

INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

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Section 1. Definitions note

As used in this Act, the following terms shall have these meanings unless the context shall otherwise require:

- A. “Affiliate.” An “affiliate” of, or person “affiliated” with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- B. “Commissioner.” The term “commissioner” shall mean the insurance commissioner, the commissioner’s deputies, or the Insurance Department, as appropriate.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the word “commissioner” appears.

- C. “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, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 4K 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 the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
- D. “Group-wide supervisor.” The regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under Section 7.1 to have sufficient significant contacts with the internationally active insurance group.

- E. "Group Capital Calculation instructions" means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
- F. "Insurance Holding Company System." An "insurance holding company system" consists of two (2) or more affiliated persons, one or more of which is an insurer.
- G. "Insurer." The term "insurer" shall have the same meaning as set forth in Section [insert applicable section] of this Chapter, 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.

Drafting Note: References in this model act to "Chapter" are references to the entire state insurance code.

Drafting Note: States should consider applicability of this model act to fraternal societies and captives.

- H. "Internationally active insurance group." An insurance holding company system that (1) includes an insurer registered under Section 4; and (2) meets the following criteria: (a) premiums written in at least three countries, (b) the percentage of gross premiums written outside the United States is at least ten percent (10%) of the insurance holding company system's total gross written premiums, and (c) based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars (\$50,000,000,000) or the total gross written premiums of the insurance holding company system are at least ten billion dollars (\$10,000,000,000).
- I. "Enterprise Risk." "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 [insert cross reference to appropriate section of Risk-Based Capital (RBC) Model Act] or would cause the insurer to be in hazardous financial condition [insert cross reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition].
- J. "NAIC" means the National Association of Insurance Commissioners.
- K. "NAIC Liquidity Stress Test Framework." The "NAIC Liquidity Stress Test Framework" is a separate 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, such Scope Criteria, instructions and reporting template being as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
- L. "Person." A "person" is an individual, a corporation, a limited liability company, 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.
- M. "Scope Criteria." The "Scope Criteria," as detailed in the NAIC Liquidity Stress Test Framework, are 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.
- N. "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.
- O. "Subsidiary." A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

- P. “Voting Security.” The term “voting security” shall include any security convertible into or evidencing a right to acquire a voting security.

Section 2. Subsidiaries of Insurers

- A. Authorization. A domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries. The 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.

Drafting Note: This bill neither expressly authorizes noninsurance subsidiaries nor restricts subsidiaries to insurance related activities. It is believed that this is a policy decision which should be made by each individual state. Attached as an appendix are alternative provisions which would authorize the formation or acquisition of subsidiaries to engage in diversified business activity.

- B. Additional Investment Authority. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this Chapter, a domestic insurer may also:

- (1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of the insurer’s assets or fifty percent (50%) of the insurer’s surplus as regards policyholders, provided that after such investments, the insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to meet its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there shall be included:
 - (a) Total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and
 - (b) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities; and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

Drafting Note: When considering whether to amend its Holding Company Act to exempt health maintenance organizations and other similar entities from certain investment limitations, a state should consider whether the solvency and general operations of the entities are regulated by the insurance department. In addition to, or in place of, the term “health maintenance organizations” in Paragraph (1) above, a state may include any other entity which provides or arranges for the financing or provision of health care services or coverage over which the commissioner possesses financial solvency and regulatory oversight authority.

- (2) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer provided that each subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in Paragraph (1) or in Sections [insert applicable section] through [insert applicable section] of this Chapter applicable to the insurer. For the purpose of this paragraph, “the total investment of the insurer” shall include:
 - (a) Any direct investment by the insurer in an asset, and
 - (b) The insurer’s proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary’s investment by the percentage of the ownership of the subsidiary;

- (3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- C. Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to Subsection B shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this Chapter applicable to such investments of insurers [except the following:].

Drafting Note: The last phrase is optional in those states having certain special qualitative limitations, such as prohibitions on investments in stock of mining companies, which the state may wish to retain as a matter of public policy.

- D. Qualification of Investment; When Determined. Whether any investment made pursuant to Subsection B meets the applicable requirements of that subsection is to be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.
- E. Cessation of Control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of this Chapter, and the insurer has so notified the commissioner.

Section 3. Acquisition of Control of or Merger with Domestic Insurer

- A. Filing Requirements.
- (1) 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 for, 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 the 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 the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner prescribed in this Act.
 - (2) 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(ies) 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 Paragraph (1) is otherwise filed, this paragraph shall not apply.
 - (3) 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 Section 3.1C(1). A failure to file the notification may be subject to penalties specified in Section 3.1E(3).

- (4) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For the purposes of this section, “person” shall not include any securities broker holding, in the usual and customary broker’s function, less than twenty percent (20%) 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 shall be made under oath or affirmation and shall contain the following:
- (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 is to be effected (hereinafter called the “acquiring party”), and
 - (a) If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;
 - (b) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for the lesser period as the person and any predecessors shall have been in existence; an informative description of the business intended to be done by the person and the person’s subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to such positions. The list shall include for each individual the information required by Subparagraph (a) of this paragraph;
 - (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 where 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 consideration; provided, however, that where a source of 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 the statement so requests;
 - (3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party (or for such lesser period as the acquiring party and any predecessors shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;
 - (4) Any plans or proposals which each acquiring party may have to liquidate the 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 which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in Subsection A, 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 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 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. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into;

- (8) A description of the purchase of any security referred to in Subsection A during the twelve (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;
- (9) A description of any recommendations to purchase any security referred to in Subsection A made during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of the 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, and (if distributed) of additional soliciting material relating to them;
- (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 for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

Drafting Note: An insurer required to file information pursuant to sub-sections 3B(12) and 3B(13) may satisfy the requirement by providing the commissioner with the most recently filed parent corporation reports that have been filed with the SEC, if appropriate.

- (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 Section 4L(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; and
- (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 is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in Subsection A is a corporation, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.

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

C. Alternative Filing Materials.

If any offer, request, invitation, agreement or acquisition referred to in Subsection A is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in Subsection A may utilize the 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 unless, after a public hearing, the commissioner finds that:
 - (a) After the change of control, the domestic insurer referred to in Subsection A 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. In applying the competitive standard in this subparagraph:
 - (i) The informational requirements of Section 3.1C(1) and the standards of Section 3.1D(2) shall apply;
 - (ii) The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by Section 3.1D(3) exist; and
 - (iii) 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) shall be held within thirty (30) days after the statement required by Subsection A is filed, and at least twenty (20) days notice shall be given by the commissioner to the person filing the statement. Not less than seven (7) days notice of the 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 the sixty (60) day period preceding the effective date of the proposed transaction. At the 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 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 [insert title] Court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.
- (3) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in Paragraph (2) 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 five (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 ten (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.

- (4) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to Section 3A(1) of this Act.
 - (5) 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 Sections [insert applicable section] and [insert applicable section] of the laws of this state, dealing with the merger or consolidation of two or more insurers].

Drafting Note: Optional for use in those states where existing law adequately governs standards and procedures for the merger or consolidation of two or more insurers.

- (2) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt as 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 as 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; or
 - (2) The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic insurer unless the commissioner has given approval.
- 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 overall 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 the person of the commissioner to be his 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 lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at his last known address.

Section 3.1 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) A purchase of securities solely for investment purposes so long as the 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 Section 1C, 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 the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;
 - (b) 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 Section 3.1C(1) thirty (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 Section 3.1B(2);
 - (c) The acquisition of already affiliated persons;
 - (d) An acquisition if, as an immediate result of the acquisition,
 - (i) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market,
 - (ii) There would be no increase in any market share, or
 - (iii) In no market would
 - (I) The combined market share of the involved insurers exceeds twelve percent (12%) of the total market, and
 - (II) The market share increase by more than two percent (2%) of the total market.

For the purpose of this Paragraph (2)(d), 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) 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) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.

C. Pre-acquisition Notification; Waiting Period. An acquisition covered by Section 3.1B may be subject to an order pursuant to Section 3.1E 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 Section 8 of this Act.

- (1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners (NAIC) relating to those markets which, under Section 3.1B(2)(d), cause the acquisition not to be exempted from the provisions of this

section. The commissioner may require such additional material and information as deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of Section 3.1D. 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 his or her ability to render an informed opinion.

- (2) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of 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 thirtieth day after receipt of the 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 Section 3.1E(1) 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 or if the insurer fails to file adequate information in compliance with Section 3.1C.
- (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 Section 3.1B involving two (2) or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standards.

- (i) 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

- (ii) 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 four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two 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 item, 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 two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under Section 3.1B involving two (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:
 - (i) There is a significant trend toward increased concentration in the market;
 - (ii) One of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and
 - (iii) Another involved insurer's market is two percent (2%) or more.
 - (c) For the purposes of Section 3.1D(2):
 - (i) The term "insurer" includes any company or group of companies under common management, ownership or control;
 - (ii) 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 NAIC 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;
 - (iii) 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 Paragraphs (2)(a) and (2)(b) of this subsection, 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 Paragraphs (2)(a) and (2)(b) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subparagraph 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 Section 3.1E(1) 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 the 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:

- (i) 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
 - (ii) 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:
- (i) There is a hearing;
 - (ii) Notice of the hearing is issued prior to the end of the waiting period and not less than fifteen (15) days prior to the hearing; and
 - (iii) The hearing is concluded and the order is issued no later than sixty (60) days after the date of the filing of the pre-acquisition notification with the commissioner.
- Every order shall be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.
- (c) 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) and while the order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:
- (a) A monetary penalty of not more than \$10,000 for every day of violation; or
 - (b) Suspension or revocation of the 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 filing requirement, shall be subject to a fine of not more than \$50,000.

F. Inapplicable Provisions. Sections 10B, 10C, and 12 do not apply to acquisitions covered under Section 3.1B.

Section 4. 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) Section 4;
 - (2) Section 5A(1), 5B, 5D; and
 - (3) Either Section 5A(2) 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 fifteen (15) days after the end of the month in which it learns of each change or addition.

Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by [insert date] of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer authorized to do business in the state which is a member of an insurance 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 Section 4C or other information filed by the insurance company with the insurance regulatory authority of its 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 NAIC, 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 the 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;

Drafting Note: Neither option below is intended to modify applicable state insurance and/or corporate law requirements.

- (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

Alternative Section 4B(7):

- (7) Statements that the insurer's board of directors is responsible for and 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 if the 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 one percent (.5%) 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. The definition of materiality provided in this subsection shall not apply for purposes of the Group Capital Calculation or the Liquidity Stress Test Framework.
- E. Reporting of Dividends to Shareholders. Subject to Section 5B, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.
- 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 the information is reasonably necessary to enable the insurer to comply with the provisions of this Act.
- 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 two (2) or more affiliated insurers subject to registration 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 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 a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (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 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 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;
- (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. 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 holding company 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 [insert cross-reference to appropriate section of Credit for Reinsurance Law] that recognizes the U.S. state regulatory approach to group supervision and group capital;

Drafting Note: On September 22, 2017, the United States and the European Union (EU) entered into the “*Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance.*” A similar agreement with the United Kingdom (UK) was signed on December 18, 2018. Both agreements are considered to be a “covered agreement” entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that addresses the U.S. state regulatory approach to group supervision and group capital, and provides that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group. Under the revised Credit for Reinsurance Models, not only are jurisdictions that are subject to the EU and UK Covered Agreements treated as Reciprocal Jurisdictions, but any other Qualified Jurisdiction can also qualify as Reciprocal Jurisdiction if they provide written confirmation that they recognize and accept the U.S. state regulatory approach to group supervision and group capital.

- (d) An insurance holding company system:
 - (i) 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 in the NAIC Financial Analysis Handbook, and
 - (ii) 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.

Drafting Note: The phrase “Recognizes and accepts” does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not apply its own version of a group capital filing to U.S. insurance groups.

- (e) Notwithstanding the provisions of Sections 4L(2)(c) and 4L(2)(d), 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 Section 4L(2)(a) through Section 4L(2)(d), 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 capital 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 National Association of Insurance Commissioners:
- (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 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 Framework for that data year.
 - (i) 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 Framework.

Drafting Note: The delay included in the change to the NAIC Liquidity Stress Test Framework or to the data year for which the Scope Criteria are to be measured being effective on January 1 of the year following the calendar year when such changes are adopted is present to: 1) allow sufficient time for states needing to adopt by rule the NAIC Liquidity Stress Test Framework for a given data year and 2) to ensure scoped in insurers have adequate time to comply with the requirements for a given data year .

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

Section 5. 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;
 - (b) Agreements for cost sharing services and management shall include such provisions as required by rule and regulation issued by the commissioner;
 - (c) Charges or fees for services performed shall be reasonable;
 - (d) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently 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
 - (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 meet 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 (g), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that 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 thirty (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, extensions of credit, or investments, provided the transactions are equal to or exceed:
 - (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;
 - (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets 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 loans or extensions of credit with the agreement or understanding that the proceeds of the 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 the loans or extensions of credit provided the transactions are equal to or exceed:

- (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;
 - (ii) With respect to life insurers, three percent (3%) 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 three years, equals or exceeds five percent (5%) 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 non-affiliate, if an agreement or understanding exists between the insurer and non-affiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;
- (d) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements;
- (e) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (.5%) of the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of the 31st day of December next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph;
- (f) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Section 2 of this Act (or authorized under any other section of this Chapter), or in non-subsidiary insurance affiliates that are subject to the provisions of this Act, are exempt from this requirement; and

Drafting Note: When reviewing the notification required to be submitted pursuant to Section 5A(2)(f), the commissioner should examine prior and existing investments of this type to establish that these investments separately or together with other transactions, are not being made to contravene the dividend limitations set forth in Section 5B. However, an investment in a controlling person or in an affiliate shall not be considered a dividend or distribution to shareholders when applying Section 5B of this Act.

- (g) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this paragraph 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 separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise his or her authority under Section 11.

- (4) The commissioner, in reviewing transactions pursuant to Subsection A(2), shall consider whether the transactions comply with the standards set forth in Subsection A(1) and whether they may adversely affect the interests of policyholders.
- (5) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

B. Dividends and other Distributions

No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within that period disapproved the payment, or until the commissioner has approved the payment within the thirty-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 twelve (12) months exceeds the lesser of:

- (1) Ten percent (10%) of the insurer's surplus as regards policyholders as of the 31st day of December next preceding; or
- (2) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-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.

In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two (2) calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration shall confer no rights upon shareholders until (1) the commissioner has approved the payment of the dividend or distribution or (2) the commissioner has not disapproved payment within the thirty-day period referred to above.

Drafting Note: The following Subsection C entitled "Management of Domestic Insurers Subject to Registration" is optional and is to be adopted according to the needs of the individual jurisdiction.

C. Management of Domestic Insurers Subject To Registration.

- (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this Act.
- (2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of Section 5A(1).
- (3) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

- (4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.
 - (5) The provisions of Paragraphs (3) and (4) shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of Paragraphs (3) and (4) with respect to such controlling entity.
 - (6) An insurer may make application to the commissioner for a waiver from the requirements of this subsection, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than \$300,000,000. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.
- D. Adequacy of Surplus. For purposes of this Act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet 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 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 investment portfolio;
 - (8) The surplus as regards policyholders maintained by other comparable insurers;
 - (9) The adequacy of the insurer's reserves; and
 - (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 judgment of the commissioner the investment so warrants.

Section 6. Examination

- A. Power of Commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under Sections [insert applicable sections] relating to the examination of insurers, the commissioner shall have the power to examine any insurer registered under Section 4 and its affiliates to ascertain the financial condition of the 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.

- B. Access to Books and Records.
- (1) The commissioner may order any insurer registered under Section 4 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this Chapter.
 - (2) To determine compliance with this Chapter, the commissioner may order any insurer registered under Section 4 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 other method. 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 \$[insert amount] for each day's delay, or may suspend or revoke the insurer's license.
- C. 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 above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.
- D. Expenses. Each registered insurer producing for examination records, books and papers pursuant to Subsection A above shall be liable for and shall pay the expense of examination in accordance with Section [insert applicable section].
- 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 also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon 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 [insert appropriate statutory reference to trial-level court in that state], 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.

Section 7. Supervisory Colleges

- A. Power of Commissioner. With respect to any insurer registered under Section 4, 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 Section 6, 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 Section 8C 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.

Section 7.1. Group-wide Supervision of Internationally Active Insurance Groups

- A. The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section.. However, the commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:
 - (1) Does not have substantial insurance operations in the United States;
 - (2) Has substantial insurance operations in the United States, but not in this state; or
 - (3) Has substantial insurance operations in the United States and this state, but the commissioner has determined pursuant to the factors set forth in Subsections B and F that the other regulatory official is the appropriate group-wide supervisor.

An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the commissioner make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

- B. In cooperation with other state, federal and international regulatory agencies, the commissioner will identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:
 - (1) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets or liabilities;
 - (2) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;
 - (3) The location of the executive offices or largest operational offices of the internationally active insurance group;
 - (4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be:

- (a) Substantially similar to the system of regulation provided under the laws of this state, or otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and
- (5) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in Paragraphs (1) through (5) above, and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

- C. Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, in the event of a material change in the internationally active insurance group that results in:
 - (1) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets or liabilities; or
 - (2) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group, the commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to Subsection B.
- D. Pursuant to Section 6, the commissioner is authorized to collect from any insurer registered pursuant to Section 4 all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered pursuant to Section 4 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than thirty (30) days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish in the [insert name of state administrative record] and on its Internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.
- E. If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:
 - (1) Assess the enterprise risks within the internationally active insurance group to ensure that:
 - (a) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management, and
 - (b) Reasonable and effective mitigation measures are in place;
 - (2) Request, from any member of an internationally active insurance group subject to the commissioner's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:
 - (a) Governance, risk assessment and management,
 - (b) Capital adequacy, and

- (c) Material intercompany transactions;
 - (3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;
 - (4) Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of Section 8, through supervisory colleges as set forth in Section 7 or otherwise;
 - (5) Enter into agreements with or obtain documentation from any insurer registered under Section 4, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and
 - (6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.
- F. If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:
- (1) The commissioner's cooperation is in compliance with the laws of this state; and
 - (2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.
- G. The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under Section 4, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.
- H. The commissioner may promulgate regulations necessary for the administration of this section.
- I. A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

Section 8. Confidential Treatment

- A. Documents, materials or other information in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 6 and all information reported or provided to the Department of Insurance pursuant to Section 3B(12) and (13), Section 4, Section 5 and Section 7.1 are recognized by this state as being proprietary and to contain trade secrets, and shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, 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 Department of Insurance pursuant to Section 4L(2), 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 [Department of Insurance] pursuant to Section 4L(3), 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.

Drafting note: This group capital calculation and group capital ratio includes confidential information and filings received from insurance holding companies supervised by the Federal Reserve Board. Similarly, the liquidity stress test may include confidential information and filings received from insurance holding companies supervised by the Federal Reserve Board. The confidential treatment afforded to group capital calculation filings includes any Federal Reserve Board group capital filings and information.

- 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 Act 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, including proprietary and trade secret documents and materials with other state, federal and international regulatory agencies, with the NAIC, and with any third-party consultants designated by the commissioner, with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 7, 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 Section 4L(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, including propriety and trade-secret information from the NAIC and 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; and
 - (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 Act consistent with this subsection that shall:
 - (a) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant designated by the commissioner pursuant to this Act, including procedures and protocols for sharing by the

NAIC with other state, federal or international 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 or a third party consultant pursuant to this Act remains with the commissioner and the NAIC's or a third-party consultant's, as designated by the commissioner, use of the information is subject to the direction of the commissioner;
 - (c) Excluding documents, material or information reported pursuant to Section 4L(3), prohibit the NAIC or third-party consultant designated by the commissioner from storing the information shared pursuant to this Act in a permanent database after the underlying analysis is completed;
 - (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 Act is subject to a request or subpoena to the NAIC or a third-party consultant designated by the commissioner for disclosure or production; and
 - (e) Require the NAIC 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 or a third-party consultant designated by the commissioner may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant designated by the commissioner pursuant to this Act.
 - (f) For documents, material or information reporting pursuant to Section 4L(3), in the case of an agreement involving a third-party consultant , provide for notification of the identity of the consultant to the applicable insurers.
- D. The sharing of information by the commissioner pursuant to this Act 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 Act.
- 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, materials or other information in the possession or control of the NAIC or a third-party consultant designated by the commissioner pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, 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 Section 4L(2) and the liquidity stress test along with its results and supporting disclosures required under Section 4L(3) 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 Act, 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.

Drafting Note: In Section 8C(4) above, the exclusions in sub-items (ii), (iii) and (vi) are the result of the Liquidity Stress Test primary purpose, which is to be used as a tool for assessing macroprudential risks by the NAIC Financial Stability Task Force assisted by NAIC staff, including trend analysis over time. Provisions against the NAIC owning the information, databasing the results and disclosures, and obtaining written consent from the insurer when a consultant is involved were deemed inappropriate.

Section 9. 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 Act.

Section 10. 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 Act or of any rule, regulation or order issued by the commissioner hereunder, the commissioner may apply to the [insert title] Court for the county in which the principal officer of the insurer is located or if the insurer has no office in this state then to the [insert title] Court for [insert county] County for an order enjoining the insurer or director, officer, employee or agent thereof from violating or continuing to violate this Act or any 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 Act 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 the securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of the 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 Act or of any rule, regulation or order issued by the commissioner hereunder; the insurer or the commissioner may apply to the [insert title] Court for the county in which the insurer has its principle place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of Section 3 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 the 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 Act or any rule, regulation or order issued by the commissioner hereunder, the [insert title] Court for [insert county] County or the [insert title] Court for the county in which the insurer has its principal place of business 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 the person, and issue such order as may be appropriate to effectuate the provisions of this Act.

Notwithstanding any other provisions of law, for the purposes of this Act the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

Section 11. Sanctions

- A. Any insurer failing, without just cause, to file any registration statement as required in this Act shall be required, after notice and hearing, to pay a penalty of \$[insert amount] 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 \$[insert amount]. 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 Section 4A, 5A(2), or 5B, or which violate this Act, shall pay, in their individual capacity, a civil forfeiture of not more than \$[insert amount] 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 Act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 5 of this Act and which would not have been approved had the 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 contracts and restore the status quo if the 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 willful violation of this Act, the commissioner may cause criminal proceedings to be instituted by the [insert title] Court for the county in which the principal office of the insurer is located or if the insurer has no office in this state, then by the [insert county] Court for [insert title] County against the insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this Act may be fined not more than \$[insert amount]. Any individual who willfully violates this Act may be fined in his or her individual capacity not more than \$[insert amount] or be imprisoned for not more than one to three (3) years or both.
- E. Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his or her duties under this Act, upon conviction shall be imprisoned for not more than [insert amount] years or fined \$[insert amount] or both. Any fines imposed shall be paid by the officer, director or employee in his or her individual capacity.
- F. Whenever it appears to the commissioner that any person has committed a violation of Section 3 of this Act 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 [insert appropriate statutory reference related to orders of supervision].

Section 12. Receivership

Whenever it appears to the commissioner that any person has committed a violation of this Act 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 Section [insert applicable section] of this Chapter to take possessions of the property of the domestic insurer and to conduct its business.

Section 13. Recovery

- A. If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, (i) 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 (ii) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer or employee, where the distribution or payment pursuant to (i) or (ii) is made at any time during the one 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 distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the 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 the distributions were paid shall be liable up to the amount of distributions or payments under Subsection A which the person received. Any person who otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions that would have been received if they had been paid immediately. If two (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 section 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, 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 the parent corporation or holding company or person who otherwise controlled it.

Section 14. Revocation, Suspension, or Nonrenewal of Insurer’s License

Whenever it appears to the commissioner that any person has committed a violation of this Act 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, suspend, revoke or refuse to renew the 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.

Section 15. Judicial Review, Mandamus

- A. Any person aggrieved by any act, determination, rule, regulation or order or any other action of the commissioner pursuant to this Act may appeal to the [insert title] Court for [insert county] County. The court shall conduct its review without a jury and by trial *de novo*, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial *de novo* as to those parties so stipulating.
- B. The filing of an appeal pursuant to this section shall stay the application of any rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors or the public.
- C. Any person aggrieved by any failure of the commissioner to act or make a determination required by this Act may petition the [insert title] Court for [insert county] County for a writ in the nature of a mandamus or a preemptory mandamus directing the commissioner to act or make a determination.

Section 16. Conflict with Other Laws

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

Section 17. Separability of Provisions

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and for this purpose the provisions of this Act are separable.

Section 18. Effective Date

This Act shall take effect thirty (30) days from its passage.

**APPENDIX
ALTERNATE PROVISIONS**

Alternative Section 1. Findings

- A. It is hereby found and declared that it may not be inconsistent with the public interest and the interest of policyholders and shareholders to permit insurers to:
- (1) Engage in activities which would enable them to make better use of management skills and facilities;
 - (2) Diversify into new lines of business through acquisition or organization of subsidiaries;
 - (3) Have free access to capital markets which could provide funds for insurers to use in diversification programs;
 - (4) Implement sound tax planning conclusions; and
 - (5) Serve the changing needs of the public and adapt to changing conditions of the social, economic and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.
- B. It is further found and declared that the public interest and the interests of policyholders and shareholders are or may be adversely affected when:
- (1) Control of an insurer is sought by persons who would utilize such control adversely to the interests of policyholders or shareholders;
 - (2) Acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this state;
 - (3) An insurer which is part of an insurance holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable; or
 - (4) An insurer pays dividends to shareholders which jeopardize the financial condition of such insurers.
- C. It is hereby declared that the policies and purposes of this Act are to promote the public interest by:
- (1) Facilitating the achievement of the objectives enumerated in Subsection A;
 - (2) Requiring disclosure of pertinent information relating to changes in control of an insurer;
 - (3) Requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends to shareholders paid by the insurer; and
 - (4) Providing standards governing material transactions between the insurer and its affiliates.
- D. It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers. Therefore, this state shall exercise regulatory authority over domestic insurers and unless otherwise provided in this Act, not over nondomestic insurers, with respect to the matters contained herein.

Alternative Section 2. Subsidiaries of Insurers

- A. Authorization. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:
- (1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;
 - (2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;
 - (3) Investing, reinvesting or trading in securities for its own account, that of its parent, a subsidiary of its parent, or an affiliate or subsidiary;
 - (4) Management of an investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
 - (5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
 - (6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups;
 - (7) Rendering other services related to the operations of an insurance business, such as actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;
 - (8) Ownership and management of assets which the parent corporation could itself own or manage;

Drafting Note: The aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph should not exceed the limitations applicable to such investments by the insurer.

- (9) Acting as administrative agent for a governmental instrumentality that is performing an insurance function;
- (10) Financing of insurance premiums, agents and other forms of consumer financing;
- (11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and
- (12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

1969 Proc. II 736, 737, 738-751, 756 (adopted).
1972 Proc. I 14, 16, 443, 449 (corrected).
1980 Proc. II 22, 26, 29, 42-46 (amended, added Section 3.1).
1983 Proc. I 6, 37, 96, 99 (amended).
1985 Proc. I 19, 37, 178, 183-200 (amended and reprinted).
1985 Proc. II 11, 24-25, 74, 75-92 (amended and reprinted).
1986 Proc. I 10, 25, 72 (amended).
1986 Proc. II 12, 19-20, 93-94, 94-109 (amended and reprinted).
1993 Proc. 4th Quarter 16, 31, 57, 61-62 (amended).
1995 Proc. 4th Quarter 11, 33, 307, 310, 312-328 (amended and reprinted).
1996 Proc. 1st Quarter 124, 270, 272-275 (amendments adopted later printed here).
1997 Proc. 4th Quarter 11 (amendments adopted).
1999 Proc. 4th Quarter 15, 364, 369, 379-380 (amended).
2001 Proc. 2nd Quarter 11, 14, 319, 339, 342-348 (amended).
2011 Proc. 1st Quarter I 3-11 (amended).
2014 Proc. 3rd Quarter, Vol. I 122, 136, 140, 183, 243-266 (amended).
Fall 2020 (amended).

INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama		ALA. CODE §§ 27-29-1 to 27-29-14 (1973/2017) (previous version of model); BULLETIN 4-2-2010 (2010).
Alaska		ALASKA STAT. §§ 21.22.010 to 21.22.200 (1976/2019) (previous version of model).
American Samoa	NO CURRENT ACTIVITY	
Arizona		ARIZ. REV. STAT. ANN. §§ 20-481 to 20-481.33 (1978/2019) (previous version of model).
Arkansas		ARK. CODE ANN. §§ 23-63-501 to 23-63-532 (1971/2019) (previous version of model).
California		CAL. INS. CODE §§ 1215 to 1215.18 (1969/2017) (previous version of model); BULLETIN 93-6 (1993).
Colorado		COLO. REV. STAT. §§ 10-3-801 to 10-3-816 (1963/2019) (previous version of model).
Connecticut		CONN. GEN. STAT. §§ 38a-129 to 38a-140 (1969/2017); CONN. GEN. STAT. § 38a-14a (1992/2012) (examination) (previous version of model).
Delaware		DEL. CODE ANN. tit. 18, §§ 5001 to 5016 (1973/2015) (previous version of model).
District of Columbia		D.C. CODE §§ 31-701 to 31-714 (1993/2019) (previous version of model) (previous version of model).

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Florida		FLA. STAT. §§ 628.801 to 628.805 (1985/2018); §§ 628.451 to 628.461 (1959/2014) (portions of previous version of model); FLA. ADMIN. CODE ANN. r. 69O-143.046 to 69O-143.050 (1970/2017) (portions of 2010 version of model).
Georgia		GA. CODE ANN. §§ 33-13-1 to 33-13-15 (1970/2019) (previous version of model).
Guam	NO CURRENT ACTIVITY	
Hawaii		HAW. REV. STAT. §§ 431:11-101 to 431:11-117 (1988/2019) (previous version of model).
Idaho		IDAHO CODE ANN. §§ 41-3801 to 41-3825 (1972/2019) (previous version of model).
Illinois		215 ILL. COMP. STAT. 5/131.1 to 5/131.30 (1997/2016) (2010 version of model); BULLETIN 2013-13 (2013).
Indiana		IND. CODE ANN. §§ 27-1-23-1 to 27-1-23-13 (1971/2018) (previous version of model).
Iowa		IOWA CODE §§ 521A.1 to 521A.13 (1970/2018) (previous version of model).
Kansas		KAN. STAT. ANN. §§ 40-3301 to 40-3318 (1975/2019) (previous version of model).
Kentucky		KY. REV. STAT. ANN. §§ 304.37-010 to 304.37-160 (1972/2019) (previous version of model); KY. REV. STAT. ANN. §§ 304.37-500 to 304.37-580 (1996/2012).
Louisiana		LA. REV. STAT. ANN. §§ 22:691.1 to 22:691.27 (2012/2015) (previous version of model).
Maine		ME. REV. STAT. ANN. tit. 24-A, § 222 (1969/2017) (previous version of model).
Maryland		MD. CODE ANN., INS. §§ 7-101 to 7-807 (1969/2013); § 2-209.2 (2019) (previous version of model).
Massachusetts		MASS. GEN. LAWS ch. 175, §§ 206 to 206D (1993/2018) (previous version of model).

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Michigan		P.A. No. 16 (2020) (previous version of model); MICH. COMP. LAWS §§ 500.1301 to 500.1379 (1970/2015) (2010 version of model).
Minnesota		MINN. STAT. §§ 60D.09 to 60D.30 (1971/2019) (previous version of model).
Mississippi		MISS. CODE ANN. §§ 83-6-1 to 83-6-47 (1974/2017) (previous version of model).
Missouri		MO. REV. STAT. §§ 382.010 to 382.302 (1983/2019) (previous version of model).
Montana		MONT. CODE ANN. §§ 33-2-1101 to 33-2-1125 (1971/2019) (portions of 2010 version of model).
Nebraska		NEB. REV. STAT. §§ 44-2120 to 44-2155 (1991/2016) (previous version of model).
Nevada		NEV. REV. STAT. §§ 692C:010 to 692C:490 (1973/2017) (previous version of model).
New Hampshire		N.H. REV. STAT. ANN. §§ 401-B:1 to 401-B:16 (2013/2019) (previous version of model).
New Jersey		N.J. STAT. ANN. §§ 17:27A-1 to 17:27A-14 (1970/2014) (portions of previous version of model); N.J. STAT. ANN. §§ 17:27B-1 to 17:27B-6 (1971).
New Mexico		N.M. STAT. ANN. §§ 59A-37-1 to 59A-37-32 (1985/2014) (2010 version of model).
New York		N.Y. INS. LAW § 302 (2013); §§ 1501 to 1510 (portions of 2010 version of model); §§ 1601 to 1612; §§ 1701 to 1719 (1984/2013) (portions of 2010 version of model); CIRCULAR LETTER 2010-10 (2010).
North Carolina		N.C. GEN. STAT. §§ 58-19-1 to 58-19-70 (1971/2019) (previous version of model).
North Dakota		N.D. CENT. CODE §§ 26.1-10-01 to 26.1-10-13 (1983/2015) (previous version of model).

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Northern Marianas	NO CURRENT ACTIVITY	
Ohio		OHIO REV. CODE ANN. §§ 3901.32 to 3901.37 (1971/2017) (previous version of model).
Oklahoma		OKLA. STAT. tit. 36, §§ 1631 to 1648 (1970/2017) (previous version of model).
Oregon		OR. REV. STAT. §§ 732.517 to 732.592 (1971/2017) (previous version of model).
Pennsylvania		40 P.A. CODE §§ 991.1401 to 991.1413 (1993/2012) (previous version of model).
Puerto Rico		P.R. LAWS ANN. tit. 26, §§ 4401 to 4414 (2012) (portions of 2010 version of model).
Rhode Island		R.I. GEN. LAWS §§ 27-35-1 to 27-35-14 (1971/2015) (previous version of model).
South Carolina		S.C. CODE ANN. §§ 38-21-10 to 38-21-390 (1988/2019) (previous version of model).
South Dakota		S.D. CODIFIED LAWS §§ 58-5A-1 to 58-5A-80 (1972/2017) (2010 version of model).
Tennessee		TENN. CODE ANN. §§ 56-11-101 to 56-11-119 (1986/2018) (previous version of model).
Texas		TEX. INS. CODE ANN. §§ 823.001 to 823.503 (2017) (previous version of model).
Utah		UTAH CODE ANN. §§ 31A-16-101 to 31A-16-119 (1986/2019) (previous version of model).
Vermont		VT. STAT. ANN. tit. 8, §§ 3681 to 3696 (1971/2016) (previous version of model).
Virgin Islands		V.I. CODE ANN. tit. 22, §§ 320 to 339 (2017) (previous version of model).
Virginia		VA. CODE ANN. §§ 38.2-1322 to 38.2-1334.2:3 (1986/2019) (previous version of model); VA. CODE ANN. §§ 38.2-4230 to 38.2-4235 (1989/2001) (regarding non-stock corporations that are members of holding company system).

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Washington		WASH. REV. CODE ANN. §§ 48.31B.005 to 48.31B.902 (1993/2015) (2010 version of model).
West Virginia		W. VA. CODE §§ 33-27-1 to 33-27-14 (1974/2019) (previous version of model).
Wisconsin		WIS. STAT. §§ 617.01 to 617.25 (1969/2014) (portions of 2010 version of model).
Wyoming		WYO. STAT. ANN. §§ 26-44-101 to 26-44-119 (1991/2019) (previous version of model).

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In June 1966, the Subcommittee to Study Trends Toward Mergers and Holding Companies submitted the first draft of a model for consideration. The reason for consideration of a model law was the perception that the “schemes being foisted on the general public” were not being regulated. If the states didn’t regulate the companies, the federal government would step in to do so. The perception was that the purpose of holding companies was to circumvent the insurance statutes that regulate the formation, financing, management, investments, operations and reporting required of insurance companies. **1966 Proc. II 308-310.**

An advisory committee reported in 1968 that several reasons existed for the increased use of holding companies: (1) increased inflation has quickened interest in equity-based investments; (2) due to declining profits in the property-liability insurance business, many property and liability insurers need additional capital; and (3) increased attention has been given to the idea of “one-stop” financial service. This has quickened the interest of insurers in diversification. **1969 Proc. I 176-177.**

In 2000 a group received a charge to assess the impact of the federal Gramm-Leach-Bliley Act of 1999 (GLBA) on the regulatory authority, focus and procedures provided by the NAIC Insurance Holding Company System Model Act and the accompanying model regulation. The working group was charged to recommend changes for consistency with the functional regulatory structure set forth in GLBA and related federal regulations. **2000 Proc. 2nd Quarter 584.**

The amendments adopted by the committee in the summer of 2001 were the result of an extensive review and comparison of relevant NAIC models to GLBA. The amendment to the holding company model was designed to conform the model to the time frames under which a state must consider a proposed acquisition of a domestic insurer by a financial holding company. **2001 Proc. 2nd Quarter 339.**

Section 1. Definitions

Much of the definition section was taken from a draft submitted by the advisory committee in December of 1968. **1969 Proc. I 188-189.**

A. The definition of affiliate was derived from the Savings and Loan Holding Company Act.

C. Control is broadly defined to include any method, direct or indirect, by which business may be diverted by any person not in an official position with the organization. The exception for commercial contracts for goods or non-management services was inserted to negate any suggestion that control might exist by virtue of a significant business transaction made in the normal course of business. The section was derived from the Savings and Loan Holding Company Act, the Bank Holding Company Act and the Investment Company Act of 1940. **1969 Proc. I 196.**

A definition of “controlled insurer” was added in 1984. **1985 Proc. I 183.** It was deleted a few months later in order to ensure that some insurers in a holding company system did not escape regulation. **1985 Proc. II 93.**

D. The holding company system is an insurer, together with its parents, subsidiaries and sister organizations. The definition was derived from the Public Utility Holding Company Act. **1969 Proc. I 196.**

E. The specific exceptions render both the permissive and regulatory provisions of this Act inapplicable to the named organizations. The definition was derived from several federal statutes and New York insurance law. **1969 Proc. I 196.**

In June of 1993 the NAIC Special Committee on Blue Cross Plans discussed the issue of the Blue Cross and Blue Shield Association’s position on investments in subsidiaries. A representative from the association said their board of directors, which is comprised of representatives from each of the plans, voted to make the individual plans subject to all approval and disclosure provisions contained in the Insurance Holding Company System Regulatory Act. She said when the provision took effect, a plan must either be subject to the Act, as it is in 24 states, or enter into an explicit agreement with state regulators memorialized with an order requiring disclosure and reporting of official transactions. One of the state regulators expressed concern that there would be no sanctions to force compliance. **1993 Proc. 2nd Quarter 61-63.**

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Section 1 (cont.)

By the next meeting of the special committee, an amendment had been prepared which removed the exclusion for nonprofit health provider plans that had been included in the original model. NAIC staff included a note advising states to look at their own special purpose corporation acts to be certain there was not any conflicting language in those statutes. **1993 Proc. 3rd Quarter 46.**

With the support of the association, the special committee adopted the amendment to the definition of insurer. **1993 Proc. 4th Quarter 57, 62.**

F. The definition of person was derived from the Savings and Loan Holding Company Act. **1969 Proc. I 196.**

When making suggestions for model amendments in 1994, one regulator suggested that limited liability companies should be added to the definition of “person.” One regulator suggested using the definition of person from the draft model investment law. Another regulator disagreed, saying the holding company act should be amended as minimally as possible to accomplish the working group’s goals. The working group agreed to add limited liability companies to the definition of “person.” **1994 Proc. 4th Quarter 1029.**

H. A subsidiary is a business under the control of any other organization. The definition was derived from the Savings and Loan Holding Company Act and the Bank Holding Company Act. **1969 Proc. I 196.**

When amendments were being developed in 1995, a member of the working group drafting changes questioned the definition of “subsidiary.” He noted that, under the current definition, an entity is presumed to be a subsidiary of an insurer if the insurer has the power to vote 11 percent of the voting shares of the entity. He suggested it would be more appropriate to treat an entity as a subsidiary if an insurer had the power to vote a majority of the voting stock. **1995 Proc. 2nd Quarter 229.**

Section 2. Subsidiaries of Insurers

A. The regulatory principles drafted by the advisory committee included the following:

1. When an insurer organizes or acquires a subsidiary, he should make full disclosure to the domiciliary commissioner;
2. A subsidiary should be permitted to conduct non-insurance business and/or make its services available to other than its parent or affiliates;
3. There should be no arbitrary limit on degrees of ownership;
4. There should be complete disclosure of financial relationships between parent and subsidiary, including loans. **1969 Proc. I 183.**

In 1984, the task force deliberated extensively on whether or not to modify this section. They decided not to make modifications, believing that the existing section and its optional section offered the necessary flexibility to the regulator. **1985 Proc. I 86.**

When the Valuation of Securities Task Force established a working group to create a model law on investments of insurers, there was discussion of whether subsidiaries and affiliates should be addressed in the model investment law. Several comments were received that indicated the investment law draft conflicted or overlapped with the provisions of the model holding company act. The working group agreed that issue should be addressed solely in the holding company law and recommended a committee be formed to study this issue and recommend modifications to the holding company law relative to investment in affiliates. **1994 Proc. 1st Quarter 303.**

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Section 2A (cont.)

The working group appointed to study the issue discussed whether it was appropriate to have different investment standards for property/casualty and for life companies. One regulator suggested that the equity required for life business is lower than that required for property and casualty business, and that therefore different types of companies perhaps should be treated differently in the holding company act. Another regulator said investments by property/casualty companies in subsidiaries was permitted under his state's law, but not investments in affiliates. Several other regulators spoke in favor of allowing investments in affiliates and cautioned against micro-managing the insurers. Following discussion the working group agreed to draft a measure that treated investments in affiliates in a manner similar to other investments under the model investment law, with an aggregate investment limit of 5% of admitted assets for life insurers and 7% of admitted assets for property/casualty insurers. **1994 Proc. 3rd Quarter 781-782, 1994 Proc. 4th Quarter 1037.**

The group discussed whether Section 2A of the holding company law unduly limited the types of subsidiaries in which an insurer might invest. The group concluded that the drafting note and the alternative provisions in the appendix provided the needed flexibility. **1994 Proc. 3rd Quarter 781.**

As the working group contemplated issues relative to investments in subsidiaries and affiliates, a group of insurers presented six short papers articulating their concerns. The papers expressed concerns relative to insurers' ability to compete, access to capital and the impact on existing state laws. **1994 Proc. 4th Quarter 1037-1042.**

The first draft contemplated by the working group charged to address investments in affiliates and subsidiaries did not suggest any changes to Section 2A. **1994 Proc. 4th Quarter 1035-1036.**

At a meeting late in 1994 a regulator recommended deleting the restrictions in Section 2A and referring to the alternate subsection in the appendix, which has been adopted in over half of the states. That suggestion was not followed at that time. **1994 Proc. 4th Quarter 1029.**

The group discussed further the interplay between the holding company act and other investment laws. One regulator suggested specifying in the model that investments in subsidiaries and affiliates would be controlled only by the holding company act and not by general investment laws. The working group did not reach consensus on the issue. **1994 Proc. 4th Quarter 1029.**

The working group was reconstituted in 1995 and stepped back to look at the whole issue from a fresh perspective. One of the questions raised was whether it was appropriate to follow the narrow approach to insurer investments in subsidiaries set forth in Section 2 (subsidiaries must be involved in specified businesses) or the broader approach of alternative Section 2A from the appendix (subsidiaries may be involved in any lawful business). **1995 Proc. 2nd Quarter 229.**

The holding company act neither prohibits or expressly permits upstream investments in parent companies. The working group agreed that a parent company cannot be considered a subsidiary, so investments in parent companies are not authorized under the model holding company act. A working group member said investments in parent companies could impair the liquidity of the investment company and that restrictions were necessary to prevent potential investment abuses. **1995 Proc. 3rd Quarter 234.**

A company representative said investments in parent companies exist today and there is no need to prohibit them. He pointed to one state law that said an insurer's investment in its parent company's debts could not be considered an admitted asset unless there was adequate collateral. A regulator said his state prohibited upstream investments. **1995 Proc. 3rd Quarter 234.**

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Section 2A (cont.)

In a draft dated Sept. 12, 1995, the working group used what had been the alternative Subsection A in the body of the model and placed what had been Subsection A in the appendix as an alternative. **1995 Proc. 3rd Quarter 208-209, 211-212.**

An agents' association objected to the substitution of alternative Section 2A for the existing 2A in the model because it believed the revised Section 2A broadens the authority for insurers to invest in any type of subsidiary, including banks. The working group said that the substitution was merely a change in format and that the two are equally acceptable. **1995 Proc. 4th Quarter 311.**

An insurer commented that alternative Section 2A, found in the appendix, should be substituted for the existing Section 2A to indicate that subsidiaries may be engaged in any business including, but not limited to, those specifically listed. The working group agreed to leave the language as it was in the last draft adopted because this issue had been fully discussed then. **1996 Proc. 1st Quarter 269.**

B. In the advisory committee recommendations submitted in 1968, a section dealt with the issue of investment restrictions. It was the premise of the committee that some states' investment laws are rooted in the Depression atmosphere of the 1930's. Others are much less stringent. Because of this wide diversity, the committee thought it was inappropriate to attempt to draft model legislation on investments. They only recommended that laws limiting investments in common stocks and real estate should be liberalized, and that limitations on investments in common stock be inapplicable to investments in subsidiaries. They suggested that, if limitations were included, they should not be less than five percent of admitted assets or 50 percent of surplus, whichever figure is less. **1969 Proc. I 183-184.**

When comparing the first NAIC committee draft and the advisory committee draft, it was clear that, in the NAIC committee draft, investments in subsidiaries would be strictly limited. Under that first draft (subsequently changed), all investments in subsidiaries would be disallowed in calculating the amount available for additional investments in other subsidiaries. This was true even though existing subsidiary investments might be extremely liquid assets, such as stocks traded on a national securities exchange. **1969 Proc. I 269.**

An amendment adopted in December 1984 changed Paragraph (1) to limit investments in subsidiaries from 5% of the insurer's assets to 10%. The comparison with 50% of surplus remained the same. **1985 Proc. I 185.**

An addition to B(1) provided that, in calculating the amount of investments under that section, investments in domestic or foreign insurance subsidiaries are to be excluded. **1985 Proc. II 93.**

The working group discussing amendments in 1994 reviewed the provision that indicates investments in subsidiaries cannot exceed the lesser of 10 percent of the insurer's surplus as regards policyholders. One industry representative said 29 states had adopted this provision in addition to general investment laws. One regulator suggested amending this to require the greater of, rather than the lesser of 10 percent or 50 percent. **1994 Proc. 4th Quarter 1029.** After further discussion the working group agreed not to amend the holding company act from "lesser" to "greater" because existing percentage limitations were appropriate. **1995 Proc. 3rd Quarter 234.**

When receiving comments on the model, one representative of a trade association suggested health maintenance organizations, preferred provider organizations and third party administrators be recognized as insurance subsidiaries. **1995 Proc. 2nd Quarter 232.**

He said many think this type of investment is already permitted under the holding company act, but he would like explicit investment authority. He recommended that health maintenance organizations be treated as insurers for purposes of the holding company act investment section. **1995 Proc. 3rd Quarter 235.**

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Section 2B (cont.)

The representative later suggested a modified proposal that was more narrowly drawn than previous suggestions. Under the modified proposal, insurers would be granted the same authority to invest in health maintenance organizations as they had to invest in domestic and foreign insurers. The proposal included a drafting note that suggested states might want to include other health care coverage entities within the scope of Section 2B. This was adopted. **1995 Proc. 4th Quarter 329.**

The working group drafting amendments to the model in 1994 suggested extensive changes to Paragraph (2) to redefine “total investments” of the insurer to include debt forgiveness, indebtedness of the subsidiary guaranteed by an insurer and several other elements. The provisions did not appear in subsequent drafts. **1994 Proc. 4th Quarter 1036.**

A member of the parent committee asked the working group to reconsider the second drafting note in Section 2 regarding health maintenance organizations. He expressed concern about the language because health maintenance organizations are not regulated in all states by the insurance department. The working group agreed to add a sentence to the drafting note to that effect. **1996 Proc. 1st Quarter 269.**

Several parties suggested that “Chapter” replace “Act” in Section 2B to reference the entire insurance code. The working group agreed to replace “Act” with “Chapter” in Section 2B. **1996 Proc. 1st Quarter 269.**

E. The language of this section was taken from an advisory committee draft. The only change from that suggested language was providing a shorter period for disposal of the investment. The advisory committee suggested five years, but the model as adopted provided a three-year period. **1969 Proc. I 190, 1969 Proc. II 742.**

Section 3. Acquisition of Control of or Merger With Domestic Insurer

Section 3 of the act provides protections against detrimental takeovers of insurance companies by regulating mergers with, and acquisitions of, domestic insurers. Persons who propose to acquire or merge with a domestic insurer are required to file a statement with the commissioner, disclosing the principal acquiring parties, giving certain information about them, describing their plans regarding the proposed takeover, and including any other information the commissioner may request. The section provides that all takeovers are subject to prior approval by the commissioner after an optional public hearing. The section lists several grounds on which denial might be based. **1978 Proc. I 222.**

A. One of the many questions confronting the Subcommittee was whether the legislation should be based on disclosure, prohibitory features, or a combination of the two. The draft considered in 1968 placed a strong emphasis on disclosure. Its purpose was to accumulate information to set the stage for subsequent legislation based on known abuses. A second purpose was to act as a deterrent on the theory that disclosure to a public agency should tend to reduce improper practices. **1969 Proc. I 172.**

The first NAIC draft provided that no tender offer could be made which would result in control of an insurer, or merger with an insurer, or acquisition of any voting securities which would result in control until a statement had been given to the commissioner of the state of domicile of that insurer, and the commissioner had approved the transaction, or the time for disapproval had passed. The advisory committee was concerned about the impact of this provision on many large corporations and expressed the opinion that it could affect the marketability of some stocks. The final version adopted did not contain the stringent provisions of the earlier draft, but required more than the first industry draft. **1969 Proc. I 269.**

In 1980, the NAIC began consideration of amendments regulating tender offers. The committee expressed concern that problems should be addressed which were created by the conflict between recently promulgated regulations of the U.S. Securities and Exchange Commission with respect to tender offers and the provisions of the NAIC Model Holding Company Act. Effectiveness of state regulation would be weakened by the SEC rules and proposed federal legislation. **1981 Proc. I 192.** The decision was made to wait until after a Supreme Court ruling on *Edgar v. MITE* before considering possible amendments to the model. **1982 Proc. II 98.**

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Section 3A (cont.)

A memorandum prepared in 1982 details the possible sources of conflict between the NAIC model and the Williams Act regarding the timing of tender offers. It concludes it would be impossible to comply with the timing provisions of both laws. **1982 Proc. II 46.**

The advisory committee expressed concern that Section 3 might be subject to constitutional challenge as the model authorized commissioner approval for the acquisition of control of a holding company that was not primarily engaged in the business of insurance. In order to exclude from approval acquisitions that were primarily engaged in business other than insurance, the second paragraph was modified. The commissioner retains the prerogative to determine if a person is primarily engaged in business other than the business of insurance. **1985 Proc. II 93.**

D. Much of this section is similar to a draft submitted by the advisory committee, except that their draft allowed for commissioner disapproval only if the enumerated situations existed. The model as adopted provided for approval by the commissioner after a hearing unless the situations listed were found to exist. **1969 Proc. I 192-193, 1969 Proc. II 744.**

An amendment was made to D(1)(b) to equate the manner of applying the competitive standard in the domiciliary and foreign state situation. The existing section was amended at the time the merger and acquisition law (Section 3.1) was adopted. The amendment provided that the prenotification requirement of filing competitive impact information and the more detailed elaboration of the general competitive would apply to the domestic as well as foreign insurer situations. In addition, in domestic situation the commissioner would not disapprove in certain circumstances involving economics of scale or increased availability, and the commissioner in a domestic situation may condition the approval of the acquisition or merger on the removal of the basis of disapproval within a specified period of time. **1980 Proc. II 31-32.**

In response to court decisions which questioned the ability of the commissioner to protect the interests of shareholders of the target companies, sections which allowed the commissioner to disapprove an acquisition because it was unfair to security holders were removed. Recent case law pointed out a trend in the direction of increased disclosure rather than oversight and prior approval. It was also argued that this type of review falls outside the scope of regulating the business of insurance. **1983 Proc. I 97-99.**

A paragraph was originally included which referred to payment of expenses for mailings to shareholders by the commissioner. This provision was also removed in response to recent court decisions. **1986 Proc. II 99.**

Amendments adopted in 1984 included the addition of Paragraph (1)(f) to show the commissioner could consider the effect on the insurance-buying public. **1985 Proc. I 188.**

In 1984 the commissioner was also given the authority to hire staff to assist him in the determination, and bill the acquiring party. **1985 Proc. I 188.**

E. Paragraph (2) empowers the commissioner to grant full or partial exemptions from the requirements when such exemptions would be consistent with the purposes of the act. The language was derived from the Williams Act. **1969 Proc. I 198.**

A working group reviewed summary information about NAIC models that might need revision in light of the federal Gramm-Leach-Bliley Act of 1999 (GLBA). The preliminary conclusion was that the models would not need significant revisions because of GLBA. However, certain procedural changes may be required. One area identified related to the different time frames specified in GLBA and the holding company act to approve Form A filings. **2000 Proc. 3rd Quarter 504.**

In addition to the shortened timeframe, the regulators considered required capital infusions in an affiliated financial institution in distress. **2000 Proc. 3rd Quarter 502-503.**

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Section 3D (cont.)

The working group reached agreement on the proposed amendments; however interested parties expressed concern regarding an amendment addressing GLBA's 60-day review time frame. **2001 Proc. 1st Quarter 364.**

Concern was expressed by some interested parties that lengthening the timeframe for pre-acquisition notice from 30 to 60 days was unnecessary. **2001 Proc. 2nd Quarter 339.**

Section 3.1 Acquisitions Involving Insurers Not Otherwise Covered

This section, originally designated the NAIC Model Acquisition and Merger Law, was added in June 1980. **1980 Proc. II 42.** It applies to acquisitions involving insurers not otherwise covered by the Holding Company Act. Acquisitions involving domiciliary companies are dealt with elsewhere; acquisitions involving nondomiciliary companies doing business in the state are treated under this section. **1980 Proc. II 30.**

In detailing reasons for adoption of this model section, the drafters pointed out that a prime regulatory responsibility is to foster and preserve competition in balance with other fundamental regulatory objectives. The regulation of acquisitions and mergers from a competitive orientation constitutes an important element in preserving competitive markets and the benefits derived from them. The insurance regulator, in exercising his responsibility over the insurance markets in his state, must be in a position to do something about mergers and acquisitions negatively impacting that competitive market. **1980 Proc. II 41.**

Originally the subcommittee planned to develop a model regulation, but because some states raised a concern that the lack of statutory authority would pose a problem, they developed a model law instead. **1980 Proc. II 32.**

The original approach of the drafters was to make an independent model acquisition and merger law separate from the holding company law. There were several reasons for this. First, and most important, the drafters wanted to visually emphasize the importance of competition when regulators pass upon an insurance acquisition or merger. There was concern that the emphasis would be lost if the provisions were buried in the holding company law. Secondly, this model involves the nondomiciliary commissioner when an acquisition or merger poses a potential significant adverse impact in his state. Since the holding company law revolves around the role of the domiciliary state, there was concern over being able to achieve a viable integration. Third, the drafter felt they could proceed at a quicker pace if they did not attempt to alter the existing holding company law. On the other hand, concern was expressed over two model laws dealing with the same topic which were not integrated with one another. The task force concluded this factor outweighed the benefits of the separate laws. **1983 Proc. II 32-33.**

Some industry spokesmen maintained that the primary purpose of the model acquisition and merger law was to oust federal jurisdiction over insurance company mergers. However, the task force developed the model law primarily in response to a very real and significant regulatory need as a part of the overall regulation of insurance markets. While some argued that states should rely on the federal government in this area, the reasons below led to the conclusion that it should be a state function:

- (1) State insurance regulators have overall responsibility for the insurance markets in their states. Fostering and preserving competition (including overseeing the competitive impact of acquisitions and mergers) is one of their basic regulatory tools in meeting this responsibility.
- (2) State insurance regulators, with their insurance expertise, knowledge of the companies in the state, awareness of the local insurer marketing practices and structure in the state, ability to require periodic reporting of necessary data, etc. are in a better position to evaluate the competitive impact in their states of acquisitions and mergers.

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Section 3.1 (cont.)

- (3) State insurance regulators possess some inherent enforcement advantages over the federal antitrust agencies. For example, in contrast to the Department of Justice, a state insurance department is a regulatory rather than a judicial enforcement agency. It is not limited to the judicial process. The insurance department can hold hearings, issue orders and promulgate rules and guidelines. Consequently, it can respond to developing situations more rapidly by establishing a clearly articulated policy through its rulemaking authority.
- (4) The federal antitrust authorities are spread too thin to become involved in more than a mere handful of insurance acquisition and merger cases. Thus, reliance upon the federal antitrust enforcement would be tantamount to ignoring the vast majority of transactions impacting on a state.
- (5) The NAIC has consistently maintained that state regulation of the business of insurance better serves the public than would a federal alternative. The enactment of an acquisition and merger law designed to curb anticompetitive mergers could significantly contribute to the primacy of insurance regulation under the McCarran Act in the merger area and to the ouster of federal antitrust authorities. **1980 Proc. II 33-34.**

A major concern of the industry was the belief that the approval of 50 states would be needed in order for a merger or acquisition to be effectuated. The committee felt their concerns were overstated. Under the model law, only the domestic commissioner of the involved insurer has the power to disapprove an acquisition or merger in its entirety. A nondomiciliary commissioner does have the authority to take action with respect to his state only. The nondomiciliary commissioner may take corrective action as to his state if the acquisition or merger adversely impacts competition there. **1980 Proc. II 36.**

A. The definitions of the holding company law are applicable to Section 3.1. Those definitions specifically needed for this section are included here. **1980 Proc. II 31.**

B. This section applies to any acquisition where there is a change of control of an insurer authorized to do business in the state. However, certain exceptions are enumerated. **1980 Proc. II 31.**

Concern was raised that the scope of this Section 3.1 might be too broad. The list of exclusions was added in response to those comments, but at the same time the model retains sufficient latitude to cover the legitimate scope of insurance regulatory concerns. Some representatives continued to express concern as to the application of the model to noninsurer affiliates. The task force revised the model to address concerns in a manner that would not significantly reduce the protection offered the public. The scope section was revised to apply to any acquisition in which there is a change of control of an insurer authorized to do business in the state. The section contains an exclusion for an acquisition of a person by another person when neither are directly or through their affiliate primarily engaged in the business of insurance. The exceptions in Paragraph (2)(e)(iii) were added because acquisitions involving these amounts of market shares fall within the *de minimus* rule. Such acquisitions clearly are not of such size to generate much likelihood of producing the requisite anticompetitive impact. Ocean marine insurance is excluded, as is a failing insurer where there is not a feasible alternative to improving its financial condition and the public will benefit more from the improvement in condition than it will lose from a possible reduction in competition. **1980 Proc. II 35-36.**

C. The insurer must file a preacquisition notification containing information prescribed by the NAIC and such additional information required by the commissioner to assist him in determining whether the proposed acquisition would violate the competitive standards of the act. Such required information may include an opinion of an economist as to the competitive impact of the acquisition. **1980 Proc. II 31.**

A form to use in filing the preacquisition notification was adopted by the NAIC in 1993, as part of the holding company regulation. **1993 Proc. 1st Quarter 362, 370.**

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Section 3.1. (cont.)

D. The commissioner may enter an order with respect to an acquisition if the effect of the acquisition may substantially lessen competition in any line of insurance in the state or tend to create a monopoly, or if the insurer fails to file adequate information. Prima facie standards in term of market share are established. However, either the insurer or the commissioner can rebut the presumption based on other evidence. An order may not be entered despite the violation of the competitive standard in certain limited situations involving economies of scale or increased availability of coverage. **1980 Proc. II 31.**

The industry expressed concern about whether the guidelines using market share figures should be considered prima facie evidence of violation. Economic and antitrust theory has evolved beyond concluding that market share size is the sole or even the primary determinant of the competitive impact of an acquisition. Market structure, market performance and market conduct are all relevant in evaluating competitive impact. To limit the commissioner to rigidly fixed statutory market share guidelines would lock the commissioner into an outmoded form of competition analysis. **1980 Proc. II 37.**

E. An order issued pursuant to this section may require an insurer to cease and desist doing business in the state with respect to the line or lines of insurance involved in violating the competitive standard or deny the application of the involved insurer to do business in the state. (Note the commissioner cannot disapprove the acquisition since this section deals with nondomiciliary insurers.) Such an order may not be issued unless there is a hearing. A person violating a cease and desist order is subject to monetary penalty and/or suspension on revocation of license. A person failing to make a filing is subject to a monetary penalty. **1980 Proc. II 31.**

The task force concluded that the most reasonable enforcement tool was to authorize the commissioner to require an involved insurer to cease and desist from doing business in the state with respect to those lines involved in the anticompetitive impact. Further, such order cannot take effect for at least 30 days, during which time the insurer may submit a plan to remedy an anticompetitive effect for consideration by the commissioner. Only if the insurer violates the cease and desist order can the commissioner suspend or revoke the insurer's license. **1980 Proc. II 37.**

A working group reviewed summary information about NAIC models that might need revision in light of the federal Gramm-Leach-Bliley Act of 1999 (GLBA). The preliminary conclusion was that the models would not need significant revisions because of GLBA. However, certain procedural changes may be required. One area identified related to the different time frames specified in GLBA and the holding company act to approve Form A filings. **2000 Proc. 3rd Quarter 504.**

The working group reached agreement on the proposed amendments; however interested parties expressed concern regarding an amendment addressing GLBA's 60-day review timeframe. **2001 Proc. 1st Quarter 364.**

Concern was expressed by some interested parties about a draft provision that lengthened the timeframe for preacquisition notice from 30 to 60 days. **2001 Proc. 2nd Quarter 339.**

Section 4. Registration of Insurers

The first committee draft provided for registration of every insurer licensed to do business in the state and a member of a holding company system. The advisory committee urged a change in this provision, so that the commissioner would not receive a flood of reports, with thousands of transactions to process. They urged a provision giving control to the domiciliary commissioner, unless that state failed to exercise effective supervision. **1969 Proc. I 268.**

Registration statements for insurers are delineated under Section 4. All authorized insurers that are members of insurance holding company systems must register with the commissioner, unless they are foreign insurers subject to substantially similar requirements in their domiciliary states. Through the definitions in Section 1, the act indicated that ten percent stock ownership of an insurer by another person (or ten percent ownership of another person by an insurer) creates a rebuttable presumption of the insurer's membership in a holding company system. The registration statement shall contain current

Section 4 (cont.)

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information about the financial condition of the insurer, and about certain specified relationships and transactions between the insurer and its affiliates. The section also provides that only material information need be disclosed, that registration may be terminated if an insurer ceases to be in an insurance holding company system, that affiliated persons may file consolidated statements, and that the commissioner may prescribe alternate registration procedures. **1978 Proc. I 223.**

A. The Subcommittee to Draft Legislation Relating to Insurance Holding Companies declined to express an opinion on whether one state's bill was "substantially similar" to that of another state. Such a determination should be left to the discretion of the individual commissioners. **1970 Proc. II 1048.**

The amendments adopted in 1985 contained a new concept on registration. Annual filing was to occur in the state of domicile and with the NAIC. **1985 Proc. II 74, 84.** This requirement was deleted in the amendments adopted a year later. **1986 Proc. II 102.**

B. Much of the information requirements section was taken from a 1968 draft submitted by the advisory committee. The second last paragraph requiring disclosure of pledges for losses was not part of the industry draft, or of the model as adopted in 1969. **1969 Proc. I 193, 1969 Proc. II 745-746.**

In discussing the possible problems which could result from varying state requirements as to the type of information to be included in registration statements, the subcommittee recognized that such determinations would rest with the individual commissioners. They did, however, expect much of the problem to be resolved after a broader enactment of the model act and the eventual adoption of a model regulation. **1970 Proc. II 1048-1049.**

An amendment adopted in 1985 provided that insurers file a registration statement on a form prescribed by the NAIC. The reason for the change in format from "forms provided by the commissioner" was a desire by the working group to encourage uniformity among the states. **1985 Proc. II 93.**

C. A new Subsection C entitled "Summary of Registration Statement" requires that a summary be included in all registration statements to outline all items in the current statement representing changes from the prior statement. The summary is a new concept proposed by the working group for the purpose of facilitating regulatory review and oversight. **1985 Proc. II 93.**

D. Strong interest was expressed in the mid-70's in clarifying the act so that it was absolutely clear that payment of any dividends to the parent or an affiliate of the insurer was a material transaction and subject to the standards applied to material transactions. A major concern was that the model not have language so sweeping that it would burden the companies and regulators with unneeded paperwork. The purpose of the proposed amendment, which was not adopted, was to reach dividends and other transactions similar to dividends, but not every distribution. The task force decided they needed further definition of the term "distribution" in legal and accounting usage. **1977 Proc. I 218.**

The members of the task force considered whether the "sales ... involving one-half percent" standard applied to each item separately or when these items together totaled one-half percent of admitted assets. The industry representative urged that the individual, not the aggregate interpretation be used; otherwise every transaction must be recorded and accumulated to determine when the one-half percent standard is exceeded. Because actual problems or abuses had not been detected, the task force concluded they should defer consideration of the point pending evidence of the need for change. **1977 Proc. I 219.**

The common law approach of using the well-accepted step transaction doctrine could solve the problem of dividing what is really one transaction into several smaller transactions to avoid the percentage test for reporting. The doctrine says that what is in substance an integrated or single transaction must be so treated, even though the steps may be pulled apart and occur at different times. **1978 Proc. I 218.**

Section 4D (cont.)

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Changes in the language of Section 4 raised a concern on the part of some industry representatives that, because this section differs in some states, a statute could be found to be not substantially similar to that of another state; thus resulting in duplicate filings. The committee did not anticipate that states would interpret the provision in a manner which would result in a determination that another state's law was not substantially similar on the basis of the materiality provisions. **1986 Proc. II 93-94.**

Section 5. Standards and Management of an Insurer Within a Holding Company System

A. When originally adopted the model did not contain Paragraph (2) which requires prior approval for certain transactions. In 1972 a proposal was made by a group of commissioners that prior approval of a material transaction be required, instead of merely reporting the transaction within 15 days after the month in which the transaction occurred. This would eliminate some transactions taking place which could cause damage to policyholders. The committee asked for specific language to consider. Industry representatives spoke out against such an amendment, saying it was contrary to the philosophy of the model bill, and should receive careful consideration before adoption. **1973 Proc. I 144.**

In the summer of 1975, a task force was appointed to review the holding company legislation, with the purpose of strengthening it. One of the areas with little or not control, or at least inadequate control, was transactions between affiliates. At the time the model was adopted there was concern by the industry that the NAIC had gone too far in interfering in inter-company relationships. **1975 Proc. II 247-248.**

The proposed amendments were considered and it was decided to thoroughly review and analyze the Insurance Holding Company Model Act to be certain any changes were of the same superior quality as the original act. **1977 Proc. I 215.** After consideration it was decided the amendments were not needed. **1978 Proc. II 211-212.**

This section was completely rewritten in the amendments adopted in December of 1984. **1985 Proc. I 194-195.**

In 1985, a threshold for reinsurance contracts was established for the first time. **1985 Proc. II 74, 86-87.**

Section 5 was a subject of considerable review and analysis by the working group to ascertain that the commissioner was given sufficient authority to review transactions between a domestic insurer and any person in its holding company system. The working group believed the standards and prior

approval process gave the regulators the necessary tools and authority to regulate the transactions within a holding company system. The working group determined that the 60-day deemer provision might be burdensome to insurers and adversely affect the insurer's ability to respond to the demands of the marketplace. They concluded that a 30-day deemer provision would serve the regulatory objective as adequately so amended Paragraph (2) accordingly. **1985 Proc. II 94-95.**

Subsection A(2)(e) was added in 1996 at the urging of a state regulator. The working group discussed the possibility of including guarantees made by non-insurance subsidiaries in the newly proposed Subparagraph (e) but ultimately rejected that suggestion. The group did decide to add a materiality threshold: .5% of admitted assets or 10% of surplus for quantifiable guarantees. Unquantifiable guarantees will always be subject to a prior notice requirement. **1996 Proc. 1st Quarter 269-270.**

When drafting amendments related to investments in affiliates and subsidiaries in 1995, the working group charged with the task added a new Subsection A(2)(f) to address investments in parent companies. The suggestion presented by an interested party was not acceptable, and the 10% of surplus threshold was considered to be too high. The regulators did agree to a 2.5% of surplus threshold. Regulators also did not accept the suggestion for an exception for publicly traded stock of a parent. **1995 Proc. 4th Quarter 330.**

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Section 5A (cont.)

An industry trade association suggested that the *de minimus* requirement in Paragraph (2)(f) be raised to 5% of surplus. A regulator said his department had to approve so many filings each year that he found some merit in increasing the threshold so the regulators would need to review only material investments. Another regulator responded that he was opposed to increasing the threshold for investments in parents or affiliates because he thought such investments should be completely disallowed. He noted that the current 2.5% of surplus threshold is part of a 30-day deemer provision and does not preclude any insurer transaction, but merely required prior notice to the insurance department of certain investments. The working group decided not to change Subparagraph (f). **1996 Proc. 1st Quarter 270.**

A drafting note was added after the new paragraph requiring the commissioner to review prior investments in parents and nonsubsidiary affiliates to establish that proposed investments are not being used to contravene dividend limitations. **1995 Proc. 4th Quarter 330.**

An interested party suggested grandfathering existing investments. The chair said it was the working group's intent that investments existing at the time the revised holding company act is adopted by the state remain legal. He said it was not necessary to amend the model to effectuate grandfathering of existing investments and working group members agreed. **1995 Proc. 4th Quarter 310.**

An interested party suggested that it should be made clear that the investments exempted from the act's requirements are not included in the new materiality threshold calculation. The chair said that, if an investment is exempt from the model, it is not subject to the materiality threshold in the model. The other working group members agreed. **1995 Proc. 4th Quarter 310.**

B. Among the amendments being considered in the late 1970's were changes to this section. A major concern was to strengthen the section so that all distributions to a parent would be covered by this section. Unpaid obligations to a subsidiary were a problem, including any unpaid tax refunds due to filing a consolidated tax return. **1977 Proc. I 217.**

One concern over tightening the dividend and distribution provisions too severely was an adverse impact on the willingness of holding companies to infuse capital into their subsidiary insurers during times of financial stress. If the holding company could not ultimately extract such monies after the insurer reached a sounder level, it might be unwilling to infuse the capital in the first place. They considered inclusion of a sentence at the end of the first paragraph allowing the commissioner to consider amounts which the affiliate had previously provided to the insurer. **1977 Proc. I 218, 220.**

The task force considered an amendment which would restrict a property and liability insurer's authority to pay dividends if the insurer experienced three successive quarters of underwriting loss. The rationale of such a provision was that it is imprudent to diminish surplus during a period of sustained underwriting loss. No unanimity of opinion among the task force members emerged on the issue. **1977 Proc. I 218.**

In 1977, an advisory committee suggested a change to Subsection B. **1978 Proc. I 213.** In rejecting the suggestion, the subcommittee reaffirmed the basic principles of the model. These included the principle that the financial condition of the holding company system's insurers must be protected by an effective and comprehensive regulatory program; the principle that the most effective regulatory system is one premised on disclosure and regulation of significant intrasystem transactions involving the insurer, and verification by examination when necessary; and the principle that the particular focus of regulation should be on the insurer's financial status, and in order to prevent the use of milking devices, emphasis should be placed on disclosure of dividends and other distributions. **1978 Proc. I 214.**

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Section 5B (cont.)

Advisors was asked to prepare a report on the Insurance Holding Company Act. Their report concluded that the act was sufficient in the form adopted and did not need amendments. They did express concern, however, about the possibility of using out-of-date information if the test of an extraordinary dividend was based on December 31 information. They suggested a quarterly statement. Although it could be argued that the commissioner already had this authority under the act, the committee thought it would be helpful to have definite statutory authority to call for supplemental information bearing on the issues of adequacy of surplus. **1978 Proc. I 217.**

Advisors expressed the opinion that adding a laundry list of specific transactions deemed dividends or distributions could weaken the Act rather than strengthen it. The general terminology gave the commissioner the latitude to sweep in any transaction which might be devised in the future to avoid regulatory restraints. **1978 Proc. I 217.**

In 1984 the commissioners voted to change the definition of an extraordinary dividend. In the original model it had been defined as any dividend that exceeded the greater of 10% surplus or net gain from operations. The “greater than” was removed and “either” substituted. **1985 Proc. I 195.**

When rewriting in 1985, the drafters revised the wording to simply state an extraordinary dividend was one that exceeded 10% surplus or net gain from operations. **1985 Proc. II 87.**

The language was again modified for clarification in 1986 when the drafters changed the definition of extraordinary dividends to “the lesser of” the two numbers. **1986 Proc. II 105.**

Subsection 5B was substantially rewritten with respect to dividends and other distributions. The new provision establishes a 30-day notification requirement with deemer for any extraordinary dividend or distribution to shareholders. **1985 Proc. II 94.**

C. A group of commissioners urged adoption of standards for management of insurers as early as 1972. Their proposal stated “The entire holding company bill should be amended to strengthen it so that the officers of the insurance company retain control over all facets of the insurance operation rather than the board of a general corporation usurping their function in any way.” **1973 Proc. I 144.**

This section was extensively rewritten in December of 1984, **1985 Proc. I 195-196** and further revised and made optional in amendments adopted six months later. **1985 Proc. II 88.**

D. The subcommittee considered the advisability of amending the model act to define the term “surplus” as used there, but decided a resolution would be more appropriate. The resolution adopted said: “If a state sees fit to exclude the capital from definition of surplus, the commissioners of other states are encouraged to accept this as being in substantial compliance with the model act insofar as the reciprocity provisions of the act are concerned.” **1971 Proc. II 290.**

The task force considered whether “operating results” should be mandated specifically as a test of adequacy of surplus in order to insure that successive periods of underwriting loss are considered. The advisory committee spoke in favor of the factors listed in the original act (as they still appear). The commissioner is free to sue any criteria, including successive periods of underwriting loss, which he deems relevant in making a determination. **1978 Proc. I 218.**

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Section 6. Examination

A. Much of this section was taken from an industry draft submitted in 1968. The industry draft contained a subsection on limitations of the examination which was, in modified form, a part of the adopted version, but was later deleted. **1969 Proc. I 195, 1969 Proc. II 748.**

In addition to its own books and records, this section requires a registered insurer to produce for examination books and records of affiliates as may be necessary to verify material in its registration statement. **1969 Proc. I 199.**

The model originally said the commissioner should exercise his powers of examination if the regular examination law was inadequate to preserve the interests of policyholders. That provision was removed in 1984. **1985 Proc. I 196.**

C. The task force considered charging the noninsurance affiliates for the costs of the commissioner's examination of the noninsurance affiliate. Since the examination arises out of the insurer's regulated status, the advisory committee suggested this was an undesirable approach. **1978 Proc. I 219.**

Section 7. Confidential Treatment

The language from the original model was replaced with a more extensive provision in 1999. **1969 Proc. I 195-196.**

In March 1999 the NAIC president said there was a need to share information among state, federal and international regulators and to clarify existing law. He suggested charges for several NAIC committees to address freedom of information and subpoena efforts to obtain confidential information and documents and to achieve a coordinated approach that protects regulatory information. A technical group drafted language, which was forwarded to each of the groups drafting amendments to models. **1999 Proc. 1st Quarter 6, 10.**

A working group was appointed to review financial-related model acts and to revise, where necessary, the confidentiality sections of these models. **1999 Proc. 2nd Quarter 149.**

The main purposes for the new language were: (1) to solidify existing law on confidentiality of sensitive documents that were in the possession of the regulator; (2) to provide a strong platform for states to use in entering into confidentiality agreements with state, federal and international regulators; and (3) to keep sensitive regulatory information out of the hands of private civil litigants, thus preventing abuse of the discovery process. **1999 Proc. 2nd Quarter 150.**

The amendments were adopted by the appropriate working group to include the standardized language. **1999 Proc. 3rd Quarter 200.**

A. New language was added in 1999 to address the charge on confidentiality of information. The first sentence in the additional language said the documents, materials or other information should be confidential by law and privileged. This sentence received extensive attention and the wording was carefully chosen to provide the maximum protection for highly sensitive information. The drafters chose to include both "privileged" and "confidential" to ensure the preservation of any applicable legal privilege and to indicate a high degree of intent to protect the documents from public disclosure. Members of the group from various jurisdictions noted court rulings holding that omission of one or more words or phrases contained in that sentence could result in unintended disclosure. **1999 Proc. 4th Quarter 16.**

Late in the process Subsection A was amended to clarify that the provisions applied only to documents, materials or information in the possession or control of the Department of Insurance. Some industry commentators expressed concern that otherwise the provision might be misinterpreted to include information in the possession of a private entity that happened to have been shared with the Department of Insurance. **1999 Proc. 4th Quarter 16.**

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Section 7 (cont.)

B. The drafters discussed whether the confidentiality should apply to documents only, or instead to the broader phrase, “documents, materials or other information.” The broader language was chosen to protect not only information in tangible form, such as a paper document or a computer hard drive, but also information that may be personal knowledge. The group noted that the reason to choose the broader phrase was to avoid the situation where, for example, examination work papers were protected, but an attempt was made to take an oral deposition of an examiner that would reveal the same sensitive information. **1999 Proc. 4th Quarter 16.**

C. The question of the commissioner’s ability or discretion to disclose the confidential information received extensive discussion. The drafters expressed concern that the commissioner not be placed in the position of possessing crucial information but be unable to use it to carry out his or her duties. **1999 Proc. 4th Quarter 16.**

The provisions of Subsection C received extensive discussion on several occasions, particularly the provisions concerning the sharing of information with the NAIC, and its affiliates or subsidiaries. Regulators expressed a strong need to retain specific language in this area to ensure the ability of the NAIC to maintain confidential data for support of solvency, antifraud and other regulatory areas. The language referring to affiliates or subsidiaries was added to address the potential that one or more databases might be maintained by a related NAIC entity. **1999 Proc. 4th Quarter 16.**

D. Subsection D was added to clarify that persons providing information to the commissioner do not waive any existing privilege or confidentiality protection by doing so. This provision was added in response to industry comments. The subsection was further amended to clarify that neither disclosing the information to the commissioner nor the transmission of the information by the commissioner to another regulator or law enforcement official would create a waiver. **1999 Proc. 4th Quarter 16.**

Section 8. Rules and Regulations

The advisory committee submitted a draft regulation to accompany the model act. **1970 Proc. II 1055-1066.**

Section 9. Injunctions, Prohibitions Against Voting Securities, Sequestration of Voting Securities

Section 10. Sanctions

This section was completely rewritten in the amendments adopted in December of 1984. The title was changed from “Criminal Proceedings” to “Sanctions” and the single paragraph providing for criminal proceedings and fines was deleted and the expanded five subsections adopted. **1985 Proc. I 197-198.**

Clarifying amendments were made to the section six months after its adoption. **1985 Proc. II 90.**

Section 11. Receivership

Section 12. Recovery

This section was added to the model in December 1984. **1985 Proc. I 198.**

Section 13. Revocation, Suspension or Nonrenewal of Insurer’s License

Section 14. Judicial Review, Mandates

Section 15. Conflict With Other Laws

Section 16. Separability of Provisions

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Section 17. Effective Date

Chronological Summary of Actions

June 1969: Adopted model.

June 1980: Adopted Section 3.1 to incorporate Acquisition and Merger Law.

December 1982: Amendment to delete reference to protecting interests of securityholders.

December 1984: Completely revised Section 5 to set standards for transactions within a holding company system and management of controlled insurers. New sections on sanctions and recovery. Modifications to several other provisions.

June 1985: Further amendments to Sections 4 and 5 adopted.

December 1985: Technical amendment to Section 10.

June 1986: Further amendments adopted.

March 1994: Removed exemption of nonprofit medical and hospital service plans from definition of insurer.

March 1995: Amended several sections relative to the issue of investments in subsidiaries and affiliates.

June 1995: Executive Committee referred newly amended model to Financial Regulation Standards and Accreditation Subcommittee for a recommendation on whether to incorporate it in the accreditation standards.

December 1997: Those amendments were adopted by the NAIC membership.

January 2000: Section 7 amended to clarify language on confidentiality and sharing of information.

October 2001: Amended Section 3 and 3.1 in regard to the timeframe under which a state must consider a proposed acquisition of a domestic insurer.