, if
46 any, or present value of any paid-up nonforfeiture benefit, at
47 the beginning of any policy year, calculated as specified in

1 subsections c., g., and h. exceeds 2 1/2 % of the amount of
2 insurance at the beginning of the same policy year,

- 3 • policy which shall be delivered outside this State through an
4 agent or other representative of the insurer issuing the
5 policy.

6 For the purposes of determining the applicability of this section,
7 the age at expiry for a joint term life insurance policy shall be the
8 age at expiry of the oldest life.

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

10
11 68. This act shall take effect immediately except that sections 58
12 through 67 of this act shall remain inoperative until the operative
13 date of the valuation manual as provided in those sections.

14 15 16 STATEMENT

17
18 The bill addresses financial modernization of the regulation of
19 insurers by the Department of Banking and Insurance in order for
20 the department to maintain accreditation by the National
21 Association of Insurance Commissioners (NAIC) beginning in
22 2015. The bill is based on model laws developed by the NAIC and
23 provides the department with additional information and tools to
24 protect policyholders through the monitoring of insurer financial
25 solvency.

26 Firstly, the bill amends and supplements P.L.1970, c.22
27 (C.17:27A-1 et seq.) concerning insurance holding company
28 systems, to reflect current requirements of the Model Insurance
29 Holding Company System Regulatory Act adopted by the NAIC in
30 2010. The purpose of these provisions of the bill is to promote the
31 reliability and financial strength of insurance institutions. These
32 revisions to the law will provide additional supervisory powers that
33 are necessary to meet the changing realities of the insurance market.
34 Moreover, by complying with the national standard, New Jersey
35 will be able to maintain a level playing field in insurance regulation
36 with other states and hold companies to a uniform standard of
37 financial solvency. Preliminary information gathered during the
38 development of the model act indicates that the cost to implement
39 these new amendments will be manageable both for compliance by
40 insurance companies and enforcement by the department. The
41 revisions include the following: disclosure of enterprise risk
42 reporting within the holding company system, reimbursement for
43 participation in supervisory colleges, modifications to the
44 requirements for transactions within an insurance holding company
45 system, clarifications with regard to the commissioner's authority to
46 access books and records, and enhancements to the requirements for
47 divestiture and disclaimers. This bill also revises provisions
48 governing confidentiality of documents filed and the sharing of

1 otherwise confidential information with other state or federal
2 regulators or the NAIC.

3 This bill also authorizes the Commissioner of Banking and
4 Insurance (“commissioner”) to increase the amount of capital and
5 surplus required, or subsequently revise or redetermine the amount
6 of any increase for hospital service corporations, medical service
7 corporations, dental service corporations, dental plan organizations,
8 health service corporations, prepaid prescription service
9 organizations and licensed organized delivery systems (collectively,
10 “health organizations”) operating in the State based on the health
11 organization's business risks. The methods and procedures for
12 determining any increase will be established by regulation based on
13 the risk based capital (“RBC”) standards adopted by the NAIC for
14 health organizations, including the exemptions for small, single
15 state writers. Similar provisions already apply to property and
16 casualty insurers and to life and health insurers and health
17 maintenance organizations. Application of the NAIC RBC
18 standards to all health organizations is required for a state insurance
19 department to maintain accreditation by the NAIC beginning
20 January 1, 2015.

21 Under the bill, any increase of capital or surplus or revision or
22 redetermination of any such increase will be made only after a
23 formal departmental hearing unless such a hearing is waived by the
24 affected health organization. All matters relating to the hearing or
25 increase of capital or surplus are not subject to subpoena or public
26 inspection, unless the commissioner determines that release of this
27 information is necessary to protect the public.

28 The bill enumerates the risks that the commissioner must
29 consider in determining any increase, revision or determination in
30 the amount of capital or surplus including, but not limited to: (1)
31 increases or decreases in the frequency or severity of losses above
32 levels contemplated by rates charged by the health organization for
33 coverage; (2) increases or decreases in expenses above or below
34 those contemplated by the rates charged by the health organization
35 for coverage; (3) increases or decreases in the value of or return on
36 invested assets above or below those anticipated; (4) changes in
37 economic, social and market conditions that could adversely or
38 favorably affect the financial condition of the health organization;
39 and (5) any other contingencies which may affect the health
40 organization's financial condition.

41 The bill also requires the commissioner to take into account
42 various factors in determining any increase, revision or
43 redetermination of a health organization's capital or surplus,
44 including methods and techniques used to measure risk exposure
45 and variability; available information relating to the magnitude of
46 the various risks that the commissioner must consider in
47 determining any increase, revision or determination; the health

1 organization's financial history and projections of profits or losses;
2 and any other relevant factors.

3 The bill also provides for the Risk Management and Own Risk
4 and Solvency Assessment (ORSA) to be performed by domestic
5 insurers/insurer groups. The bill reflects the Risk Management and
6 Own Risk and Solvency Assessment Model Act adopted by the
7 NAIC in 2012. The ORSA Summary Report must be filed by
8 insurers upon request of the commissioner. If an insurer is a
9 member of an insurance group, a report must be filed with the lead
10 state insurance regulator.

11 The ORSA allows the commissioner access to information to
12 improve understanding of the insurer/insurance group and the
13 material risks to which the insurer/insurance group is exposed,
14 thereby benefitting solvency regulation of these entities. The
15 ORSA will provide group-level perspective on risk and capital, as a
16 supplement to the current reviews.

17 The bill also expressly provides that the commissioner may, in
18 addition to any powers prescribed by law, order any person
19 violating any provision of Title 17 of the Revised Statutes or 17B of
20 the New Jersey Statutes, to cease and desist from engaging in that
21 conduct. The commissioner currently possesses this authority,
22 either express or implied, in certain circumstances. This bill
23 confirms the commissioner's authority to order a person engaging
24 in conduct in violation of the New Jersey banking and insurance
25 statutes to cease and desist from engaging in that activity, in
26 addition to any other powers provided by law.

27 Finally, the bill incorporates the Principles-Based Reserving
28 (PBR) Model Act adopted by the NAIC and includes new sections
29 and amendments to New Jersey's Standard Valuation and Standard
30 Non-Forfeiture Laws, N.J.S. 17B:19-1 et seq., and N.J.S. 17B:25-
31 19, and modernizes the approach to calculating the proper amount
32 of reserves life insurance companies must set aside to pay expected
33 future insurance claims. PBR includes changes to these laws and a
34 new Valuation Manual. The NAIC adopted a revised Standard
35 Valuation Law in 2009, a revised Standard Non-Forfeiture Law in
36 2012, and a Valuation Manual in 2012. PBR will become effective
37 only after the adoption of the Valuation Manual and will apply only
38 to life insurance sold after the date of implementation. Changes to
39 the Standard Non-Forfeiture Law for Life Insurance are intended as
40 a package with the SVL changes so that mortality and interest rate
41 assumptions are coordinated. The Valuation Manual will continue
42 to be updated annually as part of an ongoing maintenance process
43 by the states through the NAIC.