

CHAPTER 152
HB 511-FN – FINAL VERSION

13Mar2013... 0510h

2013 SESSION

13-0346
01/04

HOUSE BILL ***511-FN***

AN ACT relative to insurance holding companies.

SPONSORS: Rep. Schlachman, Rock 18; Rep. John Hunt, Ches 11

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill updates the law relative to insurance holding companies as necessary for accreditation from the National Association of Insurance Commissioners (NAIC).

This bill is a request of the insurance department.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to insurance holding companies.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 152:1 Insurance Holding Companies. RSA 401-B is repealed and reenacted to read as follows:

2 401-B:1 Definitions. In this chapter:

3 I. An “affiliate” of, or person “affiliated” with, a specific person, is a person that directly, or
4 indirectly through one or more intermediaries, controls, or is controlled by, or is under common
5 control with, the person specified.

6 II. “Commissioner” means the insurance commissioner.

7 III. “Control” (including the terms “controlling,” “controlled by” and “under common control
8 with”) means the possession, direct or indirect, of the power to direct or cause the direction of the
9 management and policies of a person, whether through the ownership of voting securities, by
10 contract other than a commercial contract for goods or non-management services, or otherwise,
11 unless the power is the result of an official position with or corporate office held by the person.
12 Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the
13 power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other
14 person. This presumption may be rebutted by a showing made in the manner provided by RSA 401-
15 B:4, XI that control does not exist in fact. The commissioner may determine, after furnishing all
16 persons in interest notice and opportunity to be heard and making specific findings of fact to support
17 such determination, that control exists in fact, notwithstanding the absence of a presumption to that
18 effect.

19 IV. “Department” means the department of insurance.

20 V. An “insurance holding company system” consists of 2 or more affiliated persons, one or
21 more of which is an insurer.

22 VI. “Insurer” shall have the same meaning as set forth in RSA 401-B:3-a, IV(b)(3)(A) except
23 that it shall not include agencies, authorities or instrumentalities of the United States, its
24 possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or
25 political subdivision of a state.

26 VII. “Enterprise risk” means any activity, circumstance, event or series of events involving
27 one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material
28 adverse effect upon the financial conditions or liquidity of the insurer or its insurance holding
29 company system as a whole, including, but not limited to, anything that would cause the insurer’s

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1 risk-based capital to fall into company action level as set forth in RSA 404-F:3 or would cause the
2 insurer to be in hazardous financial condition (Ins 2900).

3 VIII. "NAIC" means the National Association of Insurance Commissioners.

4 IX. "Person" means an individual, a corporation, a limited liability company, a partnership,
5 an association, a joint stock company, a trust, an unincorporated organization, any similar entity or
6 any combination of the foregoing acting in concert, but shall not include any joint venture
7 partnership exclusively engaged in owning, managing, leasing, or developing real or tangible
8 personal property.

9 X. A "security holder" of a specified person is one who owns any security of such person,
10 including common stock, preferred stock, debt obligations, and any other security convertible into or
11 evidencing the right to acquire any of the foregoing.

12 XI. A "subsidiary" of a specified person is an affiliate controlled by such person directly, or
13 indirectly through one or more intermediaries.

14 XII. "Voting security" shall include any security convertible into or evidencing a right to
15 acquire a voting security.

16 401-B:2 Subsidiaries of Insurers.

17 I. Authorization. Any domestic insurer, either by itself or in cooperation with one or more
18 persons, may organize or acquire one or more subsidiaries. The subsidiaries may conduct any kind of
19 business or businesses and their authority to do so shall not be limited by reasons of the fact that
20 they are subsidiaries of a domestic insurer.

21 II. Additional Investment Authority. In addition to investments in common stock, preferred
22 stock, debt obligations and other securities permitted under this title, a domestic insurer may also:

23 (a) Invest, in common stock, preferred stock, debt obligations, and other securities of one
24 or more subsidiaries, amounts which do not exceed the lesser of 10 percent of the insurer's assets or
25 50 percent of the insurer's surplus as regards policyholders, provided that after such investments,
26 the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's
27 outstanding liabilities and adequate to meet its financial needs. In calculating the amount of such
28 investments, investments in domestic or foreign insurance subsidiaries and health maintenance
29 organizations shall be excluded, and there shall be included:

30 (1) Total net moneys or other consideration expended and obligations assumed in the
31 acquisition or formation of a subsidiary, including all organizational expenses and contributions to
32 capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or
33 issuance of other securities; and

34 (2) All amounts expended in acquiring additional common stock, preferred stock,
35 debt obligations, and other securities; and all contributions to the capital or surplus of a subsidiary
36 subsequent to its acquisition or formation.

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1 (b) Invest any amount in common stock, preferred stock, debt obligations, and other
2 securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership
3 and management of assets authorized as investments for the insurer, provided that each such
4 subsidiary agrees to limit its investments in any asset so that such investments will not cause the
5 amount of the total investment of the insurer to exceed any of the investment limitations specified in
6 subparagraph II(a). For the purpose of this paragraph, “the total investment of the insurer” shall
7 include:

8 (1) Any direct investment by the insurer in an asset; and

9 (2) The insurer’s proportionate share of any investment in an asset by any subsidiary
10 of the insurer, which shall be calculated by multiplying the amount of the subsidiary’s investment by
11 the percentage of the ownership of the subsidiary.

12 (c) With the approval of the commissioner, invest any greater amount in common stock,
13 preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after
14 the investment the insurer’s surplus as regards policyholders will be reasonable in relation to the
15 insurer’s outstanding liabilities and adequate to its financial needs.

16 III. Exemption from Investment Restrictions. Investments in common stock, preferred
17 stock, debt obligations, or other securities of subsidiaries made pursuant to paragraph II, shall not
18 be subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter
19 applicable to such investments of insurers.

20 IV. Qualification of Investment; When Determined. Whether any investment made
21 pursuant to paragraph II meets the applicable requirements of that paragraph is to be determined
22 before the investment is made, by calculating the applicable investment limitations as though the
23 investment had already been made, taking into account the then outstanding principal balance on all
24 previous investments in debt obligations, and the value of all previous investments in equity
25 securities as of the day they were made, net of any return of capital invested, not including
26 dividends.

27 V. Cessation of Control. If an insurer ceases to control a subsidiary, it shall dispose of any
28 investment therein made pursuant to this section within 3 years from the time of the cessation of
29 control or within such further time as the commissioner may prescribe, unless at any time after the
30 investment shall have been made, the investment shall have met the requirements for investment
31 under any other section of this chapter, and the insurer has notified the commissioner.

32 401-B:3 Acquisition of Control of or Merger With Domestic Insurer.

33 I. Filing Requirements.

34 (a) No person other than the issuer shall make a tender offer for or a request or
35 invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or
36 acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the

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1 consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of
2 any right to acquire) be in control of the insurer, and no person shall enter into an agreement to
3 merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic
4 insurer unless, at the time the offer, request, or invitation is made or the agreement is entered into,
5 or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed
6 with the commissioner and has sent to the insurer a statement containing the information required
7 by this section and the offer, request, invitation, agreement, or acquisition has been approved by the
8 commissioner in the manner hereinafter prescribed.

9 (b) For purposes of this section, any controlling person of a domestic insurer seeking to
10 divest its controlling interest in the domestic insurer, in any manner, shall file with the
11 commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30
12 days prior to the cessation of control. The commissioner shall determine those instances in which
13 the party seeking to divest or to acquire a controlling interest in an insurer, shall be required to file
14 for and obtain approval of the transaction. The information shall remain confidential until the
15 conclusion of the transaction unless the commissioner, in his or her discretion, determines that
16 confidential treatment will interfere with enforcement of this section. If the statement referred to in
17 subparagraph (a) is otherwise filed, this subparagraph shall not apply.

18 (c) With respect to a transaction subject to this section, the acquiring person shall also
19 file a pre-acquisition notification with the commissioner, which shall contain the information set
20 forth in RSA 401-B:3-a, III(a). Failure to file the notification may subject the acquiring person to the
21 penalties specified in RSA 401-B:3-a, V(c).

22 (d) For purposes of this section, a domestic insurer shall include any person controlling a
23 domestic insurer unless the person as determined by the commissioner, is either directly or through
24 its affiliates primarily engaged in business other than the business of insurance. For the purposes of
25 this section, “person” shall not include any securities broker holding, in the usual and customary
26 broker’s function, less than 20 percent of the voting securities of an insurance company or of any
27 person which controls an insurance company.

28 II. Content of Statement. The statement to be filed with the commissioner shall be made
29 under oath or affirmation and shall contain the following:

30 (a) The name and address of each person by whom or on whose behalf the merger or
31 other acquisition of control referred to in paragraph I is to be effected (hereinafter called “acquiring
32 party”); and

33 (1) If such person is an individual, his or her principal occupation and all offices and
34 positions held during the past 5 years, and any conviction of crimes other than minor traffic
35 violations during the past 10 years;

36 (2) If the person is not an individual, a report of the nature of its business operations

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1 during the past 5 years or for the lesser period as the person and any predecessors shall have been in
2 existence; an informative description of the business intended to be done by the person and the
3 person's subsidiaries; and a list of all individuals who are or who have been selected to become
4 directors or executive officers of the person, or who perform or will perform functions appropriate to
5 such positions. The list shall include for each individual the information required by subparagraph
6 (a)(1).

7 (b) The source, nature, and amount of the consideration used or to be used in effecting
8 the merger or other acquisition of control, a description of any transaction where funds were or are to
9 be obtained for any such purpose, including any pledge of the insurer's stock, or the stock of any of its
10 subsidiaries or controlling affiliates, and the identity of persons furnishing consideration, provided,
11 however, that where a source of consideration is a loan made in the lender's ordinary course of
12 business, the identity of the lender shall remain confidential, if the person filing the statement so
13 requests.

14 (c) Fully audited financial information as to the earnings and financial condition of each
15 acquiring party for the preceding 5 fiscal years of each the acquiring party (or for such lesser period
16 as the acquiring party and any predecessors thereof shall have been in existence), and similar
17 unaudited information as of a date not earlier than 90 days prior to the filing of the statement.

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

21 (e) The number of shares of any security referred to in paragraph I which each acquiring
22 party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition
23 referred to in paragraph I and a statement as to the method by which the fairness of the proposal
24 was determined.

25 (f) The amount of each class of any security referred to in paragraph I which is
26 beneficially owned or concerning which there is a right to acquire beneficial ownership by each
27 acquiring party.

28 (g) A full description of any contracts, arrangements, or understandings with respect to
29 any security referred to in paragraph I in which any acquiring party is involved, including but not
30 limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls,
31 guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or
32 the giving or withholding of proxies. The description shall identify the persons with whom the
33 contracts, arrangements or understandings have been entered into.

34 (h) A description of the purchase of any security referred to in paragraph I during the 12
35 calendar months preceding the filing of the statement by any acquiring party, including the dates of
36 purchase, names of the purchasers, and consideration paid or agreed to be paid.

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1 (i) A description of any recommendations to purchase any security referred to in
2 paragraph I made during the 12 calendar months preceding the filing of the statement by any
3 acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party.

4 (j) Copies of all tender offers for, requests or invitations for tenders of, exchange offers
5 for, and agreements to acquire or exchange any securities referred to in paragraph I and (if
6 distributed) of additional soliciting material relating to them.

7 (k) The terms of any agreement, contract, or understanding made with or proposed to be
8 made with any broker-dealer as to solicitation of securities referred to in paragraph I for tender, and
9 the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard
10 thereto.

11 (l) An agreement by the person required to file the statement referred to in paragraph I
12 that it will provide the annual report specified in RSA 401-B:4, XII for as long as control exists.

13 (m) An acknowledgement by the person required to file the statement referred to in
14 paragraph I that the person and all subsidiaries within its control in the insurance holding company
15 system will provide information to the commissioner upon request as necessary to evaluate
16 enterprise risk to the insurer.

17 (n) Such additional information as the commissioner may by rule prescribe as necessary
18 or appropriate for the protection of policyholders of the insurer or in the public interest.

19 III. If the person required to file the statement referred to in paragraph I is a partnership,
20 limited partnership, syndicate or other group, the commissioner may require that the information
21 called for by subparagraphs II(a) through (n) shall be given with respect to each partner of the
22 partnership or limited partnership, each member of the syndicate or group, and each person who
23 controls the partner or member. If any partner, member, or person is a corporation or a person
24 required to file the statement referred to in paragraph I is a corporation, the commissioner may
25 require that the information called for by subparagraphs II(a) through (n) shall be given with respect
26 to such corporation, each officer and director of such corporation, and each person who is directly or
27 indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the
28 corporation.

29 IV. Changes. If any material change occurs in the facts set forth in the statement filed with
30 the commissioner and sent to such insurer pursuant to paragraph II or III, an amendment setting
31 forth such change, together with copies of all documents and other material relevant to such change,
32 shall be filed with the commissioner and sent to the insurer within 2 business days after the person
33 learns of the change.

34 V. Alternative Filing Materials. If any offer, request, invitation, agreement, or acquisition
35 referred to in paragraph I is proposed to be made by means of a registration statement under the
36 Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the

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1 Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the
2 person required to file the statement referred to in paragraph I may utilize the documents in
3 furnishing the information called for by that statement.

4 VI. Approval by Commissioner; Hearings.

5 (a) The commissioner shall approve any merger or other acquisition of control referred to
6 in paragraph I unless, after a public hearing, the commissioner finds that:

7 (1) After the change of control the domestic insurer referred to in paragraph I would
8 not be able to satisfy the requirements for the issuance of a license to write the line or lines of
9 insurance for which it is presently licensed;

10 (2) The effect of the merger or other acquisition of control would be substantially to
11 lessen competition in insurance in this state or tend to create a monopoly. In applying the
12 competitive standard in this subparagraph:

13 (A) The informational requirements of RSA 401-B:3-a, III(a) and the standards
14 of RSA 401-B:3-a, IV(b) shall apply;

15 (B) The merger or other acquisition shall not be disapproved if the commissioner
16 finds that any of the situations meeting the criteria provided by RSA 401-B:3-a, IV(c) exist; and

17 (C) The commissioner may condition the approval of the merger or other
18 acquisition on the removal of the basis of disapproval within a specified period of time.

19 (3) The financial condition of any acquiring party is such as might jeopardize the
20 financial stability of the insurer, or prejudice the interest of its policyholders;

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

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

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

30 (b) The public hearing referred to in subparagraph VI(a) shall be held within 30 days
31 after the statement required by paragraph I is filed and at least 20 days' notice shall be given by the
32 commissioner to the person filing the statement. Not less than 7 days' notice of the public hearing
33 shall be given by the person filing the statement to the insurer and to such other persons as may be
34 designated by the commissioner. The insurer shall give such notice to its security holders. The
35 commissioner shall make a determination within the 60-day period preceding the effective date of
36 the proposed transaction. At such hearing, the person filing the statement, the insurer, any person

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1 to whom notice of hearing was sent, and any other person whose interest may be affected shall have
2 the right to present evidence, examine and cross-examine witnesses, and offer oral and written
3 arguments and in connection therewith shall be entitled to conduct discovery proceedings in the
4 same manner as is presently allowed in the superior court of this state. All discovery proceedings
5 shall be concluded not later than 3 days prior to the commencement of the public hearing.

6 (c) If the proposed acquisition of control will require the approval of more than one
7 commissioner, the public hearing referred to in subparagraph (b) may be held on a consolidated basis
8 upon request of the person filing the statement referred to in paragraph I. Such person shall file the
9 statement referred to in paragraph I with the National Association of Insurance Commissioners
10 (NAIC) within 5 days of making the request for a public hearing. A commissioner may opt out of a
11 consolidated hearing, and shall provide notice to the applicant of the opt-out within 10 days of the
12 receipt of the statement referred to in paragraph I. A hearing conducted on a consolidated basis
13 shall be public and shall be held within the United States before the commissioners of the states in
14 which the insurers are domiciled. Such commissioners shall hear and receive evidence. A
15 commissioner may attend such hearing, in person or by telecommunication.

16 (d) In connection with a change of control of a domestic insurer, any determination by
17 the commissioner that the person acquiring control of the insurer shall be required to maintain or
18 restore the capital of the insurer to the level required by the laws and regulations of this state shall
19 be made not later than 60 days after the date of notification of the change in control submitted
20 pursuant to subparagraph I(a).

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

24 VII. Exemptions. The provisions of this section shall not apply to any offer, request,
25 invitation, agreement, or acquisition which the commissioner by order shall exempt as not having
26 been made or entered into for the purpose and not having the effect of changing or influencing the
27 control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.

28 VIII. Violations. The following shall be violations of this section:

29 (a) The failure to file any statement, amendment, or other material required to be filed
30 pursuant to paragraph I or II.

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

33 IX. Jurisdiction; Consent to Service of Process. The courts of this state are hereby vested
34 with jurisdiction over every person not resident, domiciled, or authorized to do business in this state
35 who files a statement with the commissioner under this section, and over all actions involving such
36 person arising out of violations of this section, and each the person shall be deemed to have

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1 performed acts equivalent to and constituting an appointment by the person of the commissioner to
2 be his true and lawful attorney upon whom may be served all lawful process in any action, suit or
3 proceeding arising out of violations of this section. Copies of all lawful process shall be served on the
4 commissioner and transmitted by registered or certified mail by the commissioner to the person at
5 his last known address.

6 401-B:3-a Acquisitions Involving Insurers Not Otherwise Covered.

7 I. Definitions. In this section:

8 (a) “Acquisition” means any agreement, arrangement or activity, the consummation of
9 which results in a person acquiring directly or indirectly the control of another person, and includes
10 but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance
11 and mergers.

12 (b) An “involved insurer” includes an insurer which either acquires or is acquired, is
13 affiliated with an acquirer or acquired, or is the result of a merger.

14 II. Scope.

15 (a) Except as exempted in subparagraph II(b), this section applies to any acquisition in
16 which there is a change in control of an insurer authorized to do business in this state.

17 (b) This section shall not apply to the following:

18 (1) A purchase of securities solely for investment purposes as long as the securities
19 are not used by voting or otherwise to cause or attempt to cause the substantial lessening of
20 competition in any insurance market in this state. If a purchase of securities results in a
21 presumption of control under RSA 401-B:1, III, it is not solely for investment purposes unless the
22 commissioner of the insurer’s state of domicile accepts a disclaimer of control or affirmatively finds
23 that control does not exist and the disclaimer action or affirmative finding is communicated by the
24 domiciliary commissioner to the commissioner of this state.

25 (2) The acquisition of a person by another person when both persons are neither
26 directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition
27 notification is filed with the commissioner in accordance with subparagraph III(a) 30 days prior to
28 the proposed effective date of the acquisition. However, such pre-acquisition notification is not
29 required for exclusion from this section if the acquisition would otherwise be excluded from this
30 section by any other provision of RSA 401-B:3-a, II(b).

31 (3) The acquisition of already affiliated persons.

32 (4) An acquisition if, as an immediate result of the acquisition:

33 (A) In no market would the combined market share of the involved insurers
34 exceed 5 percent of the total market.

35 (B) There would be no increase in any market share; or

36 (C) In no market would:

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1 (i) The combined market share of the involved insurers exceed 12 percent of
2 the total market; and

3 (ii) The market share increase by more than 2 percent of the total market.

4 For the purpose of this subparagraph, a market means direct written insurance premium in this
5 state for a line of business as contained in the annual statement required to be filed by insurers
6 licensed to do business in this state.

7 (5) An acquisition for which a pre-acquisition notification would be required
8 pursuant to this section due solely to the resulting effect on the ocean marine insurance line of
9 business.

10 (6) An acquisition of an insurer whose domiciliary commissioner affirmatively finds
11 that such insurer is in failing condition; there is a lack of feasible alternative to improving such
12 condition; the public benefits of improving the insurer's condition through the acquisition exceed the
13 public benefits that would arise from not lessening competition; and the findings are communicated
14 by the domiciliary commissioner to the commissioner of this state.

15 III. Pre-Acquisition Notification; Waiting Period. An acquisition covered by paragraph II
16 may be subject to an order pursuant to paragraph V, unless the acquiring person files a pre-
17 acquisition notification and the waiting period has expired. The acquired person may file a pre-
18 acquisition notification. The commissioner shall give confidential treatment to information
19 submitted under this paragraph in the same manner as provided in RSA 401-B:8.

20 (a) The pre-acquisition notification shall be in such form and contain such information
21 as prescribed by the NAIC relating to those markets which, under subparagraph II(b)(4), cause the
22 acquisition not to be exempted from the provisions of this section. The commissioner may require
23 such additional material and information as deemed necessary to determine whether the proposed
24 acquisition, if consummated, would violate the competitive standard of paragraph IV. The required
25 information may include an opinion of an economist as to the competitive impact of the acquisition in
26 this state accompanied by a summary of the education and experience of such person indicating his
27 or her ability to render an informed opinion.

28 (b) The waiting period required shall begin on the date of receipt of the commissioner of
29 a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of the
30 receipt, or termination of the waiting period, by the commissioner. Prior to the end of the waiting
31 period, the commissioner on a one-time basis may require the submission of additional needed
32 information relevant to the proposed acquisition, in which event the waiting period shall end on the
33 earlier of the thirtieth day after receipt of the additional information by the commissioner or
34 termination of the waiting period by the commissioner.

35 IV. Competitive Standard.

36 (a) The commissioner may enter an order under subparagraph V(a) with respect to an

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1 acquisition if there is substantial evidence that the effect of the acquisition may be substantially to
2 lessen competition in any line of insurance in this state or tend to create a monopoly or if the insurer
3 fails to file adequate information in compliance with paragraph III.

4 (b) In determining whether a proposed acquisition would violate the competitive
5 standard of subparagraph IV(a) the commissioner shall consider the following:

6 (1) Any acquisition covered under paragraph II involving 2 or more insurers
7 competing in the same market is prima facie evidence of violation of the competitive standards:

8 (A) If the market is highly concentrated and the involved insurers possess the
9 following shares of the market:

10	Insurer A	Insurer B
11	4 percent	4 percent or more
12	10 percent	2 percent or more
13	15 percent	1 percent or more

14 (B) Or, if the market is not highly concentrated and the involved insurers possess
15 the following shares of the market:

16	Insurer A	Insurer B
17	5 percent	5 percent or more
18	10 percent	4 percent or more
19	15 percent	3 percent or more
20	19 percent	1 percent or more

21 A highly concentrated market is one in which the share of the 4 largest insurers is 75 percent or
22 more of the market. Percentages not shown in the tables are interpolated proportionately to the
23 percentages that are shown. If more than 2 insurers are involved, exceeding the total of the 2
24 columns in the table is prima facie evidence of violation of the competitive standard in subparagraph
25 IV(a). For the purpose of this subparagraph, the insurer with the largest share of the market shall
26 be deemed to be insurer A.

27 (2) There is a significant trend toward increased concentration when the aggregate
28 market share of any grouping of the largest insurers in the market, from the 2 largest to the 8
29 largest, has increased by 7 percent or more of the market over a period of time extending from any
30 base year 5 to 10 years prior to the acquisition up to the time of the acquisition. Any acquisition or
31 merger covered under paragraph II involving 2 or more insurers competing in the same market is
32 prima facie evidence of violation of the competitive standard in subparagraph IV(a) if:

33 (A) There is a significant trend toward increased concentration in the market;

34 (B) One of the insurers involved is one of the insurers in a grouping of large
35 insurers showing the requisite increase in the market share; and

36 (C) Another involved insurer's market is 2 percent or more.

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1 (3) For the purposes of subparagraph IV(b):

2 (A) The term “insurer” includes any company or group of companies under
3 common management, ownership, or control.

4 (B) The term “market” means the relevant product and geographical markets. In
5 determining the relevant product and geographical markets, the commissioner shall give due
6 consideration to, among other things, the definitions or guidelines, if any, promulgated by the NAIC
7 and to information, if any, submitted by parties to the acquisition. In the absence of sufficient
8 information to the contrary, the relevant product market is assumed to be the direct written
9 insurance premium for a line of business, such line being that used in the annual statement required
10 to be filed by insurers doing business in this state, and the relevant geographical market is assumed
11 to be this state.

12 (C) The burden of showing prima facie evidence of violation of the competitive
13 standard rests upon the commissioner.

14 (4) Even though an acquisition is not prima facie violative of the competitive
15 standard under subparagraphs IV(b)(1) and (2), the commissioner may establish the requisite anti-
16 competitive effect based upon other substantial evidence. Even though an acquisition is prima facie
17 violative of the competitive standard under subparagraphs IV(b)(1) and (2), a party may establish
18 the absence of the requisite anti-competitive effect based upon other substantial evidence. Relevant
19 factors in making a determination under this subparagraph include, but are not limited to, the
20 following: market shares, volatility of ranking of market leaders, number of competitors,
21 concentration, trend of concentration in the industry, and ease of entry and exit into the market.

22 (c) An order may not be entered under subparagraph V(a) if:

23 (1) The acquisition will yield substantial economies of scale or economies in resource
24 utilization that cannot be feasibly achieved in any other way, and the public benefits which would
25 arise from such economies exceed the public benefits which would arise from not lessening
26 competition; or

27 (2) The acquisition will substantially increase the availability of insurance, and the
28 public benefits of the increase exceed the public benefits which would arise from not lessening
29 competition.

30 V. Orders and Penalties.

31 (a)(1) If an acquisition violates the standards of this section, the commissioner may enter
32 an order:

33 (A) Requiring an involved insurer to cease and desist from doing business in this
34 state with respect to the line or lines of insurance involved in the violation; or

35 (B) Denying the application of an acquired or acquiring insurer for a license to do
36 business in this state.

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1 (2)(A) Such an order shall not be entered unless:
2 (i) There is a hearing;
3 (ii) Notice of such hearing to be issued prior to the end of the waiting period
4 and not less than 15 days prior to the hearing; and
5 (iii) The hearing is concluded and the order is issued no later than 60 days
6 after the date of the filing of the pre-acquisition notification with the commissioner.

7 (B) Every order shall be accompanied by a written decision of the commissioner
8 setting forth findings of fact and conclusions of law.

9 (3) An order pursuant to subparagraph V(a) shall not apply if the acquisition is not
10 consummated.

11 (b) Any person who violates a cease and desist order of the commissioner under
12 subparagraph V(a) and while the order is in effect may, after notice and hearing and upon order of
13 the commissioner be subject at the discretion of the commissioner to one or more of the following:

- 14 (1) A monetary penalty of not more than \$10,000 for every day of violation; or
15 (2) Suspension or revocation of the person's license.

16 (c) Any insurer or other person who fails to make any filing required by this section, and
17 who also fails to demonstrate a good faith effort to comply with any such filing requirement, shall be
18 subject to an administrative fine of not more than \$50,000.

19 VI. Inapplicable Provisions. RSA 401-B:10, II and III and RSA 401-B:12 shall not apply to
20 acquisitions covered under paragraph II.

21 401-B:4 Registration of Insurers.

22 I. Registration.

23 (a) Every insurer which is authorized to do business in this state and which is a member
24 of an insurance holding company system shall register with the commissioner, except a foreign
25 insurer subject to registration requirements and standards adopted by statute or rule in the
26 jurisdiction of its domicile which are substantially similar to those contained in:

- 27 (1) RSA 401-B:4; and
28 (2) RSA 401-B:5, I(a), II and IV; and
29 (3) Either RSA 401-B:5, I(b) or a provision such as the following: Each registered
30 insurer shall keep current the information required to be disclosed in its registration statement by
31 reporting all material changes or additions within 15 days after the end of the month in which it
32 learns of each change or addition.

33 (b) Any insurer which is subject to registration under this section shall register within
34 15 days after it becomes subject to registration and annually thereafter by May 1 of each year for the
35 previous calendar year, unless the commissioner for good cause shown extends the time for
36 registration, and then within the extended time. The commissioner may require any insurer

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1 authorized to do business in this state which is a member of an insurance holding company system,
2 and which is not subject to registration under this section, to furnish a copy of the registration
3 statement, the summary specified in paragraph III, or other information filed by such insurance
4 company with the insurance regulatory authority of its domiciliary jurisdiction.

5 II. Information and Form Required. Every insurer subject to registration shall file a
6 registration statement with the commissioner on a form and in a format prescribed by NAIC which
7 shall contain the following current information:

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

10 (b) The identity and relationship of every member of the insurance holding company
11 system;

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

14 (1) Loans, investments, purchases, sales, or exchanges of securities of the affiliates
15 by the insurer or of the insurer by its affiliates;

16 (2) Purchases, sales, or exchanges of assets;

17 (3) Transactions not in the ordinary course of business;

18 (4) Guarantees or undertakings for the benefit of an affiliate which result in an
19 actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered
20 into in the ordinary course of the insurer's business;

21 (5) All management and service contracts and all cost-sharing arrangements;

22 (6) Reinsurance agreements;

23 (7) Dividends and other distributions to shareholders; and

24 (8) Consolidated tax allocation agreements.

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

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

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

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1 (g) Statements that the insurer’s board of directors oversees corporate governance and
2 internal controls and that the insurer’s officers or senior management have approved, implemented,
3 and continue to maintain and monitor corporate governance and internal control procedures.

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

5 III. Summary of Changes to Registration Statement. All registration statements shall
6 contain a summary outlining all items in the current registration statement representing changes
7 from the prior registration statement.

8 IV. Materiality. No information need be disclosed on the registration statement filed
9 pursuant to paragraph II, if the information is not material for the purposes of this section. Unless
10 the commissioner by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans
11 or extensions of credit, investments, or guarantees involving 1/2 of one percent or less of an insurer’s
12 admitted assets as of the 31st day of December next preceding shall not be deemed material for
13 purposes of this section.

14 V. Reporting of Dividends to Shareholders. Subject to RSA 401-B:5, II, each registered
15 insurer shall report to the commissioner all dividends and other distributions to shareholders within
16 15 business days following the declaration thereof.

17 VI. Information of Insurers. Any person within an insurance holding company system
18 subject to registration shall be required to provide complete and accurate information to an insurer,
19 where the information is reasonably necessary to enable the insurer to comply with the provisions of
20 this chapter.

21 VII. Termination of Registration. The commissioner shall terminate the registration of any
22 insurer which demonstrates that it no longer is a member of an insurance holding company system.

23 VIII. Consolidated Filing. The commissioner may require or allow 2 or more affiliated
24 insurers subject to registration to file a consolidated registration statement.

25 IX. Alternative Registration. The commissioner may allow an insurer which is authorized to
26 do business in this state and which is part of an insurance holding company system to register on
27 behalf of any affiliated insurer which is required to register under paragraph I, and to file all
28 information and material required to be filed under this section.

29 X. Exemptions. The provisions of this section shall not apply to any insurer, information or
30 transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the
31 same from the provisions of this section.

32 XI. Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with
33 any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance
34 holding company system. The disclaimer shall fully disclose all material relationships and bases for
35 affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. A
36 disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within 30

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1 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed.
2 In the event of disallowance, the disclaiming party may request an administrative hearing, which
3 shall be granted. The disclaiming party shall be relieved of its duty to register under this section if
4 approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to
5 have been approved.

6 XII. Enterprise Risk Filing. The ultimate controlling person of every insurer subject to
7 registration shall also file an annual enterprise risk report. The report shall, to the best of the
8 ultimate controlling person's knowledge and belief, identify the material risks within the insurance
9 holding company system that could pose enterprise risk to the insurer. The report shall be filed with
10 the lead state commissioner of the insurance holding company system as determined by the
11 procedures within the Financial Analysis Handbook adopted by the NAIC.

12 XIII. Violations. The failure to file a registration statement or any summary of the
13 registration statement or enterprise risk filing required by this section within the time specified for
14 such filing shall be a violation of this section.

15 401-B:5 Standards and Management of an Insurer Within a Holding Company System.

16 I. Transactions Within an Insurance Holding Company System.

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

19 (1) The terms shall be fair and reasonable.

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

22 (3) Charges or fees for services performed shall be reasonable.

23 (4) Expenses incurred and payment received shall be allocated to the insurer in
24 conformity with customary insurance accounting practices consistently applied.

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

29 (6) The insurer's surplus as regards policyholders following any dividends or
30 distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding
31 liabilities and adequate to meet its financial needs.

32 (b) The following transactions involving a domestic insurer and any person in its holding
33 company system, including amendments or modifications of affiliate agreements previously filed
34 pursuant to this section, which are subject to any materiality standards contained in RSA 401-B:5, I-
35 VII, may not be entered into unless the insurer has notified the commissioner in writing of its
36 intention to enter into the transaction at least 30 days prior thereto, or such shorter period as the

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1 commissioner may permit, and the commissioner has not disapproved it within such period. The
2 notice for amendments or modifications shall include the reasons for the change and the financial
3 impact on the domestic insurer. Informal notice shall be reported, within 30 days after a
4 termination of a previously filed agreement, to the commissioner for determination of the type of
5 filing required, if any.

6 (1) Sales, purchases, exchanges, loans, extensions of credit, or investments, provided
7 the transactions are equal to or exceed:

8 (A) With respect to nonlife insurers, the lesser of 3 percent of the insurer's
9 admitted assets or 25 percent of surplus as regards policyholders; as of December 31, next preceding.

10 (B) With respect to life insurers, 3 percent of the insurer's admitted assets as of
11 December 31, next preceding.

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

17 (A) With respect to nonlife insurers, the lesser of 3 percent of the insurer's
18 admitted assets or 25 percent of surplus as regards policyholders as of December 31, next preceding;

19 (B) With respect to life insurers, 3 percent of the insurer's admitted assets, as of
20 December 31, next preceding.

21 (3) Reinsurance agreements or modifications thereto, including:

22 (A) All reinsurance pooling agreements;

23 (B) Agreements in which the reinsurance premium or a change in the insurer's
24 liabilities, or projected reinsurance premium or a change in the insurer's liabilities in any of the next
25 3 years, equals or exceeds 5 percent of the insurer's surplus as regards policyholders, as of the
26 December 31, next preceding, including those agreements which may require as consideration the
27 transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between
28 the insurer and non-affiliate that any portion of the assets will be transferred to one or more
29 affiliates of the insurer.

30 (4) All management agreements, service contracts, tax allocation agreements,
31 guarantees, and all cost-sharing arrangements.

32 (5) Guarantees when made by a domestic insurer; provided, however, that a
33 guarantee which is quantifiable as to amount is not subject to the notice requirements of this
34 paragraph unless it exceeds the lesser of 1/2 of one percent of the insurer's admitted assets or 10
35 percent of surplus as regards policyholders as of December 31, next preceding. Further, all

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1 guarantees which are not quantifiable as to amount are subject to the notice requirements of this
2 paragraph.

3 (6) Direct or indirect acquisitions or investments in a person that controls the
4 insurer or in an affiliate of the insurer in an amount which, together with its present holdings in
5 such investments, exceeds 2-1/2 percent of the insurer's surplus to policyholders. Direct or indirect
6 acquisitions or investments in subsidiaries acquired pursuant to RSA 401-B:2 or authorized under
7 any other section of this chapter, or in non-subsidiary insurance affiliates that are subject to the
8 provisions of this chapter, are exempt from this requirement;

9 (7) Any material transactions, specified by rule, which the commissioner determines
10 may adversely affect the interests of the insurer's policyholders.

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

14 (d) A domestic insurer may not enter into transactions which are part of a plan or series
15 of like transactions with persons within the insurance holding company system if the purpose of
16 those separate transactions is to avoid the statutory threshold amount and thus avoid the review
17 that would occur otherwise. If the commissioner determines that separate transactions were entered
18 into over any 12-month period for that purpose, the commissioner may exercise his or her authority
19 under RSA 401-B:11.

20 (e) The commissioner, in reviewing transactions pursuant to subparagraph I(b), shall
21 consider whether the transactions comply with the standards of subparagraph I(a) and whether they
22 may adversely affect the interests of policyholders.

23 (f) The commissioner shall be notified within 30 days of any investment of the domestic
24 insurer in any one corporation if the total investment in the corporation by the insurance holding
25 company system exceeds 10 percent of the corporation's voting securities.

26 **II. Dividends and Other Distributions.**

27 (a) No domestic insurer shall pay any extraordinary dividend or make any other
28 extraordinary distribution to its shareholders until:

29 (1) Thirty days after the commissioner has received notice of the declaration thereof
30 and has not within that period disapproved the payment; or

31 (2) Until the commissioner has approved the payment within the 30-day period.

32 (b)(1) For the purposes of this section, an extraordinary dividend or distribution includes
33 any dividend or distribution of cash or other property, whose fair market value together with that of
34 other dividends or distributions made within the preceding 12 months exceeds the lesser of:

35 (A) Ten percent of such insurer's surplus as regards policyholders as of the
36 December 31, next preceding; or

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1 (B) The net gain from operations of the insurer, if the insurer is a life insurer, or
2 the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-
3 month period ending December 31, next preceding, but shall not include pro rata distributions of any
4 class of the insurer's own securities.

5 (2) In determining whether a dividend or distribution is extraordinary, an insurer
6 other than a life insurer may carry forward net income from the previous 2 calendar years that has
7 not already been paid out as dividends. This carry-forward shall be computed by taking the net
8 income from the second and third preceding calendar years, not including realized capital gains, less
9 dividends paid in the second and immediate preceding calendar years.

10 (c) Notwithstanding any other provision of law, an insurer may declare an extraordinary
11 dividend or distribution which is conditional upon the commissioner's approval, and the declaration
12 shall confer no rights upon shareholders until:

13 (1) The commissioner has approved the payment of the dividend or distribution; or

14 (2) The commissioner has not disapproved the payment within the 30-day period
15 referred to above.

16 III. Management of Domestic Insurers Subject to Registration.

17 (a) Notwithstanding the control of a domestic insurer by any person, the officers and
18 directors of the insurer shall not thereby be relieved of any obligation or liability to which they would
19 otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating
20 identify consistent with this chapter.

21 (b) Nothing in this section shall preclude a domestic insurer from having or sharing a
22 common management or cooperative or joint use of personnel, property or services with one or more
23 other persons under arrangements meeting the standards of subparagraph I(a).

24 (c) Not less than 1/3 of the directors of a domestic insurer, and not less than 1/3 of the
25 member of each committee of the board of directors of any domestic insurer shall be persons who are
26 not officers or employees of the insurer or of any entity controlling, controlled by, or under common
27 control with the insurer and who are not beneficial owners of a controlling interest in the voting
28 stock of the insurer or entity. At least one such person shall be included in any quorum for the
29 transaction of business at any meeting of the board of directors or any committee thereof.

30 (d) The board of directors of a domestic insurer shall establish one or more committees
31 comprised solely of directors who are not officers or employees of the insurer or of any entity
32 controlling, controlled by, or under common control with the insurer and who are not beneficial
33 owners of a controlling interest in the voting stock of the insurer or any such entity. The committee
34 or committees shall have responsibility for nominating candidates for director for election by
35 shareholders or policyholders, evaluating the performance of officers deemed to be principal officers

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1 of the insurer and recommending to the board of directors the selection and compensation of the
2 principal officers.

3 (e) The provisions of subparagraphs (c) and (d) shall not apply to a domestic insurer if
4 the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a
5 public held corporation, has a board of directors and committees thereof that meet the requirements
6 of subparagraphs (c) and (d) with respect to such controlling entity.

7 (f) An insurer may make application to the commissioner for a waiver from the
8 requirements of this paragraph, if the insurer's annual direct written and assumed premium,
9 excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood
10 Program, is less than \$300,000,000. An insurer may also make application to the commissioner for a
11 waiver from the requirements of this paragraph based upon unique circumstances. The
12 commissioner may consider various factors including, but not limited to, the type of business entity,
13 volume of business written, availability of qualified board members, or the ownership or
14 organizational structure of the entity.

15 IV. Adequacy of Surplus. For purposes of this chapter, in determining whether an insurer's
16 surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and
17 adequate to meet its financial needs, the following factors, among others, shall be considered:

18 (a) The size of the insurer as measured by its assets, capital and surplus, reserves,
19 premium writing, insurance in force, and other appropriate criteria.

20 (b) The extent to which the insurer's business is diversified among several lines of
21 insurance.

22 (c) The number and size of risks insured in each line of business.

23 (d) The extent of the geographical dispersion of the insurer's insured risks.

24 (e) The nature and extent of the insurer's reinsurance program.

25 (f) The quality, diversification, and liquidity of the insurer's investment portfolio.

26 (g) The recent past and projected future trend in the size of the insurer's investment
27 portfolio.

28 (h) The surplus as regards policyholders maintained by other comparable insurers.

29 (i) The adequacy of the insurer's reserves.

30 (j) The quality and liquidity of investment in affiliates. The commissioner may treat any
31 such investment as a disallowed asset for purposes of determining the adequacy of surplus as
32 regards policyholders whenever in the judgment of the commissioner the investment so warrants.

33 401-B:6 Examination.

34 I. Power of Commissioner. Subject to the limitation contained in this section and in addition
35 to the powers which the commissioner has under Title XXXVII relating to the examination of
36 insurers, the commissioner shall have the power to examine any insurer registered under RSA 401-

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1 B:4 and its affiliates to ascertain the financial condition of the insurer including the enterprise risk
2 to the insurer by the ultimate controlling party, or by any entity or combination of entities within the
3 insurance holding company system, or by the insurance holding company system on a consolidated
4 basis.

5 II. Access to Books and Records.

6 (a) The commissioner may order any insurer registered under RSA 401-B:4 to produce
7 such records, books, or other information papers in the possession of the insurer or its affiliates as
8 are reasonably necessary to determine compliance with this chapter.

9 (b) To determine compliance with this chapter, the commissioner may order any insurer
10 registered under RSA 401-B:4 to produce information not in the possession of the insurer if the
11 insurer can obtain access to such information pursuant to contractual relationships, statutory
12 obligations, or other method. In the event the insurer cannot obtain the information requested by
13 the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason
14 that the insurer cannot obtain the information and the identity of the holder of information.
15 Whenever it appears to the commissioner that the detailed explanation is without merit, the
16 commissioner may require, after notice and hearing, the insurer to pay a penalty of \$2,500 for each
17 day's delay, or may suspend or revoke the insurer's license.

18 III. Use of Consultants. The commissioner may retain, without appropriation under RSA 9,
19 without qualifying as a department expenditure under RSA 4:15, and at the registered insurer's
20 expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the
21 commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination
22 under paragraph I. Any persons so retained shall be under the direction and control of the
23 commissioner and shall act in a purely advisory capacity.

24 IV. Expenses. Each registered insurer producing for examination records, books and papers
25 pursuant to paragraph I, shall be liable for, and shall pay the expense of examination in accordance
26 with RSA 400-A:37.

27 V. Compelling Production. In the event the insurer fails to comply with an order, the
28 commissioner shall have the power to examine the affiliates to obtain the information. The
29 commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine
30 under oath any person for purposes of determining compliance with this section. Upon the failure or
31 refusal of any person to obey a subpoena, the commissioner may petition a court of competent
32 jurisdiction, and upon proper showing, the court may enter an order compelling the witness to
33 appear and testify or produce documentary evidence. Failure to obey the court order shall be
34 punishable as contempt of court. Every person shall be obliged to attend as a witness at the place
35 specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled
36 to the same fees and mileage, if claimed, as a witness in RSA 516:13, RSA 516:14, and RSA 516:16,

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1 which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of
2 witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company
3 being examined.

4 401-B:7 Supervisory Colleges.

5 I. Power of Commissioner. With respect to any insurer registered under RSA 401-B:4, and
6 in accordance with paragraph III, the commissioner shall also have the power to participate in a
7 supervisory college for any domestic insurer that is part of an insurance holding company system
8 with international operations in order to determine compliance by the insurer with this chapter. The
9 powers of the commissioner with respect to supervisory colleges include, but are not limited to, the
10 following:

11 (a) Initiating the establishment of a supervisory college;

12 (b) Clarifying the membership and participation of other supervisors in the supervisory
13 college;

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

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

18 (e) Establishing a crisis management plan.

19 II. Expenses. Each registered insurer subject to this section shall be liable for and shall pay
20 the reasonable expenses of the commissioner's participation in a supervisory college in accordance
21 with paragraph III, including reasonable travel expenses. For purposes of this section, a supervisory
22 college may be convened as either a temporary or permanent forum for communication and
23 cooperation between the regulators charged with the supervision of the insurer or its affiliates, and
24 the commissioner may establish a regular assessment to the insurer for the payment of these
25 expenses.

26 III. Supervisory College. In order to assess the business strategy, financial position, legal
27 and regulatory position, risk exposure, risk management and governance processes, and as part of
28 the examination of individual insurers in accordance with RSA 401-B:6, the commissioner may
29 participate in a supervisory college with other regulators charged with supervision of the insurer or
30 its affiliates, including other state, federal, and international regulatory agencies. The commissioner
31 may enter into agreements in accordance with RSA 401-B:8, III providing the basis for cooperation
32 between the commissioner and the other regulatory agencies, and the activities of the supervisory
33 college. Nothing in this section shall delegate to the supervisory college the authority of the
34 commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

35 401-B:8 Confidential Treatment.

36 I. Documents, materials, or other information in the possession or control of the insurance

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1 department that are obtained by or disclosed to the commissioner or any other person in the course
2 of an examination or investigation made pursuant to RSA 401-B:6 and all information reported
3 pursuant to RSA 401-B:3, II(l) and (m), RSA 401-B:4, and RSA 401-B:5, shall be confidential by law
4 and privileged shall not be subject to RSA 91-A, shall not be subject to subpoena, and shall not be
5 subject to discovery or admissible in evidence in any private civil action. However, the commissioner
6 is authorized to use the documents, materials, or other information in the furtherance of any
7 regulatory or legal action brought as part of the commissioner's official duties. The commissioner
8 shall not otherwise make the documents, materials or other information public without the prior
9 written consent of the insurer to which it pertains unless the commissioner, after giving the insurer
10 and its affiliates who would be affected thereby notice and opportunity to be heard, determines that
11 the interests of policyholders, shareholders, or the public will be served by the publication thereof, in
12 which event the commissioner may publish all or any part in such manner as may be deemed
13 appropriate.

14 II. Neither the commissioner or any person who received documents, materials, or other
15 information while acting under the authority of the commissioner or with whom such documents,
16 materials, or other information are shared pursuant to this chapter shall be permitted or required to
17 testify in any private civil action concerning any confidential documents, materials, or information
18 subject to RSA 401-B:8, I.

19 III. In order to assist in the performance of the commissioner's duties, the commissioner:

20 (a) May share documents, materials, or other information, including the confidential and
21 privileged documents, materials, or information subject to paragraph I, with other state, federal and
22 international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state,
23 federal, and international law enforcement authorities, including members of any supervisory college
24 described in RSA 401-B:7, provided that the recipient agrees in writing to maintain the
25 confidentiality and privileged status of the document, material or other information, and has verified
26 in writing the legal authority to maintain confidentiality.

27 (b) Notwithstanding subparagraph (a), the commissioner shall only share confidential
28 and privileged documents, material or information reported pursuant to RSA 401-B:4, XII, with
29 commissioner of states having statutes or regulations substantially similar to RSA 401-B:8, I and
30 who have agreed in writing not to disclose such information.

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

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1 (d) Shall enter into written agreements with the NAIC governing sharing and use of
2 information provided pursuant to this chapter consistent with this paragraph and shall:

3 (1) Specify procedures and protocols regarding the confidentiality and security of
4 information shared with the NAIC and its affiliates and subsidiaries pursuant to this chapter,
5 including procedures and protocols for sharing by the NAIC with other state, federal, or
6 international regulators.

7 (2) Specify that ownership of information shared with the NAIC and its affiliates
8 and subsidiaries pursuant to this chapter remains with the commissioner and the NAIC's use of the
9 information is subject to the direction of the commissioner.

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

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

17 IV. The sharing of information by the commissioner pursuant to this chapter shall not
18 constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely
19 responsible for the administration, execution and enforcement of the provisions of this chapter.

20 V. No waiver of any applicable privilege or claim of confidentiality in the documents,
21 materials or information shall occur as a result of disclosure to the commissioner under this section
22 or as a result of sharing as authorized in RSA 401-B:8, III.

23 VI. Documents, materials or other information in the possession or control of the NAIC
24 pursuant to this chapter shall be confidential by law and privileged, shall not be subject to RSA 91-
25 A, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in
26 any private civil action.

27 401-B:9 Rules and Orders. The commissioner may upon notice and opportunity for all interested
28 persons to be heard, issue such rules and orders as shall be necessary to carry out the provisions of
29 this chapter.

30 401-B:10 Injunctions; Prohibitions Against Voting Securities; Sequestration of Voting Securities.

31 I. Injunctions. Whenever it appears to the commissioner that any insurer or any director,
32 officer, employee, or agent thereof has committed or is about to commit a violation of this chapter or
33 of any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply
34 to the superior court for the county in which the principal office of the insurer is located or if such
35 insurer has no office in this state then to the superior court for Merrimack county for an order
36 enjoining the insurer or director, officer, employee, or agent thereof from violating or continuing to

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1 violate this chapter or any rule, regulation or order, and for such other equitable relief as the nature
2 of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public
3 may require.

4 II. Voting of Securities; When Prohibited. No security which is the subject of any agreement
5 or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the
6 provisions of this chapter or of any rule, regulation, or order issued by the commissioner hereunder
7 may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action
8 of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the
9 securities were not issued and outstanding; but no action taken at any such meeting shall be
10 invalidated by the voting of the securities, unless the action would materially affect control of the
11 insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has
12 reason to believe that any security of the insurer has been or is about to be acquired in contravention
13 of the provisions of this chapter or of any rule, regulation, or order issued by the commissioner
14 hereunder; the insurer or the commissioner may apply to the superior court for Merrimack county or
15 to the superior court for the county in which the insurer has its principal place of business to enjoin
16 any offer, request, invitation, agreement or acquisition made in contravention of RSA 401-B:3 or any
17 rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security
18 so acquired, to void any vote of the security already cast at any meeting of shareholders, and for such
19 other equitable relief as the nature of the case and the interest of the insurer's policyholders,
20 creditors and shareholders or the public may require.

21 III. Sequestration of Voting Securities. In any case where a person has acquired or is
22 proposing to acquire any voting securities in violation of this chapter or any rule, regulation, or order
23 issued by the commissioner hereunder, the superior court for Merrimack county or the superior court
24 for the county in which the insurer has its principal place of business may, on such notice as the
25 court deems appropriate, upon the application of the insurer or the commissioner seize or sequester
26 any voting securities of the insurer owned directly or indirectly by the person, and issue such order
27 as may be appropriate to effectuate the provisions of this chapter. Notwithstanding any other
28 provisions of law, for the purposes of this chapter, the situs of the ownership of the securities of
29 domestic insurers shall be deemed to be in this state.

30 401-B:11 Sanctions.

31 I. Any insurer failing, without just cause, to file any registration statement as required in
32 this chapter shall be required, after notice and hearing, to pay a penalty of \$2,500 for each day's
33 delay, to be recovered by the commissioner. The commissioner may reduce the penalty if the insurer
34 demonstrates to the commissioner that the imposition of the penalty would constitute a financial
35 hardship to the insurer.

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1 II. Every director or officer of an insurance holding company system who knowingly violates,
2 participates in, or assents to, or who knowingly shall permit any of the officers or agents of the
3 insurer to engage in transactions or make investments which have not been properly reported or
4 submitted pursuant to RSA 401-B:4, I; RSA 401-B:5, I(b) and II or which violate this chapter, shall
5 pay, in individual capacity, a civil forfeiture of not more than \$2,500 per violation, after notice and
6 hearing before the commissioner. In determining the amount of the civil forfeiture, the
7 commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity
8 of the violation, the history of previous violations, and such other matters as justice may require.

9 III. Whenever it appears to the commissioner that any insurer subject to this chapter or any
10 director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract
11 which is subject to RSA 401-B:5 and which would not have been approved had the approval been
12 requested, the commissioner may order the insurer to cease and desist immediately any further
13 activity under that transaction or contract. After notice and hearing the commissioner may also
14 order the insurer to void any contracts and restore the status quo if the action is in the best interest
15 of the policyholders, creditors, or the public.

16 IV. Whenever it appears to the commissioner that any insurer or any director, officer,
17 employee, or agent thereof has committed a willful violation of this chapter, the commissioner may
18 cause criminal proceedings to be instituted pursuant to RSA 400-A:16, V by the court for the county
19 in which the principal office of the insurer is located or if the insurer has no office in this state, then
20 by the Merrimack County superior court against the insurer or the responsible director, officer,
21 employee, or agent thereof. Any insurer which willfully violates this chapter may be fined pursuant
22 to RSA 651:2, IV. Any individual who willfully violates this chapter may be fined in his or her
23 individual capacity pursuant to RSA 651:2, IV or be imprisoned for not more than one to 3 years or
24 both.

25 V. Any officer, director, or employee of an insurance holding company system who willfully
26 and knowingly subscribes to or makes or causes to be made any false statements or false reports or
27 false filings with the intent to deceive the commissioner in the performance of his or her duties
28 under this chapter, upon conviction shall be imprisoned for not more than one to 3 years or fined
29 pursuant to RSA 651:2, IV or both. Any fines imposed shall be paid by the officer, director, or
30 employee in his or her individual capacity.

31 VI. Whenever it appears to the commissioner that any person has committed a violation of
32 RSA 401-B:3 and which prevents the full understanding of the enterprise risk to the insurer by
33 affiliates or by the insurance holding company system, the violation may serve as an independent
34 basis for disapproving dividends or distributions and for placing the insurer under an order of
35 supervision in accordance with RSA 402-C.

36 401-B:12 Receivership. Whenever it appears to the commissioner that any person has

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1 committed a violation of this chapter which so impairs the financial condition of a domestic insurer
2 as to threaten insolvency or make the further transaction of business by it hazardous to its
3 policyholders, creditors, shareholders, or the public, the commissioner may proceed as provided in
4 RSA 402-C to take possession of the property of such domestic insurer and to conduct its business.

5 401-B:13 Recovery.

6 I. If an order for liquidation or rehabilitation of a domestic insurer has been entered, the
7 receiver appointed under the order shall have a right to recover on behalf of the insurer:

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

11 (b) Any payment in the form of a bonus, termination settlement, or extraordinary lump
12 sum salary adjustment made by the insurer or its subsidiary to a director, officer or employee, where
13 the distribution or payment pursuant to subparagraphs (a) or (b) is made at any time during the one
14 year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject
15 to the limitations of paragraphs II-IV.

16 II. No distribution shall be recoverable if the parent or affiliate shows that when paid the
17 distribution was lawful and reasonable, and that the insurer did not know and could not reasonably
18 have known that the distribution might adversely affect the ability of the insurer to fulfill its
19 contractual obligations.

20 III. Any person who was a parent corporation or holding company or a person who otherwise
21 controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the
22 amount of distributions or payments under paragraph I which the person received. Any person who
23 otherwise controlled the insurer at the time the distributions were declared shall be liable up to the
24 amount of distributions that would have been received if they had been paid immediately. If 2
25 more persons are liable with respect to the same distributions, they shall be jointly and severally
26 liable.

27 IV. The maximum amount recoverable under this section shall be the amount needed in
28 excess of all other available assets of the impaired or insolvent insurer to pay the contractual
29 obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

30 V. To the extent that any person liable under paragraph III is insolvent or otherwise fails to
31 pay claims due from it, its parent corporation or holding company or person who otherwise controlled
32 it at the time the distribution was paid shall be jointly and severally liable for any resulting
33 deficiency in the amount recovered from the parent corporation or holding company or person who
34 otherwise controlled it.

35 401-B:14 Revocation, Suspension, or Nonrenewal of Insurer's License. Whenever it appears to
36 the commissioner that any person has committed a violation of this chapter which makes the

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1 continued operation of an insurer contrary to the interests of policyholders or the public, the
2 commissioner may, after giving notice and opportunity to be heard, suspend, revoke or refuse to
3 renew the insurer's license or authority to do business in this state for such period as the
4 commissioner finds is required for the protection of policyholders or the public. Any such
5 determination shall be accompanied by specific findings of fact and conclusions of law.

6 401-B:15 Appeal.

7 I. Judicial Review, Mandamus. Any person aggrieved by any act, determination, rule,
8 regulation, or order of any other action of the commissioner pursuant to this chapter may appeal in
9 accordance with RSA 541. The court shall conduct its review without a jury and by trial de novo,
10 except that if all parties, including the commissioner, so stipulate, the review shall be confined to the
11 record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to
12 those parties so stipulating.

13 II. The filing of an appeal pursuant to this section shall stay the application of any rule,
14 regulation, order, or other action by the commissioner to the appealing party unless the court, after
15 giving the party notice and an opportunity to be heard, determines that a stay would be detrimental
16 to the interest of policyholders, shareholders, creditors or the public.

17 III. Any person aggrieved by any failure of the commissioner to act or make a determination
18 required by this chapter may petition the Merrimack county superior court for a writ of mandamus
19 or a peremptory mandamus directing the commissioner to act or make a determination.

20 152:2 New Chapter; Own Risk and Solvency Assessment. Amend RSA by inserting after chapter
21 401-B the following new chapter:

22 CHAPTER 401-C

23 OWN RISK AND SOLVENCY ASSESSMENT

24 401-C:1 Purpose and Scope.

25 I. The purpose of this chapter is to provide the requirements for maintaining a risk
26 management framework and completing Own Risk and Solvency Assessment (ORSA) and provide
27 guidance and instructions for filing an ORSA summary report with the insurance commissioner of
28 this state.

29 II. The requirements of this chapter shall apply to all insurers domiciled in this state unless
30 exempt pursuant to RSA 401-C:6.

31 III. The general court finds and declares that the ORSA summary report will contain
32 confidential and sensitive information related to an insurer or insurance group's identification of
33 risks material and relevant to the insurer or insurance group filing the report. This information will
34 include proprietary and trade secret information that has the potential for harm and competitive
35 disadvantage to the insurer or insurance group if the information is made public. It is the intent of
36 this chapter that the ORSA summary report shall be a confidential document filed with the

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1 commissioner, that the ORSA summary report will be shared only as stated in this chapter and to
2 assist the commissioner in the performance of his or her duties, and that in no event shall the ORSA
3 summary report be subject to public disclosure.

4 401-C:2 Definitions. In this chapter:

5 I. For the purpose of conducting an ORSA, “insurance group” means those insurers and
6 affiliates included within an insurance holding company system as defined in RSA 401-B.

7 II. “Insurer” shall have the same meaning as set forth in RSA 401-C:2, except that it shall
8 not include agencies, authorities, or instrumentalities of the United States, its possessions and
9 territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political
10 subdivision of a state.

11 III. “Own risk and solvency assessment” or “ORSA” means a confidential internal
12 assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group,
13 conducted by that insurer or insurance group of the material and relevant risks associated with the
14 insurer or insurance group’s current business plan, and the sufficiency of capital resources to
15 support those risks.

16 IV. “ORSA guidance manual” means the current version of the Own Risk and Solvency
17 Assessment Guidance Manual developed and adopted by the National Association of Insurance
18 Commissioners (NAIC) and as amended from time to time. A change in the ORSA guidance manual
19 shall be effective on the January 1 following the calendar year in which the changes have been
20 adopted by the NAIC.

21 V. “ORSA summary report” means a confidential high-level summary of an insurer or
22 insurance group’s ORSA.

23 401-C:3 Risk Management Framework. An insurer shall maintain a risk management
24 framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on
25 its material and relevant risks. This requirement may be satisfied if the insurance group of which
26 the insurer is a member maintains a risk management framework applicable to the operations of the
27 insurer.

28 401-C:4 ORSA Requirement. Subject to RSA 401-C:6, an insurer, or the insurance group of
29 which the insurer is a member, shall regularly conduct an ORSA consistent with a process
30 comparable to the ORSA guidance manual. The ORSA shall be conducted no less than annually but
31 also at any time when there are significant changes to the risk profile of the insurer or the insurance
32 group of which the insurer is a member.

33 401-C:5 ORSA Summary Report.

34 I. Upon the commissioner’s request, and no more than once each year, an insurer shall
35 submit to the commissioner an ORSA summary report or any combination of reports that together
36 contain the information described in the ORSA guidance manual, applicable to the insurer and/or

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1 the insurance group of which it is a member. Notwithstanding any request from the commissioner, if
2 the insurer is a member of an insurance group, the insurer shall submit the report or reports
3 required by this section if the commissioner is the lead state commissioner of the insurance group as
4 determined by the procedures within the Financial Analysis Handbook adopted by the National
5 Association of Insurance Commissioners.

6 II. The report shall include a signature of the insurer or insurance group's chief risk officer
7 or other executive having responsibility for the oversight of the insurer's enterprise risk
8 management process attesting to the best of his or her belief and knowledge that the insurer applies
9 the enterprise risk management process described in the ORSA summary report and that a copy of
10 the report has been provided to the insurer's board of directors or the appropriate committee thereof.

11 III. An insurer may comply with paragraph I by providing the most recent and
12 substantially similar reports provided by the insurer or another member of an insurance group of
13 which the insurer is a member to the commissioner of another state or to a supervisor or regulator of
14 a foreign jurisdiction, if that report provides information that is comparable to the information
15 described in the ORSA guidance manual. Any such report in a language other than English shall be
16 accompanied by a translation of that report into the English language.

17 401-C:6 Exemption.

18 I. An insurer shall be exempt from the requirements of this chapter, if:

19 (a) The insurer has annual direct written and unaffiliated assumed premium, including
20 international direct and assumed premium but excluding premiums reinsured with the Federal Crop
21 Insurance Corporation and Federal Flood Program, less than \$500,000,000; and

22 (b) The insurance group of which the insurer is a member has annual direct written and
23 unaffiliated assumed premium including international direct and assumed premium, but excluding
24 premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less
25 than \$1,000,000,000.

26 II. If an insurer qualifies for exemption pursuant to subparagraph I(a), but the insurance
27 group of which the insurer is a member does not qualify for exemption pursuant to subparagraph
28 I(b), then the ORSA summary report that may be required pursuant to RSA 401-C:5 shall include
29 every insurer within the insurance group. This requirement may be satisfied by the submission of
30 more than one ORSA summary report for any combination of insurers provided any combination of
31 reports includes every insurer within the insurance group.

32 III. If an insurer does not qualify for exemption pursuant to subparagraph I(a), but the
33 insurance group of which it is a member qualifies for exemption pursuant to subparagraphs I(b),
34 then the only ORSA summary report that may be required pursuant to RSA 401-C:5 shall be the
35 report applicable to that insurer.

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1 IV. An insurer that does not qualify for exemption pursuant to paragraph I may apply to the
2 commissioner for a waiver from the requirements of this chapter based upon unique circumstances.
3 In deciding whether to grant the insurer's request for waiver, the commissioner may consider the
4 type and volume of business written, ownership and organizational structure, and any other factor
5 the commissioner considers relevant to the insurer or insurance group of which the insurer is a
6 member. If the insurer is part of an insurance group with insurers domiciled in more than one state,
7 the commissioner shall coordinate with the lead state commissioner and with the other domiciliary
8 commissioners in considering whether to grant the insurer's request for a waiver.

9 V. Notwithstanding the exemptions stated in this section:

10 (a) The commissioner may require that an insurer maintain a risk management
11 framework, conduct an ORSA and file an ORSA summary report based on unique circumstances
12 including, but not limited to, the type and volume of business written, ownership and organizational
13 structure, federal agency requests, and international supervisor requests.

14 (b) The commissioner may require that an insurer maintain a risk management
15 framework, conduct an ORSA and file an ORSA summary report if the insurer has risk-based capital
16 for company action level event as set forth in RSA 404-F:3, meets one or more of the standards of an
17 insurer deemed to be in hazardous financial condition, as defined in Ins 1500, or otherwise exhibits
18 qualities of a troubled insurer as determined by the commissioner.

19 VI. If an insurer that qualifies for an exemption pursuant to paragraph I subsequently no
20 longer qualifies for that exemption due to changes in premium as reflected in the insurer's most
21 recent annual statement or in the most recent annual statements of the insurers within the
22 insurance group of which the insurer is a member, the insurer shall have one year following the year
23 the threshold is exceeded to comply with the requirements of this chapter.

24 401-C:7 Contents of ORSA Summary Report.

25 I. The ORSA summary report shall be prepared consistent with the ORSA guidance manual
26 subject to the requirements of paragraph II. Documentation and supporting information shall be
27 maintained and made available upon examination or upon request of the commissioner.

28 II. The review of the ORSA summary report, and any additional requests for information,
29 shall be made using similar procedures currently used in the analysis and examination of multi-state
30 or global insurers and insurance groups.

31 401-C:8 Confidentiality.

32 I. Documents, materials, or other information, including the ORSA summary report, in the
33 possession of or control of the insurance department that are obtained by, created by or disclosed to
34 the commissioner or any other person under this chapter, is recognized by this state as being
35 proprietary and to contain trade secrets. All such documents, materials, or other information shall
36 be confidential by law and privileged, shall not be subject to RSA 91-A, shall not be subject to

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1 subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.
2 However, the commissioner is authorized to use the documents, materials, or other information in
3 the furtherance of any regulatory or legal action brought as a part of the commissioner's official
4 duties. The commissioner shall not otherwise make the documents, materials, or other information
5 public without the prior written consent of the insurer.

6 II. Neither the commissioner nor any person who received documents, materials, or other
7 ORSA related information, through examination or otherwise, while acting under the authority of
8 the commissioner or with whom such documents, materials, or other information are shared
9 pursuant to this chapter shall be permitted or required to testify in any private civil action
10 concerning any confidential documents, materials, or information subject to paragraph I.

11 III. In order to assist in the performance of the commissioner's regulatory duties, the
12 commissioner:

13 (a) May, upon request, share documents, materials, or other ORSA related information,
14 including the confidential and privileged documents, materials, or information subject to paragraph
15 I, including proprietary and trade secret documents and materials with other state, federal, and
16 international financial regulatory agencies, including members of any supervisory college as defined
17 in RSA 401-B:7, with the NAIC and with any third party consultants designated by the
18 commissioner, provided that the recipient agrees in writing to maintain the confidentiality and
19 privileged status of the ORSA related documents, materials, or other information and has verified in
20 writing the legal authority to maintain confidentiality; and

21 (b) May receive documents, materials, or other ORSA related information, including
22 otherwise confidential and privileged documents, materials, or information, including proprietary
23 and trade secret information or documents, from regulatory officials of other foreign or domestic
24 jurisdictions, including members of any supervisory college as defined in RSA 401-B:7, and from the
25 NAIC, and shall maintain as confidential or privileged any documents, materials, or information
26 received with notice or the understanding that it is confidential or privileged under the laws of the
27 jurisdiction that is the source of the document, material, or information.

28 (c) Shall enter into a written agreement with the NAIC or a third-party consultant
29 governing sharing and use of information provided pursuant to this chapter, consistent with this
30 subsection that shall:

31 (1) Specify procedures and protocols regarding the confidentiality and security of
32 information shared with the NAIC or a third-party consultant pursuant to this chapter, including
33 procedures and protocols for sharing by the NAIC with other state regulators from states in which
34 the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees
35 in writing to maintain the confidentiality and privileged status of the ORSA related documents,

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1 materials or other information and has verified in writing the legal authority to maintain
2 confidentiality;

3 (2) Specify that ownership of information shared with the NAIC or a third-party
4 consultant pursuant to this chapter remains with the commissioner and the NAIC's or third-party
5 consultant's use of the information is subject to the direction of the commissioner;

6 (3) Prohibit the NAIC or third-party consultant from storing the information shared
7 pursuant to this chapter in a permanent database after the underlying analysis is completed;

8 (4) Require prompt notice to be given to an insurer whose confidential information in
9 the possession of the NAIC or a third-party consultant pursuant to this chapter is subject to a
10 request or subpoena to the NAIC or a third-party consultant for disclosure or production;

11 (5) Require the NAIC or a third-party consultant to consent to intervention by an
12 insurer in any judicial or administrative action in which the NAIC or a third-party consultant may
13 be required to disclose confidential information about the insurer shared with the NAIC or a third-
14 party consultant pursuant to this chapter; and

15 (6) In the case of an agreement involving a third-party consultant, provide for the
16 insurer's written consent.

17 IV. The sharing of information and documents by the commissioner pursuant to this chapter
18 shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is
19 solely responsible for the administration, execution, and enforcement of the provisions of this
20 chapter.

21 V. No waiver of any applicable privilege or claim of confidentiality in the documents,
22 proprietary and trade secret materials or other ORSA related information shall occur as a result of
23 disclosure of such ORSA related information or documents to the commissioner under this section or
24 as a result of sharing as authorized in this chapter.

25 VI. Documents, materials, or other information in the possession or control of the NAIC or a
26 third-party consultant pursuant to this chapter shall be confidential by law and privileged, shall not
27 be subject to RSA 91-A, shall not be subject to subpoena, and shall not be subject to discovery or
28 admissible in evidence in any private civil action.

29 401-C:9 Sanctions. Any insurer failing, without just cause, to timely file the ORSA summary
30 report as required in this chapter shall be required, after notice and hearing, to pay a penalty of
31 \$2,500 for each day's delay, to be recovered by the commissioner and the penalty so recovered shall
32 be paid into the general revenue fund of this state. The commissioner may reduce the penalty if the
33 insurer demonstrates to the commissioner that the imposition of the penalty would constitute a
34 financial hardship to the insurer.

35 401-C:10 Severability Clause. If any provision of this chapter, or the application thereof to any
36 person or circumstance, is held invalid, such invalidity shall not affect other provisions or

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1 applications of the chapter which can be given effect without the invalid provisions or applications,
2 and to that end the provisions of this chapter are severable.

3 152:3 Applicability. The first filing of the ORSA summary report in accordance with RSA 401-
4 C:5 as inserted by section 2 of this act shall be November 1, 2015.

5 152:4 Effective Date.

6 I. Sections 2 and 3 of this act shall take effect January 1, 2015.

7 II. The remainder of this act shall take effect January 1, 2014.

8

9 Approved: June 28, 2013

10 Effective Date: I. Sections 2 and 3 shall take effect January 1, 2015.

11 II. Remainder shall take effect January 1, 2014.