

Maine Revised Statutes
Title 24-A: MAINE INSURANCE CODE
Chapter 3: THE INSURANCE SUPERINTENDENT

§222. REGISTRATION, REGULATION, SUPERVISION AND EXAMINATION OF HOLDING COMPANY SYSTEMS, AGENTS, PROMOTERS AND OTHERS

1. Examination.

[2013, c. 238, Pt. A, §34 (AFF); 2013, c. 238, Pt. A, §2 (RP) .]

1-A. Examination. For purposes of ascertaining compliance with law, or relationships and transactions between any person as defined hereafter and any insurer or proposed insurer subject to this section, the superintendent may as often as the superintendent determines to be advisable examine the accounts, records, documents and transactions pertaining to or affecting the insurance affairs or proposed insurance affairs, or transactions of the insurer or proposed insurer as may be in the possession of any holding company, its subsidiaries or affiliates as is necessary to ascertain the financial condition, including the enterprise risk to the insurer by the ultimate controlling party, or legality of conduct of the insurer or proposed insurer or the insurance holding company system as a whole or any combination of entities within the insurance holding company system and to verify the accuracy of any information provided or required to be provided to the superintendent pursuant to this section.

A. The superintendent's investigatory and examination authority under this subsection extends to the examination of:

- (1) Any business entity structured to hold the stock of an insurance company, or person holding the shares of voting stock or policyholder proxies of an insurer as voting trustee or otherwise, for the purpose of controlling the management thereof;
- (2) Any insurance producer, adjuster or consultant or other insurance or reinsurance representative or intermediary or any person acting as or purporting to be any of the foregoing;
- (3) Any person having a contract giving that person by its terms or in fact the exclusive or dominant right to manage or control the insurer; and
- (4) Any person in this State engaged in or proposing to be engaged in or acting as or purporting to be so engaged or proposing to be engaged in the business of insurance or in this State assisting in the promotion, formation or financing of an insurer or insurance holding corporation or corporation or other group financing an insurer or the production of its business. [2013, c. 238, Pt. A, §3 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

B. Subject to the limitations contained in this subsection and in addition to the powers that the superintendent has under section 221 and sections 223 to 228 relating to the examination of insurers, the superintendent may order an insurer registered under subsection 8 to produce records, books or papers in the possession of the insurer or affiliates as may be necessary to verify the accuracy of the information required to be provided to the superintendent under this section and any additional information pertinent to transactions between the insurer and affiliates. The books, records, papers and information are subject to examination in the same manner as prescribed in this chapter for an examination conducted under section 221, except that expenses incurred by the superintendent in examining an affiliate that is not an insurer must be borne by the registered insurer subject to the limitations of section 228, subsection 1. The superintendent may issue subpoenas, administer oaths and examine any person under oath for purposes of determining compliance with this subsection. [2013, c. 238, Pt. A, §3 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

C. A member of an insurer's insurance holding company system shall comply fully and accurately with a request by the insurer to provide it with information necessary to respond to an examination request by the superintendent pursuant to this section. [2013, c. 238, Pt. A, §3 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

D. The superintendent may order an insurer registered under subsection 8 to produce information not in the possession of the insurer if the insurer can obtain access to the information pursuant to contractual relationships, statutory obligations or any other lawful method. If the insurer cannot obtain the information requested by the superintendent, the insurer shall provide the superintendent a written objection with a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of the information. It is a violation of this section to submit an objection to production of information without a reasonable basis or to fail to produce information on the basis of an objection that the superintendent has denied after notice and opportunity for hearing. [2013, c. 238, Pt. A, §3 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

[2013, c. 238, Pt. A, §3 (NEW); 2013, c. 238, Pt. A, §34 (AFF) .]

2. Definitions. As used in this section, unless the context otherwise requires, the following words shall have the following meanings.

A. Affiliate. "Affiliate" of, or a person "affiliated" with, a specific person means a person who directly or indirectly controls, or is controlled by, or is under common control with the person specified. [1975, c. 356, §1 (RPR).]

A-1. Beneficial owner. "Beneficial owner" of a voting security, voting insurance policy or guaranty capital share means any person or group of persons acting in concert who, directly or indirectly, through any contract, arrangement, proxy appointment, understanding, relationship or otherwise, has or shares:

(1) Voting power over the security, policy or guaranty capital share, including the power to vote or to direct the voting of the security, policy or share; or

(2) Investment power over the security, policy or share, including the power to dispose or to direct the disposition of the security, policy or share.

The superintendent may determine that persons are acting in concert, either on the superintendent's own initiative or upon application of an interested person, based upon evidence that actions taken by those persons, if consummated, may permit the exercise of common control, directly or indirectly, over the domestic insurer. The absence of a determination by the superintendent that persons are acting in concert shall not be construed to exempt those persons from compliance with the requirements of this section. [1989, c. 385, §1 (NEW).]

A-2. "Continuing director" means:

(1) Any member of a domestic insurer's board of directors, while that person is a member of the board of directors, who was a member of that board of directors prior to the time that any person acquires control of the domestic insurer or any person controlling the insurer; and

(2) Any successor of a continuing director, while the successor is a member of the board of directors, who is recommended or elected to succeed a continuing director by a number of continuing directors equal to a majority of continuing directors in office immediately preceding the acquisition of control. [1991, c. 37, §1 (NEW).]

B. Control.

(1) "Control," including "controlling," "controlled by" and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control is presumed to exist if any person is the beneficial owner of 10% or more of the voting securities

or guaranty capital shares, if applicable, or has the right to cast 10% or more of the votes in the election of directors or other governing body of any other person. A beneficial owner may rely in determining the amount of voting securities of any person outstanding upon information set forth in that person's most recent quarterly or annual report filed with the Securities and Exchange Commission pursuant to the Exchange Act unless the beneficial owner knows or has reason to believe that the information contained in the quarterly or annual report is inaccurate. Two or more domestic mutual insurance companies that have restricted their licensed territories to the State are not considered subject to this section merely because those insurance companies commonly share facilities, incurred expenses or personnel services or otherwise utilize cost allocations based on generally accepted accounting principles including pro rata sharing of assumed risks. A person may have more than one controlling person, even if those controlling persons are not acting in concert.

(2) Notwithstanding the presumption of control contained in subparagraph (1), the superintendent, upon application of the insurance company, may determine that the insurer is not controlled by the person presumed to control it. In addition, the superintendent, after notice and an opportunity to be heard, may determine, notwithstanding the absence of the presumption in subparagraph (1), that a person does control an insurance company or companies.

(3) The presumption of control contained in subparagraph (1) does not apply to a securities broker-dealer holding, in the usual and customary broker's function, less than 20% of the voting securities of another person. [2013, c. 238, Pt. A, §4 (AMD); 2013, c. 238, Pt. A, §34 (AFF).]

B-1. Exchange Act. "Exchange Act" means the federal Securities Act of 1933, 15 United States Code, Chapter 2-A, Subchapter 1 and the federal Securities Exchange Act of 1934, 15 United States Code, Chapter 2-B. [2013, c. 238, Pt. A, §34 (AFF); 2013, c. 238, Pt. A, §5 (RPR).]

B-2. Enterprise risk. "Enterprise risk" means an activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer, or of its insurance holding company system as a whole, including, but not limited to, anything that would cause or exacerbate a risk-based capital event as described in sections 6453 to 6456 or would cause the insurer to be in unsound or hazardous financial condition as determined by the superintendent. [2013, c. 238, Pt. A, §6 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

C. Insurance holding company system. "Insurance holding company system" shall consist of 2 or more affiliated persons, one or more of whom is an insurer. [1975, c. 356, §1 (RPR).]

D. Insurer. "Insurer" has the same meaning as in section 4 and includes a fraternal benefit society required to be licensed under section 4124 or 4125. [2013, c. 238, Pt. A, §7 (AMD); 2013, c. 238, Pt. A, §34 (AFF).]

D-1. [1993, c. 313, §7 (RP).]

D-2. "Net gains from operations" means:

(1) For life insurers, the net income or loss after dividends to policyholders and federal income taxes but before the inclusion of net realized capital gains or losses; and

(2) For nonlife insurers, the net income or loss after dividends to policyholders and federal income taxes and net realized capital gains or losses. [1993, c. 313, §8 (NEW).]

D-3. Own risk and solvency assessment or ORSA. "Own risk and solvency assessment" or "ORSA" means a confidential internal assessment that is conducted by an insurer or insurance holding company system of the material and relevant risks associated with its current business plan and the sufficiency of its capital resources to support those risks and that is appropriate to the nature, scale and complexity of the operations of the insurer or insurance holding company system. [2013, c. 238, Pt. A, §8 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

D-4. ORSA guidance manual. "ORSA guidance manual" means the NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual, as amended from time to time. A change in the ORSA guidance manual is effective with regard to this State on January 1st following the calendar year in which the change has been adopted by the National Association of Insurance Commissioners. [2013, c. 238, Pt. A, §8 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

D-5. ORSA summary report. "ORSA summary report" means a confidential high-level summary of an insurer's or insurance holding company system's own risk and solvency assessment and includes a combination of separate reports that collectively meet the requirements of the ORSA guidance manual. [2013, c. 238, Pt. A, §8 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

E. Person. "Person" shall mean an individual, a corporation, a corporation which, pursuant to Title 24, chapter 19, maintains and operates nonprofit hospital service plans, nonprofit medical service plans or nonprofit health care plans or any combination thereof, a partnership, an association, a joint stock company, a business trust, an unincorporated organization or any similar entity, or any combination of the foregoing acting in concert. [1975, c. 356, §1 (RPR).]

F. "Subsidiary" of a specified person means an affiliate controlled by that person directly or through one or more intermediaries. [2001, c. 72, §4 (AMD).]

G. "Surplus regarding policyholders" means admitted assets less all liabilities. [1993, c. 313, §9 (NEW).]

H. "Unassigned funds" means the undistributed and unappropriated amount of surplus remaining on the balance sheet date as the result of all operations of an insurance company from its commencement of business. [1993, c. 313, §9 (NEW).]

I. "Voting security" means any security with voting rights or any security convertible into or evidencing a right to acquire a security with voting rights. [1999, c. 113, §10 (NEW).]

[2013, c. 238, Pt. A, §§4-8 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

3. Subsidiaries of insurers; investments to acquire interest. This subsection pertains to insurers and their subsidiaries and affiliates.

A. Any domestic insurer may invest in or otherwise acquire one or more subsidiaries as authorized in section 1115 or section 1157. [1987, c. 399, §1 (AMD).]

A-1. A domestic insurer shall notify the superintendent in writing within 30 days after any investment by the insurer or any of its affiliates in any one corporation if the insurer has invested in that corporation and the total investment in that corporation by the insurance holding company system exceeds 10% of the corporation's voting securities. [1991, c. 828, §4 (AMD).]

B. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within such further time as the superintendent may prescribe, unless at any time after the investment was made, the investment met the requirements for investment under any other section of this Title and the insurer has notified the superintendent thereof. [1991, c. 828, §4 (AMD).]

[1991, c. 828, §4 (AMD) .]

4. Tender offers.

[1989, c. 385, §4 (RP) .]

4-A. Tender offers.

[2013, c. 238, Pt. A, §34 (AFF); 2013, c. 238, Pt. A, §9 (RP) .]

4-B. Application for approval.

[2013, c. 238, Pt. A, §34 (AFF); 2013, c. 238, Pt. A, §10 (RP) .]

4-C. Acquisitions; tender offers; divestitures. The following provisions apply to a transaction or proposed transaction that results or might result in the change of direct or indirect control of a domestic insurer.

A. Except as provided in paragraph B, a person other than the issuer may not make a tender offer for, or a request or invitation for tenders of, or an agreement to exchange securities for, or otherwise acquire any voting security, or any security convertible into a voting security, of a domestic insurer or of any person controlling a domestic insurer if, as a result of the consummation thereof, the person making the tender offer, request or agreement would, directly or indirectly, acquire actual or presumptive control of the insurer or controlling person, and a person may not enter into an agreement to merge with or otherwise acquire actual or presumptive control of a domestic insurer or its controlling person, unless:

- (1) The person has filed with the superintendent and has sent the domestic insurer an application containing the information required by paragraph C;
- (2) The offer, request, invitation, agreement or acquisition has been approved by the superintendent in the manner prescribed in subsection 7; and
- (3) Ten days has elapsed from the date of approval by the superintendent and no injunction or other court order precludes consummation of the offer, request, invitation, agreement or acquisition.

[2013, c. 238, Pt. A, §11 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

B. A controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer in any manner, including any partial divestiture that would cause that person to cease to be a controlling person, shall file with the superintendent, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days before the cessation of control, unless the divestiture transaction consists of the transfer of the divesting person's interest to one or more acquiring persons, all of whom have reported their respective acquisitions pursuant to paragraph A. Unless the superintendent grants an exemption under paragraph D, the divesting person shall file an application substantially similar to the application required under paragraph C, with such modifications as the superintendent determines to be appropriate based on the nature of the transaction. The superintendent shall decide whether to approve the application using the criteria in subsection 7, paragraph A and may hold a public hearing if the superintendent determines that a hearing is in the interests of policyholders or the public. If 20 days has elapsed after the superintendent's receipt of a notice filed under this paragraph and the superintendent has not disapproved the proposed divestiture or postponed its effective date pending further review, the superintendent is deemed to have granted an exemption under paragraph D, subparagraph (2). [2013, c. 238, Pt. A, §11 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

C. An application required by paragraph A must contain the following information as applicable, made under oath or affirmation, except that if the proposed transaction is subject to regulation under the Exchange Act or Title 32, chapter 135, the superintendent may accept the relevant documents filed with the United States Securities and Exchange Commission or the Department of Professional and Financial Regulation, Office of Securities in lieu of some or all of the documents required by this paragraph:

- (1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control is to be effected and:
 - (a) If the person acquiring control is an individual, the person's principal occupation and all offices and positions held during the past 5 years and any convictions for crimes other than minor traffic violations during the past 10 years; and
 - (b) If the person acquiring control is not an individual, a report of the nature of its business operations during the past 5 years or for a lesser period the person and any predecessors have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to

become directors or executive officers of the person or who perform or will perform functions appropriate to such positions. The list must include the information required by division (a) for each individual listed;

- (2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction through which funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing consideration. If a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender is confidential if the person filing the application so requests;
- (3) Fully audited financial information as to the earnings and financial condition of each acquiring person for the preceding 5 fiscal years, or for a lesser period if the acquiring person and any predecessors have been in existence for less than 5 years, and similar unaudited information as of a date not earlier than 90 days before the filing of the application;
- (4) Any plans or proposals that each acquiring person may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person or to make any other material change in its business or corporate structure or management;
- (5) The number of shares of any security referred to in paragraph A that each acquiring person proposes to acquire, the terms of the offer, request, invitation, agreement or acquisition referred to in paragraph A and a statement as to the method by which the fairness of the proposal was arrived at;
- (6) The amount of each class of any security referred to in paragraph A that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring person;
- (7) A full description of any contracts, arrangements or understandings with respect to any security referred to in paragraph A in which any acquiring person is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements or understandings have been entered into;
- (8) A description of the purchase by any acquiring person of any security referred to in paragraph A during the 12 calendar months preceding the filing of the application, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid;
- (9) A description of any recommendations to purchase any security referred to in paragraph A made during the 12 calendar months preceding the filing of the application by any acquiring person or by anyone based upon interviews with or at the suggestion of the acquiring person;
- (10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities referred to in paragraph A and copies of any additional related soliciting material that has been distributed;
- (11) The terms of any agreement, contract or understanding made or proposed to be made with any broker-dealer as to solicitation of securities referred to in paragraph A for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard to the solicitation of securities referred to in paragraph A;
- (12) An agreement by the person required to file the application to provide the annual enterprise risk report required by subsection 8, paragraph B-1 for as long as control by the person exists;
- (13) An acknowledgement by the person required to file the application that the person and all subsidiaries within its control in the insurance holding company system will provide information to the superintendent upon request as necessary to evaluate enterprise risk to the insurer;

(14) A statement as to whether or not the proposed transaction will result in an increase in market share in this State in any line of insurance as specified in the annual statement required to be filed under section 423 for one or more insurers with combined market share greater than 5% and, if so, such further information on the competitive impact of the proposed transaction as the superintendent requires by rule or order; and

(15) Such additional information as the superintendent may prescribe by rule or order. [2013 , c. 238, Pt. A, §11 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

D. The superintendent may exempt a person otherwise subject to the requirements of this subsection and subsection 7 from some or all of those requirements if the person demonstrates to the satisfaction of the superintendent that an exemption will not be detrimental to the interests of policyholders in the State or the public and that the transaction satisfies at least one of the following criteria:

(1) The interests of the State in regulating the transaction are minimal relative to the interests of other jurisdictions or are minimal relative to the impact of the transaction as a whole;

(2) The person proposes a divestiture of control under paragraph B and the superintendent determines that the prior approval process is not necessary in the circumstances of the transaction;

(3) A party proposing to acquire presumed control submits a disclaimer fully disclosing all material relationships and bases for affiliation with the insurer and demonstrating to the satisfaction of the superintendent that the person will not be acquiring actual control. As a condition of granting an exemption under this subparagraph, the superintendent may require the person to agree to reasonable restrictions on the exercise of rights or powers that might otherwise tend to result in control;

(4) The superintendent elects to participate in a consolidated approval proceeding conducted under the laws of one or more other states pursuant to subsection 7-A, paragraph E; and

(5) The transaction involves the control of a person that is not primarily engaged in the business of insurance, directly or through its affiliates, and there will be no material impact on the management or operations of a domestic insurer.

A person requesting an exemption under this paragraph must agree to provide additional information if needed by the superintendent and to postpone the effective date of the transaction if ordered by the superintendent while the request for exemption is pending. [2013, c. 238, Pt. A, §11 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

E. A broker-dealer that is exempt from the requirements of this section pursuant to subsection 2, paragraph B, subparagraph (3) shall disclose to the superintendent the identity of any person, or group of persons the broker-dealer knows or reasonably believes to be acting in concert, on whose behalf the broker-dealer knows or reasonably believes that the broker-dealer holds 5% or more of the voting securities of a domestic insurer or of any entity the broker-dealer knows or reasonably believes to be a controlling person of a domestic insurer. A broker-dealer shall disclose to the superintendent on request the beneficial owners of any securities held by the broker-dealer of any entity that is, or that the superintendent believes might be or might become, a member of the insurance holding company system of an insurer subject to registration under subsection 8. [2013, c. 238, Pt. A, §11 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

[2013, c. 238, Pt. A, §11 (NEW); 2013, c. 238, Pt. A, §34 (AFF) .]

5. Tender offer material. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of such voting securities for control of a domestic insurer or its controlling person made by or on behalf of any such person must contain any information specified in subsection 4-C as the superintendent may prescribe and must be filed with the superintendent at the time that material is first published or sent or given to security holders. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request must contain the information that the

superintendent may prescribe as necessary or appropriate in the public interest or for the protection of policyholders and must be filed with the superintendent at the time copies of that material are first published or sent or given to security holders.

[2013, c. 238, Pt. A, §12 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

6. Information as to applicant. If a person required to file an application under subsection 4-C is a partnership, limited partnership, syndicate or other group, the superintendent may require that the information called for by subsection 4-C must be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group and each person who controls any such partner or member. If a person required to file an application under subsection 4-C is a corporation, the superintendent may require that the information called for by subsection 4-C must be given with respect to the corporation and each officer and director thereof and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding securities of the corporation.

[2013, c. 238, Pt. A, §13 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

7. Approval, disapproval of proposed change of control.

A. The superintendent shall hold a hearing in accordance with the procedures set forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4, within 30 days after the application required by subsection 4-C has been filed with the superintendent. The superintendent shall make a determination within 30 days after the conclusion of that hearing. The superintendent shall approve any purchase, exchange, merger or other change of control referred to in subsection 4-C unless the superintendent finds that:

- (1) After the change of control, the domestic insurer could not satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance or last renewal or continuation of its certificate of authority to do the insurance business that it intends to transact in this State;
 - (2) The effect of the purchases, exchanges, merger of a controlling person of the insurer or other changes of control may be substantially to lessen competition in insurance in this State or tend to create a monopoly in this State or would violate the laws of this State or of the United States relating to monopolies or restraints of trade;
 - (3) The financial condition of an acquiring person would jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;
 - (4) The plans or proposals that the acquiring or divesting person has to liquidate the insurer, to sell its assets or to merge it with any person, or to make any other major change in its business or corporate structure or management, are unfair or prejudicial to policyholders;
 - (5) The competence, experience and integrity of those persons who would control the operation of the insurer indicate that it would not be in the interest of policyholders or the public to permit them to do so;
 - (6) Any merger of a domestic insurer does not comply with section 3474; or
 - (7) The change of control would tend to affect adversely the contractual obligations of the domestic insurer or its ability and tendency to render service in the future to its policyholders and the public.
- [2013, c. 238, Pt. A, §14 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

B. Paragraph A, subparagraphs (3) to (7) do not apply to any change of control if and to the extent that the superintendent, by rule or by order, exempts the change of control from the provisions of those subparagraphs as not included within the purpose of this subsection. [2013, c. 238, Pt. A, §14 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

C. Merger, consolidation or bulk reinsurance as to a domestic insurer may be effectuated only pursuant to the applicable provisions of chapter 47, subchapter 4 and sections 3875, 4108 and 4109, as related to organization and powers of insurers. [2013, c. 238, Pt. A, §14 (AMD); 2013, c. 238, Pt. A, §34 (AFF).]

D. Violation.

(1) Failure to file the application required under subsection 4-C constitutes a violation of this section.

(2) Effectuation of or any attempt to effectuate an acquisition of control of, divestiture of control of or merger with a domestic insurer earlier than 30 days after the filing of the application required by subsection 4-C, before the superintendent's decision if a hearing is held or after disapproval by the superintendent of the acquisition, divestiture or merger, constitutes a violation of this section. [2013, c. 238, Pt. A, §14 (AMD); 2013, c. 238, Pt. A, §34 (AFF).]

[2013, c. 238, Pt. A, §14 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

7-A. Consolidated proceedings. If a proposed change of control requires, or is part of a series of related transactions that require, the approval of the insurance regulators of more than one state, a person filing an application under subsection 4-C with respect to the change of control may file a request for a consolidated approval proceeding with the National Association of Insurance Commissioners.

A. The applicant shall file a copy of the application made under subsection 4-C with the National Association of Insurance Commissioners within 5 days after making the request for a consolidated approval proceeding. [2013, c. 238, Pt. A, §15 (NEW); 2013, c. 238, Pt. A, §34 (AFF) .]

B. Within 10 days after receiving notice from the National Association of Insurance Commissioners of a request for a consolidated approval proceeding, the superintendent shall issue an order, with notice to the applicant and to the National Association of Insurance Commissioners, specifying whether the superintendent elects to participate in the consolidated proceeding or to opt out of the consolidated proceeding. [2013, c. 238, Pt. A, §15 (NEW); 2013, c. 238, Pt. A, §34 (AFF) .]

C. If the superintendent opts out of the consolidated approval proceeding pursuant to paragraph B, the superintendent shall hold a public hearing under subsection 7 unless the superintendent grants an exemption under subsection 4-C, paragraph D. Opting out of the consolidated proceeding does not preclude or limit the superintendent's authority to coordinate a proceeding conducted under subsection 7 with the consolidated proceeding or with other parallel proceedings in other states. [2013, c. 238, Pt. A, §15 (NEW); 2013, c. 238, Pt. A, §34 (AFF) .]

D. With the agreement of the other participating insurance regulators, the superintendent may initiate a consolidated approval proceeding under this paragraph to render decisions on all applications within the scope of the order of consolidation issued by the superintendent. A consolidated approval proceeding convened under this paragraph is a public adjudicatory proceeding. Except as provided in this paragraph, the proceeding must be conducted in the same manner as a proceeding under subsection 7.

(1) A person who would have the right to participate in a proceeding on any of the consolidated applications held under subsection 7 or substantially similar laws of other states has the right to participate in the proceeding.

(2) The chief insurance regulator of a participating state has the right to participate in making the decision or in designating a decision-making panel.

(3) The proceeding is public, except that deliberations of a decision-making panel are not public proceedings and communications in the course of those deliberations among panel members and their advisers, other than the decision itself, are not public records.

(4) The proceeding may be held in any state with a significant connection to the subject transactions or in a nearby location in an adjacent state. Sessions may be held in different states. Provision must be made for parties, witnesses, insurance regulators and members of the public to attend and participate in the proceeding by telecommunication.

(5) The superintendent, decision-making panel or presiding officer may vary the applicable procedural requirements under this Title and Title 5 to the extent the superintendent, panel or presiding officer determines to be reasonably necessary for the fair and effective administration of a consolidated multistate proceeding.

(6) The decision is subject to judicial review in the same manner as a final agency action of the superintendent. [2013, c. 238, Pt. A, §15 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

E. The superintendent may participate, including serving as a decision maker or member of a decision-making panel, in a consolidated approval proceeding conducted under the laws of one or more other states if the consolidated proceeding provides for a public hearing with substantially similar rights of participation and judicial review as a proceeding conducted pursuant to paragraph D. If the superintendent elects under this paragraph to participate in a consolidated proceeding that is conducted under the laws of one or more other states, the application is exempt from further review under this section pursuant to subsection 4-C, paragraph D, subparagraph (4) and the consolidated proceeding, notwithstanding the superintendent's participation, is not subject to any provisions of the law of this State governing adjudicatory proceedings, judicial review, public records or public meetings. [2013, c. 238, Pt. A, §15 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

[2013, c. 238, Pt. A, §15 (NEW); 2013, c. 238, Pt. A, §34 (AFF) .]

7-B. Supervisory colleges. In order to assess the business strategy, financial position, legal and regulatory position, risk exposure including enterprise risk, risk management and governance processes of a domestic insurer that is part of an insurance holding company system with international operations, the superintendent may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. A supervisory college may be convened as either a temporary or permanent forum for communication and cooperation among the regulators charged with the supervision of the insurer or its affiliates.

A. The superintendent's powers with respect to supervisory colleges include, but are not limited to:

- (1) Initiating the establishment of a supervisory college or participating in a supervisory college initiated by one or more other regulators;
- (2) Entering into agreements providing the basis for cooperation between the superintendent and the other participating regulators and for the activities of the supervisory college, including but not limited to agreements for sharing confidential information under section 216, subsection 5;
- (3) Obtaining and providing assistance in examinations conducted under subsection 1-A or under the examination authority of other participating jurisdictions;
- (4) Clarifying the membership and participation of other regulators in the supervisory college;
- (5) Clarifying the functions of the supervisory college and the role of other regulators, including the designation of the superintendent or another member of the supervisory college as a group-wide supervisor;
- (6) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities and processes for information sharing; and
- (7) Establishing a crisis management plan. [2013, c. 238, Pt. A, §15 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

B. A domestic insurer whose activities are subject to this subsection is liable for and shall pay the reasonable expenses of the superintendent's participation in a supervisory college, including reasonable travel expenses. The superintendent may establish a regular assessment to the insurer for the payment of these expenses. [2013, c. 238, Pt. A, §15 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

C. This section may not be construed to delegate to a supervisory college the authority of the superintendent to regulate or supervise an insurer or its affiliates within this State. [2013, c. 238, Pt. A, §15 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

[2013, c. 238, Pt. A, §15 (NEW); 2013, c. 238, Pt. A, §34 (AFF) .]

8. Registration of holding company system insurers.

A. An insurer that is authorized to do business in this State and that is a member of an insurance holding company system shall register with the superintendent, except that these requirements do not apply to a foreign insurer domiciled in a jurisdiction that in the opinion of the superintendent has adopted by statute or regulation disclosure statements and standards substantially similar to those contained in this section. An insurer domiciled in a jurisdiction that has not adopted by statute or regulation disclosure requirements and standards substantially similar to those contained in this section may be treated as a domestic insurer for purposes of this section. Each insurer that is subject to registration under this subsection shall register within 15 days after it becomes subject to registration, and annually thereafter by May 1st, unless the superintendent, for good cause shown, extends the time for registration and then an insurer shall register within that extended time. This section does not prohibit the superintendent from requesting any authorized insurer that is a member of an insurance holding company system and not subject to registration under this section to provide a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its state of domicile. Upon request of the insurer or of the insurance regulatory authority of another jurisdiction in which the insurer is authorized to transact insurance, the superintendent at the insurer's expense shall furnish a copy of the registration statement or other information filed by a domestic insurer with the superintendent pursuant to this section; [2013, c. 238, Pt. A, §16 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

B. An insurer subject to registration shall file a registration statement with the superintendent on a form and in a format prescribed by the National Association of Insurance Commissioners. The registration statement must contain current information about:

- (1) The capital structure, general financial condition, ownership and management of the insurer and of any person controlling the insurer;
- (1-A) The identity and relationship of every member of the insurance holding company system;
- (2) The following transactions currently outstanding between the insurer and its affiliates:
 - (a) Loans and other investments, and purchases, sales or exchanges of securities of the affiliate by the insurer or of the insurer by its affiliates;
 - (b) Purchases, sales or exchanges of assets;
 - (c) Transactions not in the ordinary course of business;
 - (d) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
 - (e) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;
 - (f) Reinsurance agreements;
 - (g) Dividends and other distributions to shareholders; and

(h) Consolidated tax allocation agreements;

(2-A) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(2-B) If requested by the superintendent, financial statements of or within the insurance holding company system, including all affiliates. The required financial statements may include but are not limited to annual audited financial statements filed with the United States Securities and Exchange Commission pursuant to the Exchange Act. An insurer required to file financial statements pursuant to this subparagraph may satisfy the request by providing the superintendent with the most recently filed parent corporation financial statements that have been filed with the United States Securities and Exchange Commission;

(3) Other matters concerning transactions between the insurer and any affiliate as may be required by the superintendent; and

(4) Any other information required by the superintendent by rule; [2013, c. 238, Pt. A, §17 (AMD); 2013, c. 238, Pt. A, §34 (AFF).]

B-1. The controlling person with ultimate control of an insurer subject to registration shall also file an annual enterprise risk report. The report must be appropriate to the nature, scale and complexity of the operations of the insurance holding company system and must, to the best of the controlling person's knowledge and belief, identify the material risks within the insurance holding company system, if any, that could pose enterprise risk to the insurer. The report must be filed with the lead state regulator of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the National Association of Insurance Commissioners; [2013, c. 238, Pt. A, §18 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

B-2. An insurer subject to registration shall file statements confirming that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved and implemented and continue to maintain and monitor corporate governance and internal control procedures; [2013, c. 238, Pt. A, §18 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

B-3. A domestic insurer that is subject to registration, and has annual premium of \$500,000,000 or more or is a member of an insurance holding company system with annual premium of \$1,000,000,000 or more, shall conduct an own risk and solvency assessment in accordance with the requirements of this paragraph at least annually, and also at any time when there are significant changes to the risk profile of the insurer or its insurance holding company system, except as otherwise provided in subparagraph (1). For purposes of this paragraph, "premium" means direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation within the United States Department of Agriculture, Risk Management Agency and with the National Flood Insurance Program within the United States Department of Homeland Security, Federal Emergency Management Agency.

(1) This paragraph does not apply if:

(a) The insurer is an agency, authority or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state;

(b) The insurer and its insurance holding company system did not meet either of the minimum premium criteria of this paragraph in the financial statements immediately preceding their most recent financial statements and the superintendent has not required compliance with this paragraph under subparagraph (2); or

(c) The superintendent has granted a waiver from the requirements of this paragraph based upon unique circumstances. In deciding whether to grant a waiver, the superintendent may consider the type and volume of business written by the insurer, the ownership and organizational structure of the insurer and its insurance holding company system and any

other factor the superintendent considers relevant to the insurer or the insurer's insurance holding company system. If the insurer's insurance holding company system includes insurers domiciled in more than one state, the superintendent shall coordinate with the lead regulator and with other domiciliary regulators in considering whether to grant the insurer's request for a waiver.

- (2) The superintendent may require an insurer that does not meet either of the minimum premium criteria of this paragraph to comply with the requirements of this paragraph if:
- (a) The superintendent determines that the insurer should be subject to this paragraph due to unique circumstances, including, but not limited to, the type and volume of business written by the insurer, the ownership and organizational structure of the insurer and its insurance holding company system, federal agency requests and international supervisor requests;
 - (b) The insurer is subject to a corrective order or required to adopt a risk-based capital plan under sections 6453 to 6456;
 - (c) The superintendent has determined in accordance with rules adopted by the superintendent that the insurer is in hazardous financial condition; or
 - (d) The superintendent has determined that the insurer otherwise exhibits qualities of a troubled insurer.
- (3) If an insurer's insurance holding company system has annual premium of \$1,000,000,000 or more, the assessment and reporting required by this paragraph must be conducted for each insurer within the insurance holding company system, either on a systemwide basis or separately for insurers or combinations of insurers within the insurance holding company system.
- (4) An insurer subject to this paragraph shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing and reporting on its material and relevant risks. An insurer may satisfy this requirement by participating in an applicable risk management framework maintained by the insurance holding company system of which the insurer is a member.
- (5) An insurer subject to this paragraph shall prepare and submit regular ORSA summary reports that satisfy the requirements of this subparagraph and shall provide additional information to the superintendent upon request.
- (a) Beginning no later than 2015, the ORSA summary report must be prepared at least annually, on a timetable consistent with the insurer's internal strategic planning processes, and submitted to the lead regulator of the insurer's insurance holding company system, as determined by the procedures within a financial analysis handbook adopted by the National Association of Insurance Commissioners. If the superintendent is not the lead regulator, the insurer shall submit the insurer's or insurance holding company system's most recent ORSA summary report to the superintendent on request.
 - (b) The ORSA summary report must be prepared consistent with the ORSA guidance manual. Documentation and supporting information must be maintained and made available upon examination by or upon request of the superintendent.
 - (c) The insurer's or insurance holding company system's chief risk officer, or other executive having responsibility for the oversight of the insurer's enterprise risk management process, shall sign the ORSA summary report attesting to the best of the signer's belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA summary report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee of the board.
 - (d) An insurer may comply with this paragraph by providing the most recent ORSA summary report and a report or reports that are substantially similar to the ORSA summary report that are provided by the insurer or another member of its insurance holding company system to the insurance commissioner of another state or to an insurance supervisor or regulator of a

foreign jurisdiction if that report provides information that is comparable to the information described in the ORSA guidance manual. Any report in a language other than English must be accompanied by an English translation.

(6) The superintendent's review of the ORSA summary report, and any additional requests for information, must be consistent with accepted regulatory procedures for the analysis and examination of multistate or global insurers and insurance groups. [2013, c. 238, Pt. A, §18 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

C. An insurer does not need to disclose on the registration statement filed pursuant to this subsection information that is not material to the purposes of this section. Unless the superintendent by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit or investments involving 1/2 of 1% or less of an insurer's admitted assets as of December 31st immediately preceding are not material for purposes of this section; [2013, c. 238, Pt. A, §19 (AMD); 2013, c. 238, Pt. A, §34 (AFF).]

D. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting on forms provided by the superintendent all material changes or additions on or before the 15th day of the month following that in which it learns of each such change or addition; [1975, c. 356, §1 (NEW).]

E. The superintendent shall terminate the registration of any insurer which demonstrates that it is no longer a member of an insurance holding company system; [1975, c. 356, §1 (NEW).]

F. Two or more affiliated insurers subject to registration hereunder may file a consolidated registration statement or consolidated reports amending their respective consolidated statements or their individual registration statements so long as such consolidated filings correctly reflect the condition of and transactions between such persons; [1975, c. 356, §1 (NEW).]

G. The superintendent may allow or require any insurer, which is authorized to do business in this State and which is part of an insurance holding company system, to register on behalf of any affiliated insurer which is required to register under paragraph A and to file all information and material required to be filed under this section; [1975, c. 356, §1 (NEW).]

H. This section shall not apply to any insurer, information or transaction if and to the extent that the superintendent by rule, regulation or order shall exempt the same from the provisions of this section as not comprehended within the purposes thereof; [1975, c. 356, §1 (NEW).]

I. Any person may file with the superintendent a disclaimer of affiliation with any authorized insurer. A disclaimer of affiliation may be filed by the insurer or any member of an insurance holding company system. The disclaimer must fully disclose all material relationships and bases for affiliation between the disclaiming person and the insurer as well as the bases for disclaiming affiliation.

(1) An approved disclaimer relieves the disclaiming person of the duty to register under this section.

(2) A disclaimer is deemed approved unless the superintendent, within 30 days after receipt of a complete disclaimer, including any additional information required by the superintendent, either disallows the disclaimer or notifies the disclaiming person that a hearing will be held on the disclaimer.

(3) The superintendent may condition the approval of a disclaimer on terms and conditions reasonably designed to ensure that the disclaiming person will not exercise actual control or acquire the right to actual control over the insurer without triggering the prior approval process under subsections 4-C and 7.

(4) If the superintendent takes action on a disclaimer without hearing, including the imposition of conditions not agreed to by the disclaiming person, an aggrieved person has the right to a hearing.

(5) The superintendent may rescind the approval of a disclaimer, after notice and opportunity for hearing, on the basis of new information or changed circumstances demonstrating the existence of control over the insurer. [2013, c. 238, Pt. A, §20 (AMD); 2013, c. 238, Pt. A, §34 (AFF).]

[2013, c. 238, Pt. A, §§16-20 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

9. Transactions with affiliates; standards. Transactions by insurers subject to registration with their affiliates are subject to the following standards.

A. The terms, including any charges or fees for services performed, must be fair and reasonable. [1991, c. 828, §5 (AMD).]

A-1. Agreements for cost-sharing services and management must include any provisions required by the superintendent by rule. [2013, c. 238, Pt. A, §21 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

B. The books, accounts and records of each party must be so maintained as to disclose clearly and accurately the nature and details of the transaction, including all accounting information necessary to support the reasonableness of any charges or fees. [1991, c. 828, §5 (AMD).]

C. The insurer's surplus to policyholders following any dividends or distributions to stockholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. [1991, c. 548, Pt. B, §3 (AMD).]

D. Expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied. [1991, c. 828, §5 (NEW).]

E. A domestic insurer shall notify the superintendent in writing at least 30 days in advance, unless the superintendent authorizes a shorter period, before entering into or materially amending or modifying any of the following kinds of transactions with any member of its holding company system:

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments that are equal to or exceed:

(a) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets as of December 31st of the preceding year and 25% of surplus to policyholders;

(b) With respect to life insurers, 3% of the insurer's admitted assets as of December 31st of the preceding year; or

(c) With respect to nonprofit hospital and medical service organizations and their 100% controlled affiliates that operate as monoline health insurers or health maintenance organizations, the lesser of 5% of the entity's admitted assets as of December 31st of the preceding year and 25% of surplus to policyholders;

(2) Loans or extensions of credit to any person who is not an affiliate, if the insurer makes the loan or extension of credit with the agreement or understanding that the proceeds 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 affiliate of the insurer if the loan, extension of credit, purchase or investment is equal to or exceeds:

(a) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets as of December 31st of the preceding year and 25% of surplus to policyholders;

(b) With respect to life insurers, 3% of the insurer's admitted assets as of December 31st of the preceding year; or

(c) With respect to nonprofit hospital and medical service organizations and their 100% controlled affiliates that operate as monoline health insurers or health maintenance organizations, the lesser of 5% of the entity's admitted assets as of December 31st of the preceding year and 25% of surplus to policyholders;

(3) All reinsurance pooling agreements, and all reinsurance agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a projected change in the insurer's liabilities in any of the next 3 years, equals or exceeds 5% of the insurer's surplus to policyholders, as of December 31st of the preceding year, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(4) All management agreements, cost-sharing arrangements, tax allocation agreements, service contracts and guaranties, with the exception of guaranties that are quantifiable in amount and do not exceed, in the aggregate, the lesser of 0.5% of admitted assets and 10% of surplus as regards policyholders as of December 31st of the preceding year;

(5) Any transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the superintendent determines that those separate transactions were entered into over any 12-month period for such a purpose, the superintendent may exercise authority under this subsection; and

(6) Any other material transactions specified by rule that the superintendent has determined may adversely affect the interests of the insurer's policyholders.

A notice of amendment or modification of a transaction must include the reasons for the change and the financial impact on the domestic insurer. The insurer shall notify the superintendent within 30 days after terminating an agreement previously reported under this paragraph.

The superintendent shall disapprove a transaction that is subject to this paragraph if the transaction violates the standards of this section or other applicable law or adversely affects the interests of policyholders. The superintendent's failure to make a determination on a proposed transaction within 30 days after it has been submitted for review has the effect of an approval, unless the superintendent has issued a notice of adjudicatory hearing on the proposal in accordance with section 230. [2013, c. 238, Pt. A, §21 (AMD); 2013, c. 238, Pt. A, §34 (AFF).]

Any violation of this subsection, in addition to the penalties contained in subsection 14, renders the transactions voidable at the initiative of the superintendent or otherwise under applicable law. The superintendent's approval of a transaction in accordance with this section, whether actual or by acquiescence, may not override any applicable law and does not operate to authorize any transaction that would be contrary to law if it involved an insurer not a member of the same holding company system.

[2013, c. 238, Pt. A, §21 (AMD); 2013, c. 238, Pt. A, §34 (AFF).]

10. Insurer's surplus; adequacy factors. For the purposes of this section, in determining whether an insurer's surplus to policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, may be considered:

A. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria; [1975, c. 356, §1 (NEW).]

B. The extent to which the insurer's business is diversified among the several lines of insurance; [1975, c. 356, §1 (NEW).]

C. The number and size of the risks insured in each line of business; [1975, c. 356, §1 (NEW).]

D. The extent of the geographical dispersion of the insurer's insured risks; [1975, c. 356, §1 (NEW).]

E. The nature and extent of the insurer's reinsurance program; [1975, c. 356, §1 (NEW).]

F. The quality, diversification and liquidity of the insurer's investment portfolio; [1975, c. 356, §1 (NEW).]

G. The recent past and projected future trend in the size of the insurer's surplus as regards policyholders; [1993, c. 313, §10 (AMD).]

H. The quality and liquidity of investments in subsidiaries or affiliates. The department may discount any such investment or treat any investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders whenever the investment so warrants; [1993, c. 313, §10 (AMD).]

I. The adequacy of the insurer's reserves; [1993, c. 313, §10 (AMD).]

J. The surplus as regards policyholders maintained by other comparable insurers in respect of the factors set out in this subsection; and [1993, c. 313, §10 (AMD).]

K. The quality of the company's earnings and the extent to which the reported earnings include extraordinary items. [1993, c. 313, §10 (NEW).]

[2013, c. 238, Pt. A, §22 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

11. Dividends and distributions.

[1993, c. 313, §11 (RP) .]

11-A. Extraordinary dividends.

[2009, c. 511, Pt. A, §3 (RP) .]

11-B. All other dividends and distributions.

[2009, c. 511, Pt. A, §4 (RP) .]

11-C. Dividends and distributions. The superintendent shall review all dividends and distributions declared or paid by any insurer registered under subsection 8 at least annually.

A. An insurer shall notify the superintendent within 5 days after the declaration of any dividend or distribution. If the dividend or distribution is not disapproved pursuant to paragraph B and is not an extraordinary dividend as defined in paragraph C, the insurer may pay the dividend or distribution once the superintendent has approved the payment or 10 days have elapsed after the superintendent's receipt of notice. [2009, c. 511, Pt. A, §5 (NEW).]

B. The superintendent shall issue an order restricting or disallowing the payment of dividends and distributions if the superintendent determines that the insurer's surplus would not be reasonable in relation to the insurance company's outstanding liabilities, that the insurer's surplus would be inadequate to that company's financial needs, that the insurer's financial condition would constitute a condition hazardous to policyholders, claimants or the public or that a violation of subsection 4-C prevents the superintendent from sufficiently understanding the enterprise risk to the insurer posed by its affiliates or by its insurance holding company system. [2013, c. 238, Pt. A, §23 (AMD); 2013, c. 238, Pt. A, §34 (AFF).]

C. An extraordinary dividend may not be paid until affirmatively approved by the superintendent or until at least 60 days after the superintendent has received a request to pay an extraordinary dividend.

(1) For purposes of this subsection, "extraordinary dividend" means any dividend or distribution, other than a pro rata distribution of a class of the insurer's own securities, that:

(a) Exceeds 10% of the insurer's surplus to policyholders as of December 31st of the preceding year or the net gain from operations for the preceding calendar year, whichever is greater;

(b) Is declared within 5 years after any acquisition of control of a domestic insurer or of any person controlling that insurer, unless it has been approved by a number of continuing directors equal to a majority of the directors in office immediately preceding that acquisition of control; or

(c) Is not paid entirely from unassigned funds. For purposes of this division, 50% of the net of unrealized capital gains and unrealized capital losses, reduced, but not to less than zero, by that portion of the asset valuation reserve attributable to equity investments, must be excluded from the calculation of unassigned funds.

(2) An insurer may declare an extraordinary dividend on a conditional basis, subject to the superintendent's approval. A declaration pursuant to this subparagraph does not confer any rights upon stockholders until the superintendent has approved the payment or the 60-day review period has elapsed. [2009, c. 511, Pt. A, §5 (NEW).]

[2013, c. 238, Pt. A, §23 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

12. Verification of information.

[2013, c. 238, Pt. A, §34 (AFF); 2013, c. 238, Pt. A, §24 (RP) .]

13. Confidential communications.

[2013, c. 238, Pt. A, §34 (AFF); 2013, c. 238, Pt. A, §25 (RP) .]

13-A. Confidential information. This section applies to holding company information that is in the possession or control of the superintendent or that is in the possession or control of the National Association of Insurance Commissioners as a result of a filing under this section or as a result of information sharing by the superintendent as authorized by this section.

A. For purposes of this subsection, "holding company information" means any of the following documents, materials and other information if the document, material or other information has not specifically and expressly been designated as a public record by other applicable law:

- (1) Information obtained by the superintendent pursuant to an examination or investigation pursuant to subsection 1-A to the same extent as the information would have been confidential if obtained in an examination or investigation conducted under section 220 or 221;
- (2) A registration statement or report filed under subsection 8, including all supporting information;
- (3) A report filed under subsection 9, including all supporting information;
- (4) A notice of proposed divestiture filed under subsection 4-C, paragraph B, until the divestiture transaction has occurred;
- (5) A disclosure of the beneficial owner of securities made by a broker-dealer pursuant to subsection 4-C, paragraph E;
- (6) The identity of a lender that is to finance a proposed transaction if declared confidential under subsection 4-C, paragraph C, subparagraph (2);
- (7) Information filed in support of any required attestation of risk management or internal controls under subsection 4-C, paragraph C, subparagraph (12) or (13);
- (8) A competitive impact statement filed under subsection 4-C, paragraph C, subparagraph (14), including all supporting information;
- (9) Information obtained under an information-sharing agreement entered into pursuant to this section to the extent that it is protected by the confidentiality provisions of the agreement;

(10) Information obtained pursuant to this section from a jurisdiction other than this State to the extent that it is confidential under the laws of the jurisdiction in which it is normally maintained; and

(11) Information obtained under this section to the extent that it is confidential under other applicable law, including, but not limited to, section 216, section 225 and Title 1, section 402, subsection 3. [2013, c. 238, Pt. A, §26 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

B. Except as otherwise provided by paragraphs D and E or specifically and expressly provided by other applicable law, holding company information is confidential, is not a public record, is not subject to a subpoena, is not subject to discovery or admissible as evidence in any private civil action and may not be made public by the superintendent without prior written consent of the relevant insurer. The privilege provided under this paragraph does not supersede any other applicable privilege or confidentiality protection, nor does disclosure of confidential holding company information to the superintendent constitute a waiver of any such privilege or protection. Neither the superintendent nor any person who received holding company information from or under the authority of the superintendent under this section may be permitted or required to testify in any private civil action concerning holding company information that is confidential under this subsection. [2013, c. 238, Pt. A, §26 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

C. The superintendent may share holding company information that is confidential under this subsection only in accordance with the requirements of section 216, subsection 5 and the following additional requirements.

(1) The recipient of the information must agree in writing to maintain the same level of confidentiality as is available under Maine law. This requirement may be satisfied through a multilateral confidentiality agreement to which both the superintendent and the recipient are parties.

(2) The superintendent may not share confidential holding company information with or through the National Association of Insurance Commissioners except in accordance with an information-sharing agreement entered into in accordance with section 216, subsection 5, paragraph C.

(3) If the recipient of the information is in the United States, the recipient's state must have statutes or rules that expressly protect holding company information at a level at least equivalent to the protections provided by this subsection and section 216, subsection 5.

(4) ORSA-related information subject to subsection 8, paragraph B-3 may, with the written consent of the insurer, be shared with a 3rd-party consultant under an agreement containing the conditions specified in section 216, subsection 5, paragraph C. In addition, any agreement for sharing ORSA-related information with the National Association of Insurance Commissioners or a 3rd-party consultant must further provide that:

(a) The recipient of the information agrees in writing to maintain the confidentiality and privileged status of the ORSA-related information and has verified in writing the legal authority to maintain confidentiality;

(b) Any preauthorization granted under the agreement for further sharing of information provided by the superintendent must be limited to only the domiciliary regulators of other insurers in the same insurance holding company system; and

(c) The National Association of Insurance Commissioners or a 3rd-party consultant may not store ORSA-related information shared pursuant to this subparagraph in a permanent database after the underlying analysis is completed. [2013, c. 238, Pt. A, §26 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

D. This subsection does not prohibit the superintendent from using holding company information in the furtherance of any regulatory or legal action brought as a part of the superintendent's official duties. [2013, c. 238, Pt. A, §26 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

E. Unless otherwise provided by applicable law, the superintendent may, after giving notice and opportunity for hearing to the insurer and any affiliates, controlling person or other persons that would be affected, order one or more items of holding company information, other than ORSA-related information, to be made a public record in its entirety or in redacted form if the superintendent determines that public disclosure will be in the interest of policyholders, shareholders or the public. [2013, c. 238, Pt. A, §26 (NEW); 2013, c. 238, Pt. A, §34 (AFF).]

[2013, c. 238, Pt. A, §26 (NEW); 2013, c. 238, Pt. A, §34 (AFF) .]

14. Penalties.

A. Any person who willfully violates any of the provisions of this section, or the rules and regulations promulgated by the superintendent under authority thereof, or any person who willfully, in a filing pursuant to subsection 4-C or a registration pursuant to subsection 8, paragraph B, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, must upon conviction be fined not more than \$1,000 or imprisoned not more than 3 years, or both; [2013, c. 238, Pt. A, §27 (AMD); 2013, c. 238, Pt. A, §34 (AFF).]

B. Any person who is found, after notice and opportunity to be heard, to have willfully violated any of the provisions of this section or any rule or regulations promulgated by the superintendent under the authority thereof, shall, in addition to any other penalty provided by law, forfeit to this State the sum of \$50 for a first violation and an additional sum of \$25 for each day such violation shall continue; [1975, c. 356, §1 (NEW).]

C. In addition to other remedies and penalties provided in this section or otherwise available under the laws of this State, any violation of this section is hereby declared to be an unfair method of competition or an unfair or deceptive act and practice in the business of insurance subject to the provisions of chapter 23 and in addition, the superintendent may, after notice and hearing:

- (1) Refuse to issue, refuse to renew or reissue, revoke or suspend for a period not exceeding one year any license or certificate of authority issued or to be issued to any person found to have violated any of the provisions of this section;
- (2) After notice and hearing impose by order and administrative forfeiture upon such person, enforceable by such revocation, suspension or refusal to issue, renew or reissue of any such license or licenses or otherwise pursuant to the law of this State, in an amount not to exceed \$100 for each such violation and for each day's continuance thereof;
- (3) Proceed in a court of competent jurisdiction within or without this State against such person, if an insurer, upon the applicable grounds provided for the rehabilitation, conservatorship or liquidation of an insurer or for an injunction to prevent a violation of this section or to reverse or hold invalid any transaction made in violation of this section;
- (4) Issue such administrative orders to require compliance with this section, including the filing of evidence of compliance and periodic reporting as to such compliance, enforceable by such revocation, suspension or refusal to issue, renew or reissue of any such license or licenses or otherwise pursuant to the laws of this State; or
- (5) Any or all of the foregoing. [1975, c. 356, §1 (NEW).]

[2013, c. 238, Pt. A, §27 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

14-A. Recovery.

A. If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under that order has the right to recover on behalf of the insurer:

(1) From any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of any distributions other than distributions of shares of the same class of stock paid by the insurer on its capital stock; or

(2) Any payment in the form of a bonus, termination settlement or extraordinary lump-sum salary adjustment made by the insurer or by any subsidiary of that insurer to a director, officer or employee when the distribution or payment pursuant to this subparagraph or subparagraph (1) is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, subject to the limitations of paragraphs B, C and D. [1993, c. 313, §13 (NEW) .]

B. Such a distribution is not recoverable if the parent corporation or affiliate shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution could adversely affect the ability of the insurer to fulfill its contractual obligations. [1993, c. 313, §13 (NEW) .]

C. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time distributions were paid is liable up to the amount of distributions or payments under paragraph A that the person received. Any person who otherwise controlled the insurer at the time the distributions were declared is liable up to the amount of the distributions the person would have received if that person had been paid immediately. If 2 or more persons are liable for the same distributions, those persons are jointly and severally liable. [1993, c. 313, §13 (NEW) .]

D. The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds. [1993, c. 313, §13 (NEW) .]

E. To the extent that any person liable under paragraph C is insolvent or fails to pay claims due pursuant to paragraph C, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, is jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it. [1993, c. 313, §13 (NEW) .]

[1993, c. 313, §13 (NEW) .]

15. Additional powers. The powers, remedies, procedures and penalties provided in this section shall be in addition to, and not in limitation of, any other powers, remedies, procedures and penalties otherwise provided by law.

[1975, c. 356, §1 (NEW) .]

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

[1975, c. 356, §1 (NEW) .]

17. Jurisdiction of courts; service of process. Any person obtaining or attempting to obtain control of a domestic insurer is subject to the jurisdiction of the courts of this State and to service of process in the manner provided in this Title. Unless a valid appointment of an agent for service of process is on file with the superintendent pursuant to another provision of this Title, the person is deemed to have appointed the superintendent as agent for service of process, and service may be made in the same manner as provided in section 2105.

[1999, c. 113, §14 (AMD) .]

18. Rules. The superintendent may adopt reasonable rules to carry out provisions of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 238, Pt. A, §28 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

19. Supplemental to existing provisions. This section, as to insurance holding company systems, supplements in particular those provisions contained in sections 407, subsection 2; 410, subsection 1, paragraph B; 413; 423-C; 425; 1115; 1136; 3414; 3474; 3475; 3476; 3483; 3875 and 4407; and the provisions of this section are deemed to supersede or modify any such provisions or any other provisions of this Title to the extent inconsistent therewith.

[2013, c. 238, Pt. A, §29 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1975, c. 356, §1 (RPR). 1977, c. 694, §388 (AMD). 1983, c. 394, §§1, 2 (AMD). 1987, c. 399, §1 (AMD). 1989, c. 385, §§1-9 (AMD). 1989, c. 611, §§1, 4 (AMD). 1991, c. 37, §§1, 2 (AMD). 1991, c. 548, Pt. B, §3 (AMD). 1991, c. 828, §§3-6 (AMD). 1993, c. 313, §§7-13 (AMD). 1999, c. 113, §§8-14 (AMD). 2001, c. 72, §§4, 5 (AMD). 2007, c. 466, Pt. D, §§1-3 (AMD). 2009, c. 511, Pt. A, §§3-5 (AMD). 2013, c. 238, Pt. A, §§2-29 (AMD). 2013, c. 238, Pt. A, §34 (AFF).

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