

SENATE, No. 4212

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED DECEMBER 2, 2021

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

SYNOPSIS

Revises law concerning insurance holding company systems.

CURRENT VERSION OF TEXT

As introduced.



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

3

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

6

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

9 1. Definitions.

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

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

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

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

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

45 e. The term "insurer" means any person or persons, corporation,

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 partnership or company authorized by the laws of this State to
2 transact the business of insurance or to operate a health maintenance
3 organization in this State, except that it shall not include agencies,
4 authorities or instrumentalities of the United States, its possessions
5 and territories, the Commonwealth of Puerto Rico, the District of
6 Columbia, or a state or political subdivision of a state.

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

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

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

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

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

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

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

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

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

47 o. "NAIC Liquidity Stress Test Framework" means the separate
48 NAIC publication, which includes a history of the NAIC's

1 development of regulatory liquidity stress testing, the scope criteria
2 applicable for a specific data year, and the liquidity stress test
3 instructions and reporting templates for a specific data year, the scope
4 criteria, instructions and reporting template being as adopted by the
5 NAIC and as amended by the NAIC from time to time in accordance
6 with the procedures adopted by the NAIC.

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

11 (cf: P.L.2020, c.145, s.18)

12
13 2. Section 2 of P.L.1970, c.22 (C.17:27A-2) is amended to read
14 as follows

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 d. Approval by commissioner; hearings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 (2) Subject to subsection f., the effectuation of, or any attempt to
48 effectuate, an acquisition of control of, divestiture of, or merger with,

1 a domestic insurer unless the commissioner has given his approval
2 thereto.

3 h. Jurisdiction; consent to service of process.

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

16 (cf: P.L.2014, c.81, s.2)

17

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

20 3. Registration of insurers.

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

47 b. Information and form required. Every insurer subject to
48 registration shall file a registration statement and a summary of the

1 registration statement with the commissioner on a form provided by
2 the commissioner, which shall contain current information about:

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

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

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

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

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

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

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

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

22 (f) Reinsurance agreements;

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

25 (h) Consolidated tax allocation agreements;

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

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

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

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

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

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

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

15 d. Amendments to registration statements. Each registered
16 insurer shall keep current the information required to be disclosed in
17 its registration statement by reporting all material changes or
18 additions on amendment forms provided by the commissioner within
19 15 days after the end of the month in which it learns of each such
20 change or addition.

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

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

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

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

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

44 j. Disclaimer. Any person may file with the commissioner a
45 disclaimer of affiliation with any authorized insurer or such a
46 disclaimer may be filed by such insurer or any member of an
47 insurance holding company system. The disclaimer shall fully
48 disclose all material relationships and bases for affiliation between

1 such person and such insurer as well as the basis for disclaiming such
2 affiliation. A disclaimer of affiliation shall be deemed to have been
3 granted unless the commissioner, within 30 days following receipt of
4 a complete disclaimer, notifies the filing party in writing that the
5 disclaimer is disallowed. In the event of disallowance, the
6 disclaiming party may request a hearing. The disclaiming party shall
7 be relieved of its duty to register under this section if approval of the
8 disclaimer has been granted by the commissioner, or if the disclaimer
9 is deemed to have been approved.

10 k. Enterprise risk **[filing]** filings.

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

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

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

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

46 (c) An insurance holding company system whose non-U.S.
47 group-wide supervisor is located within a reciprocal jurisdiction as
48 described in subsection e. of section 2 of P.L.1993, c.243 (C.17:51B-

1 2) that recognizes the U.S. state regulatory approach to group
2 supervision and group capital;

3 (d) An insurance holding company system:

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

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

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

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

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

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

47 (a) The NAIC Liquidity Stress Test Framework includes Scope
48 Criteria applicable to a specific data year. These Scope Criteria are

1 reviewed at least annually by the Financial Stability Task Force or its
2 successor. Any change to the NAIC Liquidity Stress Test Framework
3 or to the data year for which the Scope Criteria are to be measured
4 shall be effective on January 1 of the year following the calendar year
5 when the changes are adopted. Insurers meeting at least one
6 threshold of the Scope Criteria are considered scoped into the NAIC
7 Liquidity Stress Test Framework for the specified data year unless
8 the lead state insurance commissioner, in consultation with the NAIC
9 Financial Stability Task Force or its successor, determines the insurer
10 should not be scoped into the Framework for that data year.
11 Similarly, insurers that do not trigger at least one threshold of the
12 Scope Criteria are considered scoped out of the NAIC Liquidity
13 Stress Test Framework for the specified data year, unless the lead
14 state insurance commissioner, in consultation with the NAIC
15 Financial Stability Task Force or its successor, determines the insurer
16 should be scoped into the Framework for that data year.

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

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

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

32 (cf: P.L.2014, c.81, s.3)

33

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

36 6. Confidential treatment.

37 a. Documents, materials or other information in the possession
38 or control of the department that are obtained by or disclosed to the
39 commissioner or any other person in the course of an examination or
40 investigation made pursuant to section 5 of P.L.1970, c.22
41 (C.17:27A-5) and all information reported pursuant to paragraphs
42 (12) and (13) of subsection b. of section 2 of P.L.1970, c.22
43 (C.17:27A-2), section 3 and section 4 of P.L.1970, c.22 (C.17:27A-3
44 and 17:27A-4) are recognized by this State as being proprietary and
45 to contain trade secrets, and shall be confidential by law and
46 privileged, shall not be subject to P.L.1963, c.73 (C.47:1A-1 et seq.),
47 shall not be subject to subpoena, and shall not be subject to discovery
48 or 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 the
7 insurer and its affiliates who would be affected thereby notice and
8 opportunity to be heard, determines that the interest of policyholders,
9 shareholders or the public will be served by the publication thereof,
10 in which event the commissioner may publish all or any part in such
11 manner as may be deemed appropriate.

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

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

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

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

36 (1) May, upon request, be required to share documents, materials
37 or other information, including the confidential and privileged
38 documents, materials or information subject to subsection a. of this
39 section, including proprietary and trade secret documents and
40 materials with other state, federal and international regulatory
41 agencies, with the National Association of Insurance Commissioners
42 (NAIC) **【and its affiliates and subsidiaries】**, and with any third-party
43 consultants designated by the commissioner, with state, federal, and
44 international law enforcement authorities, including members of any
45 supervisory college described in section 7 of P.L.2014, c.81
46 (C.17:27A-5.1), provided that the recipient agrees in writing to
47 maintain the confidentiality and privileged status of the document,

1 material or other information, and has verified in writing the legal
2 authority to maintain confidentiality.

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

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

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

23 (a) specify procedures and protocols regarding the confidentiality
24 and security of information shared with the NAIC **【and its affiliates**
25 **and subsidiaries】** or a third party consultant designated by the
26 commissioner pursuant to P.L.2014, c.81 (C.17:27A-5.1 et al.),
27 including procedures and protocols for sharing by the NAIC with
28 other state, federal or international regulators. The agreement shall
29 provide that the recipient agrees in writing to maintain the
30 confidentiality and privileged status of the documents, materials or
31 other information and has verified in writing the legal authority to
32 maintain that confidentiality;

33 (b) specify that ownership of information shared with the NAIC
34 **【and its affiliates and subsidiaries】** or a third-party consultant
35 pursuant to this subsection remains with the commissioner and the
36 use by the NAIC of the information or the use of a third-party
37 consultant, as designated by the commissioner, is subject to the
38 direction of the commissioner;

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

45 **【(c)】** (d) require prompt notice to be given to an insurer whose
46 confidential information in the possession of the NAIC or a third
47 party consultant designated by the commissioner pursuant to
48 P.L.2014, c.81 (C.17:27A-5.1 et al.) is subject to a request or

1 subpoena to the NAIC or a third party consultant designated by the
2 commissioner for disclosure or production; **and**

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

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

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

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

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

35 g. The group capital calculation and resulting group capital ratio
36 required pursuant to paragraph (2) of subsection k. of section 3 of
37 P.L.1970, c.22 (C.17:27A-3), and the liquidity stress test along with
38 its results and supporting disclosures required pursuant to paragraph
39 (3) of subsection k. of section 3 of P.L.1970, c.22 (C.17:27A-3), are
40 regulatory tools for assessing group risks and capital adequacy and
41 group liquidity risks, respectively, and are not intended as a means to
42 rank insurers or insurance holding company systems generally.
43 Therefore, except as otherwise may be required under the provisions
44 of P.L.1970, c.22 (C.17:27A-1 et seq.), the making, publishing,
45 disseminating, circulating or placing before the public, or causing
46 directly or indirectly to be made, published, disseminated, circulated
47 or placed before the public in a newspaper, magazine or other
48 publication, or in the form of a notice, circular, pamphlet, letter or

1 poster, or over any radio or television station or any electronic means
2 of communication available to the public, or in any other way as an
3 advertisement, announcement or statement containing a
4 representation or statement with regard to the group capital
5 calculation, group capital ratio, the liquidity stress test results, or
6 supporting disclosures for the liquidity stress test of any insurer or
7 any insurer group, or of any component derived in the calculation by
8 any insurer, broker, or other person engaged in any manner in the
9 insurance business would be misleading and is therefore prohibited;
10 provided, however, that if any materially false statement with respect
11 to the group capital calculation, resulting group capital ratio, an
12 inappropriate comparison of any amount to an insurer's or insurance
13 group's group capital calculation or resulting group capital ratio,
14 liquidity stress test result, supporting disclosures for the liquidity
15 stress test, or an inappropriate comparison of any amount to an
16 insurer's or insurance group's liquidity stress test result or supporting
17 disclosures is published in any written publication and the insurer is
18 able to demonstrate to the commissioner with substantial proof the
19 falsity of the statement or the inappropriateness, as the case may be,
20 then the insurer may publish announcements in a written publication
21 if the sole purpose of the announcement is to rebut the materially
22 false statement.

23 (cf: P.L.2014, c.81, s.9)

24
25 5. This act shall be effective immediately upon enactment.
26
27

28 STATEMENT

29
30 This bill revises current State law on insurance holding company
31 systems to adopt changes recommended by the National Association
32 of Insurance Commissioners.

33 In December 2020, the National Association of Insurance
34 Commissioners (NAIC) adopted changes to the model Insurance
35 Holding Company System Regulatory Act to enable the requirement
36 for the Group Capital Calculation (GCC) and the Liquidity Stress
37 Test (LST).

38 The GCC requirement is a financial tool that assists state insurance
39 regulators in identifying risks that may emanate from a holding
40 company system. The GCC is intended to comply with the
41 requirements of the "Bilateral Agreement Between the United States
42 of America and the European Union on Prudential Measures
43 Regarding Insurance and Reinsurance," which was signed on Sept.
44 22, 2017. On Dec. 18, 2018, a similar covered agreement was signed
45 with the United Kingdom.

46 The LST was developed to provide state insurance regulators with
47 insights into a key macroprudential risk monitored by the Financial
48 Stability Oversight Council and other jurisdictions internationally.

1 The LST requires the ultimate controlling person of an insurer to
2 provide the results of a specific year's LST to the lead state insurance
3 commissioner.

4 State insurance regulators currently perform group analysis on all
5 U.S. insurance groups, including assessing the risks and financial
6 position of the insurance holding company system but lack the ability
7 to assess the capital position of the group, as a whole. The GCC and
8 LST will provide additional insight and transparency to insurance
9 regulators regarding insurance groups.

10 This bill provides additional analytical tools for conducting group-
11 wide supervision. The bill establishes provisions for a group capital
12 calculation for assessing group risks and capital adequacy. The bill
13 also establishes a liquidity stress test for assessing group liquidity
14 risks. The bill requires confidentiality for the group capital
15 calculation, liquidity stress test results and supporting disclosures.