

CHAPTER 388
FORMERLY
HOUSE BILL NO. 257
AS AMENDED BY
HOUSE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO INSURANCE HOLDING COMPANY SYSTEM REGISTRATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 50, Title 18 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5001. Definitions.

As used in this chapter, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(1) "Affiliate." An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through 1 or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Commissioner." The term "Commissioner" shall mean the Insurance Commissioner, the Commissioner's deputies, or the Insurance Department, as appropriate.

(3) "Control." The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by § 5004(k) of this chapter that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(4) "Enterprise Risk." The term "enterprise risk" shall mean any activity, circumstance, event or series of events, involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's Risk-Based Capital to fall into company action level as set forth in § 5803 of this title or would cause the insurer to be in hazardous financial condition as set forth in Section 3 of Department of Insurance Regulation 304 – Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition.

~~(5)~~ "Insurance holding company system." An "insurance holding company system" consists of 2 or more affiliated persons, 1 or more of which is an insurer.

~~(6)~~ "Insurer." The term "insurer" shall have the same meaning as set forth in § 102 of this ~~chapter~~ title, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

~~(7)~~ "Person." A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

~~(8)~~ "Securityholder." A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

~~(9)~~ "Subsidiary." A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through 1 or more intermediaries.

(109) "Voting security." The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

§ 5002. Subsidiaries of insurers.

Any domestic insurer, either by itself or in cooperation with 1 or more persons, may organize or acquire 1 or more subsidiaries as otherwise permitted under this ~~chapter~~ title. Such subsidiaries may conduct any kind of business or businesses and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

§ 5003. Acquisition of control of or merger with domestic insurer.

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

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

With respect to a transaction subject to this section, the acquiring person must also file a pre-acquisition notification with the Commissioner, which shall contain the information set forth in § 5003A of this chapter 30 days prior to the proposed effective date of the acquisition. A failure to file the notification may result in penalties specified in § 5003A.

For purposes of this section, a domestic insurer shall include any person controlling a domestic insurer unless such person, as determined by the Commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. ~~However, such person shall file a pre-acquisition notification with the Commissioner containing the information set forth in § 5003A of this title 30 days prior to the proposed effective date of the acquisition. Failure to file is subject to § 5003A of this title.~~ For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than 20 percent of the voting securities of an insurance company or of any person which controls an insurance company.

(b) Content of statement. -- The statement to be filed with the Commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

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

a. If such person is an individual, the acquiring party's principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes other than minor traffic violations during the past 10 years;

b. If such person is not an individual, a report of the nature of its business operations during the past 5 years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a

list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by paragraph a. of this sub-subsection.

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

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement.

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

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

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

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

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

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

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

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

(12) An agreement by the person required to file the statement referred to in subsection (a) that it will provide the annual report, specified in §5004(1), for so long as control exists.

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

~~(14)~~ Such additional information as the Commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest. If the person required to file the statement referred to in subsection (a) of this section is a partnership, limited partnership,

syndicate or other group, the Commissioner may require that the information called for by paragraphs (1) through (12) of this subsection shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) of this section is a corporation, the Commissioner may require that the information called for by paragraphs (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of such corporation.

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

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

(d) Approval by Commissioner: Hearings. --

(1) The Commissioner shall approve any merger or other acquisition of control referred to in subsection (a) of this section unless, after a public hearing thereon, the Commissioner finds that:

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

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

1. The informational requirements of § 5003A(c)(1) of this chapter and the standards of § 5003A(d)(2) of this chapter shall apply;

2. The merger or other acquisition shall not be disapproved if the Commissioner finds that any of the situations meeting the criteria provided by § 5003A(d)(3) of this chapter exist; and

3. The Commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

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

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

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

f. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(2) The public hearing referred to in paragraph (1) of this subsection shall be held within 30 days after the statement required by subsection (a) of this section is filed, and at least 20 days' notice thereof shall be given by the Commissioner to the person filing the statement.

Not less than 7 days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the Commissioner. The Commissioner shall make a determination within 30 days after the conclusion of such hearing. At such hearing, the person filing the statement,

the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the Superior Court of this State. All discovery proceedings shall be concluded not later than 3 days prior to the commencement of the public hearing.

If the proposed acquisition of control will require the approval of more than one Commissioner, the public hearing referred to in paragraph (1) of this subsection may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (a). Such person shall file the statement referred to in subsection (a) with the National Association of Insurance Commissioners (NAIC) within 5 days of making the request for a public hearing. A Commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within 10 days of the receipt of the statement referred to in subsection (a). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the Commissioners of the states in which the insurers are domiciled. Such Commissioners shall hear and receive evidence. A Commissioner may attend such hearing in person or by telecommunication.

(3) The Commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed acquisition of control.

(e) Exemptions. -- The provisions of this section shall not apply to:

(1) Any transaction which is subject to the provisions of Chapter 49 of this title dealing with the merger or consolidation of 2 or more insurers.

(2) Any offer, request, invitation, agreement or acquisition which the Commissioner by order shall exempt therefrom as:

a. Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

b. Otherwise not comprehended within the purposes of this section.

(f) Violations. -- The following shall be violations of this section:

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

(2) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the Commissioner has given approval thereto.

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

§ 5003A. Acquisitions involving insurers not otherwise covered.

(a) Definitions. -- The following definitions shall apply for the purposes of this section only:

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

(2) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired or is the result of a merger.

(b) Scope. --

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

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

~~a. An acquisition subject to approval or disapproval by the Commissioner pursuant to § 5003 of this title;~~

~~a. b.~~ A purchase of securities solely for investment purposes so long as such securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this State. If a purchase of securities results in a presumption of control under § 5001(3) of this chapter, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the Commissioner of this State;

~~b. e.~~ The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the Commissioner in accordance with subsection (c)(1) of this section 30 days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of this paragraph;

~~c. d.~~ The acquisition of already affiliated persons;

~~d. e.~~ An acquisition if, as an immediate result of the acquisition:

1. In no market would the combined market share of the involved insurers exceed 5 percent of the total market;

2. There would be no increase in any market share; or

3. In no market would:

I. The combined market share of the involved insurers exceed 12 percent of the total market, and

II. The market share increases by more than 2 percent of the total market.

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

~~e. f.~~ An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;

~~f. g.~~ An acquisition of an insurer whose domiciliary commissioner affirmatively finds that such insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving such insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and such findings are communicated by the domiciliary commissioner to the Commissioner of this State.

(c) Pre-acquisition notification, waiting period. -- An acquisition covered by subsection (b) of this section may be subject to an order pursuant to subsection (e) of this section unless the acquiring person files a pre-acquisition notification and the waiting period has expired.

The acquired person may file a pre-acquisition notification. The Commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in § 5007 of this chapter.

(1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners relating to those markets which, under subsection (b)(2)~~e. d.~~ of this section, cause the acquisition not to be exempted from the provisions of this section. The Commissioner may require such additional material and information as the Commissioner deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (d) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this State accompanied by a summary of the education and experience of such person indicating the person's ability to render an informed opinion.

(2) The waiting period required shall begin on the date of receipt by the Commissioner of a pre-acquisition notification and shall end on the earlier of the 30th day after the date of such receipt, or termination of

the waiting period by the Commissioner. Prior to the end of the waiting period, the Commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after receipt of such additional information by the Commissioner or termination of the waiting period by the Commissioner.

(d) Competitive standard. --

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

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

a. Any acquisition covered under subsection (b) of this section involving 2 or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:

1. If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

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

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the 4 largest insurers is 75 percent or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than 2 insurers are involved, exceeding the total of the 2 columns in the table is prima facie evidence of violation of the competitive standard in paragraph (1) of this subsection. For the purpose of this subparagraph, the insurer with the largest share of the market shall be deemed to be Insurer A.

b. There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the 2 largest to the 8 largest, has increased by 7 percent or more of the market over a period of time extending from any base year 5 to 10 years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (b) of this section involving 2 or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in paragraph (1) of this subsection if:

1. There is a significant trend toward increased concentration in the market;
2. One of the insurers involved is 1 of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and
3. Another involved insurer's market is 2 percent or more.

c. For the purposes of subsection (d)(2) of this section:

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

2. The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the Commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient

information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this State, and the relevant geographical market is assumed to be this State;

3. The burden of showing prima facie evidence of violation of the competitive standard rests upon the Commissioner.

d. Even though an acquisition is not prima facie violative of the competitive standard under subparagraphs a. and b. of this paragraph, the Commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under subparagraphs a. and b. of this paragraph, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(3) An order may not be entered under subsection (e)(1) of this section if:

a. The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

b. The acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits which would arise from not lessening competition.

(e) Orders and penalties. --

(1) a. If an acquisition violates the standards of this section, the Commissioner may enter an order:

1. Requiring an involved insurer to cease and desist from doing business in this State with respect to the line or lines of insurance involved in the violation; or

2. Denying the application of an acquired or acquiring insurer for a license to do business in this State.

b. Such an order shall not be entered unless:

1. There is a hearing;

2. Notice of such hearing is issued prior to the end of the waiting period and not less than 15 days prior to the hearing; and

3. The hearing is concluded and the order is issued no later than 60 days after the end of the waiting period.

Every order shall be accompanied by a written decision of the Commissioner setting forth the Commissioner's findings of fact and conclusions of law.

c. An order entered under this paragraph shall not become final earlier than 30 days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon such plan or other information, the Commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.

d. An order pursuant to this paragraph shall not apply if the acquisition is not consummated.

(2) Any person who violates a cease and desist order of the Commissioner under paragraph (1) of this subsection and while such order is in effect may, after notice and hearing and upon order of the Commissioner, be subject at the discretion of the Commissioner to any one or more of the following:

a. A monetary penalty of not more than \$10,000 for every day of violation; and/or

b. Suspension or revocation of such person's license.

(3) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any such filing requirement, shall be subject to a fine of not more than \$50,000.

(f) Inapplicable provisions. -- Sections 5009(b), (c) and 5011 of this chapter do not apply to acquisitions covered under subsection (b) of this section.

§ 5004. Registration of insurers.

(a) Registration. -- Every insurer which is authorized to do business in this State and which is a member of an insurance holding company system shall register with the Commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

- (1) This section;
- (2) Section 5005(a)(1) and (b) of this chapter; and
- (3) Either § 5005(a)(2) of this chapter; or a provision such as the following:

Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each such change or addition. Any insurer which is subject to registration under this section shall register within 15 days after it becomes subject to registration, and annually thereafter by June 1 of each year for the previous calendar year, unless the Commissioner for good cause shown extends the time for registration, and then within such extended time. The Commissioner may require any insurer authorized to do business in the State which is a member of a holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subsection (c) of this section or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Information and form required. -- Every insurer subject to registration shall file the registration statement with the Commissioner on a form and in a format prescribed by the National Association of Insurance Commissioners, which shall contain the following current information:

- (1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;
- (2) The identity and relationship of every member of the insurance holding company system;
- (3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

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

b. Purchases, sales or exchange of assets;

c. Transactions not in the ordinary course of business;

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

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

f. Reinsurance agreements;

g. Dividends and other distributions to shareholders; and

h. Consolidated tax allocation agreements;

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

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

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

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

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

(c) Summary of changes to registration statement. -- All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) Materiality. -- No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if such information is not material for the purposes of this section. Unless the Commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of 1 percent or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(e) Reporting of dividends to shareholders. --

(1) Subject to § 5005(b) of this chapter, each registered insurer shall provide notice to the Commissioner of all dividends and other distributions to shareholders within 5 business days following the declaration thereof and at least 10 days prior to the payment thereof.

(2) The Commissioner shall promptly consider the information set forth in the notice under paragraph (1) of this subsection. In the Commissioner's consideration of the information, the Commissioner shall apply the factors set forth in § 5005(c) of this chapter.

(f) Information of insurers. -- Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

(g) Termination of registration. -- The Commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(h) Consolidated filing. -- The Commissioner may require or allow 2 or more affiliated insurers subject to registration hereunder to file a consolidated registration statement.

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

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

(k) Disclaimer. -- Any person may file with the Commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. ~~After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the Commissioner disallows such a disclaimer. The Commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.~~ A disclaimer of affiliation shall be deemed to have been granted unless the Commissioner, within 30 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the Commissioner, or if the disclaimer is deemed to have been approved.

(l) Enterprise Risk Filing. The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge

and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The first Enterprise Risk Report is not required until 60 days after the effective date of this provision, unless the Commissioner for good cause shown extends the time for filing, and then within such extended time. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners, with a copy to the Commissioner upon request.

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

§ 5005. Standards and management of an insurer within a holding company system.

(a) Transactions within an insurance holding company system. --

(1) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

a. The terms shall be fair and reasonable;

b. Agreements for cost sharing services and management shall include such provisions as required by regulation issued by the Commissioner.

~~c. b-~~ Charges or fees for services performed shall be reasonable;

~~d. e-~~ Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

~~e. d-~~ The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

~~f. e-~~ The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subparagraphs (a) through (e), may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into such transaction at least 30 days prior thereto, or such shorter period as the Commissioner may permit, and the Commissioner has not disapproved it within such period: The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within 30 days after a termination of a previously filed agreement, to the Commissioner for determination of the type of filing required, if any.

a. Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided such transactions are equal to or exceed:

1. With respect to nonlife insurers, the lesser of 3 percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders;

2. With respect to life insurers, 3 percent of the insurer's admitted assets,
Each as of the 31st day of December next preceding;

b. Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed:

1. With respect to nonlife insurers, the lesser of 3 percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders;

2. With respect to life insurers, 3 percent of the insurer's admitted assets, as of the 31st day of December next preceding;

c. Reinsurance agreements or modifications thereto, including:

(i) All reinsurance pooling agreements;

(ii) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next 3 years, equals or exceeds 5 percent of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to 1 or more affiliates of the insurer;

d. All management agreements, service contracts, tax allocation agreements, and all cost-sharing arrangements; and

e. Any material transactions, specified by regulation, which the Commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the Commissioner determines that such separate transactions were entered into over any 12 month period for such purpose, the Commissioner may exercise the authority under § 5010 of this chapter.

(4) The Commissioner, in reviewing transactions pursuant to subsection (a)(2) of this section shall consider whether the transactions comply with the standards set forth in subsection (a)(1) of this section and whether they may adversely affect the interests of policyholders.

(5) The Commissioner shall be notified within 30 days of any investment of the domestic insurer in any 1 corporation if the total investment in such corporation by the insurance holding company system exceeds 10 percent of such corporation's voting securities.

(b) Dividends and other distributions. -- Except as otherwise provided by law, a domestic insurer may not declare or pay a dividend or other distribution from any source other than earned surplus without the Commissioner's prior approval. For purposes of this section, "earned surplus" means an amount equal to the unassigned funds of an insurer as set forth in the most recent annual statement of the insurer submitted to the Commissioner including all or part of the surplus arising from unrealized capital gains or revaluation of assets.

No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(1) Thirty days after the Commissioner has received notice of the declaration thereof and has not within such period disapproved such payment; or

(2) The Commissioner shall have approved such payment within such 30-day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of:

(1) Ten percent of such insurer's surplus as regards policyholders as of the 31st day of December next preceding; or

(2) The net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the 12-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Commissioner's approval thereof, and such declaration shall confer no rights upon shareholders until:

- (1) The Commissioner has approved the payment of such a dividend or distribution; or
- (2) The Commissioner has not disapproved such payment within the 30-day period

referred to above.

(c) Adequacy of surplus. -- For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;
- (2) The extent to which the insurer's business is diversified among the several lines of insurance;
- (3) The number and size of risks insured in each line of business;
- (4) The extent of the geographical dispersion of the insurer's insured risks;
- (5) The nature and extent of the insurer's reinsurance program;
- (6) The quality, diversification and liquidity of the insurer's investment portfolio;
- (7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;
- (8) The surplus as regards policyholders maintained by other comparable insurers in respect to the factors enumerated above;
- (9) The adequacy of the insurer's reserves;
- (10) The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the Commissioner's judgment such investment so warrants; and
- (11) The quality of the insurer's earnings and the extent to which the reported earnings of the insurer include extraordinary items.

(d) Departmental practices. -- The Commissioner shall review, at least 1 time each year, the dividends paid by each domestic insurer to determine whether dividends paid by the insurer are reasonable in relation to the following:

- (1) The adequacy of the level or surplus as regards policyholders of the insurer remaining after the payment of dividends; and
- (2) The quality of the earnings of the insurer and the extent to which the reported earnings of the insurer include extraordinary items, such as surplus relief, reinsurance transactions and reserve destrengthening.

The Commissioner may issue an order to limit or disallow the payment of ordinary dividends by a domestic insurer if the Commissioner finds the insurer to be presently or potentially financially distressed or troubled.

§ 5006. Examination.

(a) Power of Commissioner. -- Subject to the limitation contained in this section and in addition to the powers which the Commissioner has under Chapter 3 of this title relating to the examination of insurers, the Commissioner shall ~~also~~ have the power to order any insurer registered under § 5004 of this title and its affiliates to produce such records, books or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ascertain the financial condition of such insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis, or to determine compliance with this chapter. In the event such insurer fails to comply with such order, the Commissioner shall have the power to examine such affiliates to obtain such information.

(b) Access to Other Information. -- To determine compliance with this chapter, the Commissioner may order any insurer registered under § 5004 of this title to produce information not in the possession of the insurer

if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or through other reasonable means. In the event the insurer cannot obtain the information requested by the Commissioner, the insurer shall provide the Commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the Commissioner that the detailed explanation is without merit, the Commissioner may require, after notice and hearing, the insurer to pay a penalty of \$500 for each day's delay, or may suspend or revoke the insurer's license.

(c) ~~(b)~~ Use of consultants. -- The Commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a) of this section. Any persons so retained shall be under the direction and control of the Commissioner and shall act in a purely advisory capacity.

(d) ~~(c)~~ Expenses. -- Each registered insurer producing for examination records, books and papers pursuant to subsection (a) of this section shall be liable for and shall pay the expense of such examination in accordance with § 326 of this title.

(e) Compelling Production. -- In the event the insurer fails to comply with an order, the Commissioner shall have the power to examine the affiliates to obtain the information. The Commissioner shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person, in accordance with § 326 of this title, for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the Commissioner may petition the Superior Court, and upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in Superior Court, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

§ 5007. Supervisory Colleges.

(a) Power of Commissioner. With respect to any insurer registered under § 5004 of this title, and in accordance with subsection (c) below, the Commissioner shall also have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this chapter. The powers of the Commissioner with respect to supervisory colleges include, but are not limited to, the following:

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

(b) Expenses. Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the Commissioner's participation in a supervisory college in accordance with subsection (c) below, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the Commissioner may establish a regular assessment to the insurer for the payment of these expenses.

(c) Supervisory College. In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with § 5006 of this title, the Commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other State, federal and international regulatory agencies. The Commissioner may enter into agreements in accordance with § 5009(c)

of this title providing the basis for cooperation between the Commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the Commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

§ 5008 [Reserved]

§ 5009.7. Confidential treatment.

~~All information, documents and copies thereof obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation made pursuant to § 5006 of this title and all information reported pursuant to §§ 5004 and 5005 of this title, shall be given confidential treatment, shall not be subject to subpoena and shall not be made public by the Commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the Commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the Commissioner may publish all or any part thereof in such manner as the Commissioner may deem appropriate.~~

(a) Documents, materials or other information in the possession or control of the Department that are obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation made pursuant to § 5006 and all information reported pursuant to §§ 5003(b)(12) and (13), (a) 5004, 5005 and 5008 shall be confidential by law; shall not be subject subpoena, shall not be subject to this State's Freedom of Information Act laws (29 Del. C. Ch. 100), and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the Commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the Commissioner may publish all or any part in such manner as may be deemed appropriate.

(b) Neither the Commissioner nor any person who received documents, materials or other information while acting under the authority of the Commissioner or with whom such documents, materials or other information are shared pursuant to this chapter shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a).

(c) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (a), with other State, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in § 5007; provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.

(2) Notwithstanding paragraph (1) above, the Commissioner may only share confidential and privileged documents, material, or information reported pursuant to § 5004(1) with Commissioners of states having statutes or regulations substantially similar to subsection (a) and who have agreed in writing not to disclose such information.

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

(4) Shall enter into written agreements with the NAIC governing sharing and use of information provided pursuant to this chapter consistent with this subsection that shall:

(i) specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators;

(ii) specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this chapter remains with the Commissioner and the NAIC's use of the information is subject to the direction of the Commissioner.

(iii) require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to this chapter is subject to a request or subpoena to the NAIC for disclosure or production; and

(iv) require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this chapter.

(d) The sharing of information by the Commissioner pursuant to this chapter shall not constitute a delegation of regulatory authority or rulemaking and the Commissioner is solely responsible for the administration, execution and enforcement of the provisions of this chapter.

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

(f) Documents or other information in the possession or control of the NAIC pursuant to this chapter shall be confidential by law, shall not be subject to subpoena, shall not be subject to this State's Freedom of Information Act laws (29 Del. C. Ch. 100), and shall not be subject to discovery or admissible in evidence in any private civil action.

§ 5010 ~~8~~. Rules and regulations.

The Commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations and orders as shall be necessary to carry out the provisions of this chapter.

§ 5011 ~~09~~. Injunctions, prohibitions against voting securities; sequestration of voting securities.

(a) Injunctions. -- Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this chapter or of any rule, regulation or order issued by the Commissioner hereunder, the Commissioner may apply to the Chancery Court for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this chapter or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.

(b) Voting of securities; when prohibited. -- No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule, regulation or order issued by the Commissioner hereunder may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this State have so ordered. If an insurer or the Commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule, regulation or order issued by the Commissioner hereunder; the insurer or the Commissioner may apply to the Chancery Court to enjoin any offer, request, invitation, agreement or acquisition made in contravention of § 5003 of this title or any rule, regulation or order issued by the Commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditor and shareholders or the public may require.

(c) Sequestration of voting securities. -- In any case where a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule, regulation or order issued by the Commissioner hereunder, the Chancery Court may, on such notice as the Court deems appropriate, upon the application of the insurer or the Commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such order with respect thereto as may be appropriate to effectuate the provisions of this chapter.

Notwithstanding any other provisions of law, for the purposes of this chapter the sites of the ownership of the securities of domestic insurers shall be deemed to be in this State.

§ 5012 ~~40~~. Sanctions.

(a) Any insurer failing, without just cause, to file any registration statement as required in this chapter shall be required, after notice and hearing, to pay a penalty of \$500 for each day's delay, to be recovered by the Commissioner of Insurance and the penalty so recovered shall be paid into the General Revenue Fund of this State. The maximum penalty under this section is \$25,000. The Commissioner may reduce the penalty if the insurer demonstrates to the Commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(b) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to § 5004(a) or § 5005(a)(2) or (b) of this title, or which violate this chapter, shall pay, in their individual capacity, a civil forfeiture of not more than \$2,000 per violation, after notice and hearing before the Commissioner. In determining the amount of the civil forfeiture, the Commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(c) Whenever it appears to the Commissioner that any insurer subject to this chapter or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to § 5005 of this title and which would not have been approved had such approval been requested, the Commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the Commissioner may also order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors or the public.

(d) Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed a wilful violation of this chapter, the Commissioner may cause criminal proceedings to be instituted by the Superior Court against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which wilfully violates this chapter may be fined not more than \$50,000. Any individual who wilfully violates this chapter may be fined in an individual capacity not more than \$25,000 or be imprisoned for not more than 1 to 3 years, or both.

(e) Any officer, director or employee of an insurance holding company system who wilfully and knowingly subscribes to or makes or causes to be made any false statements, false reports or false filings with the intent to deceive the Commissioner in the performance of the Commissioner's duties under this chapter, upon conviction thereof, shall be imprisoned for not more than 2 years, or fined \$50,000 or both. Any fines imposed shall be paid by the officer, director or employee in an individual capacity.

(f) Whenever it appears to the Commissioner that any person has committed a violation of § 5003 of this title and which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with Chapter 59 of this title.

§ 5013 ~~44~~. Receivership.

Whenever it appears to the Commissioner that any person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the Commissioner may

proceed as provided in Chapter 59 of this title to take possession of the property of such domestic insurer and to conduct the business thereof.

§ 5014 ~~42~~. Recovery.

(a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer:

(1) From any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock; or

(2) Any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary(s) to a director, officer or employee.

Where the distribution or payment pursuant to paragraphs (1) or (2) of this subsection is made at any time during the 1 year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of subsections (b), (c) and (d) of this section.

(b) No such distribution shall be recoverable if the parent or affiliate shows that when paid, such distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that such distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time such distributions were paid shall be liable up to the amount of distributions or payments under subsection (a) of this section such person received. Any person who otherwise controlled the insurer at the time such distributions were declared shall be liable up to the amount of distributions the person would have received if they had been paid immediately. If 2 or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(e) To the extent that any person liable under subsection (c) of this section is insolvent or otherwise fails to pay claims due from it pursuant to such subsection, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from such parent corporation or holding company or person who otherwise controlled it.

§ 5015 ~~43~~. Revocation, suspension or nonrenewal of insurer's license.

Whenever it appears to the Commissioner that any person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the Commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this State for such period as the Commissioner finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

§ 5016 ~~44~~. Judicial review; mandamus.

Repealed by 71 Del. Laws, c. 115, § 1, eff. June 30, 1997.

§ 5017 ~~45~~. Conflict with other laws.

All laws and parts of laws of this State inconsistent with this chapter are hereby superseded with respect to matters covered by this chapter.

Section 2. This Act shall take effect immediately upon its enactment.

Approved August 05, 2014