

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 12-103—sSB 411

Insurance and Real Estate Committee

**AN ACT CONCERNING THE INSURANCE HOLDING COMPANY
SYSTEM REGULATORY ACT**

SUMMARY: This act expands the scope of the Insurance Department's review when a domestic (Connecticut) insurance company is the subject of a proposed acquisition or other change of control. The act requires, in most cases, a party seeking to acquire the company to file a pre-acquisition notification with the insurance commissioner. It establishes a waiting period after the acquiring party files this notification.

The act expands the information that must be included on the application required by law for the department's review of these transactions. It makes changes in the procedures for reviewing these transactions and the criteria the commissioner must use in determining whether to approve a transaction. The act requires the commissioner to evaluate whether the proposed acquisition will (1) substantially reduce competition in any insurance line in the state or (2) tend to create a monopoly in the state. In making this evaluation, he must consider the percentages of market share the involved insurers possess and the markets where they compete. The act allows the commissioner to issue orders in connection with such proposed transactions and impose civil penalties and other sanctions if they are violated.

The act requires any person controlling a domestic insurance company that seeks to divest its controlling interest to file a confidential notice of the proposed divestiture with the commissioner and send it to the company at least 30 days before divesting. It requires the commissioner to adopt regulations governing when his prior approval is required for a divestiture.

The act expands confidentiality requirements for information provided to the department under related provisions of existing law.

It expands filing requirements for insurance companies that are part of holding company systems (i.e., two or more affiliated persons, at least one of which is an insurance company) by requiring, in certain cases, the person who ultimately controls an insurance company to file an annual enterprise risk report with the commissioner. This risk includes any circumstances involving one or more affiliates of an insurer that may harm its financial condition or liquidity or that of its holding company system. It subjects certain transactions between insurers and their holding company systems to department review and approval.

The act allows the commissioner to initiate, be a member of, or participate in a supervisory college. This is a temporary or permanent forum for communication between and cooperation among state, federal, and international regulatory officials.

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The act allows the commissioner to examine an insurance company or its affiliates to determine the company's financial condition, including its enterprise risk.

Under the act, the commissioner may, rather than must, require a domestic insurance company that has been acquired to submit to a financial examination and a market conduct examination within 30 days after the acquisition.

The act makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2012; PA 12-2 June 12 Special Session advances the effective date of the supervisory college provisions to July 1, 2012.

§2 — CHANGE OF CONTROL OF AN INSURANCE COMPANY

By law, (1) no person other than a securities issuer may engage in activities to acquire control of a domestic insurance company or, in most cases, a corporation controlling such a company and (2) no person may enter into an agreement to merge with or otherwise acquire control of a domestic insurance company or a corporation controlling the company unless he or she meets certain conditions. Such a person must notify the Insurance Department before it completes the transaction and must (1) file an application with the insurance commissioner containing the information required by law, (2) send this information to the company, and (3) obtain the commissioner's approval of the application. By law, there is a rebuttable presumption that one entity controls another when it owns or controls at least 10% of its voting shares.

Under prior law, "person" included individuals and various types of business entities. The act excludes from the definition of "person," and thus the above provisions, a securities broker normally holding less than 20% of the voting securities of an insurance company or an entity that controls an insurance company.

The act specifies that a "domestic insurance company" includes any person controlling such a company, unless it is directly or through affiliates primarily engaged in business other than insurance, as determined by the commissioner. In doing so, it extends to persons controlling insurance companies, such as holding company systems, the law's provisions governing the acquisition of a controlling interest in an insurer that already applied to the insurers themselves. For example, if a holding company controlled an insurer, a person seeking control over the holding company would need to comply with the law's provisions.

§§ 2 & 3 — PRE-ACQUISITION NOTIFICATION AND REVIEW

Notification

The act requires, in most cases, a party seeking to acquire an insurance company to file a pre-acquisition notification with the commissioner. It also allows the acquired party to file this notification. Under the act, an acquisition includes any agreement, arrangement, or activity that will result in a person acquiring, directly or indirectly, the control of another through (1) the acquisition of voting securities, assets, or bulk reinsurance or (2) a merger. The commissioner

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must treat any filed information as confidential.

The notification must be in a form and contain information as the National Association of Insurance Commissioners (NAIC) prescribes. The Connecticut commissioner may require additional material and information he considers necessary. This can include, among other things, the opinion of an economist on the proposed acquisition's effect on competition in this state that permits the commissioner to evaluate whether it will violate the competitive standard established by the act.

The notification requirements do not apply to a purchase of securities solely for investment purposes, so long as they are not used (by voting or otherwise) to cause or attempt to cause substantial reduction of competition in any Connecticut insurance market. If a purchase of securities results in the purchaser gaining control of at least 10% of the shares of the acquired company, it is not considered to be solely for investment purposes unless (1) the insurance regulatory official of the insurance company's state of domicile accepts a disclaimer of control from the company or affirmatively finds that control does not exist and (2) the official communicates this to the Connecticut commissioner.

The requirements also do not apply to the acquisition:

1. of a person by another person when neither is directly or through affiliates primarily engaged in the business of insurance;
2. of an affiliate;
3. if (a) the combined market share of the involved insurers will not exceed 5% of the total market in any market, (b) there will be no increase in any market share, or (c) the combined market share of the involved insurers will not exceed 12% of the total market in any market and the market share will not increase by more than 2% of the total market in any market;
4. when notification would be required solely due to the resulting effect on Connecticut's ocean marine insurance business; or
5. of an insurance company when the insurance regulatory official of its state of domicile affirmatively determines that it is failing and (a) there is no feasible alternative to improving its condition, (b) the public benefits of improving the company's condition through the acquisition exceed the public benefits that would arise from not reducing competition in Connecticut, and (c) the official has communicated this to Connecticut's commissioner.

Under the act, an "involved insurer" is (1) an insurance company that acquires or is acquired by another person, (2) an affiliate of the acquiring or acquired company, or (3) the insurance company that results from the merger.

Waiting Period

The act creates a waiting period once the acquiring party files the notification. The waiting period begins the date the commissioner receives the notification and ends 30 days later, unless the commissioner ends it earlier. During this period, the commissioner may require, on a one-time basis, the acquiring or the acquired party to submit additional information relevant to the proposed acquisition. In this case, the waiting period ends on the 30th day after the commissioner receives the

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additional information or ends the waiting period, whichever is earlier.

Insurance Department Review

The commissioner must evaluate a proposed acquisition that is subject to the notification requirement to determine whether it will (1) substantially reduce competition in any line of insurance business in this state or (2) tend to create a monopoly in this state. In making his evaluation, the commissioner must consider the percentages of market share the involved insurers possess and the market in which they compete.

Under the act, for acquisitions involving more than two involved insurers, there is prima facie evidence of a violation of the act’s competitive standards if a comparison of the percentage of market share of the involved insurance company with the largest market share (Insurer A), against any other involved insurer (Insurer B) shows for any comparison that the percentages exceed those in the tables described below. If a percentage is not shown in the tables, it must be interpolated.

Highly Concentrated Markets. For highly concentrated markets (those where the four largest insurance companies have 75% or more of the market), the shares are:

	Insurer A	Insurer B
Market Share	4%	4% or more
	10%	2% or more
	15%	1% or more

Thus, if the largest of three companies involved in a transaction has a 10% market share and the next largest has a 5% share, there would be a presumption that the transaction is anticompetitive.

Other Markets. In other markets, the shares are:

	Insurer A	Insurer B
Market Share	5%	5% or more
	10%	4% or more
	15%	3% or more
	19%	1% or more

Other Prima Facie Evidence of Violation

Under the act, an acquisition involving two or more involved insurers competing in the same market is prima facie evidence of a violation of the competitive standards if (1) there is a significant trend toward increased concentration in the market, (2) one of the involved insurers is in a group of large insurance companies that shows this increase, and (3) another involved insurer’s market share is 2% or more.

Under the act, there is a significant trend toward increased concentration when the aggregate market share for any grouping of the largest insurance companies in

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the market, from the two largest to the eight largest, has increased by 7% or more of the market over a period extending from any base year between five and 10 years before the proposed acquisition.

The act defines “market” as the relevant product and geographical markets. In determining these markets, the commissioner must consider any (1) NAIC definitions or guidelines, (2) information submitted by an acquiring or acquired party, and (3) other information he considers relevant. In the absence of sufficient information to the contrary (1) the relevant product market is the direct written insurance premium for a line of business, i.e., a line being used in the annual statement insurance companies doing business in this state must file with the commissioner, and (2) the relevant geographical market is Connecticut.

Rebuttal of Presumption

An acquiring or acquired party may rebut the presumption of a prima facie violation based on substantial evidence of the absence of the requisite anticompetitive effect. The rebuttal may include factors such as the involved insurers’ market shares, the volatility of market leader rankings, the number of competitors in the market, the concentration and the trend in concentration in the insurance industry, and ease of entry to and exit from the market.

Other Violations

The act allows the commissioner to find, based on substantial evidence, a violation of the competitive standards that he did not designate as a prima facie violation.

Orders

If the commissioner finds that a proposed acquisition violates the act’s competitive standards or an acquiring party either fails to file or fails to provide adequate information in the required notification, the commissioner may issue an order (1) directing an involved insurer to cease and desist from doing business in Connecticut with respect to any line of insurance involved in the violation or (2) denying an involved insurer’s application for a license to do business in Connecticut. The order does not apply if the proposed acquisition is not consummated.

The commissioner may not issue this order unless (1) there is a hearing, notice of which is provided to the involved insurers before the end of the waiting period (described above) and at least 15 days before the hearing and (2) the hearing is concluded and the order issued within 60 days after the date the acquiring party filed the notification. The order must be accompanied by the commissioner’s written decision setting forth findings of fact and conclusions of law.

The commissioner may not issue an order if the proposed acquisition will (1) yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved any other way or (2) substantially increase the availability of insurance in this state, and either of these benefits exceed those that would arise from not reducing competition in this state.

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Penalties

The act subjects any person who violates the commissioner's cease and desist order, after notice and hearing, to a fine of up to \$10,000 for each day of the violation, suspension or revocation of his or her license, or both.

Any person who fails to make a required filing and fails to demonstrate a good faith effort to comply with the filing requirement must be fined up to \$50,000.

§§ 2 & 4 — REVIEW OF APPLICATION FOR CHANGE OF CONTROL

By law, when a domestic insurer is the subject of a proposed merger or change of control, it must submit an application to the Insurance Department containing specified information. The act expands the information that must be included on the application to include acknowledgments by the person filing the statement that:

1. he or she will make a good faith effort to ensure that the annual enterprise risk report required by the act is filed in a timely manner for as long as he or she has control and
2. he or she and all subsidiaries in the insurance holding company system within his or her control will provide information the commissioner requests to evaluate enterprise risk to the insurance company.

Under the act, "enterprise risk" is any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, will likely have a material adverse effect on the financial condition or liquidity of the insurer or its holding company system as a whole. Among other things, this includes any activity, circumstance, event, or series of events that would cause (1) an insurer's or health care center's (HMO) risk-based capital to fall below the minimum level required by law or (2) an insurer to be in a hazardous financial condition.

Hearing and Review of Application

The act eliminates a requirement that the commissioner hold a hearing on whether to approve a proposed change of control. Under prior law, the person filing the application had to provide notice of the hearing to the insurance company and to anyone else the commissioner designates. Under the act, if a hearing is held, the filer must provide its notice at least seven, rather than at least 15 days, before the hearing. The act also requires the filer to (1) publish notice of the hearing in newspapers in Hartford and other municipalities as the commissioner directs and (2) provide notice in other ways the commissioner deems appropriate.

Under the act, if a proposed merger or other acquisition of control requires the approval of another state's insurance regulatory official, the public hearing may be held on a consolidated basis at the commissioner's discretion. The hearing must be held in the United States before the officials of the states where the insurance companies are domiciled, who must hear and receive evidence. An insurance regulatory official may attend the hearing in person or through telecommunication.

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Decision Criteria

By law, the commissioner must make his determination whether to approve the merger or other change in control within 30 days after the hearing. Under the act, if there will be a change of control of a domestic insurance company, the commissioner must, by the same deadline, also determine whether the acquiring party must maintain or restore the insurance company's capital to the level required under Connecticut law.

The act requires the commissioner to consider (1) the information submitted in the pre-acquisition notification and (2) whether the proposed acquisition will substantially reduce competition in any line of insurance business in the state or tend to create a monopoly here when evaluating the effect of the merger or other acquisition of control on competition in this state.

Under prior law, the commissioner had to approve a merger or other acquisition of control unless he found that:

1. after the change of control, the domestic insurance company would not be able to satisfy the requirements for the issuance of a license to write the line or lines of business for which it was licensed;
2. the transaction would substantially lessen insurance competition in this state or tend to create a monopoly here;
3. the financial condition of any acquiring party might jeopardize the insurance company's financial stability or prejudice the interests of its policyholders;
4. the acquiring party's plans or proposals to liquidate the insurance company, sell its assets, consolidate or merge it with any person, or make any other material change in its business or corporate structure or management were unfair and unreasonable to the insurance company's policyholders and not in the public interest;
5. the competence, experience, and integrity of the persons who would control the insurance company's operations were such that it would not be in the interest of company's policyholders and the public to permit the transaction; or
6. the acquisition was likely to be hazardous or prejudicial to those buying insurance.

The act allows the commissioner to approve a merger or other acquisition of control on the condition of the correction or removal, within a specified period of time, of grounds listed above that would otherwise lead him to disapprove the application.

The act bars the commissioner from disapproving a merger or other acquisition of control based on the above criteria if he finds that the proposed transaction will (1) yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved any other way or (2) substantially increase the availability of insurance in this state, and either of these benefits exceeds those achieved by maintaining the level of competition in the state.

§§ 2 & 3 — DIVESTITURE OF CONTROL

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The act requires any person who controls a domestic insurance company and who seeks to divest the controlling interest to file with the commissioner and send to the company a confidential notice of the proposed divestiture at least 30 days before the divestiture. The notice must remain confidential until the conclusion of the divestiture unless the commissioner determines that this will interfere with the enforcement of the insurance law regarding mergers and acquisition of control. The filing requirement does not apply where the divestiture is occurring in conjunction with a merger or acquisition where the application required by law with respect to the transaction has been filed with the commissioner. The commissioner must adopt implementing regulations to govern when a controlling person must obtain his prior approval of a divestiture.

The act subjects a divestiture without the commissioner's approval to the same civil and criminal penalties that apply under the law to gaining control of an insurance company without his approval.

§ 8 — CONFIDENTIALITY OF INFORMATION

Restrictions on Access to Information

By law, all (1) information, documents, and copies obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made under law and (2) information reported, furnished, or filed under the laws requiring companies to be registered and governing transactions between holding companies and insurance companies, is confidential and not subject to subpoena. The act extends this protection to materials submitted in these reviews. It specifies that all of the information and related data is (1) privileged, (2) not subject to disclosure under the Freedom of Information Act, and (3) not subject to discovery or admissible in evidence in any civil action.

Under prior law, the commissioner, NAIC, and any other person could not make this information and data available to the public except to insurance departments of other states. The act instead prohibits the commissioner from making the information, documents, materials, or copies public without the affected insurance company's prior written consent. The company's consent is not needed if the commissioner (1) gives the insurance company and its affiliates who would be affected notice and opportunity to be heard and (2) determines that the interests of policyholders, security-holders, or the public will be served by the publication of the information; in that case, he may publish all or any part of the information as he considers appropriate.

The act prohibits the commissioner and anyone who receives the information, documents, materials, or copies or with whom they are shared, while acting under the commissioner's authority, from testifying or being required to testify in any civil action concerning them.

Permitted Disclosures

The act allows the commissioner to use the information, documents, materials, or copies in the furtherance of any regulatory or legal action brought as part of his official duties.

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The act requires the commissioner to enter into written agreements with NAIC governing the sharing and use of information, documents, materials, or copies shared or received under Connecticut law.

It allows the commissioner, for assistance in the performance of his duties, to:

1. share confidential and privileged information, documents, materials, or copies with (a) other state, federal, and international regulatory officials; (b) NAIC or its affiliate or subsidiaries; (c) the International Association of Insurance Supervisors; (d) the Bank for International Settlements; (e) the Federal Insurance Office; (f) state, federal, and international law enforcement authorities; and (g) members or participants of a supervisory college when the commissioner is a member or a participant, provided the recipient agrees, in writing, to maintain their confidentiality and privileged status and has verified, in writing, his or her legal authority to maintain confidentiality;
2. receive information, documents, materials, or copies, including those that are confidential and privileged, from NAIC or its affiliates or subsidiaries, the Federal Insurance Office, International Association of Insurance Supervisors, the Bank for International Settlements, or state, federal, and international law enforcement authorities, provided the commissioner maintains them as confidential and privileged when notified that they are so under the laws of the jurisdiction that is their source; and
3. enter into written agreements with the International Association of Insurance Supervisors and the Bank for International Settlements that govern the sharing and use of information, documents, materials, or copies shared or received under Connecticut law.

The agreements must:

1. specify the procedures and protocols regarding the confidentiality and security of the shared information;
2. specify that the commissioner must retain ownership of the information and that the use of this information by the other entities is subject to his discretion;
3. require prompt notice to be given to an insurance company whose confidential information is in the other entity's possession if it is subject to a request or subpoena for disclosure or production of this information; and
4. require, if the other entity is subject to disclosure of an insurance company's shared confidential information, it must allow the company to intervene in any judicial or administrative action regarding the disclosure or information.

Under the act, no waiver of any applicable privilege or claim of confidentiality in any information, documents, materials, or copies occurs as a result of disclosure to the commissioner or of sharing in accordance with the act. The act cannot be construed to delegate any of the commissioner's regulatory authority to any person or entity with which any information, documents, materials, or copies have been shared. Any information, documents, materials, or copies in the possession of NAIC or its affiliates or subsidiaries, the International Association of Insurance Supervisors, and the Bank for International Settlements

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must be confidential by law, privileged, and not be subject to discovery or admissible in evidence in any civil action in this state.

§§ 10 & 11 — EXAMINATION OF ENTERPRISE RISK

The act allows the commissioner to examine a registered insurance company or its affiliates to determine the company's financial condition, including its enterprise risk from (1) the company's ultimate controlling person, (2) members within its insurance holding company system, or (3) its insurance holding company system on a consolidated basis.

The act allows the commissioner to order an insurance company to produce records, books, or other information it does not have in its possession if it can obtain access to them under a contractual agreement, statutory obligation, or other method. If the company cannot obtain access to the information, it must give the commissioner a detailed explanation of why it cannot and identify who holds the information. If the commissioner finds the explanation to be without merit, the delay in producing the information is grounds for suspending, revoking, or refusing to renew the insurer's license as provided by law.

Sanctions for Violation

The act allows the insurance commissioner to (1) disapprove dividends and other distributions and (2) place an insurer under administrative supervision as authorized by law, when it appears to the commissioner that any person has violated the laws governing changes in the control of an insurance company in a way that prevents the full understanding of the enterprise risk posed to the insurer by its insurance holding company system or affiliates.

§§ 6 & 8 — REGISTRATION REQUIREMENTS FOR COMPANIES THAT ARE PART OF HOLDING COMPANY SYSTEMS

By law, each insurance company that is authorized to do business in Connecticut and is a member of an insurance holding company system must register with the commissioner and file a registration statement containing specified information. The act requires that the statement also include:

1. statements that the company's board of directors oversees its corporate governance and internal controls, and that its officers or senior management have approved, implemented, and continue to maintain the governance and controls;
2. if requested by the commissioner, financial statements of or within an insurance holding company system, including all affiliates, that may include annual audited financial statements filed with the Securities and Exchange Commission under federal law, and can be those of the insurance company or its parent corporation; and
3. any other information required by department regulations.

The act requires that the controlling person of each insurance company required to register under these provisions file an enterprise risk report in a form and manner prescribed by the commissioner. The initial report cannot be filed

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before June 1, 2013; the act does not specify a deadline for filing the initial report. PA 12-2, June 12 Special Session instead requires the first report to be filed by June 1, 2013.

The report must identify, to the best of the person's knowledge and belief, the material risks within the insurance holding company system that could pose enterprise risk to the insurance company.

The report must be filed with the lead state commissioner as determined by the procedures in NAIC's applicable financial analysis handbook. It must (1) be confidential by law and privileged, (2) be exempt from the Freedom of Information Act, (3) not be subject to subpoena, and (4) not be subject to discovery or admissible in any civil action.

The commissioner may not make the report public without the filer's prior written consent. But the commissioner can disclose the information, after giving the filer and the insurance company to which the report pertains and its affiliates in the insurance holding company system who would be affected notice and opportunity to be heard, if he determines that the interests of policyholders, security holders, or the public will be served by the disclosure. In this case, the commissioner may publish all or part of the information in a way he considers appropriate.

The commissioner may also use the report in the furtherance of any regulatory or legal action brought as part of his official duties. He may share the enterprise risk report only with the insurance regulatory official of another state with laws or regulations substantially similar to Connecticut's who has agreed, in writing, to maintain the report's confidentiality and privileged status.

By law, the failure to file a registration statement or any amendment or addition is subject to a variety of criminal and civil sanctions. The act extends these sanctions to apply to the failure to file a summary or an enterprise risk report.

§ 6 — SUPERVISORY COLLEGES

In order to assess the business strategy, financial, legal, or regulatory position risk exposure; risk management; or governance processes of a domestic insurance company that must register and that is part of an insurance holding company system with international operations, the act allows the commissioner to initiate, be a member of, or participate in a supervisory college. This is a temporary or permanent forum for communication between and cooperation among state, federal, and international regulatory officials. The commissioner must take this action in the context of an examination of a company as permitted by law.

If the commissioner initiates a supervisory college, he must:

1. establish its membership and participation in it by state, federal, or international regulatory officials;
2. establish its functions and the role of members and participants;
3. select a chairperson for it;
4. coordinate its activities, including meeting planning and processes for information sharing that comply with the law's applicable confidentiality provisions; and

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5. establish a crisis management plan for the supervisory college.

The act allows the commissioner to enter into written agreements with state, federal, or international regulatory officials governing the activities of a supervisory college. The agreements must maintain the confidentiality requirements of Connecticut law.

Under the act, each insurance company subject to registration must be assessed for and pay to the commissioner its share of the reasonable costs, including reasonable travel expenses, of the commissioner's participation in a supervisory college. The payment is in addition to any other taxes, fees, and money otherwise payable to the state. The commissioner must establish the assessment method for these costs and provide reasonable notice to each insurance company subject to an assessment.

These provisions do not affect the commissioner's authority to regulate an insurance company or its affiliate under the commissioner's jurisdiction or to delegate his regulatory authority to a supervisory college.

§ 7 — TRANSACTIONS BETWEEN INSURANCE AND HOLDING COMPANIES

By law, certain transactions involving a domestic insurance company and any person in its holding company system may not be entered into unless (1) the insurance company has notified the commissioner in writing of its intent to enter into them at least 30 days in advance, or any shorter period the commissioner may specify, and (2) the commissioner has approved or not disapproved the transaction within this period.

The act specifies that these provisions apply to amendments to or modifications of affiliate agreements previously filed under the law that meet any of its materiality standards. The act also requires that the written notice for these amendments or modifications specify the reasons for the change and the financial impact on the domestic insurance company. Within 30 days after the termination of a previously filed agreement, the insurance company must notify the commissioner of the termination in order for him to determine what written notice or filing is required, if any.

The act subjects all, rather than just material, management agreements, service contracts, and cost-sharing arrangements to the notice and approval requirements. It also expands the types of transactions subject to these requirements to include:

1. guarantees by a domestic insurance company, although those that are (a) quantifiable as to amount and (b) do not exceed the lesser of 0.5% of the company's admitted assets or 10% of surplus with regard to policyholders as of the last December 31st, are not subject to the notice requirement, and
2. direct or indirect acquisitions or investments in a person that controls the insurance company or in an affiliate of the company in an amount that, together with the insurance company's present holdings, exceeds 2.5% of the insurance company's surplus with regard to policyholders.

The latter provision does not apply to direct or indirect acquisitions of or investments in (1) subsidiaries acquired as allowed by law or (2) non-subsidiary affiliates that are subject to the law.

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