HOUSE BILL NO. HB0011

Insurance Holding Company System Regulatory Act.

Sponsored by: Joint Corporations, Elections and Political Subdivisions Interim Committee

A BILL

for

AN ACT relating to insurance holding companies; providing for use of supervisory colleges to assess insurance holding company risks; providing for approval of applications for divestiture; providing for submission of additional financial information; providing for consolidated hearings with other state insurance commissioners; providing for disclaimers of affiliation; providing for confidentiality as specified; providing for rules and regulations; providing definitions; providing penalties; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 26-44-118 is created to read:

26-44-118. Supervisory colleges.

(a) With respect to any insurer registered under W.S. 26-44-104, and in accordance with subsection (c) of this section, the commissioner shall also have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this chapter. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

(i) Initiating the establishment of a supervisory college;

(ii) Clarifying the membership and participation of other supervisors in the supervisory college;

(iii) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;

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

(v) Establishing a crisis management plan.

(b) Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with subsection (c) of this section, including reasonable travel expenses. 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 commissioner 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 W.S. 26-44-109, the commissioner 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 commissioner may enter into agreements providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within his jurisdiction.

Section 2. W.S. 26-1-102(a) by creating a new paragraph (xli), 26-2-113(d)(i), 26-44-101(a) by creating a new paragraph (xi) and by amending and renumbering (xi) as (xii), 26-44-102(b)(i)(intro), 26-44-103(a)(i), (ii), by creating a new paragraph (iii), (b)(intro), by creating new paragraphs (xii) and (xiii), by renumbering (xii) as (xiv), by creating new subsections (h) and (j), by renumbering (h) and (j) as (k) and (m), by creating a new subsection (n) and by renumbering (k) as (o), 26-44-104(a) through (c), (m) and by creating new subsections (n) and (o), 26-44-105(a)(intro), (iv), (v), by creating a new paragraph (vi), (b)(intro), (i)(A), (ii)(A), (iii), (iv), (c) and (d), 26-44-106(b)(i) and (ii), 26-44-108(a)(intro), (viii) and (b), 26-44-109, 26-44-110 and 26-44-113 by creating a new subsection (e) are amended to read:

26-1-102. Definitions.

(a) As used in this act:

<u>(xli) "NAIC" means the National Association of Insurance Commissioners.</u>

26-2-113. Records and other papers; generally.

(d) In order to assist in the performance of his duties under this code, the commissioner may:

(i) Share documents, materials or other information, including confidential and privileged documents, materials or information, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal and international law enforcement authorities, <u>including members of any supervisory college described in W.S. 26-44-118,</u> provided the recipient agrees to maintain the confidentiality and privileged status of any document, material or other information and has verified in writing the legal authority to maintain confidentiality;

26-44-101. Definitions.

(a) As used in this act:

(xi) "Enterprise risk" means any activity, circumstance, event or series of events involving one (1) or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or 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 set forth in W.S. 26-48-103 and 26-48-203 or would cause the insurer to be in hazardous financial condition pursuant to W.S. 26-3-116;

~~(xi)~~ (xii) "This act" means W.S. 26-44-101 through ~~26-44-117~~ 26-44-118.

26-44-102. Subsidiaries of insurers.

(b) In addition to investments in common stock, debt obligations and other securities permitted under all other sections of this chapter, a domestic insurer may also:

(i) Invest in common stock, preferred stock, debt obligations and other securities of one (1) or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of the insurer's assets or fifty percent (50%) of the insurer's surplus as regards policyholders, provided that after the investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries <u>and health maintenance organizations</u> shall be excluded, and there shall be included:

26-44-103. Acquisition of control of or merger with domestic insurer.

(a) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or agreement to exchange securities for or otherwise acquire, any voting security or any security convertible into a voting security of a domestic insurer or of any other person controlling a domestic insurer if, after consummation, the person would, directly or indirectly, be in control of the insurer and no person shall enter into an agreement to merge with or otherwise acquire control of a domestic insurer unless:

(i) Thirty (30) days prior to the above transactions the person has filed with the commissioner and has sent to the insurer a statement containing the information required by this section;~~ and~~

(ii) The offer, request, invitation, agreement or acquisition has been approved by the commissioner. For purposes of this section a domestic insurer includes any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For the purposes of this section, "person" does not include any securities broker holding, in the usual and customary broker's function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company;~~.~~ and

(iii) If any controlling person of a domestic insurer is seeking to divest its controlling interest in the domestic insurer in any manner, the controlling person has filed with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty (30) days prior to the cessation of control. The commissioner shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his discretion determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in paragraph (i) of this subsection is otherwise filed by the acquiring person or as otherwise required, this paragraph shall not apply.

(b) The preacquisition statement required by subsection (a) of this section shall be made under oath or affirmation and shall contain the following:~~ information:~~

(xii) An agreement by the person required to file the statement referred to in subsection (a) of this section that it will provide the annual report, specified in W.S. 26-44-104(n), for so long as control exists;

(xiii) An acknowledgement by the person required to file the statement referred to in subsection (a) of this section that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and

~~(xii)~~(xiv) Any additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

(h) If the proposed acquisition of control will require the approval of more than one (1) commissioner, the public hearing referred to in subsection (g) 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 within five (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 ten (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. The commissioners shall hear and receive evidence. A commissioner may attend the hearing in person or by telecommunication.

(j) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to subsection (a) of this section.

~~(h)~~ (k) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

~~(j)~~ (m) The provisions of this section do not apply to:

(i) Any transaction which is subject to the provisions of W.S. 26-24-146 through 26-24-149;

(ii) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer.

(n) The following shall be violations of this section:

(i) The failure to file any statement, amendment or other material required to be filed pursuant to subsection (a) or (b) of this section; or

(ii) The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic insurer unless the commissioner has given approval.

~~(k)~~ (o) The Wyoming courts have jurisdiction over every person who files a statement with the commissioner under this section, and overall actions arising out of violations of this section. Any person filing a statement with the commissioner appoints the commissioner as his agent for service of process for actions arising under this section. The commissioner shall send copies of all legal services by certified mail to the appropriate person at his last known address.

26-44-104. Registration of insurers.

(a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, 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 section, W.S.

~~26-44-105(a)(i), 26-44-105(a)(ii)~~ 26-44-105(a), 26-44-106 and 26-44-108 and a provision which substantially requires each registered insurer to keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each such change or addition.

(b) Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by July 1 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer authorized to do business in the state which is a member of ~~a~~ an insurance holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in W.S. 26-44-104(d) or other information filed by the insurance company with the insurance regulatory authority of the domiciliary jurisdiction.

(c) Every insurer subject to registration shall file the registration statement containing any information required by regulation by the commissioner and in the form prescribed by regulation by the commissioner, ~~. The regulation may by reference require the information required by the National Association of Insurance Commissioners.~~ which shall contain the following current information:

(i) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

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

(iii) 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 exchange 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) All management agreements, service contracts and all cost-sharing arrangements;

(F) Reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements.

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

(v) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the United States Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;

(vi) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

(vii) 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;

(viii) Any other information required by the commissioner by rule or regulation.

(m) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or the disclaimer may be filed by the insurer or any 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 the affiliation. ~~After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow a 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 shall be deemed to have been approved unless the commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

(n) Beginning July 1, 2014, the ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, 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 shall 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.

(o) The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for filing shall be a violation of this section.

26-44-105. Transactions within a holding company system.

(a) Transactions within ~~a~~ an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

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

(v) The insurer's surplus as regards policy holders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs as set forth in W.S. 26-44-108;~~.~~ and

(vi) Agreements for cost sharing services and management shall include such provisions as required by regulation issued by the commissioner.

(b) The following transactions involving a domestic insurer and any person in its 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 subsection (b) of this section, shall not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior to the transaction or a shorter period as the commissioner may permit and the commissioner has not disapproved it within that period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any. In assessing transactions under this subsection, the commissioner shall consider whether the transactions comply with subsection (a) of this section and whether they may adversely affect the interests of policyholders. The transactions to be considered are:

(i) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments if on December 31 of the year immediately preceding the transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders;

(ii) 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 purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit if on December 31 of the year immediately preceding the transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders;

(iii) Reinsurance agreements or modifications thereto, including all reinsurance pooling agreements, agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three (3) years, equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 of the year immediately 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 the assets will be transferred to one (1) or more affiliates of the insurer;

(iv) All management agreements, service contracts, tax allocation agreements and all cost-sharing arrangements; and

(c) Nothing in this section shall be deemed to authorize or permit any transaction which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(d) A domestic insurer shall 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 notification requirement set forth in subsection (b) of this section and thus the review that would otherwise occur. If the commissioner determines that separate transactions were entered into over any twelve (12) month period for that purpose, the commissioner may exercise his authority under W.S. 26-44-113.

26-44-106. Dividends and other distributions.

(b) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the lesser of:

(i) Ten percent (10%) of the insurer's surplus as regards policyholders as of December 31 of the year immediately preceding; or

(ii) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve (12) month period ending December 31 of the year immediately preceding, nor pro rata distributions of the insurer's own securities.

26-44-108. Adequacy of surplus.

(a) For purposes of this act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(viii) The surplus as regards policyholders maintained by other comparable insurers;

(b) The commissioner may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever he deems that treatment necessary.

26-44-109. Examination.

(a) The commissioner may examine any insurer registered under W.S. 26-44-104 or any affiliate of such insurer in accordance with this section and the provisions of W.S. 26-2-116 through 26-2-124 to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis. The commissioner may retain at the insurer's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff reasonably necessary to conduct the examination. Any person so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(b) To determine compliance with this chapter, the commissioner may order any insurer registered under W.S. 26-44-104 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. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of the information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may, after notice and hearing, suspend or revoke the insurer's license or certificate.

(c) In the event the insurer fails to comply with an order, the commissioner shall have the power to examine the affiliates to obtain the information. The commissioner shall also 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 commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence.

26-44-110. Confidential treatment.

(a) All information, documents and copies of the documents and information obtained by or disclosed to the commissioner or any other person in the course of an examination made pursuant to W.S. 26-44-109 and all information reported pursuant to W.S. 26-44-103(b)(xii) and (xiii) and 26-44-104 through 26-44-108 shall be confidential, shall not be subject to subpoena and shall not be disclosed by the commissioner, the National Association of Insurance Commissioners, or any person, except as authorized by and in accordance with the provisions of W.S. 26-2-113(d), without the prior written consent of the insurer to which the information pertains. The commissioner, after giving the insurer and its affiliates notice and opportunity to be heard, may determine that the interest of policyholders, shareholders or the public will be served by the publication of the information, in which event he may publish all or any part of the information as he deems appropriate.

(b) Notwithstanding W.S. 26-2-113, the commissioner shall only share confidential and privileged documents, material or information reported pursuant to W.S. 26-44-104(n) with commissioners of states having statutes or regulations substantially similar to Wyoming insurance statutes and who have agreed in writing not to disclose the information.

(c) In addition to any other authorities provided by law, the commissioner may enter into written agreements with the NAIC governing sharing and use of information provided pursuant to this act consistent with this subsection that shall:

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

(ii) Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this act remains with the commissioner and the

NAIC's use of the information is subject to the direction of the commissioner;

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

(iv) 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 commissioner pursuant to this chapter shall not constitute a delegation of regulatory authority or rulemaking and the commissioner 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 commissioner under this chapter or as a result of sharing as authorized under this chapter.

(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, shall not be a public record under W.S. 16-4-201 through 16-4-205, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.

26-44-113. Sanctions.

(e) Whenever it appears to the commissioner that any person has committed a violation of W.S. 26-44-103 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 in accordance with chapter 28 of this title.

Section 3. This act is effective July 1, 2013.

(END)