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COMMITTEE REPORT

February 19, 2015

**S. 342**

Introduced by Senator Hayes

S. Printed 2/19/15--H.

Read the first time February 5, 2015.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 342) to amend the Code of Laws of South Carolina, 1976, by adding Section 38‑21‑225 so as to require filing of an annual enterprise risk report by the ultimate, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑21‑225 SO AS TO REQUIRE FILING OF AN ANNUAL ENTERPRISE RISK REPORT BY THE ULTIMATE CONTROLLING PERSON OF AN INSURANCE HOLDING COMPANY, AND TO PROVIDE SPECIFIC REQUIREMENTS FOR THE CONTENT OF THE REPORT; BY ADDING SECTION 38‑21‑285 SO AS TO ENABLE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE OR HIS DESIGNEE TO PARTICIPATE IN CERTAIN SUPERVISORY COLLEGES, TO PROVIDE RELATED POWERS AND DUTIES, AND TO PROVIDE FOR THE PAYMENT OF RELATED EXPENSES; TO AMEND SECTION 38‑21‑10, AS AMENDED, RELATING TO DEFINITIONS IN THE INSURANCE HOLDING COMPANY REGULATORY ACT, SO AS TO DEFINE THE TERM “ENTERPRISE RISK”; TO AMEND SECTION 38‑21‑60, RELATING TO THE STATEMENT REQUIRED BY A PERSON SEEKING TO ACQUIRE CONTROL OF AN INSURER, SO AS TO IMPOSE CERTAIN NOTICE REQUIREMENTS; TO AMEND SECTION 38‑21‑70, RELATING TO THE CONTENTS OF A STATEMENT THAT MUST BE FILED BY A PERSON SEEKING TO ACQUIRE CONTROL OF AN INSURER, SO AS TO REVISE THE CONTENT REQUIREMENTS; TO AMEND SECTION 38‑21‑90, RELATING TO APPROVAL BY THE DIRECTOR OF THE ACQUISITION OF CONTROL OF AN INSURER, SO AS TO PROVIDE SPECIFIC REQUIREMENTS FOR PUBLIC HEARINGS WHERE APPROVAL OF MORE THAN ONE COMMISSIONER IS REQUIRED, AND TO DEFINE THE TERM “COMMISSIONER”; TO AMEND SECTION 38‑21‑110, RELATING TO VIOLATIONS OF CERTAIN PROVISIONS OF THE ACT, SO AS TO INCLUDE EFFECTUATION OF THE DIVESTITURE OF A DOMESTIC INSURER WITHOUT APPROVAL BY THE DIRECTOR OR HIS DESIGNEE; TO AMEND SECTION 38‑21‑125, RELATING TO ACQUISITIONS OF INSURERS EXEMPT FROM THE ACT, SO AS TO REMOVE CERTAIN ACQUISITIONS SUBJECT TO APPROVAL OR DISAPPROVAL BY THE DIRECTOR OR HIS DESIGNEE FROM THESE EXEMPTIONS; TO AMEND SECTION 38‑21‑130, RELATING TO THE REGISTRATION OF MEMBERS OF INSURANCE HOLDING COMPANY SYSTEMS, SO AS TO MAKE A TECHNICAL CORRECTION TO AN INCORRECT REFERENCE; TO AMEND SECTION 38‑21‑140, RELATING TO REQUIRED STATEMENTS OF REGISTERING MEMBERS OF INSURANCE HOLDING COMPANY SYSTEMS, SO AS TO ADD CERTAIN FINANCIAL STATEMENTS AND A STATEMENT CONCERNING THE GOVERNANCE AND INTERNAL CONTROLS OF THE INSURER BY ITS BOARD, AMONG OTHER THINGS; TO AMEND SECTION 38‑21‑220, RELATING TO DISCLAIMERS OF AFFILIATION, SO AS TO DELETE LANGUAGE REGARDING CERTAIN REGISTRATION AND REPORTING REQUIREMENTS, AND TO PROVIDE THAT A DISCLAIMER MUST BE CONSIDERED GRANTED ABSENT CERTAIN NOTIFICATION BY THE DIRECTOR, AND TO PROVIDE RELIEF FOR A DENIAL; TO AMEND SECTION 38‑21‑230, RELATING TO FAILURE TO TIMELY FILE A REGISTRATION STATEMENT OR AMENDMENT TO A REGISTRATION STATEMENT, SO AS TO INCLUDE ENTERPRISE RISK FILING; TO AMEND SECTION 38‑21‑250, RELATING TO STANDARDS FOR TRANSACTIONS BETWEEN REGISTERED INSUREDS AND THEIR AFFILIATES, SO AS TO PROVIDE THAT AGREEMENTS FOR COST‑SHARING SERVICES AND MANAGEMENT MUST INCLUDE PROVISIONS REQUIRED BY REGULATION, TO INCLUDE AMENDMENTS OR MODIFICATIONS OF CERTAIN AFFILIATE AGREEMENTS AMONG TRANSACTIONS INVOLVING DOMESTIC INSURERS AND ANY PERSON IN AN INSURANCE HOLDING COMPANY SYSTEM THAT REQUIRES CERTAIN NOTICE TO THE DEPARTMENT, AND TO PROVIDE REQUIREMENTS FOR THIS NOTICE, AMONG OTHER THINGS; TO AMEND SECTION 38‑21‑280, RELATING TO THE POWER OF THE DIRECTOR TO COMPEL PRODUCTION OF CERTAIN INFORMATION FROM INSURERS, SO AS TO REVISE THE REQUIREMENTS; TO AMEND SECTION 38‑21‑290, RELATING TO CONFIDENTIAL INFORMATION, SO AS TO REVISE THE REQUIREMENTS TO MAKE THE INFORMATION PRIVILEGED AND NOT SUBJECT TO DISCOVERY OR THE FREEDOM OF INFORMATION ACT, AND TO PROVIDE FOR USE OF THIS INFORMATION BY THE DIRECTOR OR HIS DESIGNEE, AMONG OTHER THINGS, AND TO PROVIDE NEITHER THE DIRECTOR OR HIS DESIGNEE MAY BE REQUIRED TO TESTIFY ABOUT THIS INFORMATION IN A PRIVATE CIVIL ACTION; TO AMEND SECTION 38‑21‑340, RELATING TO CRIMINAL PROSECUTIONS AND VIOLATIONS, SO AS TO PROVIDE THAT CERTAIN VIOLATIONS MAY SERVE AS AN INDEPENDENT BASIS FOR THE DIRECTOR TO DISAPPROVE DIVIDENDS OR DISTRIBUTIONS AND FOR PLACING THE INSURER UNDER AN ORDER OF SUPERVISION; AND TO AMEND SECTION 38‑90‑160, AS AMENDED, RELATING TO THE APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 38 TO RISK RETENTION GROUPS LICENSED AS A CAPTIVE INSURANCE COMPANY, SO AS TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 21, Title 38 of the 1976 Code is amended by adding:

“Section 38‑21‑225. The ultimate controlling person of an insurer subject to registration also shall file an annual enterprise risk report. The report must, to the best of the ultimate controlling person’s knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.”

SECTION 2. Chapter 21, Title 38 of the 1976 Code is amended by adding:

“Section 38‑21‑285. (A) With respect to an insurer registered under Sections 38‑21‑130 through 38‑21‑240 and pursuant to subsection (C), the director or his designee also may participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations to determine compliance by the insurer with this chapter. The powers of the director or his designee with respect to supervisory colleges include, but are not limited to:

(1) initiating the establishment of a supervisory college;

(2) clarifying the membership and participation of other supervisors in the supervisory college;

(3) clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group‑wide supervisor;

(4) coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and

(5) establishing a crisis management plan.

(B) A registered insurer subject to this section must be liable for and shall pay the reasonable expenses, including reasonable travel expenses, for the participation of the director or his designee in a supervisory college pursuant to subsection (C). For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the director or his designee may establish a regular assessment to the insurer for the payment of these expenses.

(C) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with Section 38‑21‑280, the director or his designee may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. The director or his designee may enter into agreements pursuant to Section 38‑21‑290(C) to provide the basis for cooperation between the director or his designee and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section delegates the authority of the director or his designee to regulate or supervise the insurer or its affiliates within its jurisdiction to the supervisory college.”

SECTION 3. Section 38‑21‑10 of the 1976 Code, as last amended by Act 82 of 2001, is further amended by adding an item at the end to read:

“( ) ‘Enterprise risk’ means an activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, likely is to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer’s risk‑based capital to fall into company action level as provided in Section 38‑9‑330 or would cause the insurer to be in hazardous financial condition as provided in Section 38‑5‑120.”

SECTION 4. Section 38‑21‑60 of the 1976 Code is amended to read:

“Section 38‑21‑60. (A) No person, other than the issuer, may make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation ~~thereof~~ of the agreement, the person would~~,~~ directly ~~or~~, indirectly, ~~or~~ by conversion, or by exercise of any right to acquire, be in control of the insurer~~, and~~. No person may enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time the offer, request, or invitation is made or the agreement is entered into, or ~~prior to~~ before the acquisition of the securities if no offer or agreement is involved, the person has filed with the department a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the director or his designee in the manner ~~hereinafter~~ prescribed in this chapter.

(B) For purposes of this section, a controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer in any manner shall file confidential notice of its proposed divestiture with the director or his designee, with a copy to the insurer, at least thirty days before the cessation of control. The director or his designee shall determine those instances in which a party seeking to divest a controlling interest in an insurer shall file for and obtain approval of the transaction by the department. The information must remain confidential until the conclusion of the transaction, unless the director or his designee determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in subsection (A) otherwise is filed, the provisions of this subsection do not apply.

(C) With respect to a transaction subject to this section, the acquiring person also must file a preacquisition notification with the director or his designee. This notification must include the information set forth in Section 38‑21‑125(C)(2). A person who fails to file this notification may be subject to penalties specified in Section 38‑21‑125(E)(3).

(D) For purposes of this section, a domestic insurer includes any other person controlling a domestic insurer unless the other person as determined by the director or his designee is either directly or through its affiliates primarily engaged in business other than the business of insurance. As used in this section, ‘person’ does not include any securities broker holding, in the usual and customary brokers’ function, less than twenty percent of the voting securities of an insurance company or of any person which controls an insurance company.”

SECTION 5. Section 38‑21‑70 of the 1976 Code is amended to read:

“Section 38‑21‑70. (A) The statement to be filed with the department, as prescribed in Section 38‑21‑60, must be made under oath or affirmation and ~~shall~~ must contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in Section 38‑21‑60 is to be effected, hereinafter called ‘acquiring party’~~,~~; and

(a) if the acquiring party is an individual, his principal occupation and all offices and positions held during the past five years and any conviction of crimes other than minor traffic violations during the past ten years; or

(b) if the acquiring party is not an individual, a report of the nature of its business operations during the past five years or for ~~any~~ a lesser period as the acquiring party and any predecessors have been in existence; an informative description of the business intended to be done by the acquiring party and its subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the acquiring party or who perform or will perform functions appropriate to these positions. The list ~~shall~~ must include for each of these individuals the information required by subitem (a) ~~of this section~~.

(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 in which funds were or are to be obtained for this purpose, and the identity of persons furnishing the consideration. Where a source of the consideration is a loan made in the lender’s ordinary course of business, the identity of the lender must remain confidential, if the person filing the statement so requests.

(3) Fully audited financial information ~~as to~~ concerning the earnings and financial condition for the preceding five fiscal years of ~~each~~ an acquiring party or for ~~any~~ a lesser period as the acquiring party and any of its predecessors have been in existence.

(4) Unaudited financial information of the earnings and financial condition of each acquiring party as of a date within ninety days ~~prior to~~ before filing the statement.

(5) Any plans or proposals which ~~each~~ an acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(6) The number of shares of ~~any~~ a security referred to in Section 38‑21‑60 which each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement, or acquisition referred to in Section 38‑21‑60 and a statement as to the method by which the fairness of the proposal was arrived.

(7) The amount of each class of any security referred to in Section 38‑21‑60 which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(8) A full description of any ~~contracts, arrangements, or understandings~~ contract, arrangement, or understanding with respect to ~~any~~ a security referred to in Section 38‑21‑60 in which an acquiring party is involved, including, but not limited to, transfer of ~~any of~~ the ~~securities~~ security, joint ~~ventures~~ venture, loan or option ~~arrangements, puts~~ arrangement, put or ~~calls, guarantees~~ call, guarantee of ~~loans, guarantees~~ loan, guarantee against loss or ~~guarantees~~ guarantee of division of ~~losses~~ loss or ~~profits~~ profit, or the giving or withholding of ~~proxies~~ a proxy. The description ~~shall~~ must identify the persons with whom the ~~contracts, arrangements~~ contract, arrangement, or ~~understandings have~~ understanding has been entered ~~into~~.

(9) A description of the purchase of ~~any~~ a security referred to in Section 38‑21‑60 during the twelve calendar months preceding the filing of the statement, by ~~any~~ an acquiring party, including the ~~dates~~ date of purchase, ~~names~~ name of the ~~purchasers~~ purchaser, and consideration paid or agreed to be paid.

(10) A description of ~~any recommendations~~ a recommendation to purchase ~~any~~ a security referred to in Section 38‑21‑60 made during the twelve calendar months preceding the filing of the statement by ~~any~~ an acquiring party, or by anyone based upon interviews or at the suggestion of ~~the~~ an acquiring party.

(11) 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 Section 38‑21‑60, if distributed, of additional soliciting material relating ~~thereto~~ to them.

(12) The terms of ~~any~~ an agreement, contract, or understanding made with any broker‑dealer ~~as to~~ concerning solicitation of securities referred to in Section 38‑21‑60 for tender, and the amount of ~~any fees, commissions~~ a fee, commission, or other compensation to be paid the ~~broker‑dealers~~ broker‑dealer.

(13) An agreement by the person required to file the statement referred to in Section 38‑21‑60 that it will provide the annual report, specified in Section 38‑21‑225, for so long as control exists.

(14) An acknowledgement by the person required to file the statement referred to in Section 38‑21‑60 that the person and all subsidiaries within its control in the insurance holding company system will provide information to the director or his designee upon request as necessary to evaluate enterprise risk to the insurer.

(~~13~~15) Any additional information the director may by regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

(B) If the person required to file the statement referred to in Section 38‑21‑60 is a partnership, limited partnership, syndicate, or other group, the director or his designee may require that the information ~~called for by~~ required in this section be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If this partner, member, or person is a corporation or the person required to file the statement referred to in Section 38‑21‑60 is a corporation, the director or his designee may require that the information ~~called for by~~ required in this section be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

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

SECTION 6. Section 38‑21‑90 of the 1976 Code is amended to read:

“Section 38‑21‑90. (A) The director or his designee shall approve a merger or other acquisition of control in Section 38‑21‑60 unless, after a public hearing, he finds that:

(1) After the change of control the domestic insurer referred to in Section 38‑21‑60 is not able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

(2) The effect of the merger or other acquisition of control would substantially lessen competition in insurance in this State or tend to create a monopoly. In applying the competitive standard in this item:

(a) The information requirements and standards of Section 38‑21‑125(C) and (D) apply.

(b) The merger or other acquisition must not be approved if the director or his designee finds that at least one of the situations in Section 38‑21‑125(D) exists.

(c) The director or his designee may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.

(3) The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders.

(4) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with a person or to make another material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest.

(5) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it is not in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(6) The acquisition is likely to be hazardous or prejudicial to the insurance‑buying public.

(B) The public hearing referred to in subsection (A) must be held within thirty days after the statement required by Section 38‑21‑60 is filed, and at least twenty days’ notice must be given by the director or his designee to the person filing the statement, to the insurer, and to other persons designated by the director or his designee. The director or his designee shall make a determination within thirty days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, a person to whom notice of hearing was sent, and other persons whose interests are affected may present evidence, examine and cross‑examine witnesses, and offer oral and written arguments and are entitled to conduct discovery proceedings in the same manner allowed in the Circuit Courts of this State. Discovery proceedings must be concluded not later than three days before the public hearing.

(C)(1) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing provided in subsections (A) and (B) may be held on a consolidated basis upon request of the person filing the statement referred to in Section 38‑21‑60 if he files the statement with the National Association of Insurance Commissioners (NAIC) within five days after making the request for a public hearing. The director or his designee may opt out of a consolidated hearing, but shall provide notice of its decision of the opt out to the applicant within ten days after receipt of the statement. A hearing conducted on a consolidated basis must be public and held within the United States before the commissioners of the states in which the insurers are domiciled. These commissioners shall hear and receive evidence. The director or his designee may attend the hearing in person or by means of telecommunication.

(2) For purposes of this subsection, ‘commissioner’ means the:

(a) insurance commissioner, director, or other chief insurance official of a state, territory, or the District of Columbia;

(b) deputy of a commissioner; and

(c) Insurance Department of a state, territory, or District of Columbia, as appropriate.

(~~C~~D) The director may retain at the acquiring person’s expense attorneys, actuaries, accountants, and other experts not otherwise a part of the department’s staff reasonably necessary to assist the director or his designee in reviewing the proposed acquisition of control.”

SECTION 7. Section 38‑21‑110 of the 1976 Code is amended to read:

“Section 38‑21‑110. The following are violations of Sections 38‑21‑60 to 38‑21‑120:

(1) the failure to file ~~any~~ a statement, amendment, or other material required to be filed pursuant to Section 38‑21‑60 or 38‑21‑70; or

(2) the effectuation or ~~any~~ an attempt to effectuate an acquisition or control of, divestiture of, or merger with~~,~~ a domestic insurer, unless the director or his designee has given his approval.”

SECTION 8. Section 38‑21‑125(B)(2) of the 1976 Code is amended to read:

“(2) This section does not apply to:

(a) ~~an acquisition subject to approval or disapproval by the director or his designee pursuant to Section 38‑21‑60;~~

~~(b)~~ a purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in an insurance market in this State. If a purchase of securities results in a presumption of control under Section 38‑21‑10(2), it is not solely for investment purposes unless the commissioner of the insurer’s state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist, and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the director or his designee;

(~~c~~b) the acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance if preacquisition notification is filed with the department in accordance with subsection (C)(1) thirty days before the proposed effective date of the acquisition. However, preacquisition notification is not required for exclusion from this section if the acquisition would be excluded by other provisions of this subsection;

(~~d~~c) the acquisition of already affiliated persons;

(~~e~~d) an acquisition if, as an immediate result of the acquisition:

(i) In any market the combined market share of the involved insurers does not exceed five percent of total market.

(ii) There is not an increase in a market share, or in any market the combined market share of the involved insurers does not exceed twelve percent of the total market, and the market share does not increase by more than two percent of the total market. For the purpose of this subitem a market means direct written insurance premium in this State for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this State;

(~~f~~e) an acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;

(~~g~~f) an acquisition of an insurer whose domiciliary commissioner affirmatively finds that:

(i) The insurer is in failing condition.

(ii) There is a lack of feasible alternatives to improving the condition.

(iii) The public benefits of improving the insurer’s condition through the acquisition exceed the public benefits that would arise from not lessening competition.

(iv) The findings are communicated by the domiciliary commissioner to the director or his designee.”

SECTION 9. Section 38‑21‑130 of the 1976 Code is amended to read:

“Section 38‑21‑130. (A) ~~Every~~ An insurer authorized to do business in this State ~~which~~ and who is a member of an insurance holding company system shall register with the department, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this chapter.

(B) ~~Any~~ An insurer ~~which~~ who is subject to registration under this chapter shall register within fifteen days after it becomes subject to registration, and annually thereafter by March first of each year for the previous calendar year, unless the director or his designee for good cause shown extends the time for registration, and then within the extended time. The director or his designee may require any authorized insurer which is a member of ~~a~~ an insurance holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.”

SECTION 10. Section 38‑21‑140 of the 1976 Code is amended to read:

“Section 38‑21‑140. Every insurer subject to registration shall file the registration statement with the director or his designee on a form and in a format prescribed by the director or his designee which must contain the following current information:

(1) capital structure, general financial condition, ownership, and management of the insurer and a person controlling the insurer;

(2) identity and relationship of every member of the insurance holding company system;

(3) the following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(a) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(b) purchases, sales, or exchanges of assets;

(c) transactions not in the ordinary course of business;

(d) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer’s assets to liability, other than insurance contracts entered into in the ordinary course of the insurer’s business;

(e) management agreements, service contracts, and cost‑sharing arrangements;

(f) reinsurance agreements;

(g) dividends and other distributions to shareholders;

(h) consolidated tax allocation agreements.

(4) pledge of the insurer’s stock, including stock of a subsidiary or controlling affiliate, for a loan made to a member of the insurance holding company system;

(5) financial statements of or within an insurance holding company system, including all affiliates, if requested by the director or his designee including, but not limited to, annual audited financial statements filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, which may be satisfied by providing the director or his designee with the most recently filed parent corporation financial statements that have been filed with the Securities and Exchange Commission;

(~~5~~6) other matters concerning transactions between registered insurers and affiliates included in registration forms adopted or approved by the director or his designee~~.~~;

(7) statements that the insurer’s board of directors is responsible for and oversees corporate governance and internal controls and that the insurer’s officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

(8) any other information required by the director or his designee by regulation.”

SECTION 11. Section 38‑21‑220 of the 1976 Code is amended to read:

“Section 38‑21‑220. A person may file with the department a disclaimer of affiliation with an authorized insurer or a disclaimer may be filed by an insurer or a member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming this affiliation. ~~After a disclaimer has been filed, the insurer is relieved of any duty to register or report under Sections 38‑21‑130 through 38‑21‑240 which may arise out of the insurer’s relationship with that person unless and until the director or his designee disallows the disclaimer. The director or his designee may disallow the disclaimer only after furnishing all parties in interest with notice and an opportunity to be heard and after making specific findings of fact to support the disallowance.~~ A disclaimer of affiliation must be considered to have been granted unless the director or his designee, within thirty days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of a disallowance, the disclaiming party may request an administrative hearing, which the department must grant. The disclaiming party must be relieved of its duty to register under Sections 38‑21‑130 through 38‑21‑240 if approval of the disclaimer is granted by the director or his designee, or if the disclaimer is considered approved.”

SECTION 12. Section 38‑21‑230 of the 1976 Code is amended to read:

“Section 38‑21‑230. The failure to file a registration statement or any summary of such registration or enterprise risk filing as required by this chapter within the time specified for filing constitutes a violation of these sections.”

SECTION 13. Section 38‑21‑250 of the 1976 Code is amended to read:

“Section 38‑21‑250. (~~1~~A) Transactions within ~~a~~ an insurance holding company system to which an insurer subject to registration is a party are subject to the following standards:

(~~i~~1) The terms must be fair and reasonable.

(2) Agreements for cost‑sharing services and management must include provisions required by regulation promulgated by the department.

(~~ii~~3) Charges or fees for services performed must be reasonable.

(~~iii~~4) Expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(~~iv~~5) The books, accounts, and records of each party to all transactions must be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

(~~v~~6) The insurer’s surplus as regards policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs.

(~~2~~B) The following transactions involving a domestic insurer and any person in its ~~a~~ insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in items (1) through (7) may not be entered into unless the insurer has notified the department in writing of its intention to enter into the transaction at least thirty days prior ~~thereto~~, or such shorter period as the director or his designee may permit, and the director or his designee has not disapproved it within such period~~:~~. The notice for amendments or modifications must include the reasons for the charge and the financial impact on the domestic insurer. Informal notice must be reported within thirty days after termination of a previously filed agreement to the director or his designee for determination of the type of filing required, if any.

(~~i~~1) Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments if the transactions are equal to or exceed:

(a) with respect to nonlife insurers, the lesser of three percent of the insurer’s admitted assets or twenty‑five percent of surplus as regards policyholders;

(b) with respect to life insurers, three percent of the insurer’s admitted assets, each as of the thirty‑first day of December next preceding~~;~~.

(~~ii~~2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit as long as such transactions are equal to or exceed:

(a) with respect to nonlife insurers, the lesser of three percent of the insurer’s admitted assets or twenty‑five percent of surplus as regards policyholders;

(b) with respect to life insurers, three percent of the insurer’s admitted assets, each as of the thirty‑first day of December next preceding~~;~~.

(~~iii~~3) Reinsurance agreements or modifications ~~thereto~~, including:

(a) all reinsurance pooling agreements; and

(b) agreements in which the reinsurance premium or a change in the insurer’s liabilities, or the projected reinsurance premium or a change to the insurer’s liabilities in any of the next three years, equals or exceeds five percent of the insurer’s surplus as regards policyholders, as of the thirty‑first day of December next preceding, including those agreements which 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 such assets will be transferred to one or more affiliates of the insurer~~;~~.

(~~iv~~4) All management agreements, service contracts, tax allocation agreements, and all cost‑sharing arrangements~~; and~~.

(5) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this item unless it exceeds the lesser of one‑half of one percent of the insurer’s admitted assets or ten percent of surplus as regards policyholders as of the thirty‑first day of December next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this item.

(6) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one‑half percent of the insurer’s surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Sections 38‑21‑20 through 38‑21‑50, or authorized under any other section of this chapter, or in nonsubsidiary insurance affiliates that are subject to the provisions of this chapter, are exempt from this requirement.

(~~v~~7) Any material transactions, specified by regulation of the department, which the director or his designee determines may adversely affect the interests of the insurer’s policyholders. Nothing herein authorizes or permits any transactions which, in the case of an insurer, not a member of the same insurance holding company system, would be otherwise contrary to law.

(~~3~~C) A domestic insurer may not enter into transactions, which are part of a plan or series of like transactions with persons within the insurance holding company system, if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the director or his designee determines that such separate transactions were entered into over any twelve‑month period for such purpose, he may exercise his authority under Section 38‑21‑340.

(~~4~~D) The director or his designee, in reviewing transactions pursuant to subsection ~~(2)~~(B), shall consider whether the transactions comply with the standards set forth in subsection ~~(1)~~ (A) and whether they may adversely affect the interests of policyholders.

(~~5~~E) The department must be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent of the corporation’s voting securities.”

SECTION 14. Section 38‑21‑280 of the 1976 Code is amended to read:

“Section 38‑21‑280. (~~a~~A) In addition to his powers relating to examinations or investigations of insurers, the director or his designee has the power to examine an insurer registered pursuant to Sections 38‑21‑130 through 38‑21‑240 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by an entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(B) The director or his designee may order an insurer registered under Sections 38‑21‑130 through 38‑21‑240 to produce records, books, or other information papers in the possession of the insurer or its affiliates as considered necessary to ~~ascertain the insurer’s financial condition or~~ determine the legality of its conduct or compliance with this chapter. ~~If the insurer fails to comply with the order, the director or his designee has, in addition to powers prescribed in Section 38‑21‑340, the power to examine the affiliates to obtain this information.~~

(C) To determine the legality of its conduct or compliance with this chapter, the director or his designee may order any insurer registered under Sections 38‑21‑130 through 38‑21‑240 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. If the insurer cannot obtain the information requested by the director or his designee, the insurer shall provide the director or his designee a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. When it appears to the director or his designee that the detailed explanation is without merit, the director or his designee may require, after notice and hearing, the insurer to pay a penalty of one thousand dollars for each day’s delay, or may suspend or revoke the insurer’s license.

(~~b~~D) The director may retain at the registered insurer’s expense attorneys, actuaries, accountants, and other experts not otherwise a part of the department’s staff reasonably necessary to assist in the conduct of the examination under subsection (~~a~~A). ~~Any persons~~ A person so retained ~~are~~ is under the direction and control of the director or his designee and must act in a purely advisory capacity.

(~~c~~E) ~~Each~~ A registered insurer producing for examination records, books, and papers pursuant to ~~subsection (a)~~ this section is liable for and must pay the expense of the examination.

(F) If the insurer fails to comply with an order, the director or his designee has, in addition to powers prescribed in Section 38‑21‑340, the power to examine the affiliates to obtain this information. The director or his designee also shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the director or his designee may petition the Administrative Law Court, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court. Every person is obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere in this State, and is entitled to the same fees and mileage, if claimed, as a witness commanded to appear in the Court of Common Pleas, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, must be itemized and charged against and be paid by the company being examined.”

SECTION 15. Section 38‑21‑290 of the 1976 Code is amended to read:

“Section 38‑21‑290. ~~All information, documents, and copies thereof obtained by or disclosed to the director or any other person in the course of an examination or investigation made pursuant to Section 38‑21‑280 and all information reported pursuant to Sections 38‑21‑130 through 38‑21‑240 must be given confidential treatment and is not subject to subpoena and may not be made public by the director, the National Association of Insurance Commissioners, or any other persons, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the director or his designee, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he may publish all or any part thereof in the manner he considers appropriate.~~ (A) Documents, materials, or other information in the possession or control of the department that are obtained by or disclosed to the director or his designee or any other person in the course of an examination or investigation made pursuant to Section 38‑21‑280 and all information reported pursuant to Section 38‑21‑70(A)(13) and (14) and Sections 38‑21‑130 through 38‑21‑270 must be confidential by law and privileged, shall not be subject to disclosure, may not be subject to subpoena, and may not be disclosed under the Freedom of Information Act and may not be subject to discovery or admissible in evidence in any private civil action. However, the director or his designee may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of his official duties. The director or his designee otherwise shall not make the documents, materials, or other information public without obtaining the prior written consent of the insurer to which it pertains unless the director or his designee, after giving the insurer and its affiliates who would be affected by it, notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication of it, in which event the director or his designee may publish all or any part.

(B) Neither the director or his designee nor a person who received documents, materials, or other information while acting under the authority of the director or his designee or with whom such documents, materials, or other information are shared pursuant to this chapter may be permitted or required to testify in a private civil action concerning any confidential documents, materials, or information subject to subsection (A).

(C) In order to assist in the performance of the director or his designee’s duties, the director or his designee:

(1) may share documents, materials, or other information, including the confidential and privileged documents, materials or information subject to subsection (A), with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 38‑21‑285, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality;

(2) only may share confidential and privileged documents, material, or information reported pursuant to Section 38‑21‑225 with commissioners of states having statutes or regulations substantially similar to subsection (A) and who have agreed in writing not to disclose such information;

(3) may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(4) shall enter into written agreements with the NAIC governing sharing and use of information provided pursuant to this chapter consistent with this subsection that shall:

(a) specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators;

(b) specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this chapter remains with the director or his designee and the NAIC’s use of the information is subject to the direction of the director or his designee:

(c) require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to this chapter is subject to a request or subpoena to the NAIC for disclosure or production; and

(d) require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this chapter.

(D) The sharing of information by the director or his designee pursuant to this chapter may not constitute a delegation of regulatory authority or rulemaking, and the director or his designee is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

(E) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the director or his designee under this section or as a result of sharing as authorized in subsection (C).

(F) Documents, materials, or other information in the possession or control of the NAIC pursuant to this chapter shall be confidential by law and privileged, may not be disclosed under the Freedom of Information Act, may not be subject to subpoena, and may not be subject to discovery or admissible in evidence in a private civil action.”

SECTION 16. Section 38‑21‑340 of the 1976 Code is amended to read:

“Section 38‑21‑340. (~~a~~A) ~~Any~~ An insurer failing, without just cause, to file any registration statement or summary ~~thereof~~ of it as required in this chapter is required, after notice and hearing, to pay a penalty of one thousand dollars for each day’s delay, to be recovered by the director or his designee, and the penalty so recovered must be paid into the General Fund of the State. The maximum penalty under this section is thirty thousand dollars. The director or his designee may reduce the penalty if the insurer demonstrates to the director or his designee that the imposition of the penalty would constitute a financial hardship to the insurer.

(~~b~~B) ~~Every~~ A director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to this chapter or which violate this chapter, shall pay, in their individual capacity, a civil forfeiture of not more than ten thousand dollars per violation, after notice and hearing before the director or his designee. In determining the amount of the civil forfeiture, the director or his designee shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and other matters as justice may require.

(~~c~~C) ~~Whenever~~ When it appears to the director or his designee that ~~any~~ an insurer subject to this chapter or ~~any~~ a director, officer, employee, or agent ~~thereof~~ of it has engaged in ~~any~~ a transaction or entered into a contract which is subject to Sections 38‑21‑250 through 38‑21‑270 and which would not have been approved had ~~such~~ the approval been requested, the director or his designee may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the director or his designee may also order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors, or the public.

(~~d~~D) ~~Whenever~~ When it appears to the director or his designee that an insurer or a director, officer, employee, or agent of it has committed a ~~willful~~ wilfull violation of this chapter, the director or his designee may, in addition to other powers prescribed in this section, cause criminal proceedings to be instituted in the circuit court for the county in which the principal office of the insurer is located or, if the insurer has no such office in the State, then in the Circuit Court for Richland County against the insurer or the responsible director, officer, employee, or agent of it. An insurer which wilfully violates this chapter may be fined not more than fifty thousand dollars. An individual who wilfully violates this chapter is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed ten thousand dollars or be imprisoned for a term not to exceed two years, or both.

(~~e~~E) ~~Any~~ An officer, director, or employee of an insurance holding company system who wilfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the director or his designee in the performance of his duties under this chapter is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than two years ~~or~~, fined ten thousand dollars, or both. ~~Any fines~~ A fine imposed must be paid by the officer, director, or employee in his individual capacity.

(F) When it appears to the director or his designee that a person has committed a violation of Sections 38‑21‑60 through 38‑21‑120 and which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with Chapter 26, Title 38.

(~~f~~G) ~~Whenever~~ When it appears to the director or his designee that ~~any~~ an insurer has committed a violation of this chapter, or that any person has committed a violation of this chapter which makes continued operation of the insurer contrary to the interests of policyholders or the public, the director or his designee may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew ~~such~~ the insurer’s license or authority to do business in this State for ~~such~~ a period as he finds is required for the protection of policyholders or the public. ~~Any such~~ This determination must be accompanied by specific findings of fact and conclusions of law.”

SECTION 17. Section 38‑90‑160(C) of the 1976 Code, as last amended by Act 282 of 2014, is further amended to read:

“(C) The provisions of Sections 38‑5‑120(A)(5), 38‑5‑120(B), 38‑5‑120(D)(1), 38‑5‑120(D)(2), 38‑9‑225, 38‑9‑230, 38‑21‑10, 38‑21‑30, 38‑21‑60, 38‑21‑70, 38‑21‑80, 38‑21‑90, 38‑21‑95, 38‑21‑100, 38‑21‑110, 38‑21‑120, 38‑21‑130, 38‑21‑140, 38‑21‑150, 38‑21‑160, 38‑21‑170, 38‑21‑220, 38‑21‑225, 38‑21‑230, 38‑21‑250, 38‑21‑270, 38‑21‑280, 38‑21‑285, 38‑21‑290, 38‑21‑310, 38‑21‑320, 38‑21‑330, 38‑21‑360, 38‑55‑75 and Chapters 44 and 46, Title 38 apply in full to a risk retention group licensed as a captive insurance company and, if a conflict occurs between those code sections and chapters referenced in this subsection and this chapter (Chapter 90, Title 38), then the code sections and chapters referenced in this subsection control.”

SECTION 18. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 19. This act takes effect upon approval by the Governor or January 1, 2016, if later.

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