S T A T E O F N E W Y O R K

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2013-2014 Regular Sessions

I N S E N A T E

March 21, 2013

Introduced by Sen. SEWARD -- (at request of the Department of Financial Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to enhancing regulatory efficiency and efficacy

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subsection (a) of section 110 of the insurance law, as added by chapter 687 of the laws of 2003, paragraph 1 as amended by chapter 245 of the laws of 2004, is amended to read as follows:

(a) In order to assist in the performance of the superintendent's duties under this chapter, the superintendent:

(1) may share documents, materials or other information, including [the] confidential and privileged documents, materials or information with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, INCLUDING MEMBERS OF ANY SUPERVISORY COLLEGE DESCRIBED IN SECTION THREE HUNDRED TWO OF THIS CHAPTER, provided that the recipient has the authority and agrees to maintain the confidentiality and privileged status of the document, material or other information; provided, however, that this paragraph shall not be construed as limiting access to records pursuant to article six of the public officers law;

(2) may receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, INCLUDING MEMBERS OF ANY SUPERVISORY COLLEGE DESCRIBED IN SECTION THREE HUNDRED TWO OF THIS CHAPTER,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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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

(3) may enter into agreements governing sharing and use of documents, materials or information consistent with this subsection.

S 2. The insurance law is amended by adding a new section 302 to read as follows:

S 302. SUPERVISORY COLLEGES. (A) THE SUPERINTENDENT MAY PARTICIPATE IN A SUPERVISORY COLLEGE IN ORDER TO DETERMINE COMPLIANCE WITH THIS CHAPTER WITH RESPECT TO AN INSURER THAT IS REGISTERED UNDER ARTICLE FIFTEEN, SIXTEEN, OR SEVENTEEN OF THIS CHAPTER AND HAS INTERNATIONAL OPERATIONS. THE POWERS OF THE SUPERINTENDENT WITH RESPECT TO SUPERVISORY COLLEGES INCLUDE:

(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) EACH INSURER REGISTERED UNDER ARTICLE FIFTEEN, SIXTEEN, OR SEVENTEEN OF THIS CHAPTER THAT IS SUBJECT TO A SUPERVISORY COLLEGE SHALL BE LIABLE FOR AND SHALL PAY THE REASONABLE EXPENSES OF THE SUPERINTENDENT'S PARTICIPATION IN A SUPERVISORY COLLEGE, INCLUDING REASONABLE TRAVEL EXPENSES. A SUPERVISORY COLLEGE MAY BE CONVENED AS EITHER A TEMPORARY OR PERMANENT FORUM FOR THE COMMUNICATION AND COOPERATION BETWEEN THE REGULATORS CHARGED WITH THE SUPERVISION OF THE INSURER OR ITS PARENT, AFFILIATES, OR SUBSIDIARIES. THE SUPERINTENDENT MAY ESTABLISH A REGULAR ASSESSMENT TO THE INSURER FOR THE PAYMENT OF THESE EXPENSES.

(C) 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, THE SUPERINTENDENT MAY PARTICIPATE IN A SUPERVISORY COLLEGE WITH OTHER REGULATORS CHARGED WITH SUPERVISION OF THE INSURER OR ITS PARENT, AFFILIATES, OR SUBSIDIARIES, INCLUDING OTHER STATE, FEDERAL, AND INTERNATIONAL REGULATORY AGENCIES. THE SUPERINTENDENT MAY ENTER INTO AGREEMENTS PURSUANT TO SECTION ONE HUNDRED TEN OF THIS CHAPTER PROVIDING THE BASIS FOR COOPERATION BETWEEN THE SUPERINTENDENT AND OTHER REGULATORY AGENCIES AND FOR THE ACTIVITIES OF THE SUPERVISORY COLLEGE. NOTHING IN THIS SECTION SHALL DELEGATE TO THE SUPERVISORY COLLEGE THE SUPERINTENDENT'S AUTHORITY TO REGULATE OR SUPERVISE THE INSURER OR ITS PARENT, AFFILIATES, OR SUBSIDIARIES WITHIN THE SUPERINTENDENT'S JURISDICTION.

S 3. Subsection (a) of section 1501 of the insurance law is amended by adding a new paragraph 7 to read as follows:

(7) "ENTERPRISE RISK" MEANS ANY ACTIVITY, CIRCUMSTANCE, EVENT, OR SERIES OF EVENTS INVOLVING THE HOLDING COMPANY SYSTEM THAT, IF NOT REMEDIED PROMPTLY, IS LIKELY TO HAVE A MATERIAL ADVERSE EFFECT UPON THE FINANCIAL CONDITION OR LIQUIDITY OF THE INSURER OR ITS HOLDING COMPANY SYSTEM, INCLUDING ANYTHING THAT WOULD CAUSE THE INSURER'S RISK-BASED CAPITAL TO FALL INTO COMPANY ACTION LEVEL AS SET FORTH IN SECTION ONE THOUSAND THREE HUNDRED TWENTY-TWO OR ONE THOUSAND THREE HUNDRED TWENTY-FOUR OF THIS CHAPTER, OR THAT WOULD CAUSE FURTHER TRANSACTION OF BUSI-

NESS TO BE HAZARDOUS TO THE INSURER'S POLICYHOLDERS OR CREDITORS OR THE PUBLIC.

S 4. Section 1503 of the insurance law is amended to read as follows:

S 1503. Registration. (a) Every person who becomes a controlled insurer shall, within thirty days thereafter register with the superintendent and [such] SHALL AMEND THE registration [shall be amended] within thirty days following any change in the identity of its holding company OR ANY OTHER MATERIAL CHANGE TO THE INFORMATION PROVIDED IN THE REGISTRATION. THE REGISTRATION SHALL BE IN SUCH FORM AND SHALL CONTAIN SUCH MATTERS AS THE SUPERINTENDENT PRESCRIBES. The superintendent may grant reasonable extensions of the time to register.

(b) [Every registrant shall furnish the superintendent with the following information concerning its holding company:

(1) a copy of its charter or articles of incorporation and by-laws;

(2) the identities of its principal shareholders, officers, directors and controlled persons; and

(3) information as to its capital structure and financial condition, and a description of its principal business activities.] A HOLDING COMPANY THAT DIRECTLY OR INDIRECTLY CONTROLS AN INSURER SHALL ADOPT A FORMAL ENTERPRISE RISK MANAGEMENT FUNCTION AND SHALL FILE AN ENTERPRISE RISK REPORT WITH THE SUPERINTENDENT BY APRIL THIRTIETH OF EACH YEAR. THE REPORT SHALL, TO THE BEST OF THE HOLDING COMPANY'S KNOWLEDGE AND BELIEF, IDENTIFY THE MATERIAL RISKS WITHIN THE HOLDING COMPANY SYSTEM THAT COULD POSE ENTERPRISE RISK TO THE INSURER.

S 5. Section 1504 of the insurance law is amended to read as follows:

S 1504. Reporting; examination; publication. (a) (1) Every controlled insurer shall file with the superintendent such reports or material as [he] THE SUPERINTENDENT may direct for the purpose of disclosing information concerning the operations of persons within the holding company system [which] THAT may materially affect the operations, management or financial condition of the insurer.

(2) TO DETERMINE COMPLIANCE WITH THIS ARTICLE, THE SUPERINTENDENT MAY ORDER ANY CONTROLLED INSURER TO PRODUCE INFORMATION NOT IN THE INSURER'S POSSESSION IF THE INSURER CAN OBTAIN ACCESS TO THE INFORMATION PURSUANT TO CONTRACTUAL RELATIONSHIPS, STATUTORY OBLIGATIONS, OR OTHER METHOD. IN THE EVENT THE INSURER CANNOT OBTAIN THE INFORMATION REQUESTED BY THE SUPERINTENDENT, THE INSURER SHALL PROVIDE THE SUPERINTENDENT 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 SUPERINTENDENT THAT THE DETAILED EXPLANATION IS WITHOUT MERIT, IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, THE SUPERINTENDENT, AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD, MAY LEVY A PENALTY AGAINST THE INSURER NOT TO EXCEED FIVE HUNDRED DOLLARS PER DAY FOR EACH DAY BEYOND THE DATE SPECIFIED BY THE SUPERINTENDENT FOR RESPONSE.

(b) Every holding company and every controlled person within a holding company system shall be subject to examination by order of the superintendent if [he] THE SUPERINTENDENT has cause to believe that the operations of such persons may materially affect the operations, management or financial condition of any controlled insurer within the system, INCLUDING BY POSING ENTERPRISE RISK TO THE INSURER, and that [he] THE SUPERINTENDENT is unable to obtain relevant information from such controlled insurer. The grounds relied upon by the superintendent for such examination shall be stated in [his] THE SUPERINTENDENT'S order. Such examination shall be confined to matters specified in the order. The cost of such examination shall be assessed against the person exam-

ined and no portion thereof shall thereafter be reimbursed to it directly or indirectly by the controlled insurer.

(c) The superintendent shall keep the contents of each report made pursuant to this article and any information obtained in connection therewith confidential and shall not make the same public without the prior written consent of the controlled insurer to which it pertains unless the superintendent after notice and an opportunity to be heard, shall determine that the interests of policyholders, shareholders or the public will be served by the publication thereof. In any action or proceeding by the superintendent against the person examined or any other person within the same holding company system a report of such examination published by [him] THE SUPERINTENDENT shall be admissible as evidence of the facts stated therein.

S 6. Subsection (d) of section 1505 of the insurance law is amended to read as follows:

(d) The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, OR WITH REGARD TO REINSURANCE TREATIES OR AGREEMENTS AT LEAST FORTY-FIVE DAYS PRIOR THERETO, or such shorter period as [he] THE SUPERINTENDENT may permit, and [he] THE SUPERINTENDENT has not disapproved it within such period:

(1) sales, purchases, exchanges, loans or extensions of credit, or investments[,] involving [more than one-half of one percent but] less than five percent of the insurer's admitted assets at last year-end, PROVIDED THE TRANSACTIONS ARE EQUAL TO OR EXCEED:

(A) THE LESSER OF THREE PERCENT OF THE INSURER'S ADMITTED ASSETS OR TWENTY-FIVE PERCENT OF CAPITAL AND SURPLUS AT LAST YEAR-END, WITH REGARD TO AN ACCIDENT AND HEALTH INSURANCE COMPANY OR A CORPORATION SUBJECT TO ARTICLE FORTY-THREE OF THIS CHAPTER;

(B) THREE PERCENT OF THE INSURER'S ADMITTED ASSETS AT LAST YEAR-END, WITH REGARD TO A LIFE INSURANCE COMPANY; OR

(C) THE LESSER OF THREE PERCENT OF THE INSURER'S ADMITTED ASSETS OR TWENTY-FIVE PERCENT OF SURPLUS TO POLICYHOLDERS AT LAST YEAR-END, WITH REGARD TO AN INSURER OTHER THAN AS SPECIFIED IN SUBPARAGRAPHS (A) AND (B) OF THIS PARAGRAPH;

(2) reinsurance treaties or agreements;

(3) rendering of services on a regular or systematic basis; or

(4) any material transaction, specified by regulation, [which] THAT the superintendent determines may adversely affect the interests of the insurer's policyholders or shareholders.

Nothing herein contained shall be deemed to authorize or permit any transaction [which] THAT, in the case of a non-controlled insurer, would be otherwise contrary to law.

S 7. Subsection (a) of section 1506 of the insurance law is amended to read as follows:

(a) No person, other than an authorized insurer, shall acquire control of any domestic insurer, whether by purchase of its securities or otherwise, unless:

(1) it gives twenty [days'] DAYS written notice to the insurer, or such shorter period of notice as the superintendent permits, of its intention to acquire control, PROVIDED THAT THE NOTICE SHALL INCLUDE AN AGREEMENT BY THE PERSON SEEKING TO ACQUIRE CONTROL THAT THE PERSON WILL PROVIDE THE ANNUAL REPORT SPECIFIED IN SECTION ONE THOUSAND FIVE HUNDRED THREE OF THIS ARTICLE FOR SO LONG AS CONTROL EXISTS; and

(2) it receives the superintendent's prior approval.

S 8. Section 1506 of the insurance law is amended by adding a new subsection (f) to read as follows:

(F) ANY HOLDING COMPANY SEEKING TO DIVEST ITS CONTROLLING INTEREST IN A DOMESTIC INSURER, IN ANY MANNER, SHALL FILE WITH THE SUPERINTENDENT, WITH A COPY TO THE INSURER, NOTICE OF ITS PROPOSED DIVESTITURE AT LEAST THIRTY DAYS PRIOR TO THE CESSATION OF CONTROL.

S 9. Section 1510 of the insurance law is amended by adding a new subsection (d) to read as follows:

(D) WHENEVER IT APPEARS TO THE SUPERINTENDENT THAT ANY PERSON HAS COMMITTED A VIOLATION OF SECTION ONE THOUSAND FIVE HUNDRED SIX OF THIS ARTICLE THAT PREVENTS THE FULL UNDERSTANDING OF THE ENTERPRISE RISK POSED TO THE INSURER BY THE HOLDING COMPANY SYSTEM, THE VIOLATION MAY SERVE AS AN INDEPENDENT BASIS FOR DISAPPROVING DIVIDENDS OR DISTRIBUTIONS OR AS GROUNDS FOR REHABILITATION OR LIQUIDATION PURSUANT TO ARTICLE SEVENTY-FOUR OF THIS CHAPTER.

S 10. Section 1603 of the insurance law is amended to read as follows:

S 1603. Notice of intent to acquire OR DIVEST. (a) [No acquisition of a majority of any corporation's outstanding common shares shall be made pursuant to this article] A DOMESTIC INSURER SHALL NOT ACQUIRE CONTROL OF ANY OTHER DOMESTIC INSURER, WHETHER BY PURCHASE OF ITS SECURITIES OR OTHERWISE, unless:

(1) a notice of intention of such proposed acquisition shall have been filed with the superintendent not less than ninety days, or such shorter period as may be permitted by the superintendent, in advance of such proposed acquisition[, nor shall any such acquisition be made if the superintendent at any time prior thereto finds]; AND

(2) THE INSURER RECEIVES THE SUPERINTENDENT'S PRIOR APPROVAL.

(B) THE SUPERINTENDENT SHALL DISAPPROVE SUCH ACQUISITION IF THE SUPERINTENDENT DETERMINES that the proposed acquisition is contrary to law or determines that such proposed acquisition would be contrary to the best interests of the parent insurer's policyholders or of the people of this state. Only the following factors shall be considered in making the foregoing determination:

(1) the availability of the funds or assets required for such acquisition;

(2) the fairness of any exchange of shares, assets, cash or other consideration for the shares or assets to be received;

(3) the impact of the new operation on the parent insurer's surplus and existing insurance business and the risks inherent in the parent insurer's investment portfolio and operations;

(4) the fairness and adequacy of the financing proposed for the subsidiary;

(5) the likelihood of undue concentration of economic power;

(6) whether the effect of the acquisition may be substantially to lessen competition in any line of commerce in insurance or to tend to create a monopoly therein; and

(7) whether the acquisition might result in an excessive proliferation of subsidiaries [which] THAT would tend to unduly dilute management effectiveness or weaken financial strength, or otherwise be contrary to the best interests of the parent insurer's policyholders or of the people of this state.

[(b)] (C) At any time after an acquisition the superintendent may order its disposition if [he] THE SUPERINTENDENT finds, after notice and an opportunity to be heard, that its continued retention is hazardous or prejudicial to the interests of the parent insurer's policyholders.

(D) ANY DOMESTIC INSURER SEEKING TO DIVEST ITS CONTROLLING INTEREST IN ANOTHER DOMESTIC INSURER, IN ANY MANNER, SHALL FILE WITH THE SUPERINTENDENT, WITH A COPY TO THE INSURER, NOTICE OF ITS PROPOSED DIVESTITURE AT LEAST THIRTY DAYS PRIOR TO THE CESSATION OF CONTROL.

[(c)] (E) The contents of each notice of intention of a proposed acquisition OR DIVESTITURE filed hereunder and information pertaining thereto shall be kept confidential, shall not be subject to subpoena and shall not be made public unless after notice and opportunity to be heard the superintendent determines that the interests of policyholders, shareholders or the public will be served by publication.

S 11. The insurance law is amended by adding a new section 1604 to read as follows:

S 1604. REGISTRATION. (A) AN AUTHORIZED DOMESTIC INSURER SHALL REGISTER WITH THE SUPERINTENDENT WITHIN THIRTY DAYS OF BECOMING SUBJECT TO REGISTRATION AND SHALL AMEND THE REGISTRATION WITHIN THIRTY DAYS FOLLOWING ANY MATERIAL CHANGE TO THE INFORMATION PROVIDED IN THE REGISTRATION. THE REGISTRATION SHALL BE IN SUCH FORM AND SHALL CONTAIN SUCH MATTERS AS THE SUPERINTENDENT PRESCRIBES. THE SUPERINTENDENT MAY GRANT REASONABLE EXTENSIONS OF THE TIME TO REGISTER.

(B)(1) AN AUTHORIZED DOMESTIC INSURER, OTHER THAN A DOMESTIC INSURER REQUIRED TO REGISTER AS A CONTROLLED INSURER PURSUANT TO SECTION ONE THOUSAND FIVE HUNDRED THREE OF THIS CHAPTER, SHALL ADOPT A FORMAL ENTERPRISE RISK MANAGEMENT FUNCTION AND SHALL FILE AN ENTERPRISE RISK REPORT WITH THE SUPERINTENDENT BY APRIL THIRTIETH OF EACH YEAR. THE REPORT SHALL, TO THE BEST OF THE INSURER'S KNOWLEDGE AND BELIEF, IDENTIFY THE MATERIAL RISKS WITHIN ANY SUBSIDIARY THAT COULD POSE ENTERPRISE RISK TO THE INSURER.

(2) FOR THE PURPOSES OF THIS ARTICLE, "ENTERPRISE RISK" MEANS ANY ACTIVITY, CIRCUMSTANCE, EVENT, OR SERIES OF EVENTS INVOLVING ONE OR MORE SUBSIDIARIES 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, INCLUDING ANYTHING THAT WOULD CAUSE THE INSURER'S RISK-BASED CAPITAL TO FALL INTO COMPANY ACTION LEVEL AS SET FORTH IN SECTION ONE THOUSAND THREE HUNDRED TWENTY-FOUR OF THIS CHAPTER, OR THAT WOULD CAUSE FURTHER TRANSACTION OF BUSINESS TO BE HAZARDOUS TO THE INSURER'S POLICYHOLDERS OR CREDITORS OR THE PUBLIC.

S 12. Section 1608 of the insurance law is amended by adding a new subsection (e) to read as follows:

(E) THE FOLLOWING TRANSACTIONS BETWEEN A DOMESTIC INSURER AND ANY SUBSIDIARY MAY NOT BE ENTERED INTO UNLESS THE INSURER HAS NOTIFIED THE SUPERINTENDENT IN WRITING OF ITS INTENTION TO ENTER INTO ANY SUCH TRANSACTION AT LEAST THIRTY DAYS PRIOR THERETO, OR WITH REGARD TO REINSURANCE TREATIES OR AGREEMENTS AT LEAST FORTY-FIVE DAYS PRIOR THERETO, OR SUCH SHORTER PERIOD AS THE SUPERINTENDENT MAY PERMIT, AND THE SUPERINTENDENT HAS NOT DISAPPROVED IT WITHIN SUCH PERIOD:

(1) SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, OR INVESTMENTS WITH A SUBSIDY, PROVIDED THE TRANSACTIONS ARE EQUAL TO OR EXCEED THE LESSER OF THREE PERCENT OF THE INSURER'S ADMITTED ASSETS OR TWENTY-FIVE PERCENT OF SURPLUS TO POLICYHOLDERS AT LAST YEAR-END;

(2) LOANS OR EXTENSIONS OF CREDIT TO ANY PERSON WHO IS NOT A SUBSIDIARY, WHERE THE INSURER MAKES LOANS OR EXTENSIONS OF CREDIT WITH THE AGREEMENT OR UNDERSTANDING THAT THE PROCEEDS OF SUCH TRANSACTIONS, IN WHOLE OR IN SUBSTANTIAL PART, ARE TO BE USED TO MAKE LOANS OR EXTENSIONS OF CREDIT TO, PURCHASE ASSETS OF, OR MAKE INVESTMENTS IN, ANY SUBSIDIARY OF THE INSURER MAKING THE LOANS OR EXTENSIONS OF CREDIT, PROVIDED THE TRANSACTIONS ARE EQUAL TO OR EXCEED THE LESSER OF THREE PERCENT OF THE

INSURER'S ADMITTED ASSETS OR TWENTY-FIVE PERCENT OF SURPLUS TO POLICYHOLDERS AT LAST YEAR-END;

(3) REINSURANCE TREATIES OR AGREEMENTS WITH A SUBSIDIARY THAT THE INSURER HAS NOT OTHERWISE SUBMITTED TO THE SUPERINTENDENT, PROVIDED, HOWEVER, THE INSURER NEED NOT SUBMIT A COPY OF A REINSURANCE AGREEMENT UNLESS REQUESTED BY THE SUPERINTENDENT WHERE 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, IS LESS THAN FIVE PERCENT OF THE INSURER'S SURPLUS TO POLICYHOLDERS AT LAST YEAR-END. THIS SHALL INCLUDE AGREEMENTS THAT MAY REQUIRE, AS CONSIDERATION, THE TRANSFER OF ASSETS FROM AN INSURER TO A NON-SUBSIDIARY, IF AN AGREEMENT OR UNDERSTANDING EXISTS BETWEEN THE INSURER AND NON-SUBSIDIARY THAT ANY PORTION OF THE ASSETS WILL BE TRANSFERRED TO ONE OR MORE SUBSIDIARIES OF THE INSURER; AND

(4) MANAGEMENT AGREEMENTS, SERVICE CONTRACTS, TAX ALLOCATION AGREEMENTS, GUARANTEES, AND ALL COST-SHARING ARRANGEMENTS.

S 13. Section 1702 of the insurance law, as amended by chapter 526 of the laws of 1987, is amended to read as follows:

S 1702. Meaning of "subsidiary" [and], "parent corporation" AND "ENTERPRISE RISK"; certain types of subsidiaries defined. As used in this article[, "subsidiary" (i)]: (A) "SUBSIDIARY" means subsidiaries of the types described in subsection (b) of section one thousand seven hundred four of this article and subsidiaries acquired or held under this article, section one thousand four hundred five or section four thousand two hundred forty of this chapter, but [(ii) does] SHALL not include a subsidiary acquired or held under section one thousand four hundred four of this chapter or a subsidiary acquired or held by an insurer authorized to make investments by subsection (c) of section one thousand four hundred three of this chapter[; and "parent corporation"].

(B) "PARENT CORPORATION" means a parent corporation of a type described in subsection (a), (b) or (c) of section one thousand seven hundred one of this article[; "holding company operating subsidiary"].

(C) "HOLDING COMPANY OPERATING SUBSIDIARY" means a subsidiary (other than a separate account subsidiary) engaged or organized to engage in either or both of the following activities [(i)](1) the ownership and management of other subsidiaries, and [(ii)](2) the raising of capital (debt or equity) [which] THAT could be loaned to, or invested in, other subsidiaries or loaned to the parent corporation, provided that any such subsidiary may in addition engage in the ownership and management of assets authorized as investments for the parent corporation[; "investment subsidiary"].

(D) "INVESTMENT SUBSIDIARY" means a subsidiary (other than a separate account subsidiary) engaged or organized to engage exclusively in the ownership and management of assets (other than equity securities of subsidiaries) authorized as investments for the parent corporation and of other investment subsidiaries[; and "separate account subsidiary"].

(E) "SEPARATE ACCOUNT SUBSIDIARY" means a subsidiary acquired or held under section four thousand two hundred forty of this chapter.

(F) "ENTERPRISE RISK" MEANS ANY ACTIVITY, CIRCUMSTANCE, EVENT, OR SERIES OF EVENTS INVOLVING ONE OR MORE SUBSIDIARIES OF A PARENT CORPORATION THAT, IF NOT REMEDIED PROMPTLY, IS LIKELY TO HAVE A MATERIAL ADVERSE EFFECT UPON THE FINANCIAL CONDITION OR LIQUIDITY OF THE PARENT CORPORATION, INCLUDING ANYTHING THAT WOULD CAUSE THE PARENT CORPORATION'S RISK-BASED CAPITAL TO FALL INTO COMPANY ACTION LEVEL AS SET FORTH IN SECTION ONE THOUSAND THREE HUNDRED TWENTY-TWO OF THIS CHAPTER,

OR THAT WOULD CAUSE FURTHER TRANSACTION OF BUSINESS TO BE HAZARDOUS TO THE INSURER'S POLICYHOLDERS OR CREDITORS OR THE PUBLIC.

S 14. Section 1710 of the insurance law, as amended by chapter 805 of the laws of 1984, is amended to read as follows:

S 1710. [Superintendent's] DIVESTITURE OF CONTROL; SUPERINTENDENT'S power to order disposition of subsidiaries.

(A) ANY PARENT CORPORATION SEEKING TO DIVEST ITS CONTROLLING INTEREST IN A DOMESTIC INSURER, IN ANY MANNER, SHALL FILE WITH THE SUPERINTENDENT, WITH A COPY TO THE INSURER, NOTICE OF ITS PROPOSED DIVESTITURE AT LEAST THIRTY DAYS PRIOR TO THE CESSATION OF CONTROL.

(B) In addition to the powers granted to the superintendent elsewhere in this chapter (including, without limitation, [sections] SECTION one hundred nine [and three hundred twenty-seven] of this chapter AND SECTION THREE HUNDRED NINE OF THE FINANCIAL SERVICES LAW), the superintendent may, at any time, order a parent corporation to dispose of any subsidiary, if the superintendent finds, after notice and an opportunity to be heard, either:

[(i)](1) that its acquisition or continued retention is or was not permitted by the provisions of this article; or

[(ii)](2) except in the case of a subsidiary then exempted by the provisions of subsection (a) or (b) of section one thousand seven hundred four of this article, that its continued retention is materially adverse to the interests of the parent corporation's policyholders or subscribers.

S 15. Section 1712 of the insurance law is amended to read as follows:

S 1712. Relationships and transactions between parent corporation and subsidiary. (A) The business operations, corporate proceedings and fiscal and accounting records of subsidiaries shall be conducted or maintained so as to assure the separate legal and operating identities of the parent corporation and subsidiary, but nothing herein shall preclude arrangements for common management or the cooperative or joint use of personnel, property, or services, otherwise consistent with this chapter. All transactions between the parent corporation and its subsidiaries shall be fair and equitable, charges or fees for services performed shall be reasonable and all expenses incurred and payments received shall be allocated to the parent corporation on an equitable basis in conformity with customary insurance accounting practices consistently applied. The books, accounts and records of each party to all such transactions shall be so maintained as to disclose clearly and accurately 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.

(B) THE FOLLOWING TRANSACTIONS BETWEEN A PARENT CORPORATION AND ANY SUBSIDIARY MAY NOT BE ENTERED INTO UNLESS THE PARENT CORPORATION HAS NOTIFIED THE SUPERINTENDENT IN WRITING OF ITS INTENTION TO ENTER INTO ANY SUCH TRANSACTION AT LEAST THIRTY DAYS PRIOR THERETO, OR WITH REGARD TO REINSURANCE TREATIES OR AGREEMENTS AT LEAST FORTY-FIVE DAYS PRIOR THERETO, OR SUCH SHORTER PERIOD AS THE SUPERINTENDENT MAY PERMIT, AND THE SUPERINTENDENT HAS NOT DISAPPROVED IT WITHIN SUCH PERIOD:

(1) SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, OR INVESTMENTS WITH A SUBSIDY, PROVIDED THE TRANSACTIONS ARE EQUAL TO OR EXCEED:

(A) THREE PERCENT OF THE PARENT CORPORATION'S ADMITTED ASSETS AT LAST YEAR-END, WITH REGARD TO A DOMESTIC LIFE INSURANCE COMPANY; OR

(B) THE LESSER OF THREE PERCENT OF THE PARENT CORPORATION'S ADMITTED ASSETS OR TWENTY-FIVE PERCENT OF CAPITAL AND SURPLUS AT LAST YEAR-END,

WITH REGARD TO A DOMESTIC CORPORATION SUBJECT TO ARTICLE FORTY-THREE OF THIS CHAPTER; OR

(2) LOANS OR EXTENSIONS OF CREDIT TO ANY PERSON WHO IS NOT A SUBSIDIARY, WHERE THE PARENT CORPORATION MAKES LOANS OR EXTENSIONS OF CREDIT WITH THE AGREEMENT OR UNDERSTANDING THAT THE PROCEEDS OF SUCH TRANSACTIONS, IN WHOLE OR IN SUBSTANTIAL PART, ARE TO BE USED TO MAKE LOANS OR EXTENSIONS OF CREDIT TO, PURCHASE ASSETS OF, OR MAKE INVESTMENTS IN, ANY SUBSIDIARY OF THE PARENT CORPORATION MAKING THE LOANS OR EXTENSIONS OF CREDIT, PROVIDED THE TRANSACTIONS ARE EQUAL TO OR EXCEED:

(A) THREE PERCENT OF THE PARENT CORPORATION'S ADMITTED ASSETS AT LAST YEAR-END, WITH REGARD TO A DOMESTIC LIFE INSURANCE COMPANY; OR

(B) THE LESSER OF THREE PERCENT OF THE PARENT CORPORATION'S ADMITTED ASSETS OR TWENTY-FIVE PERCENT OF CAPITAL AND SURPLUS AT LAST YEAR-END, WITH REGARD TO A DOMESTIC CORPORATION SUBJECT TO ARTICLE FORTY-THREE OF THIS CHAPTER; OR

(3) REINSURANCE TREATIES OR AGREEMENTS WITH A SUBSIDIARY THAT THE PARENT CORPORATION HAS NOT OTHERWISE SUBMITTED TO THE SUPERINTENDENT. THIS SHALL INCLUDE AGREEMENTS THAT MAY REQUIRE, AS CONSIDERATION, THE TRANSFER OF ASSETS FROM A PARENT CORPORATION TO A NON-SUBSIDIARY, IF AN AGREEMENT OR UNDERSTANDING EXISTS BETWEEN THE PARENT CORPORATION AND NON-SUBSIDIARY THAT ANY PORTION OF THE ASSETS WILL BE TRANSFERRED TO ONE OR MORE SUBSIDIARIES OF THE PARENT CORPORATION; AND

(4) MANAGEMENT AGREEMENTS, SERVICE CONTRACTS, TAX ALLOCATION AGREEMENTS, GUARANTEES, AND ALL COST-SHARING ARRANGEMENTS.

S 16. The insurance law is amended by adding a new section 1717 to read as follows:

S 1717. REGISTRATION. (A) A PARENT CORPORATION SHALL REGISTER WITH THE SUPERINTENDENT WITHIN THIRTY DAYS OF BECOMING SUBJECT TO REGISTRATION AND SHALL AMEND THE REGISTRATION WITHIN THIRTY DAYS FOLLOWING ANY MATERIAL CHANGE TO THE INFORMATION PROVIDED IN THE REGISTRATION. THE REGISTRATION SHALL BE IN SUCH FORM AND SHALL CONTAIN SUCH MATTERS AS THE SUPERINTENDENT PRESCRIBES. THE SUPERINTENDENT MAY GRANT REASONABLE EXTENSIONS OF THE TIME TO REGISTER.

(B) A PARENT CORPORATION, OTHER THAN A PARENT CORPORATION REQUIRED TO REGISTER AS A CONTROLLED INSURER PURSUANT TO SECTION ONE THOUSAND FIVE HUNDRED THREE OF THIS CHAPTER, SHALL ADOPT A FORMAL ENTERPRISE RISK MANAGEMENT FUNCTION AND SHALL FILE AN ENTERPRISE RISK REPORT WITH THE SUPERINTENDENT BY APRIL THIRTIETH OF EACH YEAR. THE REPORT SHALL, TO THE BEST OF THE PARENT CORPORATION'S KNOWLEDGE AND BELIEF, IDENTIFY THE MATERIAL RISKS WITHIN ANY SUBSIDIARY THAT COULD POSE ENTERPRISE RISK TO THE PARENT CORPORATION.

S 17. Subsection (d) of section 1110 of the insurance law, as amended by chapter 431 of the laws of 2000, is amended to read as follows:

(d) No such corporation or association shall make or issue in this state any annuity contract before obtaining a permit issued in accordance with the provisions of this section except that if its requisite reserve on its outstanding annuity agreements computed in accordance with section four thousand two hundred seventeen of this chapter does not exceed the amount of [five hundred thousand] ONE MILLION dollars, it may make gift annuity agreements in this state and shall be exempted from securing a permit provided it maintains the reserve required by section four thousand two hundred seventeen of this chapter and a surplus of at least twenty-five per centum of such reserve. If the superintendent finds, after notice and hearing, that any such corporation or association, having such a permit, has failed to comply with the requirements of this section, [he] THE SUPERINTENDENT may revoke or

suspend such permit or order it to cease making new annuity contracts until it complies. The superintendent may, in [his] THE SUPERINTENDENT'S discretion, either dispense with the requirement of annual statements by such corporations or associations or accept a sworn statement by two or more of its principal officers, in such form as will satisfy the superintendent that the requirements of this section are being complied with.

S 18. Section 1110 of the insurance law is amended by adding a new subsection (f) to read as follows:

(F) THE SUPERINTENDENT MAY, IN THE SUPERINTENDENT'S DISCRETION, EXAMINE ANY SUCH CORPORATION OR ASSOCIATION THAT IS EXEMPT FROM OBTAINING A PERMIT PURSUANT TO SUBSECTION (D) OF THIS SECTION.

S 19. Paragraph 1 of subsection (a) of section 307 of the insurance law is amended to read as follows:

(1) Every insurer and every fraternal benefit society [which] THAT is authorized to do an insurance business in this state, and every pension fund, retirement system or state fund [which] THAT is required, by any law of this state, to report to the superintendent or is subject to [his] THE SUPERINTENDENT'S examination, shall file in the office of the superintendent, annually on or before the first day of March, a statement, to be known as its annual statement, executed in duplicate, verified by the oath of at least two of its principal officers, showing its condition at last year-end or, in the case of a pension fund or retirement system, on such date in the year next preceding as the superintendent may approve. Such statement shall be in such form and shall contain such matters as the superintendent shall prescribe. THE SUPERINTENDENT MAY ACCEPT AN ELECTRONIC FILING OF A FOREIGN INSURER'S ANNUAL STATEMENT THAT DOES NOT CONTAIN THE SIGNATURES OR VERIFICATION OF THE OFFICERS PROVIDED THAT THE FOREIGN INSURER HAS FILED, IN ITS STATE OF DOMICILE, AN ANNUAL STATEMENT VERIFIED BY THE OATH OF AT LEAST TWO OF ITS PRINCIPAL OFFICERS. IN SUCH A SITUATION, THE OFFICERS OF THE FOREIGN INSURER SHALL BE DEEMED TO HAVE GIVEN THEIR OATH IN THIS STATE.

S 20. Subsection (b) of section 7428 of the insurance law is amended to read as follows:

(b) If the amount of any such REAL OR PERSONAL PROPERTY OWNED BY, OR debt or claim owed by or to, such insurer does not exceed twenty-five [hundred] THOUSAND dollars, THEN the superintendent may SELL OR DISPOSE OF ALL OR ANY PART OF THE REAL OR PERSONAL PROPERTY, OR compromise or compound the [same] DEBT OR CLAIM, upon such terms as [he] THE SUPERINTENDENT may deem for the best interests of such insurer without obtaining the approval of the court.

S 21. Subsection (g) of section 7602 of the insurance law, as amended by chapter 578 of the laws of 1990, is amended to read as follows:

(g) "Allowed claim" means a claim [which] THAT has been allowed by the [court] SUPERINTENDENT in a proceeding under article seventy-four of this chapter OR, IF SUCH CLAIM EXCEEDS TWENTY-FIVE THOUSAND DOLLARS, HAS BEEN ALLOWED BY THE COURT IN A PROCEEDING UNDER ARTICLE SEVENTY-FOUR OF THIS CHAPTER, and which is based upon:

(1) a policy insuring property or risks located or resident in this state, or

(2) a policy issued in this state to a resident of this state insuring property or risks, located or resident outside this state but within the United States, its possessions and territories, and Canada, provided that, with respect to policies covered under this paragraph:

(A) irrespective of the amount of claim [which] THAT has been allowed, no person shall recover any amount from this fund until such person has exhausted all rights of recovery from any security fund, guaranty asso-

ciation, or the equivalent in the jurisdiction where such property or risks are located or resident; and, thereafter, such person's recovery from this fund, when combined with amounts recovered or recoverable from any other security fund, guaranty association, or the equivalent in such jurisdiction, shall not exceed the maximum limit available to a qualified claimant for a recovery solely from such other security fund, guaranty association, or the equivalent; and

(B) the aggregate limit for all claims arising out of any one policy, excluding claims with respect to property or risks located or resident in this state, shall not exceed the lesser of the aggregate limit of the policy or five million dollars.

S 22. This act shall take effect immediately, except that:

(1) sections four, eleven, and sixteen of this act shall take effect on the ninetieth day after this act shall have become a law; and

(2) the amendments to subsection (d) of section 1505 of the insurance law made by section six of this act, the amendments to section 1608 of the insurance law made by section twelve of this act and the amendments to section 1712 of the insurance law made by section fifteen of this act shall apply only to transactions entered into on or after the effective date of this act.