

7807

2013-2014 Regular Sessions

I N A S S E M B L Y

June 4, 2013

Introduced by M. of A. CAHILL -- (at request of the Department of Financial Services) -- read once and referred to the Committee on Insurance

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:

1 Section 1. Subsection (a) of section 110 of the insurance law, as
2 added by chapter 687 of the laws of 2003, paragraph 1 as amended by
3 chapter 245 of the laws of 2004, is amended to read as follows:
4 (a) In order to assist in the performance of the superintendent's
5 duties under this chapter, the superintendent:
6 (1) may share documents, materials or other information, including
7 [the] confidential and privileged documents, materials or information
8 with other state, federal, and international regulatory agencies, with
9 the National Association of Insurance Commissioners, its affiliates or
10 subsidiaries, and with state, federal, and international law enforcement
11 authorities, INCLUDING MEMBERS OF ANY SUPERVISORY COLLEGE DESCRIBED IN
12 SECTION THREE HUNDRED TWO OF THIS CHAPTER, provided that the recipient
13 has the authority and agrees to maintain the confidentiality and privileged
14 status of the document, material or other information; provided,
15 however, that this paragraph shall not be construed as limiting access
16 to records pursuant to article six of the public officers law;
17 (2) may receive documents, materials or information, including other-
18 wise confidential and privileged documents, materials or information,
19 from the National Association of Insurance Commissioners, its affiliates
20 or subsidiaries and from regulatory and law enforcement officials of
21 other foreign or domestic jurisdictions, INCLUDING MEMBERS OF ANY SUPER-
22 VISORY COLLEGE DESCRIBED IN SECTION THREE HUNDRED TWO OF THIS CHAPTER,
23 and shall maintain as confidential or privileged any document, material
24 or information received with notice or the understanding that it is

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

LBD09114-06-3

1 confidential or privileged under the laws of the jurisdiction that is
2 the source of the document, material or information; AND

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

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

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

13 (1) INITIATING THE ESTABLISHMENT OF A SUPERVISORY COLLEGE;

14 (2) CLARIFYING THE MEMBERSHIP AND PARTICIPATION OF OTHER SUPERVISORS
15 IN THE SUPERVISORY COLLEGE;

16 (3) CLARIFYING THE FUNCTIONS OF THE SUPERVISORY COLLEGE AND THE ROLE
17 OF OTHER REGULATORS, INCLUDING THE ESTABLISHMENT OF A GROUP-WIDE SUPER-
18 VISOR;

19 (4) COORDINATING THE ONGOING ACTIVITIES OF THE SUPERVISORY COLLEGE,
20 INCLUDING PLANNING MEETINGS, SUPERVISORY ACTIVITIES, AND PROCESSES FOR
21 INFORMATION SHARING; AND

22 (5) ESTABLISHING A CRISIS MANAGEMENT PLAN.

23 (B) EACH INSURER REGISTERED UNDER ARTICLE FIFTEEN, SIXTEEN, OR SEVEN-
24 TEEN OF THIS CHAPTER SHALL BE LIABLE FOR AND SHALL PAY THE REASONABLE
25 EXPENSES OF THE SUPERINTENDENT'S PARTICIPATION IN A SUPERVISORY COLLEGE,
26 INCLUDING REASONABLE TRAVEL EXPENSES. A SUPERVISORY COLLEGE MAY BE
27 CONVENED AS EITHER A TEMPORARY OR PERMANENT FORUM FOR THE COMMUNICATION
28 AND COOPERATION BETWEEN THE REGULATORS CHARGED WITH THE SUPERVISION OF
29 THE INSURER OR ITS PARENT, AFFILIATES, OR SUBSIDIARIES. THE SUPERINTEN-
30 DENT MAY ESTABLISH A REGULAR ASSESSMENT TO THE INSURER FOR THE PAYMENT
31 OF THESE EXPENSES.

32 (C) IN ORDER TO ASSESS THE BUSINESS STRATEGY, FINANCIAL POSITION,
33 LEGAL AND REGULATORY POSITION, RISK EXPOSURE, RISK MANAGEMENT AND GOVER-
34 NANCE PROCESSES, AND AS PART OF THE EXAMINATION OF INDIVIDUAL INSURERS,
35 THE SUPERINTENDENT MAY PARTICIPATE IN A SUPERVISORY COLLEGE WITH OTHER
36 REGULATORS CHARGED WITH SUPERVISION OF THE INSURER OR ITS PARENT, AFFIL-
37 IATES, OR SUBSIDIARIES, INCLUDING OTHER STATE, FEDERAL, AND INTERNA-
38 TIONAL REGULATORY AGENCIES. THE SUPERINTENDENT MAY ENTER INTO AGREEMENTS
39 PURSUANT TO SECTION ONE HUNDRED TEN OF THIS CHAPTER PROVIDING THE BASIS
40 FOR COOPERATION BETWEEN THE SUPERINTENDENT AND OTHER REGULATORY AGENCIES
41 AND FOR THE ACTIVITIES OF THE SUPERVISORY COLLEGE. NOTHING IN THIS
42 SECTION SHALL DELEGATE TO THE SUPERVISORY COLLEGE THE SUPERINTENDENT'S
43 AUTHORITY TO REGULATE OR SUPERVISE THE INSURER OR ITS PARENT, AFFIL-
44 IATES, OR SUBSIDIARIES WITHIN THE SUPERINTENDENT'S JURISDICTION.

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

47 (7) "ENTERPRISE RISK" MEANS ANY ACTIVITY, CIRCUMSTANCE, EVENT, OR
48 SERIES OF EVENTS INVOLVING THE HOLDING COMPANY SYSTEM THAT, IF NOT REME-
49 DIED PROMPTLY, IS LIKELY TO HAVE A MATERIAL ADVERSE EFFECT UPON THE
50 FINANCIAL CONDITION OR LIQUIDITY OF THE INSURER OR ITS HOLDING COMPANY
51 SYSTEM, INCLUDING ANYTHING THAT WOULD CAUSE THE INSURER'S RISK-BASED
52 CAPITAL TO FALL INTO COMPANY ACTION LEVEL AS SET FORTH IN SECTION ONE
53 THOUSAND THREE HUNDRED TWENTY-TWO OR ONE THOUSAND THREE HUNDRED TWENTY-
54 FOUR OF THIS CHAPTER, OR THAT WOULD CAUSE FURTHER TRANSACTION OF BUSI-
55 NESS TO BE HAZARDOUS TO THE INSURER'S POLICYHOLDERS OR CREDITORS OR THE
56 PUBLIC.

1 S 4. Section 1503 of the insurance law is amended to read as follows:
2 S 1503. Registration. (a) Every person who becomes a controlled insur-
3 er shall, within thirty days thereafter register with the superintendent
4 and [such] SHALL AMEND THE registration [shall be amended] within thirty
5 days following any change in the identity of its holding company OR ANY
6 OTHER MATERIAL CHANGE TO THE INFORMATION PROVIDED IN THE REGISTRATION.
7 THE REGISTRATION SHALL BE IN SUCH FORM AND SHALL CONTAIN SUCH MATTERS AS
8 THE SUPERINTENDENT PRESCRIBES. The superintendent may grant reasonable
9 extensions of the time to register.

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

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

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

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

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

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

30 (2) TO DETERMINE COMPLIANCE WITH THIS ARTICLE, THE SUPERINTENDENT MAY
31 ORDER ANY CONTROLLED INSURER TO PRODUCE INFORMATION NOT IN THE INSURER'S
32 POSSESSION IF THE INSURER CAN OBTAIN ACCESS TO THE INFORMATION PURSUANT
33 TO CONTRACTUAL RELATIONSHIPS, STATUTORY OBLIGATIONS, OR OTHER METHOD. IN
34 THE EVENT THE INSURER CANNOT OBTAIN THE INFORMATION REQUESTED BY THE
35 SUPERINTENDENT, THE INSURER SHALL PROVIDE THE SUPERINTENDENT A DETAILED
36 EXPLANATION OF THE REASON THAT THE INSURER CANNOT OBTAIN THE INFORMATION
37 AND THE IDENTITY OF THE HOLDER OF INFORMATION. WHENEVER IT APPEARS TO
38 THE SUPERINTENDENT THAT THE DETAILED EXPLANATION IS WITHOUT MERIT, IN
39 ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, THE SUPERINTENDENT, AFTER
40 NOTICE AND AN OPPORTUNITY TO BE HEARD, MAY LEVY A PENALTY AGAINST THE
41 INSURER NOT TO EXCEED FIVE HUNDRED DOLLARS PER DAY FOR EACH DAY BEYOND
42 THE DATE SPECIFIED BY THE SUPERINTENDENT FOR RESPONSE.

43 (b) Every holding company and every controlled person within a holding
44 company system shall be subject to examination by order of the super-
45 intendent if [he] THE SUPERINTENDENT has cause to believe that the oper-
46 ations of such persons may materially affect the operations, management
47 or financial condition of any controlled insurer within the system,
48 INCLUDING BY POSING ENTERPRISE RISK TO THE INSURER, and that [he] THE
49 SUPERINTENDENT is unable to obtain relevant information from such
50 controlled insurer. The grounds relied upon by the superintendent for
51 such examination shall be stated in [his] THE SUPERINTENDENT'S order.
52 Such examination shall be confined to matters specified in the order.
53 The cost of such examination shall be assessed against the person exam-
54 ined and no portion thereof shall thereafter be reimbursed to it direct-
55 ly or indirectly by the controlled insurer.

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

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

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

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

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

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

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

36 (2) reinsurance treaties or agreements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (1) the availability of the funds or assets required for such acquisi-
35 tion;

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

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

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

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

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

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

52 [(b)] (C) At any time after an acquisition the superintendent may
53 order its disposition if [he] THE SUPERINTENDENT finds, after notice and
54 an opportunity to be heard, that its continued retention is hazardous or
55 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 SHALL ADOPT A FORMAL ENTERPRISE RISK MANAGEMENT FUNCTION AND SHALL FILE AN ENTERPRISE RISK REPORT WITH THE SUPERINTENDENT BY APRIL FIRST 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 SIXTY 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;

1 (3) REINSURANCE TREATIES OR AGREEMENTS WITH A SUBSIDIARY THAT THE
2 INSURER HAS NOT OTHERWISE SUBMITTED TO THE SUPERINTENDENT, PROVIDED,
3 HOWEVER, THE INSURER NEED NOT SUBMIT A COPY OF A REINSURANCE AGREEMENT
4 UNLESS REQUESTED BY THE SUPERINTENDENT WHERE THE REINSURANCE PREMIUM OR
5 A CHANGE IN THE INSURER'S LIABILITIES, OR THE PROJECTED REINSURANCE
6 PREMIUM OR A CHANGE IN THE INSURER'S LIABILITIES IN ANY OF THE NEXT
7 THREE YEARS, IS LESS THAN FIVE PERCENT OF THE INSURER'S SURPLUS TO POLI-
8 CYHOLDERS AT LAST YEAR-END. THIS SHALL INCLUDE AGREEMENTS THAT MAY
9 REQUIRE, AS CONSIDERATION, THE TRANSFER OF ASSETS FROM AN INSURER TO A
10 NON-SUBSIDIARY, IF AN AGREEMENT OR UNDERSTANDING EXISTS BETWEEN THE
11 INSURER AND NON-SUBSIDIARY THAT ANY PORTION OF THE ASSETS WILL BE TRANS-
12 FERRED TO ONE OR MORE SUBSIDIARIES OF THE INSURER; AND

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

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

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

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

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

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

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

47 (F) "ENTERPRISE RISK" MEANS ANY ACTIVITY, CIRCUMSTANCE, EVENT, OR
48 SERIES OF EVENTS INVOLVING ONE OR MORE SUBSIDIARIES OF A PARENT CORPO-
49 RATION THAT, IF NOT REMEDIED PROMPTLY, IS LIKELY TO HAVE A MATERIAL
50 ADVERSE EFFECT UPON THE FINANCIAL CONDITION OR LIQUIDITY OF THE PARENT
51 CORPORATION, INCLUDING ANYTHING THAT WOULD CAUSE THE PARENT CORPO-
52 RATION'S RISK-BASED CAPITAL TO FALL INTO COMPANY ACTION LEVEL AS SET
53 FORTH IN SECTION ONE THOUSAND THREE HUNDRED TWENTY-TWO OF THIS CHAPTER,
54 OR THAT WOULD CAUSE FURTHER TRANSACTION OF BUSINESS TO BE HAZARDOUS TO
55 THE INSURER'S POLICYHOLDERS OR CREDITORS OR THE PUBLIC.

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

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

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

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

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

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

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

24 S 1712. Relationships and transactions between parent corporation and
25 subsidiary. (A) The business operations, corporate proceedings and
26 fiscal and accounting records of subsidiaries shall be conducted or
27 maintained so as to assure the separate legal and operating identities
28 of the parent corporation and subsidiary, but nothing herein shall
29 preclude arrangements for common management or the cooperative or joint
30 use of personnel, property, or services, otherwise consistent with this
31 chapter. All transactions between the parent corporation and its subsid-
32 iaries shall be fair and equitable, charges or fees for services
33 performed shall be reasonable and all expenses incurred and payments
34 received shall be allocated to the parent corporation on an equitable
35 basis in conformity with customary insurance accounting practices
36 consistently applied. The books, accounts and records of each party to
37 all such transactions shall be so maintained as to disclose clearly and
38 accurately the nature and details of the transactions, including such
39 accounting information as is necessary to support the reasonableness of
40 the charges or fees to the respective parties.

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

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

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

53 (B) THE LESSER OF THREE PERCENT OF THE PARENT CORPORATION'S ADMITTED
54 ASSETS OR TWENTY-FIVE PERCENT OF CAPITAL AND SURPLUS AT LAST YEAR-END,
55 WITH REGARD TO A DOMESTIC CORPORATION SUBJECT TO ARTICLE FORTY-THREE OF
56 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 SHALL ADOPT A FORMAL ENTERPRISE RISK MANAGEMENT FUNCTION AND SHALL FILE AN ENTERPRISE RISK REPORT WITH THE SUPERINTENDENT BY APRIL FIRST 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

1 more of its principal officers, in such form as will satisfy the super-
2 intendent that the requirements of this section are being complied with.
3 S 18. Section 1110 of the insurance law is amended by adding a new
4 subsection (f) to read as follows:

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

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

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

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

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

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

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

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

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

50 (A) irrespective of the amount of claim [which] THAT has been allowed,
51 no person shall recover any amount from this fund until such person has
52 exhausted all rights of recovery from any security fund, guaranty asso-
53 ciation, or the equivalent in the jurisdiction where such property or
54 risks are located or resident; and, thereafter, such person's recovery
55 from this fund, when combined with amounts recovered or recoverable from
56 any other security fund, guaranty association, or the equivalent in such

1 jurisdiction, shall not exceed the maximum limit available to a quali-
2 fied claimant for a recovery solely from such other security fund, guar-
3 anty association, or the equivalent; and
4 (B) the aggregate limit for all claims arising out of any one policy,
5 excluding claims with respect to property or risks located or resident
6 in this state, shall not exceed the lesser of the aggregate limit of the
7 policy or five million dollars.
8 S 22. This act shall take effect immediately, except that sections
9 four, eleven and sixteen of this act shall take effect on the ninetieth
10 day after this act shall have become a law.