

HOUSE BILL 431

C4

3lr0107

By: **Chair, Economic Matters Committee (By Request – Departmental – Insurance Administration, Maryland)**

Introduced and read first time: January 28, 2013

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2013

CHAPTER _____

1 AN ACT concerning

2 **Insurance – Maryland Insurance Acquisitions Disclosure and Control Act –**
3 **Revisions**

4 FOR the purpose of authorizing the Maryland Insurance Commissioner to participate
5 in a certain supervisory college; describing the powers of the Commissioner with
6 respect to supervisory colleges; authorizing the Commissioner to enter into
7 certain agreements; providing that the purposes of certain provisions of law
8 include promoting the public interest by providing standards governing
9 material transactions between an insurer and its affiliates; adding a factor to be
10 considered in determining whether an insurer's assets and surplus as regards
11 policyholders are reasonable in relation to the insurer's outstanding liabilities
12 and adequate to its financial needs; providing for the confidentiality of certain
13 documents and information under certain provisions of law; providing that
14 certain information and documents are not subject to discovery or admissible in
15 certain actions; providing that certain material may be made public under
16 certain circumstances; providing that certain persons must comply with certain
17 requirements before making certain tender offers for or agreements to merge
18 with a person that controls a domestic insurer; requiring certain persons
19 seeking to acquire control of a domestic insurer, persons that control a domestic
20 insurer, or insurance holding companies controlling a domestic insurer to file a
21 certain pre-acquisition notification; requiring a controlling person of a domestic
22 insurer seeking to divest its controlling interest in the domestic insurer to file a
23 certain notice; requiring certain persons seeking to acquire control of a domestic
24 insurer to file a certain statement with the Commissioner and provide a copy to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 the domestic insurer; requiring the statement to include certain information;
 2 requiring the filing of an amendment to the statement under certain
 3 circumstances; establishing certain violations; requiring insurers subject to
 4 certain registration requirements to include certain information in the
 5 registration statement; requiring certain persons to file an annual enterprise
 6 risk report that includes certain information; authorizing the sharing of certain
 7 information in an enterprise risk report under certain circumstances;
 8 authorizing the Commissioner, in verifying information in the registration
 9 statement, including the enterprise risk to an insurer by an ultimate controlling
 10 person, to order certain insurers to produce certain information; authorizing the
 11 Commissioner to retain the services of certain persons to assist in the conduct of
 12 certain examinations; providing a process for reviewing disclaimers of affiliation
 13 and receiving an administrative hearing if a disclaimer of affiliation is denied;
 14 providing that an insurer that does not file a certain registration statement,
 15 summary, or enterprise risk report may be subject to a certain penalty;
 16 providing that when it appears to the Commissioner that a person has
 17 committed a certain violation, the violation may serve as an independent basis
 18 for disapproving certain dividends or distributions and for placing an insurer
 19 under a certain order of supervision; supplementing the standards to which
 20 certain transactions within an insurance holding company system are subject;
 21 providing that a certain notice be given before a domestic insurer and another
 22 member of the same insurance holding company system enter into certain
 23 transactions; providing that certain transactions are subject to certain notice
 24 requirements; altering the penalty amounts for persons that willfully violate
 25 certain provisions of law; requiring certain directors or officers of an insurance
 26 holding company system who engage in certain activities to pay, in their
 27 individual capacity, a certain civil penalty under certain circumstances;
 28 authorizing the Commissioner to petition for certain injunctive or other relief
 29 under certain circumstances; authorizing the Commissioner to institute
 30 criminal proceedings in a certain court against certain persons under certain
 31 circumstances; establishing a certain criminal ~~penalty~~ violations subject to
 32 certain penalties; altering certain definitions; defining certain terms; providing
 33 for a delayed effective date; and generally relating to the Maryland Insurance
 34 Acquisitions Disclosure and Control Act.

35 BY adding to

36 Article – Insurance

37 Section 2–209.1, 7–608, 7–802.1, and 7–807

38 Annotated Code of Maryland

39 (2011 Replacement Volume and 2012 Supplement)

40 BY repealing and reenacting, with amendments,

41 Article – Insurance

42 Section 2–209(g)(1), 7–101, 7–102, 7–105, 7–106, 7–201, 7–302 through 7–304,

43 7–306, 7–309, 7–603, 7–605 through 7–607, 7–702, 7–703, 7–802, and

44 7–805

45 Annotated Code of Maryland

1 (2011 Replacement Volume and 2012 Supplement)

2 BY repealing

3 Article – Insurance

4 Section 7–807

5 Annotated Code of Maryland

6 (2011 Replacement Volume and 2012 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article – Insurance**

10 2–209.

11 (g) (1) This subsection applies only to a document, material, or
12 information other than an adopted examination report that:

13 (i) is in the control or possession of the Commissioner; and

14 (ii) is obtained or generated during an analysis or examination
15 conducted under § 2–205 or § 2–206 of this subtitle, **TITLE 7 OF THIS ARTICLE**, or §
16 23–103, § 15–10B–19, or § 15–10B–20 of this article.

17 **2–209.1.**

18 **(A) IN THIS SECTION, “SUPERVISORY COLLEGE” MEANS A FORUM FOR**
19 **COOPERATION AND COMMUNICATION AMONG THE INVOLVED STATE, FEDERAL,**
20 **AND INTERNATIONAL REGULATORS ESTABLISHED FOR THE FUNDAMENTAL**
21 **PURPOSE OF FACILITATING THE EFFECTIVENESS OF SUPERVISION OF ENTITIES**
22 **THAT BELONG TO AN INSURANCE HOLDING COMPANY SYSTEM.**

23 **(B) (1) WITH RESPECT TO ANY INSURER REGISTERED UNDER TITLE**
24 **7, SUBTITLE 6 OF THIS ARTICLE, THE COMMISSIONER MAY PARTICIPATE IN A**
25 **SUPERVISORY COLLEGE FOR ANY DOMESTIC INSURER THAT IS PART OF AN**
26 **INSURANCE HOLDING COMPANY SYSTEM WITH ~~NATIONAL OR~~ INTERNATIONAL**
27 **OPERATIONS IN ORDER TO DETERMINE COMPLIANCE BY THE INSURER WITH**
28 **THIS ARTICLE.**

29 **(2) THE POWERS OF THE COMMISSIONER WITH RESPECT TO A**
30 **SUPERVISORY COLLEGE INCLUDE:**

31 **(1) INITIATING THE ESTABLISHMENT OF A SUPERVISORY**
32 **COLLEGE;**

1 **(II) DETERMINING THE MEMBERSHIP AND PARTICIPATION**
2 **OF OTHER SUPERVISORS IN THE SUPERVISORY COLLEGE;**

3 **(III) DETERMINING THE FUNCTIONS OF THE SUPERVISORY**
4 **COLLEGE AND THE ROLE OF OTHER STATE, FEDERAL, AND INTERNATIONAL**
5 **REGULATORS;**

6 **(IV) COORDINATING THE ONGOING ACTIVITIES OF THE**
7 **SUPERVISORY COLLEGE, INCLUDING PLANNING MEETINGS, SUPERVISORY**
8 **ACTIVITIES, AND PROCESSES FOR SHARING INFORMATION; AND**

9 **(V) ESTABLISHING A CRISIS MANAGEMENT PLAN ON THE**
10 **OCCURRENCE OF ANY ACTIVITY, CIRCUMSTANCE, EVENT, OR SERIES OF EVENTS**
11 **INVOLVING ONE OR MORE AFFILIATES OF AN INSURER THAT HAS, OR IS LIKELY**
12 **TO HAVE, A MATERIAL ADVERSE EFFECT ON THE FINANCIAL CONDITION OR**
13 **LIQUIDITY OF THE INSURER OR ITS INSURANCE HOLDING COMPANY SYSTEM AS**
14 **A WHOLE.**

15 **(3) (I) EACH INSURER SUBJECT TO REGISTRATION UNDER §**
16 **7-603 OF THIS ARTICLE SHALL BE LIABLE FOR AND SHALL PAY THE**
17 **REASONABLE EXPENSES OF THE COMMISSIONER'S PARTICIPATION IN A**
18 **SUPERVISORY COLLEGE, INCLUDING TRAVEL EXPENSES.**

19 **(II) A SUPERVISORY COLLEGE MAY BE CONVENED AS**
20 **EITHER A TEMPORARY OR A PERMANENT FORUM FOR COMMUNICATION AND**
21 **COOPERATION AMONG THE REGULATORS CHARGED WITH SUPERVISING AN**
22 **INSURER OR ITS AFFILIATES, AND THE COMMISSIONER MAY ESTABLISH A**
23 **REGULAR ASSESSMENT TO AN INSURER FOR THE PAYMENT OF EXPENSES**
24 **UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

25 **(4) (I) IN ORDER TO ASSESS THE BUSINESS STRATEGY,**
26 **FINANCIAL POSITION, LEGAL AND REGULATORY POSITION, RISK EXPOSURE,**
27 **RISK MANAGEMENT, AND GOVERNANCE PROCESSES OF AN INSURER OR ITS**
28 **AFFILIATES, AND AS PART OF THE EXAMINATION OF INSURERS UNDER § 7-605**
29 **OF THIS ARTICLE, THE COMMISSIONER MAY PARTICIPATE IN A SUPERVISORY**
30 **COLLEGE WITH OTHER REGULATORS CHARGED WITH SUPERVISING AN INSURER**
31 **OR ITS AFFILIATES, INCLUDING OTHER STATE, FEDERAL, AND INTERNATIONAL**
32 **REGULATORY AGENCIES.**

33 **(II) NOTHING IN THIS SECTION MAY BE CONSTRUED TO**
34 **DELEGATE TO THE SUPERVISORY COLLEGE ANY OF THE AUTHORITY OF THE**
35 **COMMISSIONER TO REGULATE THE INSURER OR THE ACTIVITIES OF ITS**
36 **AFFILIATES WITHIN THE STATE.**

1 **(C) THE COMMISSIONER MAY ENTER INTO AGREEMENTS PROVIDING**
2 **THE BASIS FOR COOPERATION BETWEEN THE COMMISSIONER AND OTHER**
3 **STATE, FEDERAL, AND INTERNATIONAL REGULATORY AGENCIES AND THE**
4 **ACTIVITIES OF THE SUPERVISORY COLLEGE IN ACCORDANCE WITH § 2-209(H)**
5 **OF THIS SUBTITLE.**

6 7-101.

7 (a) In this title the following words have the meanings indicated.

8 (b) “Affiliate” means a person that directly or indirectly, through one or more
9 intermediaries, controls, is controlled by, or is under common control with another
10 person.

11 (c) “Control”, “controlling”, “controlled by”, or “under common control with”
12 means the direct or indirect possession of the power to direct or cause the direction of
13 the management and policies of a person, through ownership of voting securities or of
14 securities convertible into voting securities, by contract other than a commercial
15 contract for goods or nonmanagement services, or otherwise, whether or not the power
16 is exercised or sought to be exercised **UNLESS THE POWER IS THE RESULT OF AN**
17 **OFFICIAL POSITION WITH OR CORPORATE OFFICE HELD BY THE PERSON.**

18 **(D) (1) “ENTERPRISE RISK” MEANS ANY ACTIVITY, CIRCUMSTANCE,**
19 **EVENT, OR SERIES OF EVENTS INVOLVING ONE OR MORE AFFILIATES OF AN**
20 **INSURER THAT, IF NOT REMEDIED PROMPTLY, IS LIKELY TO HAVE A MATERIAL**
21 **ADVERSE EFFECT ON THE FINANCIAL CONDITION OR LIQUIDITY OF THE**
22 **INSURER OR ITS INSURANCE HOLDING COMPANY SYSTEM AS A WHOLE.**

23 **(2) “ENTERPRISE RISK” INCLUDES ANYTHING THAT WOULD:**

24 **(I) CAUSE THE INSURER’S RISK BASED CAPITAL TO FALL**
25 **~~INTO~~ TO OR BELOW A COMPANY ACTION LEVEL UNDER TITLE 4, SUBTITLE 3 OF**
26 **THIS ARTICLE; OR**

27 **(II) CAUSE THE INSURER TO BE IN A HAZARDOUS FINANCIAL**
28 **CONDITION UNDER § 9-102 OF THIS ARTICLE.**

29 **[(d)] (E)** “Insurance holding company” means a person that directly or
30 indirectly controls an insurer or controls a person that controls an insurer.

31 **[(e)] (F)** “Insurance holding company system” means two or more affiliates,
32 at least one of which is an insurer.

33 **[(f)] (G)** “Subsidiary” means an affiliate of a person that, directly or
34 indirectly, through one or more intermediaries, is controlled by that person.

1 **(H) “ULTIMATE CONTROLLING PERSON” MEANS THE PERSON WITHIN A**
2 **HOLDING COMPANY SYSTEM THAT IS NOT CONTROLLED BY ANY OTHER PERSON.**

3 7–102.

4 (a) The General Assembly finds that the public interest and the interest of
5 policyholders and stockholders may be adversely affected when:

6 (1) control of an insurer is sought by a person that would use that
7 control adversely to the best interest of policyholders or stockholders;

8 (2) acquisition of control of an insurer would substantially lessen
9 competition or create a monopoly in the insurance business in the State;

10 (3) an insurer that is part of an insurance holding company system
11 enters into transactions or relationships with affiliates on terms that are not fair and
12 reasonable; or

13 (4) an insurer pays to stockholders dividends that jeopardize the
14 financial condition of the insurer.

15 (b) The purposes of this title include promoting the public interest by:

16 (1) requiring disclosures in acquisitions or mergers;

17 (2) requiring disclosures of material transactions, relationships
18 between an insurer and its affiliates, and dividends to stockholders paid by insurers;

19 (3) requiring disclosures of relevant information about changes in
20 control of insurers; [and]

21 (4) **PROVIDING STANDARDS GOVERNING MATERIAL**
22 **TRANSACTIONS BETWEEN AN INSURER AND ITS AFFILIATES; AND**

23 **(5)** establishing penalties for failure to disclose and providing for the
24 disapproval of certain transactions.

25 7–105.

26 (a) For purposes of this title, in determining whether an insurer’s assets and
27 surplus as regards policyholders are reasonable in relation to the insurer’s
28 outstanding liabilities and adequate to its financial needs, the following factors, among
29 others, 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 appropriate
3 criteria;

4 (2) the extent to which the insurer's business is diversified among the
5 several lines of insurance;

6 (3) the number and size of risks insured in each line of insurance;

7 (4) the geographical dispersion of the insurer's insured risks;

8 (5) the nature and extent of reinsurance of the insurer's risks;

9 (6) the quality, diversification, and liquidity of the insurer's
10 investment portfolio;

11 (7) the recent past and projected future trends in the size of the
12 insurer's surplus as regards policyholders;

13 (8) the surplus as regards policyholders maintained by comparable
14 insurers;

15 (9) the quality and liquidity of investments in and other transactions
16 with affiliates;

17 (10) the adequacy of the reserves of the insurer; [and]

18 (11) the quality of the earnings of the insurer and the extent to which
19 the reported earnings include extraordinary items; AND

20 **(12) THE RECENT PAST AND PROJECTED FUTURE TRENDS IN THE**
21 **SIZE AND QUALITY OF THE INSURER'S INVESTMENT PORTFOLIO.**

22 (b) The Commissioner may discount an investment or treat an investment
23 under subsection (a)(9) of this section as a nonadmitted asset for purposes of
24 determining the adequacy of surplus as regards policyholders whenever the
25 investment so warrants.

26 7-106.

27 (a) Except as provided in subsections (b) and (c) of this section or otherwise
28 by law, all information and documents that are filed with the Commissioner in
29 compliance with the requirements of this title or that are reported to, obtained by, or
30 otherwise disclosed to the Commissioner or any other person in the course of an
31 examination or investigation made under this title:

32 (1) are confidential material;

1 (2) are not subject to subpoena; ~~and~~

2 (3) may not be made public by the Commissioner, the National
3 Association of Insurance Commissioners, or any other person; **AND**

4 **(4) ARE NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN**
5 **EVIDENCE IN ANY CIVIL ACTION.**

6 (b) Material that otherwise is confidential under subsection (a) of this section
7 may be made public by any person [to whom] **WHO HAS RECEIVED THE PRIOR**
8 **WRITTEN CONSENT OF** the [insurer] **PERSON** to [which] **WHOM** the material relates
9 [gives prior written consent].

10 (c) If, after giving [an insurer and its affiliates] **THE PERSON TO WHOM**
11 **THE MATERIAL RELATES** notice and an opportunity to be heard, the Commissioner
12 determines that it is in the interest of the policyholders, stockholders, or the public to
13 make public any material relating to the [insurer] **PERSON** that otherwise is
14 confidential under subsection (a) of this section, the Commissioner may make public
15 all or part of the material in an appropriate manner.

16 7–201.

17 (a) In addition to any other investment allowed elsewhere in this article, a
18 domestic insurer, either alone or with another person, may invest in or otherwise
19 acquire a subsidiary that engages in or is registered to engage in one or more of the
20 following insurance businesses or business activities that are ancillary to an insurance
21 business:

22 (1) conducting an insurance business that is authorized by the
23 jurisdiction where the subsidiary is incorporated;

24 (2) acting as an [insurance agency] **INSURANCE PRODUCER** for its
25 parent, its parent's insurer subsidiaries, or its parent's intermediate insurer
26 subsidiaries;

27 (3) investing, reinvesting, or trading in securities for itself, its
28 affiliate, its parent, or another subsidiary of its parent;

29 (4) managing an investment company that is subject to the
30 Investment Company Act of 1940, including managing related sales and services of the
31 investment company;

32 (5) acting as a broker–dealer that is subject to the Securities Exchange
33 Act of 1934;

1 (6) providing investment advice to governments, governmental units,
2 corporations, or other organizations or groups;

3 (7) performing other services related to the operations of an insurance
4 business, including actuarial, loss prevention, safety engineering, data processing,
5 accounting, claims, appraisal, and collection services;

6 (8) owning and managing assets that its parent may own and manage;

7 (9) acting as administrative agent for a governmental unit that
8 performs an insurance function;

9 (10) financing insurance premiums;

10 (11) conducting any other business activity that is reasonably ancillary
11 to an insurance business; or

12 (12) owning one or more corporations engaged exclusively in or
13 organized to engage exclusively in one or more of the business activities specified in
14 this section.

15 (b) Subject to the approval of the Commissioner and to the provisions of this
16 title, a domestic mutual insurer may acquire or form a subsidiary insurance holding
17 company.

18 7-302.

19 With respect to a transaction subject to this subtitle, a person must comply with
20 all requirements of this subtitle before the person:

21 (1) makes a tender offer for, invites tenders of, enters into an
22 agreement to exchange securities for, or otherwise acquires any voting security or
23 security convertible into voting security of a domestic insurer, or **[of] A PERSON,**
24 **INCLUDING** an insurance holding company **[controlling], THAT CONTROLS** a
25 domestic insurer; or

26 (2) makes an agreement to merge with or otherwise to acquire control
27 of a domestic insurer, or **[of] A PERSON, INCLUDING** an insurance holding company
28 **[controlling], THAT CONTROLS** a domestic insurer.

29 7-303.

30 (a) With respect to a transaction subject to this subtitle, a **[domestic insurer**
31 **or a person controlling a domestic insurer]** **PERSON SEEKING TO ACQUIRE**
32 **CONTROL OF A DOMESTIC INSURER** must file with the Commissioner the
33 pre-acquisition notification required under Subtitle 4 of this title.

1 (b) The pre-acquisition notification must be filed at least 30 days before a
2 transaction subject to this subtitle is proposed to become effective.

3 (c) The Commissioner may impose sanctions under § 7-405 of this title for
4 failure to file the information required under subsection (a) of this section.

5 **(D) (1) ANY PERSON THAT CONTROLS A DOMESTIC INSURER SEEKING**
6 **TO DIVEST ITS CONTROLLING INTEREST IN THE DOMESTIC INSURER SHALL FILE**
7 **A CONFIDENTIAL NOTICE OF ITS PROPOSED DIVESTITURE WITH THE**
8 **COMMISSIONER AT LEAST 30 DAYS BEFORE THE PROPOSED DIVESTITURE AND**
9 **PROVIDE A COPY OF THE NOTICE TO THE INSURER.**

10 **(2) THE COMMISSIONER SHALL DETERMINE THOSE INSTANCES**
11 **IN WHICH THE PARTY SEEKING TO DIVEST A CONTROLLING INTEREST IN AN**
12 **INSURER MUST FILE FOR AND OBTAIN APPROVAL OF THE TRANSACTION.**

13 **(3) THE INFORMATION REGARDING THE DIVESTITURE SHALL**
14 **REMAIN CONFIDENTIAL UNTIL THE CONCLUSION OF THE TRANSACTION UNLESS,**
15 **IN THE COMMISSIONER'S DISCRETION, THE COMMISSIONER DETERMINES THAT**
16 **CONFIDENTIAL TREATMENT WILL INTERFERE WITH ENFORCEMENT OF THIS**
17 **SECTION.**

18 **(4) ~~THIS~~ UNLESS THE COMMISSIONER DETERMINES OTHERWISE,**
19 **THIS SUBSECTION ~~MAY~~ DOES NOT APPLY IF THE STATEMENT REQUIRED BY**
20 **SUBSECTION (A) OF THIS SECTION IS FILED.**

21 7-304.

22 (a) **[(1)] A PERSON SEEKING TO ACQUIRE CONTROL OF A domestic**
23 **insurer[, or a person that is primarily engaged directly or indirectly in the insurance**
24 **business and that controls a domestic insurer,] must file a statement with the**
25 **Commissioner AND PROVIDE A COPY TO THE DOMESTIC INSURER.**

26 **[(2) If the Commissioner determines that a person controlling a**
27 **domestic insurer is, directly or through affiliates, primarily engaged in a business**
28 **other than the insurance business, the person need not comply with paragraph (1) of**
29 **this subsection.]**

30 (b) The statement must be filed at least 60 days before a transaction subject
31 to this subtitle is proposed to become effective.

32 (c) The statement required by subsection (a) of this section must contain:

1 (1) the name and address of each individual, by or for whom the
2 transaction subject to this subtitle is to be made, and background information about
3 the individual, including:

4 (i) the principal occupation of and all offices and positions held
5 by the individual during the past 10 years; and

6 (ii) other than minor traffic offenses, crimes of which the
7 individual has been convicted during the past 10 years;

8 (2) the name and address of each person that is not an individual, by
9 or for whom the transaction subject to this subtitle is to be made, and background
10 information about the person, including:

11 (i) the nature of the person's business operations and those of
12 its predecessors during the past 10 years or any shorter period that the person and
13 any predecessors have existed;

14 (ii) a description of the business that the person and its
15 subsidiaries intend to do;

16 (iii) a list of the person's current directors and executive officers,
17 individuals who have been selected to hold those positions, and individuals who
18 perform or will perform functions appropriate to those positions; and

19 (iv) for each individual listed under subitem (iii) of this item:

20 1. the principal occupation of and all offices and
21 positions held by the individual during the past 10 years; and

22 2. other than minor traffic offenses, crimes of which the
23 individual has been convicted during the past 10 years;

24 (3) fully audited financial information about the earnings and
25 financial condition of each acquiring person and any predecessor for the past 5 fiscal
26 years or any shorter period that each acquiring person and any predecessor have
27 existed;

28 (4) similar unaudited financial information dated within 90 days
29 before the statement is filed;

30 (5) (i) copies of all actual or proposed tender offers, invitations for
31 tender, exchange offers, and agreements to acquire or exchange that relate to any
32 security described in this subtitle;

33 (ii) if distributed, copies of any additional soliciting materials
34 that relate to the actions described in subitem (i) of this item;

1 (6) the source and amount of the funds or other consideration for a
2 transaction subject to this subtitle and, if a part of the funds or other consideration
3 has been or is to be borrowed or otherwise obtained for a transaction subject to this
4 subtitle, a description of that transaction and the names of the parties to that
5 transaction;

6 (7) any plans or proposals to liquidate the domestic insurer or
7 insurance holding company controlling a domestic insurer, sell its assets, merge it
8 with any person, or make any other major change in its business or corporate
9 structure or management;

10 (8) with regard to any security connected with a transaction subject to
11 this subtitle:

12 (i) the number of shares each acquiring person proposes to
13 acquire;

14 (ii) the terms of the offer, invitation, agreement, or transaction
15 subject to this subtitle; and

16 (iii) a statement of the method by which the fairness of the
17 proposal was determined;

18 (9) the name and address of each person and each of that person's
19 affiliates holding the following securities, the amount held in each class of the
20 securities, and, for the past 2 years, the dates, amounts, and prices of sales and
21 purchases of the securities by the person or affiliate:

22 (i) beneficially owned voting securities of the domestic insurer;

23 (ii) voting securities of the domestic insurer in which there is a
24 right to acquire beneficial ownership;

25 (iii) beneficially owned securities that may be converted into
26 voting securities of the domestic insurer; and

27 (iv) securities in which there is a right to acquire beneficial
28 ownership that may be converted into voting securities of the domestic insurer;

29 (10) the names of the parties to and details of any contracts,
30 arrangements, or understandings about securities of the domestic insurer or insurance
31 holding company controlling the domestic insurer, including contracts, arrangements,
32 or understandings providing for:

33 (i) transfers of the securities;

- 1 (ii) joint ventures;
- 2 (iii) loan or option arrangements;
- 3 (iv) puts or calls;
- 4 (v) loan guarantees;
- 5 (vi) guarantees against loss or guarantees of profits;
- 6 (vii) divisions of losses or profits; and
- 7 (viii) giving or withholding of proxies;

8 (11) a description of the purchase of any security described in this
9 subtitle during the 12 calendar months immediately preceding the filing of the
10 statement by an acquiring person, including:

- 11 (i) the dates of purchase;
- 12 (ii) the names of the purchasers; and
- 13 (iii) the consideration paid or agreed to be paid;

14 (12) a description of any recommendations to purchase any security
15 subject to this subtitle made during the 12 calendar months immediately preceding
16 the filing of the statement by:

- 17 (i) an acquiring person; or
- 18 (ii) any other person, based on interviews with or at the
19 suggestion of the acquiring person;

20 (13) the terms of any agreements **MADE OR PROPOSED TO BE MADE**
21 with[, including the amount of any fees, commissions, or other compensation to be
22 paid to,] brokers, securities dealers, service organizations, or other persons,
23 **INCLUDING THE AMOUNT OF ANY FEES, COMMISSIONS, OR OTHER**
24 **COMPENSATION TO BE PAID**, for soliciting shares for tender; [and]

25 (14) **AN AGREEMENT BY THE PERSON REQUIRED TO FILE THE**
26 **STATEMENT UNDER THIS SECTION THAT THE PERSON WILL PROVIDE THE**
27 **ANNUAL REPORT SPECIFIED IN § 7-603(H) OF THIS TITLE FOR AS LONG AS**
28 **CONTROL EXISTS;**

29 (15) **AN ACKNOWLEDGMENT BY THE PERSON REQUIRED TO FILE**
30 **THE STATEMENT UNDER THIS SECTION THAT THE PERSON AND ALL AFFILIATES**

1 IN THE INSURANCE HOLDING COMPANY SYSTEM WILL PROVIDE INFORMATION
2 TO THE COMMISSIONER ON REQUEST AS NECESSARY TO EVALUATE ENTERPRISE
3 RISK TO THE INSURER; AND

4 [(14)] (16) other information necessary or appropriate in the public
5 interest or for the protection of policyholders that the Commissioner requires by
6 regulation.

7 (d) (1) If the person required to file a statement under this section is a
8 partnership, limited partnership, syndicate, or other group, the statement also shall
9 include the information required by subsection (c) of this section for:

10 (i) each partner of the partnership or limited partnership;

11 (ii) each member of the syndicate or group; and

12 (iii) each person controlling a partner or member.

13 (2) If a person required to file the statement under this section is a
14 corporation or if a person referred to in paragraph (1) of this subsection is a
15 corporation, the statement also shall include the information required by subsection
16 (c) of this section for:

17 (i) the corporation;

18 (ii) each officer and director of the corporation; and

19 (iii) each person that directly or indirectly is the beneficial owner
20 of more than 10% of the outstanding voting securities of the corporation.

21 (3) IF ANY MATERIAL CHANGE OCCURS IN THE FACTS SET FORTH
22 IN THE STATEMENT FILED WITH THE COMMISSIONER AND PROVIDED TO THE
23 INSURER UNDER THIS SECTION, AN AMENDMENT, TOGETHER WITH COPIES OF
24 ANY DOCUMENTS OR OTHER MATERIALS NECESSARY TO DESCRIBE THE
25 AMENDMENT, SHALL BE FILED WITH THE COMMISSIONER AND PROVIDED TO
26 THE INSURER WITHIN THE EARLIER OF 2 BUSINESS DAYS AFTER:

27 (I) THE CHANGE OCCURS; OR

28 (II) THE PERSON THAT FILED THE STATEMENT LEARNS OF
29 THE CHANGE.

30 (e) A person that is required to file a statement under this section instead
31 may file with the Commissioner, in addition to any other materials that the
32 Commissioner requests:

1 (1) a registration statement filed under the Securities Act of 1933;

2 (2) a disclosure containing similar information filed under the
3 Securities Exchange Act of 1934; or

4 (3) a registration or disclosure that contains similar information filed
5 under another State law.

6 (f) (1) Except as provided in paragraph (2) of this subsection, on request
7 of the person filing the statement, the Commissioner may not make public the name of
8 a lender listed under subsection (c)(6) of this section as a source of funds, unless the
9 transaction is made in the lender's ordinary course of business.

10 (2) The Commissioner may make public the name of a lender under
11 paragraph (1) of this subsection if the Commissioner considers the disclosure to be in
12 the public interest.

13 (g) The Commissioner shall provide the statement filed under this section to
14 the person to be acquired on the date the attempt to acquire is made public.

15 7-306.

16 (a) A transaction subject to this subtitle may not be made unless, within 60
17 days after the statement required by § 7-304 of this subtitle is filed with the
18 Commissioner or within any extension of that period, the Commissioner approves the
19 transaction or does not disapprove the transaction.

20 (b) Subject to subsection (c) of this section, the Commissioner shall
21 disapprove a proposed transaction subject to this subtitle if the Commissioner finds
22 that:

23 (1) after the transaction, the domestic insurer could not satisfy the
24 requirements for the issuance of a certificate of authority to engage in the insurance
25 business which it intends to transact **OR IS LICENSED TO TRANACT** in the State,
26 taking into consideration the financial and managerial resources and future prospects
27 of the domestic insurer;

28 (2) the transaction may substantially lessen competition in insurance
29 in the State or tend to create a monopoly;

30 (3) the financial condition of an acquiring person might jeopardize the
31 financial stability of the domestic insurer or prejudice the interests of its policyholders
32 or, in the case of an acquisition of control, the interests of any remaining stockholders
33 who are unaffiliated with the acquiring person;

34 (4) the acquiring person has plans or proposals that are unfair or
35 prejudicial to policyholders for liquidating the domestic insurer, selling its assets,

1 merging it with another person, or making any other major change in its business or
2 corporate structure or management;

3 (5) it would not be in the interest of policyholders, shareholders, or the
4 public to allow the acquiring person to control the domestic insurer based on the
5 competence, experience, and integrity of the persons that would control the operations
6 of the domestic insurer;

7 (6) any party to an agreement to merge with a domestic insurer is not
8 itself an insurer; or

9 (7) the interests of the domestic insurer's policyholders and
10 stockholders might otherwise be prejudiced, impaired, or not properly protected.

11 (c) In disapproving a transaction based on a finding under subsection (b)(2)
12 of this section:

13 (1) the Commissioner may not disapprove a transaction subject to this
14 subtitle if the Commissioner finds that any of the situations meeting the criteria of §
15 7-405(b) of this title exist;

16 (2) the Commissioner may condition the approval of a transaction
17 subject to this subtitle on the removal of the basis of disapproval under subsection
18 (b)(2) of this section within a specified period of time; and

19 (3) the disapproval is subject to § 7-405(c) of this title and the
20 informational requirements under § 7-403(c) of this title.

21 7-309.

22 A person violates this title if:

23 (1) the person fails to file the statement required by this subtitle; [or]

24 (2) [the person,] without the Commissioner's approval during the
25 60-day period under § 7-306(a) of this subtitle, or after the Commissioner's
26 disapproval, **THE PERSON** makes or attempts to make an acquisition of actual or
27 presumed control of, or a merger with, a domestic insurer or **A PERSON, INCLUDING**
28 **AN** insurance holding company [controlling], **THAT CONTROLS** a domestic insurer; **OR**

29 (3) **WITHOUT THE COMMISSIONER'S APPROVAL DURING THE**
30 **30-DAY PERIOD UNDER § 7-303(D) OF THIS SUBTITLE, OR AFTER THE**
31 **COMMISSIONER'S DISAPPROVAL, THE PERSON DIVESTS OR ATTEMPTS TO**
32 **DIVEST ACTUAL OR PRESUMED CONTROL OF A DOMESTIC INSURER OR A**
33 **PERSON, INCLUDING AN INSURANCE HOLDING COMPANY, THAT CONTROLS A**
34 **DOMESTIC INSURER.**

1 7-603.

2 (a) Each insurer subject to registration shall file the registration statement
3 on the form provided by the Commissioner, containing the following current
4 information:

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

7 (2) the identity and relationship of each member of the insurance
8 holding company system;

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

12 (4) the following agreements in force, and transactions currently
13 outstanding or that have occurred during the previous calendar year between the
14 insurer and the insurer's affiliates:

15 (i) loans, other investments, purchases, sales, and exchanges of
16 securities of the affiliates by the insurer or of the insurer by its affiliates;

17 (ii) purchases, sales, and exchanges of assets;

18 (iii) transactions not in the ordinary course of business;

19 (iv) except for insurance contracts entered into in the ordinary
20 course of the insurer's business, guarantees or undertakings for the benefit of an
21 affiliate that result in an actual contingent exposure to liability of the insurer's assets;

22 (v) management agreements, service contracts, and
23 cost-sharing arrangements;

24 (vi) reinsurance agreements;

25 (vii) dividends and other distributions to shareholders; and

26 (viii) consolidated tax allocation agreements;

27 **(5) STATEMENTS THAT THE INSURER'S BOARD OF DIRECTORS**
28 **OVERSEES CORPORATE GOVERNANCE AND INTERNAL CONTROLS AND THAT THE**
29 **INSURER'S OFFICERS OR SENIOR MANAGEMENT HAVE APPROVED,**
30 **IMPLEMENTED, AND CONTINUE TO MAINTAIN AND MONITOR CORPORATE**
31 **GOVERNANCE AND INTERNAL CONTROL PROCEDURES;**

1 **(6) ON REQUEST FROM THE COMMISSIONER AND IN ACCORDANCE**
2 **WITH SUBSECTION (F) OF THIS SECTION, FINANCIAL STATEMENTS OF OR WITHIN**
3 **AN INSURANCE HOLDING COMPANY SYSTEM, INCLUDING ALL AFFILIATES;**

4 **[(5)] (7)** any other matters about transactions between the insurer
5 and its affiliates that the registration statement form requires; and

6 **[(6)] (8)** a summary outlining all items in the current registration
7 statement that represent changes from the prior registration statement.

8 (b) Each affiliate in an insurance holding company system shall give an
9 insurer subject to registration under this subtitle that is in the same insurance
10 holding company system complete and accurate information if that information is
11 reasonably necessary to enable the insurer to comply with this subtitle.

12 (c) Each insurer required to register under this subtitle shall[:

13 (1) file with the National Association of Insurance Commissioners a
14 copy of the registration statement required by subsection (a) of this section; and

15 (2)], on request of the **INSURANCE** commissioner of any state where the
16 insurer is authorized to do business, file with that commissioner a copy of the
17 registration statement summary required by subsection **[(a)(6)] (A)(8)** of this section.

18 (d) The Commissioner may allow or require affiliated insurers subject to
19 registration under this subtitle to file a consolidated registration statement.

20 (e) The Commissioner may require an insurer that is a member of an
21 insurance holding company system and that is not subject to registration under this
22 subtitle to provide to the Commissioner a copy of the registration statement or other
23 information that the insurer files with the commissioner of the insurer's domiciliary
24 jurisdiction.

25 **(F) (1) FINANCIAL STATEMENTS REQUIRED UNDER SUBSECTION**
26 **(A)(6) OF THIS SECTION MAY INCLUDE ANNUAL AUDITED FINANCIAL**
27 **STATEMENTS FILED WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION**
28 **UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES**
29 **EXCHANGE ACT OF 1934, AS AMENDED.**

30 **(2) AN INSURER REQUIRED TO FILE FINANCIAL STATEMENTS**
31 **UNDER SUBSECTION (A) OF THIS SECTION MAY SATISFY THE REQUEST BY**
32 **PROVIDING THE COMMISSIONER WITH THE MOST RECENTLY FILED PARENT**
33 **CORPORATION FINANCIAL STATEMENTS THAT HAVE BEEN FILED WITH THE U.S.**
34 **SECURITIES AND EXCHANGE COMMISSION.**

1 (G) (1) UNLESS OTHERWISE PROVIDED BY THE COMMISSIONER
2 THROUGH REGULATION OR ORDER, A SALE, A PURCHASE, AN EXCHANGE, A
3 LOAN OR AN EXTENSION OF CREDIT, AN INVESTMENT, OR A GUARANTEE
4 INVOLVING 0.5% OR LESS OF AN INSURER'S ADMITTED ASSETS AS OF THE
5 DECEMBER 31 IMMEDIATELY PRECEDING THE TRANSACTION IS NOT MATERIAL
6 FOR PURPOSES OF THIS SECTION.

7 (2) INFORMATION NEED NOT BE DISCLOSED ON THE
8 REGISTRATION STATEMENT FILED UNDER SUBSECTION (A) OF THIS SECTION IF
9 THE INFORMATION IS NOT MATERIAL.

10 (H) (1) ~~THE~~ BEGINNING IN 2015, THE ULTIMATE CONTROLLING
11 PERSON OF EVERY INSURER SUBJECT TO REGISTRATION SHALL FILE AN
12 ANNUAL ENTERPRISE RISK REPORT ON OR BEFORE ~~MAY~~ JULY 1 OF EACH YEAR
13 UNLESS THE COMMISSIONER EXTENDS THE TIME FOR FILING FOR GOOD CAUSE.

14 (2) THE ENTERPRISE RISK REPORT SHALL, TO THE BEST OF THE
15 ULTIMATE CONTROLLING PERSON'S KNOWLEDGE AND BELIEF, IDENTIFY THE
16 MATERIAL RISKS WITHIN THE INSURANCE HOLDING COMPANY SYSTEM THAT
17 COULD POSE ENTERPRISE RISK TO THE INSURER.

18 (3) THE ENTERPRISE RISK REPORT SHALL BE FILED WITH THE
19 LEAD STATE COMMISSIONER OF THE INSURANCE HOLDING COMPANY SYSTEM AS
20 DEFINED AND DETERMINED BY THE PROCEDURES IN THE FINANCIAL ANALYSIS
21 HANDBOOK ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE
22 COMMISSIONERS.

23 (4) THE COMMISSIONER MAY SHARE THE ENTERPRISE RISK
24 REPORT FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION WITH AN
25 INSURANCE REGULATORY AGENCY IN A STATE THAT HAS LAWS OR
26 REGULATIONS THAT THE COMMISSIONER DETERMINES ARE SUBSTANTIALLY
27 SIMILAR TO § 2-209(G) AND (H) OF THIS ARTICLE, ONLY IF THE AGENCY AGREES
28 IN WRITING TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF
29 THE REPORT.

30 7-605.

31 (a) (1) To verify the information required in the insurer's registration
32 statement AND IN THE ANNUAL ENTERPRISE RISK REPORT, and any addition or
33 amendment to the registration statement OR THE ANNUAL ENTERPRISE RISK
34 REPORT, and in addition to the powers granted under §§ 2-205 through 2-209 of this
35 article relating to the examination of insurers, the Commissioner may order an
36 insurer subject to registration under this subtitle to produce:

1 (i) those records, books, or papers in the possession of the
2 insurer or its affiliates that are necessary to verify the registration statement; and

3 (ii) additional information relevant to the registration
4 statement.

5 (2) The Commissioner shall examine the materials produced under
6 this subsection at the time and place prescribed in §§ 2–205 through 2–209 of this
7 article.

8 (b) (1) The Commissioner may conduct an examination under subsection
9 (a) of this section only:

10 (i) if the examination of the insurer under §§ 2–205 through
11 2–209 of this article is inadequate, or the interests of the policyholders of the insurer
12 are being adversely affected; and

13 (ii) within 3 years after the filing of the registration statement
14 or the addition or amendment to the registration statement.

15 (2) In a matter involving fraud, the 3–year limitation period of this
16 subsection does not apply.

17 (c) (1) [If reasonably necessary, the] **THE** Commissioner may retain, **AT**
18 **THE INSURER’S EXPENSE**, the services of [an accounting firm at the insurer’s
19 expense to help in an examination under subsection (a) of this section]
20 **ACCOUNTANTS, ATTORNEYS, ACTUARIES, AND OTHER EXPERTS NOT OTHERWISE**
21 **A PART OF THE COMMISSIONER’S STAFF AS MAY BE REASONABLY NECESSARY**
22 **TO ASSIST IN THE CONDUCT OF AN EXAMINATION UNDER SUBSECTION (A) OF**
23 **THIS SECTION.**

24 (2) [An accounting firm] **THE ACCOUNTANTS, ATTORNEYS,**
25 **ACTUARIES, AND OTHER EXPERTS** retained under this subsection [is] **ARE** under
26 the direction and control of the Commissioner and [acts] **ACT** only in an advisory
27 capacity.

28 (d) An insurer that produces materials for an examination under subsection
29 (a) of this section is liable for and shall pay the expense of the examination in
30 accordance with § 2–208 of this article.

31 **(E) WITH REGARD TO AN EXAMINATION UNDER SUBSECTION (A) OF**
32 **THIS SECTION, THE COMMISSIONER HAS THE AUTHORITY PROVIDED UNDER §**
33 **2–203 OF THIS ARTICLE.**

34 7–606.

1 (a) An insurer, a member of an insurance holding company system, or any
 2 other person may file with the Commissioner a disclaimer of affiliation with an
 3 authorized insurer that fully discloses:

4 (1) all material relationships and bases for affiliation between the
 5 person filing the disclaimer and the authorized insurer; and

6 (2) the basis for disclaiming the affiliation.

7 (b) (1) [After giving] **WITHIN 30 DAYS AFTER RECEIPT OF A FILING**
 8 **UNDER SUBSECTION (A) OF THIS SECTION, THE COMMISSIONER SHALL GIVE** all
 9 parties in interest notice and an opportunity to be heard[.].

10 (2) **WITHIN 30 DAYS AFTER THE CLOSE OF THE NOTICE PERIOD**
 11 **UNDER PARAGRAPH (1) OF THIS SUBSECTION,** the Commissioner may disallow a
 12 disclaimer based on specific findings of fact.

13 [(c)] (3) [An insurer] **IF WITHIN 30 DAYS AFTER THE CLOSE OF THE**
 14 **NOTICE PERIOD THE COMMISSIONER HAS NOT DISALLOWED THE DISCLAIMER,**
 15 **THE DISCLAIMING PARTY IS RELIEVED OF ITS DUTY TO REGISTER OR REPORT**
 16 **UNDER THIS SUBTITLE, AND THE INSURER** is relieved of any duty to register or
 17 report under this subtitle that arises out of the insurer's relationship with the person
 18 filing the disclaimer[:]

19 (1) from the date the disclaimer is filed; and

20 (2) until the Commissioner disallows the disclaimer].

21 (4) **IN THE EVENT OF DISALLOWANCE, THE DISCLAIMING PARTY**
 22 **MAY REQUEST AN ADMINISTRATIVE HEARING, WHICH SHALL BE GRANTED.**

23 7-607.

24 (A) Failure to file the registration statement [or], summary [of it], **OR**
 25 **ENTERPRISE RISK REPORT** required by this subtitle in the time specified in this
 26 subtitle is a violation of this title.

27 (B) (1) **AN INSURER THAT DOES NOT FILE A REGISTRATION**
 28 **STATEMENT OR SUMMARY REQUIRED UNDER § 7-603(A) OF THIS SUBTITLE, ~~OR~~**
 29 **~~A PERSON THAT DOES NOT FILE AN ENTERPRISE RISK REPORT REQUIRED BY §~~**
 30 **~~7-603(H) OF THIS SUBTITLE,~~ ON OR BEFORE MAY 1 OR THE DATE THE**
 31 **COMMISSIONER SETS IN ACCORDANCE WITH § 7-602(B) ~~OR § 7-603(H) OF THIS~~**
 32 **SUBTITLE, MAY BE SUBJECT TO A PENALTY OF UP TO:**

33 (I) **\$500 FOR EACH DAY FROM MAY 1 THROUGH MAY 10;**

1 **(II) \$1,000 FOR EACH DAY FROM MAY 11 THROUGH MAY 31;**
2 **AND**

3 **(III) \$5,000 FOR EACH DAY AFTER MAY 31.**

4 **(2) IN DETERMINING THE AMOUNT OF ANY FINANCIAL PENALTY**
5 **TO BE IMPOSED UNDER THIS SECTION, THE COMMISSIONER SHALL CONSIDER**
6 **THE FOLLOWING FACTORS:**

7 **(I) THE SERIOUSNESS OF THE VIOLATION;**

8 **(II) THE GOOD FAITH OF THE VIOLATOR;**

9 **(III) THE VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS;**

10 **(IV) THE DELETERIOUS EFFECT OF THE VIOLATION ON THE**
11 **PUBLIC AND THE INSURANCE INDUSTRY; AND**

12 **(V) THE ASSETS OF THE VIOLATOR.**

13 **7-608.**

14 **WHENEVER IT APPEARS TO THE COMMISSIONER THAT A PERSON HAS**
15 **COMMITTED A VIOLATION OF § 7-603(H) OF THIS SUBTITLE THAT PREVENTS A**
16 **FULL UNDERSTANDING OF THE ENTERPRISE RISK TO THE INSURER BY**
17 **AFFILIATES OR BY THE INSURANCE HOLDING COMPANY SYSTEM, THE**
18 **VIOLATION MAY SERVE AS AN INDEPENDENT BASIS FOR DISAPPROVING**
19 **DIVIDENDS OR DISTRIBUTIONS AND PLACING THE INSURER UNDER AN ORDER**
20 **OF SUPERVISION IN ACCORDANCE WITH § 7-804 OF THIS TITLE.**

21 **7-702.**

22 Each transaction within an insurance holding company system to which an
23 insurer subject to registration under Subtitle 6 of this title is a party is subject to the
24 following standards:

25 (1) the terms shall be fair and reasonable in light of the purposes of
26 this title;

27 (2) the records of each party shall clearly and accurately disclose the
28 precise nature and details of the transaction, including accounting information
29 necessary to support the reasonableness of the charges or fees to the parties;

1 (3) after the transaction, including any dividend or distribution to
2 shareholder affiliates, the insurer has assets and surplus as regards policyholders
3 that:

4 (i) bear a reasonable relation to the insurer's outstanding
5 liabilities; and

6 (ii) are adequate to meet the insurer's financial needs;

7 (4) charges or fees for services performed shall be reasonable; [and]

8 (5) expenses incurred and payments received shall be allocated to the
9 insurer in conformity with customary insurance accounting practices consistently
10 applied; AND

11 **(6) AGREEMENTS, INCLUDING MANAGEMENT AGREEMENTS,
12 SERVICE CONTRACTS, TAX ALLOCATION AGREEMENTS, OR COST-SHARING
13 AGREEMENTS, SHALL INCLUDE THE PROVISIONS THAT THE COMMISSIONER
14 REQUIRES BY REGULATION.**

15 7-703.

16 (a) [In this section, "material transaction" includes:

17 (1) an asset change, determined as of the December 31 immediately
18 preceding a transaction involving an insurer, that exceeds in value the lesser of:

19 (i) 5% of the insurer's surplus as regards policyholders; and

20 (ii) the net gain from operations of a life insurer, or the net
21 investment income of an insurer other than a life insurer; and

22 (2) any other transaction specified by regulation to be a material
23 transaction.

24 (b)] **(1)** Before a domestic insurer and another member of the same
25 insurance holding company system enter into any of the transactions specified in
26 subsection [(e)](D) of this section, **INCLUDING AMENDMENTS OR MODIFICATIONS
27 OF AFFILIATE AGREEMENTS PREVIOUSLY FILED UNDER THIS SECTION**, the
28 domestic insurer shall notify the Commissioner in writing of its intention to enter into
29 the transaction.

30 **(2) THE NOTICE FOR AMENDMENTS OR MODIFICATIONS SHALL
31 INCLUDE THE REASONS FOR THE AMENDMENTS OR MODIFICATIONS AND THE
32 PROJECTED FINANCIAL IMPACT OF THE AMENDMENTS OR MODIFICATIONS ON
33 THE DOMESTIC INSURER.**

1 **(3) A DOMESTIC INSURER THAT INTENDS TO TERMINATE AN**
2 **AGREEMENT OR OTHER TRANSACTION PREVIOUSLY FILED UNDER THIS SECTION**
3 **SHALL PROVIDE THE COMMISSIONER WITH ~~AT LEAST 30 DAYS' ADVANCE~~**
4 **WRITTEN NOTICE ~~OF ITS INTENTION TO TERMINATE~~ WITHIN 30 DAYS AFTER THE**
5 **TERMINATION OF THE AGREEMENT OR OTHER TRANSACTION.**

6 **[(c)](B)** The insurer shall notify the Commissioner under subsection **[(b)]**
7 **(A)** of this section:

8 (1) at least 30 days before the transaction is to be entered into; or

9 (2) if the Commissioner allows a shorter notice period, within the time
10 that the Commissioner sets.

11 **[(d)](C)** A domestic insurer and another member of the same insurance
12 holding company system may enter into, **AMEND, MODIFY, OR TERMINATE** MODIFY
13 a transaction **OR AN AGREEMENT** under this section only if, within the notice period
14 under subsection **[(c)] (B)** of this section, the Commissioner does not disapprove the
15 transaction.

16 **[(e)](D)** The following transactions are subject to subsections **(A)**, **(b)**, **AND**
17 **(c)**[, and **(d)**] of this section:

18 (1) a sale, purchase, exchange, loan, OR extension of credit,
19 [guarantee,] or investment, if, as of the December 31 immediately preceding the
20 transaction, the amount of the transaction equals or exceeds:

21 (i) with respect to a life insurer, 3% of the insurer's admitted
22 assets; and

23 (ii) with respect to an insurer other than a life insurer, the
24 lesser of 3% of the insurer's admitted assets and 25% of surplus as regards
25 policyholders;

26 (2) a loan or extension of credit by an insurer to a person that is not an
27 affiliate if:

28 (i) the parties have an agreement or understanding that the
29 proceeds of the transaction, as a whole or in substantial part, are to be used to make
30 loans or extensions of credit to purchase assets of or to make investments in an
31 affiliate of the insurer; and

32 (ii) as of the December 31 immediately preceding the
33 transaction, the amount of the transaction equals or exceeds:

1 1. with respect to a life insurer, 3% of the insurer's
2 admitted assets; and

3 2. with respect to an insurer other than a life insurer,
4 the lesser of 3% of the insurer's admitted assets and 25% of surplus as regards
5 policyholders;

6 (3) **IN ACCORDANCE WITH SUBSECTION (H) OF THIS SECTION**, a
7 reinsurance agreement, or a modification to a reinsurance agreement, including an
8 agreement that requires as consideration the transfer of assets from an insurer to a
9 person that is not its affiliate, if[:

10 (i) the parties have an agreement or understanding that part of
11 the insurer's assets will be transferred to an affiliate of the insurer; and

12 (ii) as of the December 31 immediately preceding the
13 transaction, the amount of the reinsurance premium or change in the insurer's
14 liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders;], **AS**
15 **OF THE DECEMBER 31 IMMEDIATELY PRECEDING THE TRANSACTION, THE**
16 **AMOUNT OF THE REINSURANCE PREMIUM OR CHANGE IN THE INSURER'S**
17 **LIABILITIES OR THE PROJECTED REINSURANCE PREMIUM OR CHANGE IN THE**
18 **INSURER'S LIABILITIES IN ANY OF THE NEXT 3 YEARS EQUALS OR EXCEEDS 5%**
19 **OF THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS;**

20 (4) **ALL REINSURANCE POOLING AGREEMENTS;**

21 ~~[(4)](5)~~ a management agreement, service contract, **TAX**
22 **ALLOCATION AGREEMENT**, or cost-sharing arrangement; ~~[and]~~

23 (6) **SUBJECT TO SUBSECTION (I) OF THIS SECTION, GUARANTEES**
24 **MADE BY A DOMESTIC INSURER;**

25 (7) **DIRECT OR INDIRECT INVESTMENTS IN A PERSON THAT**
26 **CONTROLS THE INSURER OR AN AFFILIATE OF THE INSURER IN AN AMOUNT**
27 **THAT, TOGETHER WITH ITS PRESENT HOLDINGS IN THE INVESTMENTS, EXCEEDS**
28 **2.5% OF THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS;**

29 (8) **NOTWITHSTANDING ITEM (7) OF THIS SUBSECTION, ANY**
30 **DIRECT OR INDIRECT INVESTMENT IN OR ACQUISITION OF A SUBSIDIARY OF**
31 **THE INSURER; AND**

32 ~~[(5)](9)~~ a material transaction, **AS SPECIFIED BY REGULATION**,
33 that the Commissioner determines may adversely affect the interests of the insurer's
34 policyholders.

1 **[(f)](E)** In reviewing transactions under subsection **[(e)] (D)** of this section,
2 the Commissioner shall consider whether a transaction:

3 (1) complies with the standards stated in § 7–702 of this subtitle; or

4 (2) potentially adversely affects the interests of policyholders.

5 **[(g)](F)** (1) A **[material]** transaction that does not conform to this
6 section is a violation of this title.

7 (2) In addition to the sanctions in §§ 7–802, 7–803, 7–805, and 7–807
8 of this title, the Commissioner may set aside and rescind a **[material]** transaction that
9 the Commissioner finds does not conform to this section at the initiative of the
10 Commissioner or otherwise under applicable law.

11 (3) Within 90 days after the date that the Commissioner receives
12 information about **[the material transaction]** **A TRANSACTION THAT THE**
13 **COMMISSIONER FINDS DOES NOT CONFORM TO THIS SECTION**, the Commissioner
14 shall give the insurer notice of the proposed action to set aside or rescind the
15 **[material]** transaction and an opportunity for a hearing.

16 **[(h)](G)** (1) A domestic insurer and another member of the same
17 insurance holding company system may not enter into a transaction that is part of a
18 plan or series of like transactions if the purpose of making separate transactions is to
19 avoid exceeding limitations under this section and the review of the transaction that
20 otherwise would occur.

21 (2) If the Commissioner determines that separate transactions were
22 entered into during any 12–month period in violation of paragraph (1) of this
23 subsection, the Commissioner may impose any sanction authorized by §§ 7–802,
24 7–803, 7–805, and 7–807 of this title.

25 **(H) A REINSURANCE AGREEMENT SUBJECT TO SUBSECTION (D)(3) OF**
26 **THIS SECTION INCLUDES AN AGREEMENT THAT REQUIRES AS CONSIDERATION**
27 **THE TRANSFER OF ASSETS FROM AN INSURER TO A NONAFFILIATE IF AN**
28 **AGREEMENT OR UNDERSTANDING EXISTS BETWEEN THE INSURER AND**
29 **NONAFFILIATE THAT ANY PORTION OF THE ASSETS WILL BE TRANSFERRED TO**
30 **ONE OF MORE AFFILIATES OF THE INSURER.**

31 **(I) (1) A GUARANTEE THAT IS QUANTIFIABLE AS TO AMOUNT IS NOT**
32 **SUBJECT TO THE NOTICE REQUIREMENTS OF SUBSECTION (D)(6) OF THIS**
33 **SECTION UNLESS THE GUARANTEE EXCEEDS THE LESSER OF 0.5% OF THE**
34 **INSURER’S ADMITTED ASSETS OR 10% OF THE INSURER’S SURPLUS AS REGARDS**
35 **POLICYHOLDERS AS OF THE DECEMBER 31 IMMEDIATELY PRECEDING THE**
36 **GUARANTEE.**

1 **(2) ALL GUARANTEES MADE BY A DOMESTIC INSURER THAT ARE**
2 **NOT QUANTIFIABLE AS TO AMOUNT ARE SUBJECT TO THE NOTICE**
3 **REQUIREMENTS OF SUBSECTION (D)(6) OF THIS SECTION.**

4 7-802.

5 (a) In addition to any other penalty provided by law, a person that willfully
6 violates this title or any regulation adopted under this title is subject to a penalty of
7 **[\$1,000] UP TO \$10,000** for the first day of violation and **[\$100] UP TO \$1,000** for
8 each additional day that the violation continues.

9 (b) **IN DETERMINING THE AMOUNT OF ANY FINANCIAL PENALTY TO BE**
10 **IMPOSED UNDER THIS SECTION, THE COMMISSIONER SHALL CONSIDER THE**
11 **FOLLOWING FACTORS:**

12 **(1) THE SERIOUSNESS OF THE VIOLATION;**

13 **(2) THE GOOD FAITH OF THE VIOLATOR;**

14 **(3) THE VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS;**

15 **(4) THE DELETERIOUS EFFECT OF THE VIOLATION ON THE**
16 **PUBLIC AND THE INSURANCE INDUSTRY; AND**

17 **(5) THE ASSETS OF THE VIOLATOR.**

18 (c) Before imposing a penalty under this subsection, the Commissioner:

19 (1) shall give the person that allegedly committed the violation notice
20 and an opportunity for hearing; and

21 (2) must find that the person willfully committed the violation.

22 **7-802.1.**

23 **(A) A DIRECTOR OR AN OFFICER OF AN INSURANCE HOLDING COMPANY**
24 **SYSTEM WHO KNOWINGLY PARTICIPATES IN, ASSENTS TO, OR ALLOWS ANY OF**
25 **THE OFFICERS OR AGENTS OF AN INSURER TO ENGAGE IN TRANSACTIONS OR**
26 **INVESTMENTS THAT HAVE NOT BEEN PROPERLY REPORTED OR SUBMITTED**
27 **UNDER SUBTITLES 6 AND 7 OF THIS TITLE, SHALL PAY, IN THE DIRECTOR'S OR**
28 **OFFICER'S INDIVIDUAL CAPACITY, A CIVIL PENALTY IN ACCORDANCE WITH §**
29 **7-802 OF THIS SUBTITLE, AFTER NOTICE AND AN OPPORTUNITY FOR HEARING**
30 **BEFORE THE COMMISSIONER.**

1 **(B) IN DETERMINING THE AMOUNT OF THE CIVIL PENALTY, THE**
2 **COMMISSIONER SHALL TAKE INTO ACCOUNT THE FACTORS IN § 7-802(B) OF**
3 **THIS SUBTITLE.**

4 **(C) (1) WHENEVER IT APPEARS TO THE COMMISSIONER THAT AN**
5 **INSURER SUBJECT TO THIS TITLE, OR A DIRECTOR, AN OFFICER, AN EMPLOYEE,**
6 **OR AN AGENT OF THE INSURER, HAS ENGAGED IN A TRANSACTION OR ENTERED**
7 **INTO A CONTRACT THAT IS SUBJECT TO SUBTITLE 7 OF THIS TITLE AND THAT**
8 **WOULD NOT HAVE BEEN APPROVED IF THE APPROVAL HAD BEEN REQUESTED,**
9 **THE COMMISSIONER MAY ORDER THE INSURER TO CEASE AND DESIST**
10 **IMMEDIATELY ANY FURTHER ACTIVITY UNDER THAT TRANSACTION OR**
11 **CONTRACT.**

12 **(2) AFTER NOTICE AND AN OPPORTUNITY FOR HEARING, THE**
13 **COMMISSIONER ALSO MAY ORDER THE INSURER TO VOID ANY CONTRACTS AND**
14 **RESTORE THE STATUS QUO IF, IN THE COMMISSIONER'S JUDGMENT, THE**
15 **ACTION IS IN THE BEST INTEREST OF THE POLICYHOLDERS, THE CREDITORS, OR**
16 **THE PUBLIC.**

17 7-805.

18 **(A) If a person acquires or offers to acquire stock of an insurer or of an**
19 **insurance holding company in violation of Subtitle 3 of this title, the following persons**
20 **may petition a court of competent jurisdiction in the State for injunctive and other**
21 **appropriate relief:**

22 (1) the issuer of the stock;

23 (2) a stockholder of the issuer;

24 (3) if the issuer is an insurance holding company, a stockholder of a
25 subsidiary that is an insurer;

26 (4) a stockholder of the insurer; or

27 (5) the Commissioner.

28 **(B) WHENEVER IT APPEARS TO THE COMMISSIONER THAT AN INSURER**
29 **OR A DIRECTOR, AN OFFICER, AN EMPLOYEE, OR AN AGENT OF THE INSURER**
30 **HAS COMMITTED OR IS ABOUT TO COMMIT A VIOLATION OF THIS TITLE OR ~~OF~~**
31 **ANY REGULATION OR ORDER OF THE COMMISSIONER UNDER THIS TITLE, THE**
32 **COMMISSIONER MAY PETITION A COURT OF COMPETENT JURISDICTION IN THE**
33 **STATE FOR AN ORDER ENJOINING THE INSURER OR THE DIRECTOR, OFFICER,**
34 **EMPLOYEE, OR AGENT FROM VIOLATING OR CONTINUING TO VIOLATE THIS**
35 **TITLE OR ANY REGULATION OR ORDER, AND FOR OTHER EQUITABLE RELIEF**

1 THAT THE NATURE OF THE CASE AND THE INTEREST OF THE INSURER'S
2 POLICYHOLDERS, CREDITORS, AND SHAREHOLDERS OR THE PUBLIC MAY
3 REQUIRE.

4 (c) (1) NO SECURITY THAT IS THE SUBJECT OF AN AGREEMENT OR
5 ARRANGEMENT REGARDING ACQUISITION, OR THAT IS ACQUIRED OR TO BE
6 ACQUIRED CONTRARY TO THIS TITLE OR ANY REGULATION OR ORDER OF THE
7 COMMISSIONER UNDER THIS TITLE, MAY BE VOTED AT ANY SHAREHOLDER'S
8 MEETING, OR MAY BE COUNTED FOR QUORUM PURPOSES, AND ANY ACTION OF
9 SHAREHOLDERS REQUIRING THE AFFIRMATIVE VOTE OF A PERCENTAGE OF
10 SHARES MAY BE TAKEN AS THOUGH THE SECURITIES WERE NOT ISSUED AND
11 OUTSTANDING.

12 (2) AN ACTION TAKEN AT THE MEETING MAY NOT BE
13 INVALIDATED BY THE VOTING OF THE SECURITIES, UNLESS THE ACTION WOULD
14 MATERIALLY AFFECT CONTROL OF THE INSURER OR UNLESS THE COURTS OF
15 THIS STATE HAVE SO ORDERED.

16 (3) IF AN INSURER OR THE COMMISSIONER HAS REASON TO
17 BELIEVE THAT ANY SECURITY OF THE INSURER HAS BEEN OR IS ABOUT TO BE
18 ACQUIRED CONTRARY TO THIS TITLE OR ANY REGULATION OR ORDER OF THE
19 COMMISSIONER UNDER THIS TITLE, THE INSURER OR THE COMMISSIONER MAY
20 PETITION A COURT OF COMPETENT JURISDICTION IN THE STATE:

21 (I) TO ENJOIN ANY OFFER, REQUEST, INVITATION,
22 AGREEMENT, OR ACQUISITION MADE CONTRARY TO SUBTITLE 4 OF THIS TITLE
23 OR ANY REGULATION OR ORDER OF THE COMMISSIONER UNDER THAT
24 SUBTITLE;

25 (II) TO ENJOIN THE VOTING OF ANY SECURITY SO
26 ACQUIRED;

27 (III) TO VOID ANY VOTE OF THE SECURITY ALREADY CAST AT
28 ANY MEETING OF SHAREHOLDERS; AND

29 (IV) FOR OTHER EQUITABLE RELIEF THAT THE NATURE OF
30 THE CASE AND THE INTEREST OF THE INSURER'S POLICYHOLDERS, CREDITORS,
31 AND SHAREHOLDERS OR THE PUBLIC MAY REQUIRE.

32 (d) (1) IN ANY CASE WHERE A PERSON HAS ACQUIRED OR IS
33 PROPOSING TO ACQUIRE ANY VOTING SECURITIES IN VIOLATION OF THIS TITLE
34 OR ~~OF~~ ANY REGULATION OR ORDER OF THE COMMISSIONER UNDER THIS TITLE,
35 A COURT OF COMPETENT JURISDICTION IN THE STATE, ON NOTICE THAT THE
36 COURT CONSIDERS APPROPRIATE, ON THE APPLICATION OF THE INSURER OR

1 THE COMMISSIONER, MAY SEIZE OR SEQUESTER ANY VOTING SECURITIES OF
2 THE INSURER OWNED DIRECTLY OR INDIRECTLY BY THE PERSON AND ISSUE AN
3 ORDER APPROPRIATE TO CARRY OUT THIS TITLE.

4 (2) NOTWITHSTANDING ANY OTHER LAW, FOR THE PURPOSES OF
5 THIS SECTION, THE LOCATION OF THE OWNERSHIP OF THE SECURITIES OF
6 DOMESTIC INSURERS SHALL BE DEEMED TO BE IN THE STATE.

7 [7-807.

8 (a) A person may not willfully:

9 (1) violate a provision of this title or a regulation adopted by the
10 Commissioner under this title; or

11 (2) in a document required to be filed under Subtitle 3 or Subtitle 6 of
12 this title:

13 (i) make an untrue statement of a material fact; or

14 (ii) omit a material fact that is required in the document or that
15 is necessary to make a statement in the document not misleading.

16 (b) A person that violates subsection (a) of this section is guilty of a
17 misdemeanor and on conviction is subject to a fine not exceeding \$10,000 or
18 imprisonment not exceeding 5 years, or both.]

19 **7-807.**

20 (A) (1) **WHENEVER IT APPEARS TO THE COMMISSIONER THAT ANY**
21 **INSURER OR ANY DIRECTOR, OFFICER, EMPLOYEE, OR AGENT OF THE INSURER**
22 **HAS COMMITTED A WILLFUL VIOLATION OF THIS TITLE OR ANY REGULATION**
23 **ADOPTED OR ORDER ISSUED UNDER THIS TITLE, THE COMMISSIONER MAY**
24 **INSTITUTE CRIMINAL PROCEEDINGS IN A COURT OF COMPETENT JURISDICTION**
25 **AGAINST THE INSURER OR THE RESPONSIBLE DIRECTOR, OFFICER, EMPLOYEE,**
26 **OR AGENT.**

27 (2) **ANY INSURER THAT WILLFULLY VIOLATES THIS TITLE OR ANY**
28 **REGULATION ADOPTED OR ORDER ISSUED UNDER THIS TITLE MAY BE FINED IN**
29 **ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.**

30 (B) (1) **ANY OFFICER, DIRECTOR, EMPLOYEE, OR AGENT OF AN**
31 **INSURANCE HOLDING COMPANY SYSTEM WHO WILLFULLY AND KNOWINGLY**
32 **SUBSCRIBES TO OR MAKES OR CAUSES TO BE MADE ANY FALSE STATEMENT,**
33 **REPORT, OR FILING WITH THE INTENT TO DECEIVE THE COMMISSIONER IN THE**

1 PERFORMANCE OF THE COMMISSIONER'S DUTIES UNDER THIS ARTICLE IS
2 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT
3 EXCEEDING \$100,000 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH.

4 (2) ANY FINES IMPOSED UNDER THIS SECTION SHALL BE PAID BY
5 THE OFFICER, DIRECTOR, EMPLOYEE, OR AGENT IN HIS OR HER INDIVIDUAL
6 CAPACITY.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 January 1, 2014.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.