

LAWS OF DELAWARE
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CHAPTER 272
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 272

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 Section 5001, Title 18, of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 5001. Definitions. For purposes of this chapter:

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

(6) “Group capital calculation instructions” means the group capital calculation instructions adopted by the NAIC and as amended, from time to time, by the NAIC.

(10) “NAIC” means National Association of Insurance Commissioners.

(11) “NAIC liquidity stress test framework” means the NAIC publication which includes a history of the NAIC’s development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year, as adopted by the NAIC, and as amended from time to time by the NAIC, in accordance with the procedures adopted by the NAIC.

(12) “Scope criteria” means the designated exposure bases, along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC liquidity stress test framework for that data year.

Section 2. Amend Section 5003(b)(12), Title 18, of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

(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:

(12) An agreement by the person required to file the statement referred to in subsection (a) of this section that it will provide the annual report, specified in § ~~5004(4)~~ 5004(1)(1) of this title, for so long as control exists.

Section 3. Amend Section 5004(l), Title 18, of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5004. Registration of insurers.

(l) Enterprise risk ~~filing~~ filings. –

(1) 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 October 3, 2014, 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~~ NAIC, with a copy to the Commissioner upon request.

(2) Group capital calculation. Except as provided below, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the NAIC group capital calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC. All of the insurance holding company systems described below are exempt from filing the group capital calculation:

a. An insurance holding company system that has only one insurer within its holding company structure, that only writes business and is only licensed in its domestic state, and assumes no business from any other insurer.

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

c. An insurance holding company system whose non-U.S. group-wide supervisor is located within a reciprocal jurisdiction as described in § 911(6) of this title that recognizes the U.S. state regulatory approach to group supervision and group capital.

d. An insurance holding company system that meets both of the following:

1. That provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed by the NAIC Financial Analysis Handbook.

2. Whose non-U.S. group-wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified by the commissioner in regulation, the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction.

e. Notwithstanding the provisions of § 5004(1)(2)c. and § 5004(1)(2)d. of this section, a lead state commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

f. Notwithstanding the exemptions from filing the group capital calculation stated in § 5004(2)a. through § 5004(2)d. of this section, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in regulation.

g. If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance

holding company system shall file the group calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.

(3) Liquidity stress test. The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC liquidity stress test framework shall file the results of a specific year's liquidity stress test. The filing shall be made to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC.

a. The NAIC liquidity stress test framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the Financial Stability Task Force or its successor. Any change to the NAIC liquidity stress test framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the scope criteria are considered scoped into the NAIC liquidity stress test framework for the specified data year unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the NAIC liquidity stress test framework for that data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria are considered scoped out of the NAIC liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force, or its successor, determines the insurer should be scoped into the NAIC liquidity stress test framework for that data year.

1. Regulators wish to avoid having insurers scoped in and out of the NAIC liquidity stress test framework on a frequent basis. The lead state insurance commissioner, in consultation with the Financial Stability Task Force or its successor, will assess this concern as part of the determination for an insurer.

b. The performance of, and filing of the results from, a specific year's liquidity stress test shall comply with the NAIC liquidity stress test framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations, in consultation with the Financial Stability Task Force or its successor, provided within the NAIC liquidity stress test framework.

Section 4. Amend Section 5005, Title 18, of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5005. Standards and management of an insurer within an insurance 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~~; reasonable.
- b. Agreements for cost-sharing services and management shall include such provisions as required by regulation issued by the Commissioner.
- c. Charges or fees for services performed shall be ~~reasonable~~; reasonable.
- d. Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently ~~applied~~; applied.
- e. 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 parties.

f. 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~~; needs.

g. If an insurer subject to this chapter is deemed by the Commissioner to be in a hazardous financial condition, as set forth in Section 3 of Department of Insurance Regulation 304 [18 DE Admin. Code § 304-3.0], or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, then the Commissioner may require the insurer to secure and maintain either a deposit, held by the Commissioner, or a bond, as determined by the insurer at the insurer's discretion, for the protection of the insurer for the duration of the contracts or agreements, or the existence of the condition for which the Commissioner required the deposit or bond.

In determining whether a deposit or a bond is required, the Commissioner should consider whether concerns exist with respect to the affiliated person's ability to fulfill the contracts or agreements if the insurer were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, and a deposit or bond is necessary, the Commissioner has discretion to determine the amount of the deposit or bond, not to exceed the value of the contracts or agreements in any one year, and whether such deposit or bond should be required for a single contract, multiple contracts or a contract only with a specific person(s).

h. All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to control of the insurer, are identifiable, and are segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons' records and data. This includes all records and data that are otherwise the property of the insurer, in whatever form maintained, including, but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records, or similar records within the possession, custody, or control of the affiliate. At the request of the insurer, the affiliate shall provide that the receiver can obtain a complete set of all records of any type that pertain to the insurer's business; obtain access to the operating systems on which the data is maintained; obtain the software that runs those systems either through assumption of licensing agreements or otherwise; and restrict the use of the data by the affiliate if it is not operating the insurer's business. The affiliate shall provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement; and

(i) Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. Any right of offset in the event an insurer is placed into receivership shall be subject to Chapter 59 of this title.

(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 paragraphs (a)(2)a. through e. of this section, 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 December 31 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 December 31 next preceding;

c. Reinsurance agreements or modifications thereto, including:

1. All reinsurance pooling agreements;

2. 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 December 31 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 title.

(4) The Commissioner, in reviewing transactions pursuant to paragraph (a)(2) of this section shall consider whether the transactions comply with the standards set forth in paragraph (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.

(6) Supervision, seizure, conservatorship or receivership proceedings.

a. Any affiliate that is party to an agreement or contract with a domestic insurer that is subject to § 5004(b)(3)e. of this title shall be subject to the jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed pursuant to Chapter 59 of this title for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that are either of the following:

1. An integral part of the insurer's operations, including, but not limited to management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions.

2. Essential to the insurer's ability to fulfill its obligations under insurance policies.

b. The Commissioner may require that an agreement or contract pursuant to § 5004(b)(3)e. of this title for the provision of services described in paragraphs 1. and 2. above specify that the affiliate consents to the jurisdiction as set forth in this § 5005(a)(6) of this chapter.

Section 5. Amend Section 5007, Title 18, of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5007. Confidential treatment.

(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 of this title and all information reported or provided to the Department pursuant to § 5003(b)(12) and (13), § 5003(e)(2), § 5003A, § 5004, § 5005, or § 5015 of this title are recognized by this State as being proprietary and to contain trade secrets, and shall be confidential by law; shall not be subject subpoena, shall not be subject to this State's Freedom of Information Act laws (Chapter 100 of Title 29), 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.

(1) For purposes of the information reported and provided to the Commissioner pursuant to § 5004(l)(2) of this title, the Commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any U.S. group wide supervisor.

(2) For purposes of the information reported and provided to the Commissioner pursuant to § 5004(l)(3) of this title, the Commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group wide supervisors.

(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) of this section.

(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) of this section, including proprietary and trade secret documents and materials with other state, federal and international regulatory agencies, with the NAIC ~~and its affiliates and subsidiaries~~, with any third-party consultants designated by the Commissioner, and with state, federal, and international law-enforcement authorities, including members of any supervisory college described in § 5014 of this title; 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 (c)(1) of this section above, the Commissioner may only share confidential and privileged documents, material, or information reported pursuant to § ~~5004(4)~~ 5004(1)(1) of this title with Commissioners of states having statutes or regulations substantially similar to subsection (a) of this section 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, including proprietary and trade secret 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 and any third-party consultant designated by the Commissioner governing sharing and use of information provided pursuant to this chapter consistent with this subsection that shall:

a. Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC ~~and its affiliates and subsidiaries~~ or a third-party consultant designated by the Commissioner pursuant to this chapter, including procedures and protocols for sharing by the NAIC with other state, federal or international ~~regulators;~~ regulators. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain such confidentiality.

b. Specify that ownership of information shared with the NAIC ~~and its affiliates and subsidiaries~~ or a third-party consultant designated by the Commissioner pursuant to this chapter remains with the Commissioner and the NAIC's ~~or third-party consultant's~~ use of the information is subject to the direction of the ~~Commissioner;~~ Commissioner.

c. Excluding documents, material or information reported pursuant to § 5004(1)(3) of this title, prohibit the NAIC or third-party consultant designated by the Commissioner from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed.

e. ~~d.~~ Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant designated by the Commissioner pursuant to this chapter is subject to a request or

subpoena to the NAIC or a third-party consultant designated by the Commissioner for disclosure or ~~production~~; and production.

d. ~~e.~~ Require the NAIC ~~and its affiliates and subsidiaries~~ or a third-party consultant designated by the Commissioner to consent to intervention by an insurer in any judicial or administrative action in which the NAIC ~~and its affiliates and subsidiaries~~ or third-party consultant designated by the Commissioner may be required to disclose confidential information about the insurer shared with the NAIC ~~and its affiliates and subsidiaries~~ or a third-party consultant designated by the Commissioner pursuant to this ~~chapter~~; chapter.

f. For documents, materials, or information reporting pursuant to § 5004(1)(3) of this title, in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurer.

(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) of this section.

(f) Documents or other information in the possession or control of the NAIC or a third-party consultant designated by the Commissioner 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 (Chapter 100 of Title 29), and shall not be subject to discovery or admissible in evidence in any private civil action.

(g) The group capital calculation and resulting group capital ratio required under § 5004(1)(2) of this title and the liquidity stress test along with its results and supporting disclosures required under § 5004(1)(3) of this title are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this chapter, the making, publishing, disseminating, circulating or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the Commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

Approved February 7, 2022