

CHAPTER 118
FORMERLY
HOUSE BILL NO. 143

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO INSURANCE HOLDING COMPANY SYSTEM REGISTRATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 50, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 5001. Definitions.

As used in this chapter, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(5) “Group-wide supervisor.” The “group-wide supervisor” is the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the Commissioner under § 5015 of this chapter to have sufficient significant contacts with the internationally active insurance group.

(8) “Internationally active insurance group.” An “internationally active insurance group” is an insurance holding company system that meets all of the following criteria:

- a. Includes an insurer registered under § 5004 of this chapter.
- b. Has premiums written in at least three countries.
- c. Has gross premiums written outside the United States that are at least 10% of total gross written premiums.
- d. Based on a three-year rolling average, has total assets of at least fifty billion dollars or total gross written premiums of at least ten billion dollars.

§ 5003. Acquisition of control of or merger with domestic insurer.

(d) Approval by Commissioner: Hearings. –

(2) The public hearing referred to in paragraph (d)(1) of this section shall be held within ~~30~~45 days after the statement required by subsection (a) of this section is filed, and at least 20 days’ notice thereof shall be given by the Commissioner to the person filing the statement.

Not less than 7 days’ notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the Commissioner. The Commissioner shall make a determination within 30 days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the Superior Court of this State. All discovery proceedings shall be concluded not later than 3 days prior to the commencement of the public hearing.

If the proposed acquisition of control will require the approval of more than 1 Commissioner, the public hearing referred to in paragraph (d)(1) of this section may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (a) of this section. Such person shall file the statement referred to in subsection (a) of this section with the National Association of Insurance Commissioners (NAIC) within 5 days of making the request for a public hearing. A Commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within 10 days of the receipt of the statement referred to in subsection (a) of this section. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the Commissioners of the states in which the insurers are domiciled. Such Commissioners shall hear and receive evidence. A Commissioner may attend such hearing in person or by telecommunication.

§ 5007. Confidential treatment.

(a) Documents, materials or other information in the possession or control of the Department that are obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation

made pursuant to § 5006 of this title and all information reported or provided to the Department pursuant to §§ 5003(b)(12) and (13), 5004, ~~and 5005~~, or 5015 of this title shall be confidential by law; shall not be subject subpoena, shall not be subject to this State's Freedom of Information Act laws (Chapter 100 of Title 29), and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the Commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the Commissioner may publish all or any part in such manner as may be deemed appropriate.

§ 5015. Group-wide Supervision of Internationally Active Insurance Groups.

(a) The Commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section. However, the Commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

(1) Does not have substantial insurance operations in the United States;

(2) Has substantial insurance operations in the United States, but not in this State; or

(3) Has substantial insurance operations in the United States and this State, but the Commissioner has determined pursuant to the factors set forth in subsections (b) and (f) of this section that the other regulatory official is the appropriate group-wide supervisor.

An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the Commissioner make a determination or acknowledgement as to a group-wide supervisor pursuant to this section.

(b) In cooperation with other state, federal, and international regulatory agencies, the Commissioner will identify a single group-wide supervisor for an internationally active insurance group. The Commissioner may determine that the Commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this State. However, the Commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The Commissioner shall consider the following factors when making a determination or acknowledgement under this subsection:

(1) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets, or liabilities;

(2) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;

(3) The location of the executive offices or largest operational offices of the internationally active insurance group;

(4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the Commissioner determines to be:

a. Substantially similar to the system of regulation provided under the laws of this State; or

b. Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials;

(5) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the Commissioner with reasonably reciprocal recognition and cooperation.

However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgement of the group-wide supervisor shall be made after consideration of the factors listed in paragraphs (1) through (5) above, and shall be made in cooperation with and subject to the acknowledgement of other

regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

(c) Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the Commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, in the event of a material change in the internationally active insurance group that results in:

(1) The internationally active insurance group's insurers domiciled in this State holding the largest share of the group's premiums, assets, or liabilities; or

(2) This State being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group,

the Commissioner shall make a determination or acknowledgement as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to subsection (b) of this section.

(d) Pursuant to § 5006 of this chapter, the Commissioner is authorized to collect from any insurer registered pursuant to § 5004 of this chapter all information necessary to determine whether the Commissioner may act as a group-wide supervisor of an internationally active insurance group or if the Commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the Commissioner, the Commissioner shall notify the insurer registered pursuant to § 5004 of this chapter and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than 30 days to provide the Commissioner with additional information pertinent to the pending determination. The Commissioner shall publish in the Delaware Administrative Code and on its Internet website the identity of internationally active insurance groups that the Commissioner has determined are subject to group-wide supervision by the Commissioner.

(e) If the Commissioner is the group-wide supervisor for an internationally active insurance group, the Commissioner is authorized to engage in any of the following group-wide supervision activities:

(1) Assess the enterprise risks within the internationally active insurance group to ensure that:

a. The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

b. Reasonable and effective mitigation measures are in place.

(2) Request from any member of an internationally active insurance group subject to the Commissioner's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:

a. Governance, risk assessment and management;

b. Capital adequacy; and

c. Material intercompany transactions.

(3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance.

(4) Communicate with other state, federal, and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of § 5007 of this chapter, through supervisory colleges as set forth in § 5014 of this chapter or otherwise.

(5) Enter into agreements with or obtain documentation from any insurer registered under § 5004 of this chapter, any member of the internationally active insurance group, and any other state, federal, and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the Commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any

insurer or person within an insurance holding company system not domiciled in this State is doing business in this State or is otherwise subject to jurisdiction in this State.

(6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the Commissioner.

(f) If the Commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the Commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:

(1) The Commissioner's cooperation is in compliance with the laws of this State; and

(2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the Commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the Commissioner is authorized to refuse recognition and cooperation.

(g) The Commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under § 5004 of this chapter, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

(h) The Commissioner may promulgate regulations necessary for the administration of this section.

(i) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the Commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

§ 5015-5016 Conflict with other laws.

All laws and parts of laws of this State inconsistent with this chapter are hereby superseded with respect to matters covered by this chapter.

Section 2. Effective date.

This Act shall take effect 30 days after its enactment.

Approved July 27, 2015