

Senate File 2104 - Introduced

SENATE FILE 2104
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3090)

A BILL FOR

1 An Act relating to the regulation of insurance company holding
2 systems and providing assessments and penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 521A.1, subsection 3, Code 2014, is
2 amended to read as follows:

3 3. "Control", including controlling, controlled by, and
4 under common control with, shall mean the possession, direct
5 or indirect, of the power to direct or cause the direction
6 of the management and policies of a person, whether through
7 the ownership of voting securities, by contract other than
8 a commercial contract for goods or nonmanagement services,
9 or otherwise, unless the power is solely the result of an
10 official position with or a corporate office held by the
11 person. Control shall be presumed to exist if any person,
12 directly or indirectly, owns, controls, holds with the power
13 to vote, or holds proxies representing, ten percent or more of
14 the voting securities of any other person. This presumption
15 may be rebutted by a showing made in the manner provided in
16 section 521A.3, subsections 1 through 5, inclusive, or section
17 521A.4, subsection 11, whichever is applicable, that control
18 does not exist in fact. The commissioner may determine, after
19 furnishing all persons in interest notice and opportunity to
20 be heard and making specific findings of fact to support the
21 determination, that control exists in fact, notwithstanding the
22 absence of a presumption to that effect.

23 Sec. 2. Section 521A.1, Code 2014, is amended by adding the
24 following new subsections:

25 NEW SUBSECTION. 4A. "Enterprise risk" means any activity,
26 circumstance, event, or series of events involving one or more
27 affiliates of an insurer that, if not remedied promptly, is
28 likely to have a material adverse effect upon the financial
29 condition or liquidity of the insurer or its insurance holding
30 company system as a whole, including but not limited to
31 anything that would cause the insurer's risk-based capital to
32 fall into a company-action-level event as set forth in section
33 521E.3 for insurers or section 521F.4 for health organizations,
34 or would cause the insurer to be in hazardous financial
35 condition pursuant to 191 IAC ch 110.

1 NEW SUBSECTION. 9A. "*Supervisory college*" means a temporary
2 or permanent forum for communication and cooperation between
3 regulators charged with supervision of an insurer or its
4 affiliates.

5 Sec. 3. Section 521A.3, subsection 1, paragraph a, Code
6 2014, is amended to read as follows:

7 a. No person other than the issuer shall make a tender offer
8 for or a request or invitation for tenders of, or enter into
9 any agreement to exchange securities for, seek to acquire, or
10 acquire, in the open market or otherwise, any voting security
11 of a domestic insurer if, after the consummation thereof,
12 such person would, directly or indirectly, or by conversion
13 or by exercise of any right to acquire, be in control of such
14 insurer, and no person shall enter into an agreement to merge
15 with or otherwise to acquire control of a domestic insurer
16 unless, at the time any such offer, request, or invitation is
17 first made or any such agreement is entered into, or prior to
18 the acquisition of such securities if no offer or agreement is
19 involved, such person has first filed with the commissioner
20 and has sent to such insurer, ~~and such insurer has sent to its~~
21 ~~shareholders~~, a statement containing the information required
22 by this section and such offer, request, invitation, agreement
23 or acquisition has been approved by the commissioner in the
24 manner hereinafter prescribed.

25 Sec. 4. Section 521A.3, subsection 1, Code 2014, is amended
26 by adding the following new paragraph:

27 NEW PARAGRAPH. *Ob.* For purposes of this section, any
28 controlling person of a domestic insurer seeking to divest its
29 controlling interest in the domestic insurer, in any manner,
30 shall file with the commissioner, with a copy to the insurer,
31 confidential notice of its proposed divestiture at least thirty
32 days prior to the cessation of control. The commissioner
33 shall determine those instances in which the party seeking to
34 divest or to acquire a controlling interest in an insurer,
35 shall be required to file for and obtain approval of the

1 transaction. The information shall remain confidential until
2 the conclusion of the transaction unless the commissioner, in
3 the commissioner's discretion, determines that confidential
4 treatment will interfere with enforcement of this section. If
5 the statement referred to in paragraph "a" is otherwise filed,
6 this paragraph "0b" shall not apply.

7 Sec. 5. Section 521A.3, subsection 2, paragraph a,
8 unnumbered paragraph 1, Code 2014, is amended to read as
9 follows:

10 The statement to be filed with the commissioner hereunder
11 shall be made under oath or affirmation and shall contain the
12 following information:

13 Sec. 6. Section 521A.3, subsection 2, paragraph a, Code
14 2014, is amended by adding the following new subparagraphs:

15 NEW SUBPARAGRAPH. (012) An agreement by the person required
16 to file the statement referred to in subsection 1 that the
17 person will provide the annual report specified in section
18 521A.4, subsection 11A for so long as control exists.

19 NEW SUBPARAGRAPH. (0012) An acknowledgment by the person
20 required to file the statement referred to in subsection 1
21 that the person and all subsidiaries within its control in
22 the insurance holding company system will provide information
23 to the commissioner upon request as necessary to evaluate
24 enterprise risk to the insurer.

25 Sec. 7. Section 521A.3, subsection 4, paragraph a, Code
26 2014, is amended by adding the following new subparagraph:

27 NEW SUBPARAGRAPH. (6) The merger or other acquisition of
28 control is not likely to be hazardous or prejudicial to the
29 insurance-buying public.

30 Sec. 8. Section 521A.3, subsection 4, paragraph b, Code
31 2014, is amended to read as follows:

32 *b.* The public hearing referred to in paragraph "a" shall be
33 held within thirty days after the commissioner has determined
34 that the statement required by subsection 1 is filed has
35 been completed and contains all the required information set

1 forth in subsection 2, and at least twenty days' notice of
2 the public hearing shall be given by the commissioner to the
3 person filing the statement and to the domestic insurer. Not
4 less than seven days' notice of the public hearing shall be
5 given by the person filing the statement to the insurer and to
6 such other persons as may be designated by the commissioner.
7 The commissioner shall make a determination within thirty
8 days after the conclusion of the hearing. At the hearing,
9 the person filing the statement, the insurer, any person to
10 whom notice of hearing was sent, and any other person whose
11 interests may be affected shall have the right to present
12 evidence, examine and cross-examine witnesses, and offer oral
13 and written arguments and in connection therewith shall be
14 entitled to conduct discovery proceedings in the same manner as
15 is presently allowed in the district court of this state. All
16 discovery proceedings shall be concluded not later than three
17 days prior to the commencement of the public hearing.

18 Sec. 9. Section 521A.3, subsection 4, Code 2014, is amended
19 by adding the following new paragraph:

20 NEW PARAGRAPH. *0c.* If the proposed merger or other
21 acquisition of control will require the approval of more than
22 one commissioner, the public hearing referred to in paragraph
23 "a" may be held on a consolidated basis upon request of the
24 person filing the statement referred to in subsection 1.
25 Such person may file the statement referred to in subsection
26 1 with the national association of insurance commissioners
27 within five days of making the request for a public hearing.
28 The commissioner may opt out of a consolidated hearing, and
29 shall provide notice to the applicant of the opt-out within
30 ten days of the receipt of the statement referred to in
31 subsection 1. A hearing conducted on a consolidated basis
32 shall be public and shall be held within the United States
33 before the commissioners of the states in which the insurers
34 are domiciled. Such commissioners shall hear and receive
35 evidence. The commissioner may attend such hearing in person

1 or by telecommunication.

2 Sec. 10. Section 521A.4, subsection 2, Code 2014, is amended
3 by adding the following new paragraphs:

4 NEW PARAGRAPH. *0e.* If requested by the commissioner, the
5 insurer shall include financial statements of or within an
6 insurance holding company system, including all affiliates.
7 Financial statements may include but are not limited to annual
8 audited financial statements filed with the United States
9 securities and exchange commission pursuant to the federal
10 Securities Act of 1933, as amended, or the federal Securities
11 Exchange Act of 1934, as amended. An insurer required to file
12 financial statements pursuant to this paragraph may satisfy the
13 request by providing the commissioner with the most recently
14 filed financial statements of the parent corporation that have
15 been filed with the United States securities and exchange
16 commission.

17 NEW PARAGRAPH. *00e.* Statements that the insurer's board of
18 directors oversees corporate governance and internal controls
19 and that the insurer's officers or senior management have
20 approved, implemented, and continue to maintain and monitor
21 corporate governance and internal control procedures.

22 NEW PARAGRAPH. *f.* Any other information required by the
23 commissioner by rule or by regulation.

24 Sec. 11. Section 521A.4, subsection 11, Code 2014, is
25 amended to read as follows:

26 11. *Disclaimer.* Any person may file with the commissioner
27 a disclaimer of affiliation with any authorized insurer or such
28 a disclaimer may be filed by such insurer or any member of an
29 insurance holding company system. The disclaimer shall fully
30 disclose all material relationships and basis for affiliation
31 between such person and such insurer as well as the basis for
32 disclaiming such affiliation. ~~After a disclaimer has been~~
33 ~~filed, the insurer shall be relieved of any duty to register or~~
34 ~~report under this section which may arise out of the insurer's~~
35 ~~relationship with such person unless and until the commissioner~~

1 ~~disallows such a disclaimer. The commissioner shall disallow~~
2 ~~such a disclaimer only after furnishing all parties in interest~~
3 ~~with notice and opportunity to be heard and after making~~
4 ~~specific findings of fact to support such disallowance. A~~
5 disclaimer of affiliation shall be deemed to have been granted
6 unless the commissioner, within thirty days following receipt
7 of a complete disclaimer, notifies the filing party that the
8 disclaimer is disallowed. In the event of disallowance, the
9 disclaiming party may request an administrative hearing, which
10 shall be granted. The disclaiming party shall be relieved of
11 its duty to register under this section if approval of the
12 disclaimer has been granted by the commissioner, or if the
13 disclaimer is deemed to have been granted.

14 Sec. 12. Section 521A.4, Code 2014, is amended by adding the
15 following new subsection:

16 NEW SUBSECTION. 11A. *Enterprise risk report.* The ultimate
17 controlling person of every insurer subject to registration
18 shall also file an annual enterprise risk report. The report
19 shall, to the best of the ultimate controlling person's
20 knowledge and belief, identify the material risks within the
21 insurance holding company system that could pose enterprise
22 risk to the insurer. The report shall be filed with the lead
23 state commissioner of the insurance holding company system as
24 determined by the procedures within the financial analysis
25 handbook adopted by the national association of insurance
26 commissioners.

27 Sec. 13. Section 521A.4, subsection 12, Code 2014, is
28 amended to read as follows:

29 12. *Violations.* The failure to file a registration
30 statement or a summary of the registration statement or an
31 enterprise risk report required by this section within the time
32 specified for the filing is a violation of this section.

33 Sec. 14. Section 521A.5, subsection 1, paragraph a, Code
34 2014, is amended by adding the following new subparagraph:

35 NEW SUBPARAGRAPH. (02) Agreements for cost-sharing

1 services and management shall include such provisions as
2 required by rule issued by the commissioner.

3 Sec. 15. Section 521A.5, subsection 1, paragraph b,
4 subparagraph (5), Code 2014, is amended by striking the
5 subparagraph.

6 Sec. 16. Section 521A.5, subsection 1, paragraph c, Code
7 2014, is amended to read as follows:

8 c. A domestic insurer and a person in its holding company
9 system shall not enter into any of the following transactions,
10 unless the domestic insurer notifies the commissioner in
11 writing of its intention to enter into the transaction at least
12 thirty days prior to entering into the transaction or within a
13 shorter time permitted by the commissioner and the commissioner
14 has not disapproved of the transaction within the time period:

15 (1) All reinsurance pooling agreements.

16 ~~(1)~~ (2) All reinsurance agreements or modifications to such
17 agreements in which the reinsurance premium or a change in the
18 insurer's liabilities, or the projected reinsurance premium
19 or a change in the insurer's liabilities in any of the next
20 three years, equals or exceeds five percent of the insurer's
21 surplus as regards policyholders, as of the next preceding
22 December 31, including those agreements which may require as
23 consideration the transfer of assets from an insurer to a
24 nonaffiliate, if an agreement or understanding exists between
25 the insurer and nonaffiliate that any portion of such assets
26 will be transferred to one or more affiliates of the insurer.

27 ~~(2)~~ (3) All management agreements, service contracts,
28 and all other cost-sharing arrangements involving at least
29 one-half of one percent of the insurer's surplus as of the
30 next preceding December 31. A guarantee which is quantifiable
31 as to amount is not subject to the notice requirements of
32 this paragraph "c" unless it exceeds the lesser of one-half
33 of one percent of the insurer's admitted assets or ten
34 percent of surplus as regards policyholders as of the next
35 preceding December 31. Further, all guarantees which are

1 not quantifiable as to amount are subject to the notice
2 requirements of this paragraph "c".

3 (4) Direct or indirect acquisitions or investments in a
4 person that controls the insurer or in an affiliate of the
5 insurer in an amount which, together with its present holdings
6 in such investments, exceeds two and one-half percent of
7 the insurer's surplus to policyholders. Direct or indirect
8 acquisitions or investments in subsidiaries acquired pursuant
9 to section 521A.2 or authorized under any other section of this
10 chapter, or in nonsubsidiary insurance affiliates that are
11 subject to the provisions of this chapter, are exempt from this
12 subparagraph.

13 ~~(3)~~ (5) Any material transactions specified by rule which
14 the commissioner determines may adversely affect the interests
15 of the domestic insurer's policyholders.

16 Sec. 17. Section 521A.5, Code 2014, is amended by adding the
17 following new subsection:

18 NEW SUBSECTION. 4. *Management of domestic insurers subject*
19 *to registration.*

20 a. Notwithstanding the control of a domestic insurer by any
21 person, the officers and directors of the insurer shall not
22 thereby be relieved of any obligation or liability to which
23 they would otherwise be subject by law, and the insurer shall
24 be managed so as to assure its separate operating identity
25 consistent with this chapter.

26 b. Nothing in this section shall preclude a domestic insurer
27 from having or sharing a common management, or cooperative or
28 joint use of personnel, property, or services with one or more
29 other persons under arrangements meeting the standards of this
30 section.

31 c. Not less than one-third of the directors of a domestic
32 insurer, and not less than one-third of the members of each
33 committee of the board of directors of any domestic insurer,
34 shall be persons who are not officers or employees of the
35 insurer or of any entity controlling, controlled by, or under

1 common control with the insurer and who are not beneficial
2 owners of a controlling interest in the voting stock of the
3 insurer or entity. At least one such person must be included
4 in any quorum for the transaction of business at any meeting
5 of the board of directors or any committee of the board of
6 directors.

7 *d.* The board of directors of a domestic insurer shall
8 establish one or more committees comprised solely of directors
9 who are not officers or employees of the insurer or of any
10 entity controlling, controlled by, or under common control with
11 the insurer and who are not beneficial owners of a controlling
12 interest in the voting stock of the insurer or any such entity.
13 The committee or committees shall have responsibility for
14 recommending or nominating candidates for director for election
15 by shareholders or policyholders, evaluating the performance
16 of officers deemed to be principal officers of the insurer,
17 and recommending to the board of directors the selection and
18 compensation of the principal officers.

19 *e.* The provisions of paragraphs "c" and "d" shall not apply
20 to a domestic insurer if the person controlling the insurer,
21 such as an insurer, a mutual insurance holding company, or
22 a publicly held corporation, has a board of directors and
23 committees of the board of directors that meet the requirements
24 of paragraphs "c" and "d" with respect to such controlling
25 entity.

26 *f.* An insurer may make application to the commissioner
27 for a waiver from the requirements of this subsection if
28 the insurer's annual direct written and assumed premium,
29 excluding premiums reinsured with the federal crop insurance
30 corporation and federal flood program, is less than three
31 hundred million dollars. An insurer may also make application
32 to the commissioner for a waiver from the requirements of this
33 subsection based upon unique circumstances. The commissioner
34 may consider various factors including but not limited to
35 the type of business entity, volume of business written,

1 availability of qualified board members, or the ownership or
2 organizational structure of the entity.

3 Sec. 18. Section 521A.6, Code 2014, is amended to read as
4 follows:

5 **521A.6 Examination.**

6 1. *Power of commissioner.* Subject to the limitation
7 contained in this section and in addition to the powers
8 which the commissioner has under chapter 507 relating to the
9 examination of insurers, the commissioner ~~may also order an~~
10 ~~insurer registered under section 521A.4 to produce records,~~
11 ~~books, or other information papers in the possession of the~~
12 ~~insurer or its affiliates as reasonably necessary to ascertain~~
13 ~~the financial condition of the insurer or to determine~~
14 ~~compliance with this chapter. If the insurer fails to comply~~
15 ~~with the order, the commissioner may examine the affiliates~~
16 ~~to obtain the information~~ shall have the power to examine any
17 insurer registered under section 521A.4 and its affiliates to
18 ascertain the financial condition of the insurer, including
19 the enterprise risk to the insurer by the ultimate controlling
20 party, or by any entity or combination of entities within the
21 insurance holding company system, or by the insurance holding
22 company system on a consolidated basis.

23 2. Access to books and records — penalty.

24 a. The commissioner may order an insurer registered under
25 section 521A.4 to produce records, books, or other information
26 papers in the possession of the insurer or its affiliates as
27 reasonably necessary or to determine compliance with this
28 chapter.

29 b. To determine compliance with this chapter, the
30 commissioner may order any insurer registered under section
31 521A.4 to produce information not in the possession of the
32 insurer if the insurer can obtain access to such information
33 pursuant to a contractual relationship, statutory obligation,
34 or other method. In the event the insurer cannot obtain the
35 information requested by the commissioner, the insurer shall

1 provide the commissioner a detailed explanation of the reason
2 that the insurer cannot obtain the information and the identity
3 of the holder of the information. Whenever it appears to the
4 commissioner that the detailed explanation is without merit,
5 the commissioner may require, after notice and hearing, the
6 insurer to pay a penalty of five hundred dollars for each day's
7 delay, or may suspend or revoke the insurer's certificate of
8 authority.

9 3. *Compelling production.* In the event the insurer fails
10 to comply with an order, the commissioner shall have the power
11 to examine the affiliates to obtain the information. The
12 commissioner shall also have the power to issue subpoenas, to
13 administer oaths, and to examine under oath any person for
14 purposes of determining compliance with this section. Upon
15 the failure or refusal of any person to obey a subpoena, the
16 commissioner may petition a court of competent jurisdiction,
17 and upon proper showing, the court may enter an order
18 compelling the witness to appear and testify or produce
19 documentary evidence. Failure to obey the court order shall
20 be punishable as contempt of court. Every person shall be
21 obliged to attend as a witness at the place specified in the
22 subpoena, when subpoenaed, anywhere within the state. Such
23 a person shall be entitled to the same fees and mileage, if
24 claimed, as a witness in district court, which fees, mileage,
25 and actual expense, if any, necessarily incurred in securing
26 the attendance of witnesses, and their testimony, shall be
27 itemized and charged against, and be paid by, the company being
28 examined.

29 ~~2.~~ 4. *Use of consultants.* The commissioner may retain at
30 the registered insurer's expense such attorneys, actuaries,
31 accountants and other experts not otherwise a part of the
32 commissioner's staff as shall be reasonably necessary to assist
33 in the conduct of the examination under subsection 1, 2, or 3
34 of this section. Any persons so retained shall be under the
35 direction and control of the commissioner and shall act in a

1 purely advisory capacity.

2 ~~3.~~ 5. *Expenses.* Each registered insurer producing for
3 examination records, books and papers pursuant to subsection 1,
4 2, or 3 of this section shall be liable for and shall pay the
5 expense of such examination in accordance with section 507.7.

6 Sec. 19. NEW SECTION. **521A.6A Supervisory colleges.**

7 1. *Power of commissioner.* With respect to any insurer
8 registered under section 521A.4 and in accordance with
9 subsection 3 of this section, the commissioner shall have
10 the power to participate in a supervisory college for any
11 domestic insurer that is part of an insurance holding company
12 system with international operations in order to determine
13 compliance by the insurer with this chapter. The powers of the
14 commissioner with respect to supervisory colleges include but
15 are not limited to the following:

16 a. Initiating the establishment of a supervisory college.

17 b. Clarifying the membership and participation of other
18 supervisors in the supervisory college.

19 c. Clarifying the functions of the supervisory college and
20 the role of other regulators, including the establishment of a
21 group-wide supervisor.

22 d. Coordinating the ongoing activities of the supervisory
23 college, including planning meetings, supervisory activities,
24 and processes for information sharing.

25 e. Establishing a crisis management plan.

26 2. *Selection of group-wide supervisor.* In the event a
27 group-wide supervisor is established for a supervisory college
28 as described in subsection 1, the commissioner is authorized,
29 but not required, to act as the group-wide supervisor. In
30 order to determine whether the commissioner or another chief
31 insurance regulatory official is the appropriate group-wide
32 supervisor, the commissioner shall, in cooperation with other
33 supervisors, consider the following factors and the relative
34 scale of each:

35 a. The extent to which the insurance holding company

1 system's insurance operations are domiciled in Iowa.

2 *b.* The location where the insurance holding company system
3 is based or the place of domicile of the insurance holding
4 company system's ultimate controlling person.

5 *c.* The locations of the insurance holding company system's
6 executive offices.

7 *d.* The locations of origin of the insurance business of the
8 insurance holding company system.

9 *e.* The locations of the assets and liabilities of the
10 insurance holding company system.

11 *f.* The locations of the business operations and activities
12 of the insurance holding company system.

13 *g.* Whether another chief insurance regulatory official is
14 acting or seeking to act as the lead group-wide supervisor
15 under a regulatory system that the commissioner determines to
16 be either of the following:

17 (1) Substantially similar to that provided under the laws of
18 the state of Iowa.

19 (2) Otherwise sufficient in terms of provision of
20 group-wide supervision, enterprise risk analysis, and
21 cooperation with other chief insurance regulatory officials.

22 *h.* Whether a chief insurance regulatory official acting
23 or seeking to act as the lead group-wide supervisor provides
24 the commissioner with reasonably reciprocal recognition and
25 cooperation.

26 3. *Commissioner as group-wide supervisor.* If the
27 commissioner is the group-wide supervisor as described in
28 subsection 2, the commissioner is authorized to engage in
29 conducting and coordinating any of the following group-wide
30 supervision activities:

31 *a.* Assessing the enterprise risks within the international
32 insurance group in accordance with the "own risk and solvency
33 assessments" requirements of chapter 522.

34 *b.* Requesting from any member of an international insurance
35 group subject to the commissioner's supervision information

1 necessary and appropriate to assess enterprise risk in
2 accordance with chapter 522.

3 *c.* Communicating with other insurance regulatory officials
4 regarding members within the international insurance group and
5 sharing relevant information, subject to the confidentiality
6 provisions of section 521A.7, through supervisory colleges as
7 set forth in this section.

8 *d.* Other group-wide supervisory activities as considered
9 appropriate by the commissioner and as defined by the
10 commissioner by rule.

11 4. *Expenses — assessment.* Each registered insurer
12 subject to this section shall be liable for and shall pay the
13 reasonable expenses of the commissioner's participation in a
14 supervisory college in accordance with subsection 5, including
15 reasonable travel expenses. For purposes of this section,
16 a supervisory college may be convened as either a temporary
17 or permanent forum for communication and cooperation between
18 the regulators charged with the supervision of the insurer or
19 its affiliates, and the commissioner may establish a regular
20 assessment to the insurer for the payment of these expenses.

21 5. *Supervisory college.* In order to assess the business
22 strategy, financial position, legal and regulatory position,
23 risk exposure, risk management and governance processes,
24 and as part of the examination of individual insurers
25 in accordance with section 521A.6, the commissioner may
26 participate in a supervisory college with other regulators
27 charged with supervision of an insurer or its affiliates,
28 including other state, federal, and international regulatory
29 agencies. The commissioner may enter into agreements in
30 accordance with section 521A.7, subsection 3, providing the
31 basis for cooperation between the commissioner and the other
32 regulatory agencies, and the activities of the supervisory
33 college. Nothing in this section shall delegate to the
34 supervisory college the authority of the commissioner to
35 regulate or supervise the insurer or its affiliates within the

1 commissioner's jurisdiction.

2 Sec. 20. Section 521A.7, Code 2014, is amended to read as
3 follows:

4 **521A.7 Confidential treatment.**

5 1. All information, documents, and copies thereof obtained
6 by or disclosed to the commissioner or any other person in
7 the course of an examination or investigation made pursuant
8 to section 521A.6 or 521A.6A, and all information reported
9 pursuant to sections 521A.4 and 521A.5, shall be given
10 confidential treatment and shall not be subject to subpoena
11 and shall not be made public by the commissioner or any other
12 person, except to insurance departments of other states,
13 without the prior written consent of the insurer to which it
14 pertains unless the commissioner, after giving the insurer
15 and its affiliates who would be affected thereby, notice and
16 opportunity to be heard, determines that the interests of
17 policyholders, shareholders, or the public will be served
18 by the publication thereof, in which event the commissioner
19 may publish all or any part thereof in such manner as the
20 commissioner may deem appropriate.

21 2. Neither the commissioner nor any person who received
22 documents, materials, or other information while acting under
23 the authority of the commissioner or with whom such documents,
24 materials, or other information are shared pursuant to this
25 chapter shall be permitted or required to testify in any
26 private civil action concerning any confidential documents,
27 materials, or other information subject to subsection 1.

28 3. In order to assist in the performance of the
29 commissioner's duties, the commissioner:

30 a. May share documents, materials, or other information,
31 including the confidential and privileged documents, materials,
32 or information subject to subsection 1, with other state,
33 federal, and international regulatory agencies, with the
34 national association of insurance commissioners and its
35 affiliates and subsidiaries, and with state, federal, and

1 international law enforcement authorities, including members
2 of any supervisory college described in section 521A.6A,
3 provided that the recipient agrees in writing to maintain
4 the confidentiality and privileged status of the document,
5 material, or other information, and has verified in writing the
6 legal authority to maintain confidentiality.

7 b. Notwithstanding paragraph "a", the commissioner may only
8 share confidential and privileged documents, materials, or
9 information filed pursuant to section 521A.4, subsection 11A,
10 with commissioners of states having statutes or regulations
11 substantially similar to subsection 1 of this section and who
12 have agreed in writing not to disclose such information.

13 c. May receive documents, materials, or information,
14 including otherwise confidential and privileged documents,
15 materials, or information from the national association of
16 insurance commissioners and its affiliates and subsidiaries and
17 from regulatory and law enforcement officials of other foreign
18 or domestic jurisdictions, and shall maintain as confidential
19 or privileged any document, material, or information received
20 with notice or the understanding that it is confidential or
21 privileged under the laws of the jurisdiction that is the
22 source of the document, material, or information.

23 d. Shall enter into written agreements with the national
24 association of insurance commissioners governing sharing and
25 use of information provided pursuant to this chapter consistent
26 with this subsection that shall do all of the following:

27 (1) Specify procedures and protocols regarding the
28 confidentiality and security of information shared with
29 the national association of insurance commissioners and
30 subsidiaries pursuant to this chapter, including procedures
31 and protocols for sharing by the association with other state,
32 federal, or international regulators.

33 (2) Specify that ownership of information shared with
34 the national association of insurance commissioners and its
35 affiliates and subsidiaries pursuant to this chapter remains

1 with the commissioner and the association's use of the
2 information is subject to the direction of the commissioner.

3 (3) Require prompt notice to be given to an insurer whose
4 confidential information in the possession of the national
5 association of insurance commissioners pursuant to this chapter
6 is subject to a request or subpoena to the association for
7 disclosure or production.

8 (4) Require the national association of insurance
9 commissioners and its affiliates and subsidiaries to consent to
10 intervention by an insurer in any judicial or administrative
11 action in which the association and its affiliates and
12 subsidiaries may be required to disclose confidential
13 information about the insurer shared with the association and
14 its affiliates and subsidiaries pursuant to this chapter.

15 4. The sharing of information by the commissioner pursuant
16 to this chapter shall not constitute a delegation of regulatory
17 authority or rulemaking, and the commissioner is solely
18 responsible for the administration, execution, and enforcement
19 of the provisions of this chapter.

20 5. No waiver of any applicable privilege or claim of
21 confidentiality in the documents, materials, or information
22 shall occur as a result of disclosure to the commissioner
23 under this section or as a result of sharing as authorized in
24 subsection 3.

25 6. Documents, materials, or other information in the
26 possession or control of the national association of insurance
27 commissioners pursuant to this chapter shall be confidential
28 by law and privileged, shall not be subject to chapter 22,
29 shall not be subject to subpoena, and shall not be subject
30 to discovery or admissible in evidence in any private civil
31 action.

32

EXPLANATION

33 The inclusion of this explanation does not constitute agreement with
34 the explanation's substance by the members of the general assembly.

35 This bill relates to the regulation of insurance company

1 holding systems by the commissioner of insurance and provides
2 assessments and penalties.

3 Code section 521A.1 is amended to change the definition
4 of what constitutes "control" so that the presumption of
5 control can be rebutted in a specified manner and so that
6 the commissioner of insurance, after notice and hearing, may
7 determine that control of an entity exists in fact even without
8 a presumption to that effect.

9 New Code section 521A.1(4A) adds a definition of "enterprise
10 risk" which means an activity, circumstance, event, or series
11 of events involving one or more affiliates of an insurer that
12 if not remedied promptly is likely to have a material adverse
13 effect upon the financial condition or liquidity of the insurer
14 or its insurance company holding system as a whole.

15 New Code section 521A.1(9A) adds a definition of
16 "supervisory college" which is a temporary or permanent forum
17 for communication and cooperation between regulators charged
18 with supervision of an insurer or its affiliates.

19 Code section 521A.3(1) is amended to eliminate a requirement
20 that a tender offer or other request or invitation for tenders
21 made by an insurer must be sent to the insurer's shareholders.

22 Code section 521A.3(1) is also amended to require the
23 controlling person of a domestic insurer seeking to divest its
24 controlling interest in the insurer to file a confidential
25 notice of its proposed divestiture with the commissioner at
26 least 30 days prior to the cessation of control. In some
27 circumstances, the commissioner may require a party seeking
28 to divest or acquire a controlling interest in an insurer to
29 obtain approval of the transaction. The information shall
30 remain confidential until the conclusion of the transaction
31 unless the commissioner determines that confidential treatment
32 will interfere with enforcement of the statute.

33 Code section 521A.3(2) is amended to add additional
34 information that must be included in the required statement
35 filed with the commissioner by an insurer seeking acquisition

1 of control of or merger with a domestic insurer.

2 Code section 521A.3(4)(a) is amended to require an applicant
3 for merger or other acquisition of control of a domestic
4 insurer to demonstrate to the commissioner that the merger or
5 acquisition is not likely to be hazardous or prejudicial to the
6 insurance-buying public.

7 Code section 521A.3(4)(b) is amended to provide that the
8 public hearing on a proposed merger or acquisition shall be
9 held within 30 days after the commissioner determines that
10 the required statement has been completed and contains all
11 required information. Notice of the hearing shall be given by
12 the commissioner to the person filing the statement and to the
13 domestic insurer.

14 Code section 521A.3(4) is also amended to include procedures
15 where the proposed merger or acquisition will require the
16 approval of more than one state commissioner of insurance.
17 In such cases, public hearings can be held on a consolidated
18 basis and the required statement can be filed with the national
19 association of insurance commissioners. A consolidated hearing
20 must be public and be held in the United States before the
21 commissioners of the states where the insurers involved are
22 domiciled.

23 Code section 521A.4(2) is amended to include additional
24 information that must be provided to the commissioner by an
25 insurer authorized to do business in this state which is a
26 member of an insurance holding company system and is required
27 to register in this state.

28 Code section 521A.4(11) is amended to provide that if a
29 person files with the commissioner a disclaimer of affiliation
30 with an authorized insurer the disclaimer shall be deemed
31 to have been granted unless the commissioner, within 30
32 days following receipt of the disclaimer, notifies the party
33 that the disclaimer is disallowed. In that instance, the
34 disclaiming party may request a hearing. A disclaiming party
35 is relieved of its duty to register in this state if the

1 disclaimer is approved or is deemed to have been granted.

2 New Code section 521A.4(11A) requires the ultimate
3 controlling person of every insurer subject to registration
4 to file an annual enterprise risk report identifying material
5 risks within the insurance holding company system that could
6 pose enterprise risk to the insurer.

7 Code section 521A.4(12) is amended to provide that failure
8 to file an enterprise risk report within the time specified is
9 a violation of the Code section and could subject the violator
10 to civil penalties of \$1,000 for each day of delay with a
11 maximum of \$10,000 or \$1,000 per violation. A violator may
12 also be subject to a cease and desist order and voiding of
13 contracts. A willful violation is punishable as a class "D"
14 felony. A class "D" felony is punishable by confinement for no
15 more than five years and a fine of at least \$750 but not more
16 than \$7,500.

17 Code section 521A.5(1)(a) is amended to require that
18 agreements for cost-sharing services and management between
19 registered insurers and their affiliates must include
20 provisions as required by rules issued by the commissioner.

21 Code section 521A.5(1)(b) is amended to remove a provision
22 that limited a domestic insurer and its holding company system
23 from entering into certain transactions involving guarantees.

24 Code section 521A.5(1)(c) is amended to require a
25 domestic insurer and its holding company system to notify
26 the commissioner before entering into reinsurance pooling
27 agreements.

28 Code sections 521A.5(1)(c)(1) and (2) are amended to require
29 notification to the commissioner if the projected reinsurance
30 premium or a change in the insurer's liabilities in any of the
31 next three years equals or exceeds 5 percent of the insurer's
32 surplus as regards policyholders, or if the insurer and its
33 holding company system enter into management agreements,
34 service contracts, and other cost-sharing arrangements with
35 a quantifiable guarantee amount which exceeds the lesser of

1 one-half of 1 percent of the insurer's admitted assets or 10
2 percent of surplus as regards policyholders. All guarantees
3 which are not quantifiable as to amount are subject to the
4 notice requirements.

5 Code section 521A.5(1)(c) is also amended to require a
6 domestic insurer and its holding company system to notify the
7 commissioner of direct or indirect acquisitions or investments
8 in a person that controls the insurer or an affiliate of the
9 insurer in an amount which together with its present holdings
10 in such investments, exceeds 2.5 percent of the insurer's
11 surplus to policyholders. Certain specified acquisitions or
12 investments are exempt from this requirement.

13 New Code section 521A.5(4) adds a standard related to the
14 management of domestic insurers subject to registration. The
15 provision allows a domestic insurer to have or share common
16 management, or cooperative or joint use of personnel, property,
17 or services under arrangements meeting the standards of the
18 provision as to the makeup and procedures of the board of
19 directors of the insurer and the board's committees. An
20 insurer may apply to the commissioner for a waiver from
21 these requirements if the insurer's annual direct written and
22 assumed premium is less than \$300 million or based upon unique
23 circumstances.

24 Code section 521A.6(1) is amended to authorize the
25 commissioner to examine any registered insurer and its
26 affiliates to ascertain the financial condition of the insurer,
27 including the enterprise risk to the insurer by any entity or
28 combination of entities within the insurance holding company
29 system.

30 New provisions in Code section 521A.6 allow the commissioner
31 to order the production of books and records of registered
32 insurers, including information not in the possession of, but
33 obtainable by the insurer, to determine compliance with the
34 Code chapter. If the insurer fails to comply with an order,
35 the commissioner has the power to examine the affiliates to

1 obtain the information, issue subpoenas, administer oaths,
2 and examine persons under oath to determine compliance. The
3 commissioner can also petition a court to enter an order
4 compelling the appearance of witnesses or the production of
5 documentary evidence. The commissioner can also, after notice
6 and a hearing, require an insurer to pay a penalty of \$500
7 for each day's delay in providing information, or may suspend
8 or revoke the insurer's certificate of authority. The Code
9 section is also amended to provide that the commissioner may
10 retain consultants and assess expenses in connection with
11 examinations under the new provisions.

12 New Code section 521A.6A authorizes the commissioner
13 to participate in a supervisory college for any registered
14 domestic insurer that is part of an insurance holding company
15 system with international operations in order to determine
16 compliance by the insurer with the Code chapter and specifies
17 some of the commissioner's powers in that respect. The
18 provision allows the commissioner to act as the group-wide
19 supervisor of a supervisory college and sets forth criteria
20 for determining which chief insurance regulatory official
21 should act as the supervisor. If the commissioner serves
22 as the group-wide supervisor, the provision authorizes
23 the commissioner to engage in conducting and coordinating
24 certain group-wide supervision activities. The commissioner
25 is authorized to assess each registered insurer subject to
26 this provision the reasonable expenses of the commissioner's
27 participation in a supervisory college and also allows
28 the commissioner to establish a regular assessment to the
29 insurer for the ongoing expenses of convening a supervisory
30 college. The commissioner may enter into agreements with other
31 regulators in accordance with confidentiality requirements
32 for cooperation between the commissioner and other regulatory
33 agencies.

34 Code section 521A.7 is amended to provide that the
35 commissioner or any person who receives documents, materials,

1 or other information under the Code chapter shall not be
2 permitted or required to testify in any private civil action
3 concerning such confidential documents, materials, or other
4 information. In order to assist in the performance of the
5 commissioner's duties, the commissioner may share such matters
6 with specified recipients provided that those recipients
7 agree to maintain confidentiality and privileged access to
8 the documents, materials, and information. Specifically as
9 to enterprise reports filed by insurers, the commissioner may
10 share those documents, materials, and information only with
11 commissioners of states that have statutes or regulations
12 that are substantially similar to the confidential treatment
13 provisions of this state. The commissioner may receive
14 documents, materials, or information from the national
15 association of insurance commissioners and its affiliates and
16 subsidiaries and from regulatory and law enforcement officials
17 of other foreign or domestic jurisdictions if the confidential
18 and privileged nature of the materials is maintained. The
19 commissioner may enter into written agreements concerning the
20 sharing of such materials.