

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 253

(SENATORS MINARD AND JENKINS, *original sponsors*)

[Passed March 12, 2011; to take effect July 1, 2012.]

AN ACT to amend and reenact §33-27-2, §33-27-2a, §33-27-3, §33-27-4, §33-27-5, §33-27-6, §33-27-7, §33-27-9, §33-27-11 and §33-27-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §33-27-3a and §33-27-6a, all relating to insurance holding company systems; defining terms; excluding certain investments from determination of adequacy of surplus; requiring notice and other information with regard to divestiture or acquisition of a controlling interest; changing public hearing requirements; providing standards for review of acquisition request by commissioner; establishing process for consolidated hearings; providing standards and procedures for certain acquisitions not otherwise covered; providing requirements for insurers; expanding examinations and types of information that may be demanded and reviewed by the commissioner, including compelling production; providing for management of domestic insurers subject to registration;

1 providing for establishment of supervisory colleges; providing
2 additional confidentiality measures; providing for payments of
3 costs, expenses and mileage; providing for fines, orders and
4 penalties; and authorizing emergency rules.

5 *Be it enacted by the Legislature of West Virginia:*

6 That §33-27-2, §33-27-2a, §33-27-3, §33-27-4, §33-27-5,
7 §33-27-6, §33-27-7, §33-27-9, §33-27-11 and §33-27-14 of the Code
8 of West Virginia, 1931, as amended, be amended and reenacted; and
9 that said code be amended by adding thereto two new sections,
10 designated §33-27-3a and §33-27-6a, all to read as follows:

11 **ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.**

12 **§33-27-2. Definitions.**

13 As used in this article:

14 (a) An "affiliate" of or person "affiliated" with a specific
15 person is a person that, directly or indirectly through one or more
16 intermediaries, controls or is controlled by or is under common
17 control with the person specified.

18 (b) "Commissioner" means the West Virginia Insurance
19 Commissioner, his or her deputies or the West Virginia offices of
20 the Insurance Commissioner, as appropriate.

21 (c) "Control" (including the terms "controlling", "controlled
22 by" and "under common control with") means the possession, direct
23 or indirect, of the power to direct or cause the direction of the
24 management and policies of a person, whether through the ownership
25 of voting securities, by contract other than a commercial contract
26 for goods or nonmanagement services or otherwise, unless the power

1 is the result of an official position with or corporate office held
2 by the person. Control shall be presumed to exist if any person,
3 directly or indirectly, owns, controls, holds with the power to
4 vote or holds proxies representing ten percent or more of the
5 voting securities of any other person. This presumption may be
6 rebutted by a showing made in the manner provided by subsection
7 (k), section four of this article that control does not exist in
8 fact. The commissioner may determine after furnishing all persons
9 in interest notice and opportunity to be heard and making specific
10 findings of fact to support the determination that control exists
11 in fact notwithstanding the absence of a presumption to that
12 effect.

13 (d) "Enterprise risk" means any activity, circumstance, event
14 or series of events involving one or more affiliates of an insurer
15 that, if not remedied promptly, is likely to have a material
16 adverse effect upon the financial condition or liquidity of the
17 insurer or its insurance holding company system as a whole,
18 including, but not limited to, anything that would cause the
19 insurer's risk-based capital to fall into company action level, as
20 set forth in article forty of this chapter, or would cause the
21 insurer to be in hazardous financial condition, as set forth in
22 article thirty-four of this chapter.

23 (e) "Insurance holding company system" consists of two or more
24 affiliated persons, one or more of which is an insurer.

25 (f) "Insurer" means any person or persons or corporation,
26 partnership or company authorized by the laws of this state to

1 transact the business of insurance in this state, except that it
2 shall not include agencies, authorities or instrumentalities of the
3 United States, its possessions and territories, the commonwealth of
4 Puerto Rico, the District of Columbia or a state or political
5 subdivision of a state.

6 (g) "Person" means an individual, a corporation, a limited
7 liability company, a partnership, an association, a joint-stock
8 company, a trust, an unincorporated organization, a depository
9 institution or any similar entity or any combination of the
10 foregoing acting in concert, but does not include any joint venture
11 partnership exclusively engaged in owning, managing, leasing or
12 developing real or tangible personal property.

13 (h) A "security holder" of a specified person is one who owns
14 any security of such person, including common stock, preferred
15 stock, debt obligations and any other security convertible into or
16 evidencing the right to acquire any of the foregoing.

17 (i) A "subsidiary" of a specified person is an affiliate
18 controlled by such person directly or indirectly through one or
19 more intermediaries.

20 (j) "Voting security" includes any security convertible into
21 or evidencing a right to acquire a voting security.

22 **§33-27-2a. Subsidiaries of insurers; authorization; investment**
23 **authority; exemptions; qualifications; cessation of**
24 **controls.**

25 (a) *Authorization.* - Any domestic insurer, either by itself
26 or in cooperation with one or more persons, may organize or acquire

1 one or more subsidiaries engaged in the following kinds of business
2 with the commissioner's prior approval:

3 (1) Any kind of insurance business authorized by the
4 jurisdiction in which it is incorporated;

5 (2) Acting as an insurance agent for its parent or for any of
6 its parent's insurer subsidiaries;

7 (3) Investing, reinvesting or trading in securities for its
8 own account, that of its parent, any subsidiary of its parent, or
9 any affiliate or subsidiary;

10 (4) Management of any investment company subject to or
11 registered pursuant to the Investment Company Act of 1940, as
12 amended, including related sales and services;

13 (5) Acting as a broker-dealer subject to or registered
14 pursuant to the Securities Exchange Act of 1934, as amended;

15 (6) Rendering investment advice to governments, government
16 agencies, corporations or other organizations or groups;

17 (7) Rendering other services related to the operations of an
18 insurance business, including, but not limited to, actuarial, loss
19 prevention, safety engineering, data processing, accounting,
20 claims, appraisal and collection services;

21 (8) Ownership and management of assets which the parent
22 corporation could itself own or manage;

23 (9) Acting as administrative agent for a governmental
24 instrumentality which is performing an insurance function;

25 (10) Financing of insurance premiums, agents and other forms
26 of consumer financing;

1 (11) Any other business activity determined by the
2 commissioner to be reasonably ancillary to an insurance business;
3 and

4 (12) Owning a corporation or corporations engaged or organized
5 to engage exclusively in one or more of the businesses specified in
6 this section;

7 (b) *Additional investment authority.* -- In addition to
8 investments in common stock, preferred stock, debt obligations and
9 other securities permitted under any other provision of this
10 chapter, a domestic insurer may also with the commissioner's prior
11 approval:

12 (1) Invest in common stock, preferred stock, debt obligations
13 and other securities of one or more subsidiaries, amounts which do
14 not exceed the lesser of ten percent of the insurer's assets or
15 fifty percent of the insurer's surplus as regards policyholders:
16 *Provided,* That after the investments, the insurer's surplus as
17 regards policyholders will be reasonable in relation to the
18 insurer's outstanding liabilities and adequate to its financial
19 needs. In calculating the amount of the investments, investments
20 in domestic or foreign insurance subsidiaries shall be excluded and
21 there shall be included:

22 (A) Total net moneys or other consideration expended and
23 obligations assumed in the acquisition or formation of a
24 subsidiary, including all organizational expenses and contributions
25 to capital and surplus of the subsidiary whether or not represented
26 by the purchase of capital stock or issuance of other securities;

1 and

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

6 (2) Invest any amount in common stock, preferred stock, debt
7 obligations and other securities of one or more subsidiaries
8 engaged or organized to engage exclusively in the ownership and
9 management of assets authorized as investments for the insurer:
10 *Provided*, That each subsidiary agrees to limit its investments in
11 any asset so that the investments will not cause the amount of the
12 total investment of the insurer to exceed any of the investment
13 limitations specified in subdivision (1) of this subsection or in
14 article eight of this chapter applicable to the insurer. For the
15 purpose of this subdivision, "the total investment of the insurer"
16 includes:

17 (A) Any direct investment by the insurer in an asset; and

18 (B) The insurer's proportionate share of any investment in an
19 asset by any subsidiary of the insurer, which shall be calculated
20 by multiplying the amount of the subsidiary's investment by the
21 percentage of the ownership of the subsidiary.

22 (3) With the approval of the commissioner, invest any greater
23 amount in common stock, preferred stock, debt obligations or other
24 securities of one or more subsidiaries: *Provided*, That after
25 investment the insurer's surplus as regards policyholders will be
26 reasonable in relation to the insurer's outstanding liabilities and

1 adequate to its financial needs.

2 (c) *Exemption from investment restrictions.* -- Investments in
3 common stock, preferred stock, debt obligations or other securities
4 of subsidiaries made pursuant to subsection (b) of this section are
5 not subject to any of the otherwise applicable restrictions or
6 prohibitions contained in this chapter applicable to the
7 investments of insurers.

8 (d) *Qualification of investment; when determined.* -- Whether
9 any investment made pursuant to subsection (b) of this section
10 meets the applicable requirements of that subsection is to be
11 determined before the investment is made, by calculating the
12 applicable investment limitations as though the investment had
13 already been made, taking into account the then outstanding
14 principal balance on all previous investments in debt obligations,
15 and the value of all previous investments in equity securities as
16 of the day they were made, net of any return of capital invested,
17 not including dividends.

18 (e) *Cessation of control.* -- If an insurer ceases to control
19 a subsidiary, it shall dispose of any investment in the subsidiary
20 made pursuant to this section within three years from the time of
21 the cessation of control or within any further time prescribed by
22 the commissioner, unless at any time after the investment was made,
23 the investment meets the requirements for investment under any
24 other provision of this chapter and the insurer has notified the
25 commissioner of compliance with the provisions of this chapter.

26 **§33-27-3. Acquisition of control of or merger with domestic**

1 **insurer; filing requirements; statements;**
2 **alternative filing material; approval by the**
3 **commissioner; hearings; notice; mailings to**
4 **shareholders; expenses; exemptions; violations and**
5 **jurisdiction.**

6 (a) *Filing requirements.* --

7 (1) No person other than the issuer may make a tender offer
8 for or a request or invitation for tenders of, or enter into any
9 agreement to exchange securities for, seek to acquire or acquire,
10 in the open market or otherwise, any voting security of a domestic
11 insurer if, after the consummation thereof, the person would,
12 directly or indirectly (or by conversion or by exercise of any
13 right to acquire) be in control of the insurer and a person shall
14 not enter into an agreement to merge with or otherwise to acquire
15 control of a domestic insurer or any person controlling a domestic
16 insurer unless at the time the offer, request or invitation is made
17 or the agreement is entered into, or prior to the acquisition of
18 the securities if no offer or agreement is involved, the person has
19 filed with the commissioner and has sent to the insurer and, to the
20 extent permitted by applicable federal laws, rules and regulations,
21 the insurer has sent to its shareholders a statement containing the
22 information required by this section and the offer, request,
23 invitation, agreement or acquisition has been approved by the
24 commissioner in the manner hereinafter prescribed.

25 (2) For purposes of this section, any controlling person of a
26 domestic insurer seeking to divest its controlling interest in the

1 domestic insurer, in any manner, shall file with the commissioner,
2 with a copy to the insurer, confidential notice of its proposed
3 divestiture at least thirty days prior to the cessation of control.
4 The commissioner shall determine those instances in which the party
5 or parties seeking to divest or to acquire a controlling interest
6 in an insurer will be required to file for and obtain approval of
7 the transaction. The information shall remain confidential until
8 the conclusion of the transaction unless the commissioner, in his
9 or her discretion, determines that confidential treatment will
10 interfere with enforcement of this section. If the statement
11 referred to in subsection (a) of this section is otherwise filed,
12 this subdivision does not apply.

13 (3) With respect to a transaction subject to this section, the
14 acquiring person must also file a preacquisition notification with
15 the commissioner, which shall contain the information set forth in
16 subdivision (1), subsection (c), section three-a of this article.
17 A failure to file the notification may subject the person to
18 penalties specified in subdivision (3), subsection (e), section
19 three-a of this article.

20 (4) For purposes of this section, a "domestic insurer"
21 includes any person controlling a domestic insurer unless the
22 person as determined by the commissioner is either directly or
23 through its affiliates primarily engaged in business other than the
24 business of insurance. For purposes of this section, "person" does
25 not include any securities broker holding, in the usual and
26 customary broker's function, less than twenty percent of the voting

1 securities of an insurance company or of any person that controls
2 an insurance company.

3 (b) *Content of statement.* -- The statement to be filed with
4 the commissioner hereunder shall be made under oath or affirmation
5 and shall contain the following information:

6 (1) The name and address of each person by whom or on whose
7 behalf the merger or other acquisition of control referred to in
8 subsection (a) of this section is to be effected (hereinafter
9 called "acquiring party"); and

10 (A) If such person is an individual, his or her principal
11 occupation and all offices and positions held during the past five
12 years and any conviction of crimes other than minor traffic
13 violations during the past ten years; or

14 (B) If the person is not an individual, a report of the nature
15 of its business operations during the past five years or for such
16 lesser period as the person and any predecessors thereof shall have
17 been in existence; an informative description of the business
18 intended to be done by the person and the person's subsidiaries;
19 and a list of all individuals who are or who have been selected to
20 become directors or executive officers of the person, or who
21 perform or will perform functions appropriate to those positions.
22 The list shall include for each individual the information required
23 by paragraph (2) of this subdivision;

24 (2) The source, nature and amount of the consideration used or
25 to be used in effecting the merger or other acquisition of control,
26 a description of any transaction wherein funds were or are to be

1 obtained for any such purpose, including any pledge of the
2 insurer's stock or the stock of any of its subsidiaries or
3 controlling affiliates, and the identity of persons furnishing such
4 consideration: *Provided*, That where a source of the consideration
5 is a loan made in the lender's ordinary course of business, the
6 identity of the lender shall remain confidential if the person
7 filing the statement so requests;

8 (3) Fully audited financial information as to the earnings and
9 financial condition of each acquiring party for the preceding five
10 fiscal years of each acquiring party (or for such lesser period as
11 each acquiring party and any predecessors thereof shall have been
12 in existence) and similar unaudited information as of a date not
13 earlier than ninety days prior to the filing of the statement;

14 (4) Any plans or proposals which each acquiring party may have
15 to liquidate the insurer, to sell its assets or merge or
16 consolidate it with any person or to make any other material change
17 in its business or corporate structure or management;

18 (5) The number of shares of any security referred to in
19 subsection (a) of this section which each acquiring party proposes
20 to acquire and the terms of the offer, request, invitation,
21 agreement or acquisition referred to in that subsection and a
22 statement as to the method by which the fairness of the proposal
23 was arrived at;

24 (6) The amount of each class of any security referred to in
25 subsection (a) of this section which is beneficially owned or
26 concerning which there is a right to acquire beneficial ownership

1 by each acquiring party;

2 (7) A full description of any contracts, arrangements or
3 understanding with respect to any security referred to in
4 subsection (a) of this section in which any acquiring party is
5 involved, including, but not limited to, transfer of any of the
6 securities, joint ventures, loan or option arrangements, puts or
7 calls, guarantees of loans, guarantees against loss or guarantees
8 of profits, division of losses or profits or the giving or
9 withholding of proxies. The description shall identify the persons
10 with whom such contracts, arrangements or understandings have been
11 entered into;

12 (8) A description of the purchase of any security referred to
13 in subsection (a) of this section during the twelve calendar months
14 preceding the filing of the statement by any acquiring party,
15 including the dates of purchase, names of the purchasers and
16 consideration paid or agreed to be paid therefor;

17 (9) A description of any recommendations to purchase any
18 security referred to in subsection (a) of this section made during
19 the twelve calendar months preceding the filing of the statement by
20 an acquiring party or by anyone based upon interviews or at the
21 suggestion of the acquiring party;

22 (10) Copies of all tender offers for, requests or invitations
23 for tenders of, exchange offers for and agreements to acquire or
24 exchange any securities referred to in subsection (a) of this
25 section and, if distributed, of additional soliciting material
26 relating thereto;

1 (11) The terms of any agreement, contract or understanding
2 made with any broker-dealer as to solicitation of securities
3 referred to in subsection (a) of this section for tender and the
4 amount of any fees, commissions or other compensation to be paid to
5 broker-dealers with regard thereto;

6 (12) An agreement by the person required to file the statement
7 referred to in subsection (a) of this section that it will provide
8 the annual report, specified in subsection (1), section four of
9 this article, for so long as control exists;

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

16 (14) Any additional information as the commissioner may by
17 rule prescribe as necessary or appropriate for the protection of
18 policyholders and security holders of the insurer or in the public
19 interest.

20 (c) If the person required to file the statement referred to
21 in subsection (a) of this section is a partnership, limited
22 partnership, syndicate or other group, the commissioner may require
23 that the information called for by subdivisions (1) through (14),
24 inclusive, subsection (b) of this section shall be given with
25 respect to each partner of the partnership or limited partnership,
26 each member of the syndicate or group and each person who controls

1 the partner or member. If any partner, member or person is a
2 corporation or the person required to file the statement referred
3 to in subsection (a) of this section is a corporation, the
4 commissioner may require that the information called for by
5 subdivisions (1) through (14), inclusive, subsection (b) of this
6 section shall be given with respect to the corporation and each
7 person who is directly or indirectly the beneficial owner of more
8 than ten percent of the outstanding voting securities of the
9 corporation.

10 (d) If any material change occurs in the facts set forth in
11 the statement filed with the commissioner and sent to the insurer
12 pursuant to this section, an amendment setting forth such change,
13 together with copies of all documents and other material relevant
14 to such change, shall be filed with the commissioner and sent to
15 the insurer within two business days after the person learns of the
16 change. The insurer shall send the amendment to its shareholders.

17 (e) *Alternative filing materials.* -- If any offer, request,
18 invitation, agreement or acquisition referred to in subsection (a)
19 of this section is proposed to be made by means of a registration
20 statement under the Securities Act of 1933 or in circumstances
21 requiring the disclosure of similar information under the
22 Securities Exchange Act of 1934 or under a state law requiring
23 similar registration or disclosure, the person required to file the
24 statement referred to in that subsection may utilize such documents
25 in furnishing the information called for by that statement.

26 (f) (1) *Approval by commissioner; hearings.* -- The

1 commissioner shall approve any merger or other acquisition of
2 control referred to in subsection (a) of this section unless, after
3 a public hearing thereon, he or she finds that:

4 (A) After the change of control the domestic insurer referred
5 to in subsection (a) of this section would not be able to satisfy
6 the requirements for the issuance of a license to write the line or
7 lines of insurance for which it is presently authorized;

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

12 (i) The informational requirements of subdivision (1),
13 subsection (c), section three-a of this article and the standards
14 of subdivision (2), subsection (d), section three-a of this article
15 apply;

16 (ii) The merger or other acquisition may not be disapproved if
17 the commissioner finds that any of the situations meeting the
18 criteria provided by subdivision (3), subsection (d), section
19 three-a of this article exist; and

20 (iii) The commissioner may condition the approval of the
21 merger or other acquisition on the removal of the basis of
22 disapproval within a specified period of time.

23 (C) The financial condition of any acquiring party is such as
24 might jeopardize the financial stability of the insurer or
25 prejudice the interest of its policyholders or the interests of any
26 remaining security holders who are unaffiliated with the acquiring

1 party;

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

8 (E) The competence, experience and integrity of those persons
9 who would control the operation of the insurer are such that it
10 would not be in the interest of policyholders of the insurer and of
11 the public to permit the merger or other acquisition of control; or

12 (F) The acquisition is likely to be hazardous or prejudicial
13 to the insurance-buying public.

14 (2) The public hearing required by this section shall be held
15 within thirty days after the statement required by subsection (a)
16 of this section is filed, and at least twenty days' notice thereof
17 shall be given by the commissioner to the person filing the
18 statement. Not less than seven days' notice of the public hearing
19 shall be given by the person filing the statement to the insurer
20 and to any other persons as may be designated by the commissioner.
21 The commissioner shall make a determination within the sixty-day
22 period preceding the effective date of the proposed transaction.
23 At the hearing, the person filing the statement, the insurer, any
24 person to whom notice of hearing was sent, and any other person
25 whose interest may be affected has the right to present evidence,
26 examine and cross-examine witnesses, and offer oral and written

1 arguments and in connection therewith shall be entitled to conduct
2 discovery proceedings in the same manner as is presently allowed in
3 the circuit courts of this state: *Provided*, That all discovery
4 proceedings shall be concluded not later than three days prior to
5 the commencement of the public hearing.

6 (3) If the proposed acquisition of control will require the
7 approval of more than one commissioner, a public hearing pursuant
8 to this subsection may be held on a consolidated basis upon request
9 of the person filing the statement referred to in subsection (a) of
10 this section. That person shall file the statement referred to in
11 subsection (a) of this section with the National Association of
12 Insurance Commissioners within five days of making the request for
13 a public hearing. A commissioner may opt out of a consolidated
14 hearing, and shall provide notice to the applicant of the opt-out
15 within ten days of the receipt of the statement referred to in
16 subsection (a) of this section. A hearing conducted on a
17 consolidated basis shall be public and shall be held within the
18 United States before the commissioners of the states in which the
19 insurers are domiciled. Such commissioners shall hear and receive
20 evidence. A commissioner may attend the hearing, in person or by
21 telecommunication.

22 (4) In connection with a change of control of a domestic
23 insurer, any determination by the commissioner that the person
24 acquiring control of the insurer is required to maintain or restore
25 the capital of the insurer to the level required by the laws of
26 this state shall be made not later than sixty days after the date

1 of filing the change in control submitted pursuant to subdivision
2 (1), subsection (a) of this section.

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

8

9 (g) *Exemptions.* -- The provisions of this section shall not
10 apply to any offer, request, invitation, agreement or acquisition
11 which the commissioner by order shall exempt therefrom as: (1) Not
12 having been made or entered into for the purpose of, and not having
13 the effect of, changing or influencing the control of a domestic
14 insurer; or (2) as otherwise not comprehended within the purposes
15 of this section.

16 (h) The following are violations of this section:

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

20 (2) The effectuation or any attempt to effectuate an
21 acquisition of control of, divestiture of, or merger with, a
22 domestic insurer unless the commissioner has given his or her
23 approval thereto.

24 (i) *Jurisdiction; consent to service of process.* -- The
25 courts of this state are hereby vested with jurisdiction over every
26 person not resident, domiciled or authorized to do business in this

1 state who files a statement with the commissioner under this
2 section and over all actions involving such person arising out of
3 violations of this section and each such person shall be deemed to
4 have performed acts equivalent to and constituting an appointment
5 by the person of the Secretary of State to be his or her true and
6 lawful attorney upon whom may be served all lawful process in any
7 action, suit or proceeding arising out of violations of this
8 section. Copies of all such lawful process shall be served on the
9 Secretary of State and transmitted by registered or certified mail
10 by the Secretary of State to such person at his or her last known
11 address.

12 **§33-27-3a. Acquisitions Involving Insurers Not Otherwise Covered;**
13 **definitions; scope; pre-acquisition notification and waiting**
14 **period; competitive standard; orders and penalties.**

15 (a) *Definitions.* -- The following definitions apply to only
16 this section:

17 (1) "Acquisition" means any agreement, arrangement or activity
18 the consummation of which results in a person acquiring directly or
19 indirectly the control of another person, and includes, but is not
20 limited to, the acquisition of voting securities, the acquisition
21 of assets, bulk reinsurance and mergers.

22 (2) An "involved insurer" includes an insurer which either
23 acquires or is acquired, is affiliated with an acquirer or
24 acquired, or is the result of a merger.

25 (b) *Scope.* - (1) Except as exempted in subdivision (2) of
26 this subsection, this section applies to any acquisition in which

1 there is a change in control of an insurer authorized to do
2 business in this state.

3 (2) This section does not apply to the following:

4 (A) A purchase of securities solely for investment purposes so
5 long as the securities are not used by voting or otherwise to cause
6 or attempt to cause the substantial lessening of competition in any
7 insurance market in this state. If a purchase of securities
8 results in a presumption of control pursuant to subsection (c),
9 section two of this article, it is not solely for investment
10 purposes unless the commissioner of the insurer's state of domicile
11 accepts a disclaimer of control or affirmatively finds that control
12 does not exist and the disclaimer action or affirmative finding is
13 communicated by the domiciliary commissioner to the commissioner of
14 this state;

15 (B) The acquisition of a person by another person when both
16 persons are neither directly nor through affiliates primarily
17 engaged in the business of insurance, if pre-acquisition
18 notification is filed with the commissioner pursuant to subdivision
19 (1), subsection (c) of this section thirty days prior to the
20 proposed effective date of the acquisition. However, such
21 pre-acquisition notification is not required for exclusion from
22 this section if the acquisition would otherwise be excluded from
23 this section by any other paragraph of this subdivision;

24 (C) The acquisition of already affiliated persons;

25 (D) An acquisition if, as an immediate result of the
26 acquisition:

1 (i) In no market would the combined market share of the
2 involved insurers exceed five percent of the total market;

3 (ii) There would be no increase in any market share; or

4 (iii) In no market would:

5 (I) The combined market share of the involved insurers exceed
6 twelve percent of the total market; and

7 (II) The market share increase by more than two percent of the
8 total market.

9 For the purpose of this paragraph, a "market" means direct
10 written insurance premium in this state for a line of business as
11 contained in the annual statement required to be filed by insurers
12 licensed to do business in this state; and

13 (E) An acquisition for which a pre-acquisition notification
14 would be required pursuant to this section due solely to the
15 resulting effect on the ocean marine insurance line of business;

16 (F) An acquisition of an insurer whose domiciliary
17 commissioner affirmatively finds that the insurer is in failing
18 condition; there is a lack of feasible alternative to improving
19 such condition; the public benefits of improving the insurers
20 condition through the acquisition exceed the public benefits that
21 would arise from not lessening competition; and the findings are
22 communicated by the domiciliary commissioner to the commissioner of
23 this state.

24 (c) *Pre-acquisition notification and waiting period.* -- An
25 acquisition covered by subsection (b) of this section may be
26 subject to an order pursuant to subsection (e) of this section

1 unless the acquiring person files a pre-acquisition notification
2 and the waiting period has expired. The acquired person may file
3 a pre-acquisition notification. The commissioner shall give
4 confidential treatment to information submitted under this
5 subsection in the same manner as provided in section seven of this
6 article.

7 (1) The pre-acquisition notification shall be in such form and
8 contain such information as prescribed by the National Association
9 of Insurance Commissioners relating to those markets that, under
10 paragraph (D), subdivision (2), subsection (b) of this section,
11 cause the acquisition not to be exempted from the provisions of
12 this section. The commissioner may require such additional
13 material and information as deemed necessary to determine whether
14 the proposed acquisition, if consummated, would violate the
15 competitive standard of subsection (d) of this section. The
16 required information may include an opinion of an economist as to
17 the competitive impact of the acquisition in this state accompanied
18 by a summary of the education and experience of such person
19 indicating his or her ability to render an informed opinion.

20 (2) The waiting period required shall begin on the date of
21 receipt of the commissioner of a pre-acquisition notification and
22 shall end on the earlier of the thirtieth day after the date of
23 receipt, or termination of the waiting period by the commissioner.
24 Prior to the end of the waiting period, the commissioner on a
25 one-time basis may require the submission of additional needed
26 information relevant to the proposed acquisition, in which event

1 the waiting period shall end on the earlier of the thirtieth day
2 after receipt of the additional information by the commissioner or
3 termination of the waiting period by the commissioner.

4 (d) Competitive Standard. -- (1) The commissioner may enter
5 an order under subdivision (1), subsection (e) of this section,
6 with respect to an acquisition if there is substantial evidence
7 that the effect of the acquisition may be substantially to lessen
8 competition in any line of insurance in this state or tend to
9 create a monopoly or if the insurer fails to file adequate
10 information in compliance with subsection (c) of this section.

11 (2) In determining whether a proposed acquisition would
12 violate the competitive standard of subdivision (1) of this
13 subsection, the commissioner shall consider the following:

14 (A) Any acquisition covered under subsection (b) of this
15 section involving two or more insurers competing in the same market
16 is *prima facie* evidence of violation of the competitive standards.

market is highly concentrated and the involved insurers possess

18 the following shares of the market:

19	Insurer A	Insurer B
20	4%	4% or more
21	10%	10%
22	15%	1% or more

23 (ii) Or, if the market is not highly concentrated and the
24 involved insurers possess the following shares of the market:

25	Insurer A	Insurer B
26	5%	5% or more

1	10%	4% or more
2	15%	3% or more
3	19%	1% or more

4 A highly concentrated market is one in which the share of the
5 four largest insurers is seventy-five percent or more of the
6 market. Percentages not shown in the tables are interpolated
7 proportionately to the percentages that are shown. If more than
8 two insurers are involved, exceeding the total of the two columns
9 in the table is *prima facie* evidence of violation of the
10 competitive standard in subdivision one of this subsection. For
11 the purpose of this item, the insurer with the largest share of the
12 market shall be deemed to be Insurer A;

13 (B) There is a significant trend toward increased
14 concentration when the aggregate market share of any grouping of
15 the largest insurers in the market, from the two largest to the
16 eight largest, has increased by seven percent or more of the market
17 over a period of time extending from any base year five to ten
18 years prior to the acquisition up to the time of the acquisition.
19 Any acquisition or merger covered under subsection (b) of this
20 section involving two (2) or more insurers competing in the same
21 market is *prima facie* evidence of violation of the competitive
22 standard in subdivision (1) of this subsection if:

23 (i) There is a significant trend toward increased
24 concentration in the market;

25 (ii) One of the insurers involved is one of the insurers in a
26 grouping of large insurers showing the requisite increase in the

1 market share; and

2 (iii) Another involved insurer's market is two percent or
3 more;

4 (C) For the purposes of subdivision (2), subsection (d) of
5 this section:

6 (i) The term "insurer" includes any company or group of
7 companies under common management, ownership or control;

8 (ii) The term "market" means the relevant product and
9 geographical markets. In determining the relevant product and
10 geographical markets, the commissioner shall give due consideration
11 to, among other things, the definitions or guidelines, if any,
12 promulgated by the National Association of Insurance Commissioners
13 and to information, if any, submitted by parties to the
14 acquisition. In the absence of sufficient information to the
15 contrary, the relevant product market is assumed to be the direct
16 written insurance premium for a line of business, such line being
17 that used in the annual statement required to be filed by insurers
18 doing business in this state, and the relevant geographical market
19 is assumed to be this state;

20 (iii) The burden of showing *prima facie* evidence of violation
21 of the competitive standard rests upon the commissioner.

22 (D) Even though an acquisition is not *prima facie* violative of
23 the competitive standard under paragraphs (A) and (B), subdivision
24 (2) of this subsection, the commissioner may establish the
25 requisite anticompetitive effect based upon other substantial
26 evidence. Even though an acquisition is *prima facie* violative of

1 the competitive standard under paragraphs (A) and (B), subdivision
2 (2) of this subsection, a party may establish the absence of the
3 requisite anticompetitive effect based upon other substantial
4 evidence. Relevant factors in making a determination under this
5 paragraph include, but are not limited to, the following: market
6 shares, volatility of ranking of market leaders, number of
7 competitors, concentration, trend of concentration in the industry,
8 and ease of entry and exit into the market.

9 (3) An order may not be entered under subdivision (1),
10 subsection (e) of this section if:

11 (A) The acquisition will yield substantial economies of scale
12 or economies in resource utilization that cannot be feasibly
13 achieved in any other way, and the public benefits which would
14 arise from such economies exceed the public benefits which would
15 arise from not lessening competition; or

16 (B) The acquisition will substantially increase the
17 availability of insurance, and the public benefits of the increase
18 exceed the public benefits which would arise from not lessening
19 competition.

20 (e) *Orders and Penalties.* -- (1)(A) If an acquisition
21 violates the standards of this section, the commissioner may enter
22 an order:

23 (i) Requiring an involved insurer to cease and desist from
24 doing business in this state with respect to the line or lines of
25 insurance involved in the violation; or

26 (ii) Denying the application of an acquired or acquiring

1 insurer for a license to do business in this state.

2 (B) Such an order shall not be entered unless:

3 (i) There is a hearing;

4 (ii) Notice of the hearing is issued prior to the end of the
5 waiting period and not less than fifteen days prior to the hearing;
6 and

7 (iii) The hearing is concluded and the order is issued no
8 later than sixty days after the date of the filing of the
9 preacquisition notification with the commissioner.

10 (C) Every order issued pursuant to this subsection shall be
11 accompanied by a written decision of the commissioner setting forth
12 findings of fact and conclusions of law.

13 (D) An order pursuant to this subsection does not apply if the
14 acquisition is not consummated.

15 (2) Any person who violates a cease and desist order of the
16 commissioner under subdivision one of this subsection and while the
17 order is in effect may, after notice and hearing and upon order of
18 the commissioner, be subject at the discretion of the commissioner
19 to one or more of the following:

20 (A) A monetary penalty of not more than \$10,000 for every day
21 of violation; or

22 (B) Suspension or revocation of the person's license.

23 (3) Any insurer or other person who fails to make any filing
24 required by this section, and who also fails to demonstrate a good
25 faith effort to comply with any filing requirement, shall be
26 subject to a fine of not more than \$50,000.

1 (f) Inapplicable Provisions. Subsections (b) and (c), section
2 eight of this article and section ten of this article do not apply
3 to acquisitions covered under subsection (b) of this section.

4 **§33-27-4. Registration of insurers; information and form required;**
5 **summary of changes to registration statement;**
6 **materiality; reporting of dividends to shareholders;**
7 **information to insurers; termination of registration;**
8 **consolidated filing; alternative registration;**
9 **exemptions; disclaimer; enterprise risk filing;**
10 **violations.**

11 (a) *Registration.* -- (1) Every insurer which is authorized to
12 do business in this state and which is a member of an insurance
13 holding company system shall register with the commissioner, except
14 a foreign insurer subject to disclosure requirements and standards
15 adopted by statute or regulation in the jurisdiction of its
16 domicile which are substantially similar to those contained in this
17 section, subsections (a), (b) and (c), section five of this
18 article, and either subsection (d), section five of this article or
19 has a provision such as the following: "Each registered insurer
20 shall keep current the information required to be disclosed in its
21 registration statement by reporting all material changes or
22 additions within fifteen days after the end of the month in which
23 it learns of each change or addition."

24 (2) Any insurer which is subject to registration under this
25 section shall register within fifteen days after it becomes subject
26 to registration and annually thereafter by June 1 of each year for

1 the previous calendar year, unless the commissioner for good cause
2 shown extends the time for registration. The commissioner may
3 require any authorized insurer which is a member of a holding
4 company system which is not subject to registration under this
5 section to furnish a copy of the registration statement, the
6 summary described in subsection (c) of this section, or other
7 information filed by such insurance company with the insurance
8 regulatory authority of domiciliary jurisdiction.

9 (b) *Information and form required.* -- Every insurer subject
10 to registration shall file a registration statement with the
11 commissioner on a form and in a format prescribed by the National
12 Association of Insurance Commissioners, which shall contain the
13 following current information:

14 (1) The capital structure, general financial condition,
15 ownership and management of the insurer and any person controlling
16 the insurer.

17 (2) The identity and relationship of every member of the
18 insurance holding company system.

19 (3) The following agreements in force, relationships
20 subsisting, and transactions currently outstanding or which have
21 occurred during the last calendar year between such insurer and its
22 affiliates:

23 (A) Loans, other investments, or purchases, sales or exchanges
24 of securities of the affiliates by the insurer or of the insurer by
25 its affiliates;

26 (B) Purchases, sales or exchanges of assets;

1 (C) Transactions not in the ordinary course of business;

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

6 (E) All management and service contracts and all cost-sharing
7 arrangements;

8 (F) All reinsurance agreements;

9 (G) Dividends and other distributions to shareholders; and

10 (H) Consolidated tax allocation statements.

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

14 (5) If requested by the commissioner, the insurer shall
15 include financial statements of or within an insurance holding
16 company system, including all affiliates. Financial statements may
17 include, but are not limited to, annual audited financial
18 statements filed with the U.S. Securities and Exchange Commission
19 (SEC) pursuant to the Securities Act of 1933, as amended, or the
20 Securities Exchange Act of 1934, as amended. An insurer required
21 to file financial statements pursuant to this subdivision may
22 satisfy the request by providing the commissioner with the most
23 recently filed parent corporation financial statements that have
24 been filed with the SEC.

25 (6) Other matters concerning transactions between registered
26 insurers and any affiliates as may be included from time to time in

1 any registration forms adopted or approved by the commissioner.

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

7 (8) Any other information required by the commissioner by
8 rule.

9 (c) *Summary of changes to registration statement.* -- All
10 registration statements shall contain a summary outlining all items
11 in the current registration statement representing changes from the
12 prior registration statement.

13 (d) *Materiality.* -- Information need not be disclosed on the
14 registration statement filed pursuant to subsection (b) of this
15 section if such information is not material for the purpose of this
16 section. Unless the commissioner by rule or order provides
17 otherwise, sales, purchases, exchanges, loans or extensions of
18 credit, or investments, involving one half of one percent or less
19 of an insurer's admitted assets as of December 31, next preceding
20 shall not be deemed material for purposes of this section.

21 (e) *Reporting of dividends to shareholders.* -- Subject to
22 subsection (c), section five of this article, each registered
23 insurer shall report to the commissioner all dividends and other
24 distributions to shareholders within fifteen business days
25 following the declaration thereof.

26 (f) *Information to insurers.* -- Any person within an

1 insurance holding company system subject to registration shall be
2 required to provide complete and accurate information to an
3 insurer, when such information is reasonably necessary to enable
4 the insurer to comply with the provisions of this article.

5 (g) *Termination of registration.* -- The commissioner shall
6 terminate the registration of any insurer which demonstrates that
7 it no longer is a member of an insurance holding company system.

8 (h) *Consolidated filing.* -- The commissioner may require or
9 allow two or more affiliated insurers subject to registration
10 hereunder to file a consolidated registration statement or
11 consolidated reports amending their consolidated registration
12 statement or their individual registration statements.

13 (i) *Alternative registration.* -- The commissioner may allow
14 an insurer which is authorized to do business in this state and
15 which is a part of an insurance holding company system to register
16 on behalf of any affiliated insurer which is required to register
17 under subsection (a) of this section and to file all information
18 and material required to be filed under this section.

19 (j) *Exemptions.* -- The provisions of this section shall not
20 apply to any insurer, information or transaction if and to the
21 extent that the commissioner by rule or order shall exempt the same
22 from the provisions of this section.

23 (k) *Disclaimer.* -- Any person may file with the commissioner
24 a disclaimer of affiliation with any authorized insurer or a
25 disclaimer may be filed by the insurer or any member of an
26 insurance holding company system. The disclaimer shall fully

1 disclose all material relationships and bases for affiliation
2 between the person and the insurer as well as the basis for
3 disclaiming such affiliation. A disclaimer of affiliation shall be
4 deemed to have been granted unless the commissioner, within thirty
5 days following receipt of a complete disclaimer, notifies the
6 filing party the disclaimer is disallowed. In the event of
7 disallowance, the disclaiming party may request an administrative
8 hearing, which shall be granted, and the commissioner shall
9 disallow such a disclaimer only after furnishing all parties in
10 interest with notice and opportunity to be heard and after making
11 specific findings of fact to support such disallowance. The
12 disclaiming party shall be relieved of its duty to register under
13 this section if approval of the disclaimer has been granted by the
14 commissioner, or if the disclaimer is deemed to have been approved.

15 (1) *Enterprise Risk Filing.* -- The ultimate controlling
16 person of every insurer subject to registration shall also file an
17 annual enterprise risk report. The report shall, to the best of
18 the ultimate controlling person's knowledge and belief, identify
19 the material risks within the insurance holding company system that
20 could pose enterprise risk to the insurer. The report shall be
21 filed with the lead state commissioner of the insurance holding
22 company system as determined by the procedures within the Financial
23 Analysis Handbook adopted by the National Association of Insurance
24 Commissioners.

25 (m) *Violations.* -- The failure to file a registration
26 statement or enterprise risk filing thereto required by this

1 section within the time specified for such filing shall be a
2 violation of this section.

3 **§33-27-5. Standards; adequacy of surplus; dividends and other**
4 **distributions; notice of amendments or modifications; management of**
5 **domestic insurers subject to registration.**

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

9 (1) The terms shall be fair and reasonable;

10 (2) Agreements for cost-sharing services and management shall
11 include such provisions as required by rule;

12 (3) Charges or fees for services performed shall be
13 reasonable;

14 (4) Expenses incurred and payment received shall be allocated
15 to the insurer in conformity with customary insurance accounting
16 practices consistently applied;

17 (5) The books, accounts and records of each party to all such
18 transactions shall be so maintained as to clearly and accurately
19 disclose the nature and details of the transactions, including such
20 accounting information as is necessary to support the
21 reasonableness of the charges or fees to the respective parties;
22 and

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

1 (b) *Adequacy of surplus.* -- For purposes of this article, in
2 determining whether an insurer's surplus as regards policyholders
3 is reasonable in relation to the insurer's outstanding liabilities
4 and adequate to meet its financial needs, the following factors,
5 among others, shall be considered:

6 (1) The size of the insurer as measured by its assets, capital
7 and surplus, reserves, premium writings, insurance in force and
8 other appropriate criteria;

9 (2) The extent to which the insurer's business is diversified
10 among the several lines of insurance;

11 (3) The number and size of risks insured in each line of
12 business;

13 (4) The extent of the geographical dispersion of the insurer's
14 insured risks;

15 (5) The nature and extent of the insurer's reinsurance
16 program;

17 (6) The quality, diversification and liquidity of the
18 insurer's investment portfolio;

19 (7) The recent past and projected future trend in the size of
20 the insurer's surplus as regards policyholders;

21 (8) The surplus as regards policyholders maintained by other
22 comparable insurers;

23 (9) The adequacy of the insurer's reserves; and

24 (10) The quality and liquidity of investments in affiliates.

25 The commissioner may treat any such investment as a disallowed
26 asset for purposes of determining the adequacy of surplus as

1 regards policyholders whenever in his or her judgment such
2 investment so warrants.

3 (c) *Dividends and other distributions.* - (1) No domestic
4 insurer may pay any extraordinary dividend or make any other
5 extraordinary distribution to its shareholders until:

6 (A) Thirty days after the commissioner has received notice of
7 the declaration thereof and has not within that period disapproved
8 such payment; or

9 (B) The commissioner has approved that payment within the
10 thirty-day period.

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

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

18 (B) The net gain from operations of such insurer, if such
19 insurer is a life insurer, or the net income, if the insurer is not
20 a life insurer, not including realized capital gains, for the
21 twelve-month period ending December 31, next preceding, but shall
22 not include pro rata distributions of any class of the insurer's
23 own securities. In determining whether a dividend or distribution
24 is extraordinary, an insurer other than a life insurer may carry
25 forward net income from the previous two calendar years that has
26 not already been paid out as dividends. This carry-forward shall

1 be computed by taking the net income from the second and third
2 preceding calendar years, not including realized capital gains,
3 less dividends paid in the second and immediate preceding calendar
4 years.

5 (3) Notwithstanding any other provision of law, an insurer may
6 declare an extraordinary dividend or distribution which is
7 conditional upon the commissioner's approval, and the declaration
8 shall confer no rights upon shareholders until:

9 (A) The commissioner has approved the payment of such dividend
10 or distribution; or

11 (B) The commissioner has not disapproved such payment within
12 the thirty-day period referred to above.

13 (d) The following transactions involving a domestic insurer
14 and any person in its insurance holding company system, including
15 amendments or modifications of affiliate agreements previously
16 filed pursuant to this section, that are subject to any materiality
17 standards contained in subdivisions (1) through (5) of this
18 subsection, may not be entered into unless the insurer has notified
19 the commissioner in writing of its intention to enter into the
20 transaction at least thirty days prior thereto, or such shorter
21 period as the commissioner may permit, and the commissioner has not
22 disapproved it within that period: *Provided*, That nothing contained
23 in this subsection shall be deemed to authorize or permit any
24 transactions which, in the case of an insurer not a member of the
25 same holding company system, would be otherwise contrary to law.
26 The notice for amendments or modifications shall include the

1 reasons for the change and the financial impact on the domestic
2 insurer. Informal notice shall be reported, within thirty days
3 after a termination of a previously filed agreement, to the
4 commissioner for determination of the type of filing required, if
5 any.

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

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

12 (B) With respect to life insurers, three percent of the
13 insurer's admitted assets as of December 31, next preceding;

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

22 (A) With respect to nonlife insurers, the lesser of three
23 percent of the insurer's admitted assets or twenty-five percent of
24 surplus as regards policyholders; each as of December 31, next
25 preceding;

26 (B) With respect to life insurers, three percent of the

1 insurer's admitted assets as of December 31, next preceding;

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

4 (A) All reinsurance pooling agreements; and

5 (B) Agreements in which the reinsurance premium or a change in
6 the insurer's liabilities, or the projected reinsurance premium or
7 a change in the insurer's liabilities in any of the next three
8 years, equals or exceeds five percent of the insurer's surplus as
9 regards policyholders, as of December 31, next preceding, including
10 those agreements which may require as consideration the transfer of
11 assets from an insurer to a nonaffiliate, if an agreement or
12 understanding exists between the insurer and nonaffiliate that any
13 portion of the assets will be transferred to one or more affiliates
14 of the insurer;

15 (4) All management agreements, service contracts, tax
16 allocation agreements, guarantees and all cost-sharing
17 arrangements;

18 (5) Guarantees when made by a domestic insurer; *Provided*, That
19 a guarantee that is quantifiable as to amount is not subject to the
20 notice requirements of this subdivision unless it exceeds the
21 lesser of one half of one percent of the insurer's admitted assets
22 or ten percent of surplus as regards policyholders as of December
23 31, next preceding: *Provided, however*, That all guarantees that are
24 not quantifiable as to amount are subject to the notice
25 requirements of this subdivision.

26 (6) Direct or indirect acquisitions or investments in a person

1 that controls the insurer or in an affiliate of the insurer in an
2 amount which, together with its present holdings in such
3 investments, exceeds two and one-half percent of the insurer's
4 surplus to policyholders. Direct or indirect acquisitions or
5 investments in subsidiaries acquired pursuant to section two-a of
6 this article or authorized under any other section of this chapter,
7 or in nonsubsidiary insurance affiliates that are subject to the
8 provisions of this article, are exempt from this requirement; and

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

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

20 (f) The commissioner, in reviewing transactions pursuant to
21 subsection(d) of this section, shall consider whether the
22 transactions comply with the standards set forth in subsection (a)
23 of this section and whether they may adversely affect the interests
24 of policyholders.

25 (g) The commissioner shall be notified within thirty days of
26 any investment of the domestic insurer in any one corporation if

1 the total investment in that corporation by the insurance holding
2 company system exceeds ten percent of such corporation's voting
3 securities.

4 (h) *Management of domestic insurers subject to registration.*

5 -- (1) Notwithstanding the control of a domestic insurer by any
6 person, the officers and directors of the insurer shall not thereby
7 be relieved of any obligation or liability to which they would
8 otherwise be subject by law, and the insurer shall be managed so as
9 to assure its separate operating identity consistent with the
10 provisions of this article.

11 (2) Nothing in this section precludes a domestic insurer from
12 having or sharing a common management or cooperatively, or jointly
13 using personnel, property or services with one or more other
14 persons under arrangements meeting the standards of subsection (a)
15 of this section.

16 (3) Not less than one third of the directors of a domestic
17 insurer, and not less than one third of the members of each
18 committee of the board of directors of any domestic insurer, shall
19 be persons who are not officers or employees of the insurer or of
20 any entity controlling, controlled by, or under common control with
21 the insurer and who are not beneficial owners of a controlling
22 interest in the voting stock of the insurer or entity. At least
23 one such person must be included in any quorum for the transaction
24 of business at any meeting of the board of directors or any
25 committee thereof.

26 (4) The board of directors of a domestic insurer shall

1 establish one or more committees comprised solely of directors who
2 are not officers or employees of the insurer or of any entity
3 controlling, controlled by, or under common control with the
4 insurer and who are not beneficial owners of a controlling interest
5 in the voting stock of the insurer or any such entity. The
6 committee or committees have responsibility for nominating
7 candidates for director for election by shareholders or
8 policyholders, evaluating the performance of officers deemed to be
9 principal officers of the insurer and recommending to the board of
10 directors the selection and compensation of the principal officers.

11 (5) The provisions of subdivisions three and four of this
12 subsection do not apply to a domestic insurer if the person
13 controlling the insurer, such as an insurer, a mutual insurance
14 holding company, or a publicly held corporation, has a board of
15 directors and committees thereof that meet the requirements of such
16 subdivisions with respect to such controlling entity.

17 (6) An insurer may make application to the commissioner for a
18 waiver from the requirements of this subsection, if the insurer's
19 annual direct written and assumed premium, excluding premiums
20 reinsured with the Federal Crop Insurance Corporation and Federal
21 Flood Program, is less than \$300 million. An insurer may also make
22 application to the commissioner for a waiver from the requirements
23 of this subsection based upon unique circumstances. The
24 commissioner may consider various factors including, but not
25 limited to, the type of business entity, volume of business
26 written, availability of qualified board members, or the ownership

1 or organizational structure of the entity.

2 **§33-27-6. Examination; power of commissioner; access to books and**
3 **records; use of consultants; expenses; compelling**
4 **production, contempt and payment of fees, mileage and**
5 **actual expenses.**

6 (a) *Power of commissioner.* -- Subject to the limitation
7 contained in this section and in addition to the powers which the
8 commissioner has under other provisions of this chapter relating to
9 the examination of insurers, the commissioner has the power to
10 examine any insurer registered under section four of this article
11 and its affiliates to ascertain the financial condition of the
12 insurer, including the enterprise risk to the insurer by the
13 ultimate controlling party, or by any entity or combination of
14 entities within the insurance holding company system, or by the
15 insurance holding company system on a consolidated basis.

16 (b) *Access to books and records.* -

17 (1) The commissioner may order any insurer registered under
18 section four of this article to produce such records, books or
19 other information papers in the possession of the insurer or its
20 affiliates as are reasonably necessary to determine compliance with
21 this chapter.

22 (2) To determine compliance with this chapter, the
23 commissioner may order any insurer registered under section four of
24 this article to produce information not in the possession of the
25 insurer if the insurer can obtain access to such information
26 pursuant to contractual relationships, statutory obligations, or

1 other method. In the event the insurer cannot obtain the
2 information requested by the commissioner, the insurer shall
3 provide the commissioner a detailed explanation of the reason that
4 the insurer cannot obtain the information and the identity of the
5 holder of information. Whenever it appears to the commissioner
6 that the detailed explanation is without merit, the commissioner
7 may, after notice and hearing, require the insurer to pay a penalty
8 of up to \$10,000 for each day's delay, may suspend or revoke the
9 insurer's license, or both impose a penalty and revoke or suspend
10 the insurer's license.

11 (c) *Use of consultants.* -- The commissioner may retain at
12 the registered insurer's expense such attorneys, actuaries,
13 accountants and other experts not otherwise a part of the
14 commissioner's staff as shall be reasonably necessary to assist in
15 the conduct of the examination under subsection (a) of this
16 section. Any person so retained shall be under the direction and
17 control of the commissioner and shall act in a purely advisory
18 capacity.

19 (d) *Expenses.* -- Each registered insurer producing for
20 examination records, books and papers pursuant to subsection (a) of
21 this section is liable for and shall pay the expense of such
22 examination in accordance with applicable laws of this state.

23 (e) *Compelling Production.* -- In the event the insurer fails
24 to comply with an order, the commissioner may examine the affiliates
25 to obtain the information. The commissioner may also issue
26 subpoenas, to administer oaths, and examine under oath any person

1 for purposes of determining compliance with this section. Upon the
2 failure or refusal of any person to obey a subpoena, the
3 commissioner may petition any circuit court and, upon proper
4 showing, the court may enter an order compelling the witness to
5 appear and testify or produce documentary evidence. Failure to obey
6 the court order is punishable as contempt of court. Every person
7 is obliged to attend as a witness at the place specified in the
8 subpoena, when subpoenaed, anywhere within the state. He or she is
9 entitled to the same fees and mileage, if claimed, as a witness in
10 the circuit court of the county in which attendance is required,
11 which fees, mileage, and actual expense, if any, necessarily
12 incurred in securing the attendance of witnesses, and their
13 testimony, shall be itemized and charged against, and be paid by,
14 the company being examined.

15 **§33-27-6a. Supervisory Colleges; power of commissioner; expenses;**
16 **agreements.**

17 (a) *Power of Commissioner.* -- With respect to any insurer
18 registered under section four of this article, and in accordance
19 with subsection (c) of this section, the commissioner may
20 participate in a supervisory college for any domestic insurer that
21 is part of an insurance holding company system with international
22 operations in order to determine compliance by the insurer with this
23 chapter. The powers of the commissioner with respect to supervisory
24 colleges include, but are not limited to, the following:

- 25 (1) Initiating the establishment of a supervisory college;
26 (2) Clarifying the membership and participation of other

1 supervisors in the supervisory college;

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

5 (4) Coordinating the ongoing activities of the supervisory
6 college, including planning meetings, supervisory activities, and
7 processes for information sharing; and

8 (5) Establishing a crisis management plan.

9 (b) *Supervisory College*. -- In order to assess the business
10 strategy, financial position, legal and regulatory position, risk
11 exposure, risk management and governance processes, and as part of
12 the examination of individual insurers in accordance with section
13 six of this article, the commissioner may participate in a
14 supervisory college with other regulators charged with supervision
15 of the insurer or its affiliates, including other state, federal and
16 international regulatory agencies. The commissioner may enter into
17 agreements in accordance with subsection (c), section seven of this
18 article providing the basis for cooperation between the commissioner
19 and the other regulatory agencies, and the activities of the
20 supervisory college: *Provided*, That this section may not be
21 construed as delegating to the supervisory college the authority of
22 the commissioner to regulate or supervise the insurer or its
23 affiliates within its jurisdiction.

24 **§33-27-7. Confidential treatment.**

25 (a) Documents, materials or other information in the possession
26 or control of the commissioner that are obtained by or disclosed to

1 the commissioner or any other person in the course of an examination
2 or investigation made pursuant to section six of this article and
3 all information reported pursuant to subdivision thirteen or
4 fourteen, subsection (b), section three of this article, section
5 four or section five of this article is confidential by law and
6 privileged, is exempt from disclosure pursuant to chapter
7 twenty-nine-b of this code, is not open to public inspection, is not
8 subject to subpoena, is not subject to discovery or admissible in
9 evidence in any criminal, private civil or administrative action and
10 is not subject to production pursuant to court order: *Provided*, That
11 the commissioner is authorized to use the documents, materials or
12 other information in the furtherance of any regulatory or legal
13 action brought as part of the commissioner's official duties. The
14 commissioner may not otherwise make the documents, materials or
15 other information public without the prior written consent of the
16 insurer to which it pertains unless the commissioner, after giving
17 the insurer and its affiliates who would be affected thereby notice
18 and opportunity to be heard, determines that the interests of
19 policyholders, shareholders or the public will be served by the
20 publication thereof, in which event he or she may publish all or any
21 part thereof in any manner as he or she may consider appropriate.

22 (b) Neither the commissioner nor any person who received
23 documents, materials or other information while acting under the
24 authority of the commissioner or with whom such documents, materials
25 or other information are shared pursuant to this article may be
26 permitted or required to testify in any private civil action

1 concerning any confidential documents, materials, or information
2 subject to subsection (a) of this section.

3 (c) In order to assist in the performance of the commissioner's
4 duties, the commissioner:

5 (1) May share documents, materials or other information,
6 including the confidential and privileged documents, materials or
7 information subject to subsection (a) of this section, with other
8 state, federal and international regulatory agencies, with the
9 National Association of Insurance Commissioners and its affiliates
10 and subsidiaries, and with state, federal, and international law
11 enforcement authorities, including members of any supervisory
12 college described in section six-a of this article, if the recipient
13 agrees in writing to maintain the confidentiality and privileged
14 status of the document, material or other information, and has
15 verified in writing the legal authority to maintain confidentiality;

16 (2) Notwithstanding subdivision (1) of this subsection, the
17 commissioner may only share confidential and privileged documents,
18 material, or information reported pursuant to subsection (1),
19 section four of this article, with commissioners of states having
20 statutes or regulations substantially similar to subdivision (1) of
21 this subsection and who have agreed in writing not to disclose such
22 information;

23 (3) May receive documents, materials or information, including
24 otherwise confidential and privileged documents, materials or
25 information from the National Association of Insurance Commissioners
26 and its affiliates and subsidiaries and from regulatory and law-

1 enforcement officials of other foreign or domestic jurisdictions,
2 and shall maintain as confidential or privileged any document,
3 material or information received with notice or the understanding
4 that it is confidential or privileged under the laws of the
5 jurisdiction that is the source of the document, material or
6 information; and

7 (4) Shall enter into written agreements with the National
8 Association of Insurance Commissioners governing sharing and use of
9 information provided pursuant to this article consistent with this
10 subsection that:

11 (A) Specify procedures and protocols regarding the
12 confidentiality and security of information shared with the National
13 Association of Insurance Commissioners and its affiliates and
14 subsidiaries pursuant to this article, including procedures and
15 protocols for sharing by the National Association of Insurance
16 Commissioners with other state, federal or international regulators;

17 (B) Specify that ownership of information shared with the
18 National Association of Insurance Commissioners and its affiliates
19 and subsidiaries pursuant to this article remains with the
20 commissioner, and the National Association of Insurance
21 Commissioners' use of the information is subject to the direction
22 of the commissioner;

23 (C) Require prompt notice to be given to an insurer whose
24 confidential information in the possession of the National
25 Association of Insurance Commissioners pursuant to this article is
26 subject to a request or subpoena to the National Association of

1 Insurance Commissioners for disclosure or production; and

2 (D) Require the National Association of Insurance Commissioners
3 and its affiliates and subsidiaries to consent to intervention by
4 an insurer in any judicial or administrative action in which the
5 National Association of Insurance Commissioners and its affiliates
6 and subsidiaries may be required to disclose confidential
7 information about the insurer shared with the National Association
8 of Insurance Commissioners and its affiliates and subsidiaries
9 pursuant to this article.

10 (d) The sharing of information by the commissioner pursuant to
11 this article does not constitute a delegation of regulatory
12 authority, and the commissioner is solely responsible for the
13 administration, execution and enforcement of the provisions of this
14 article.

15 (e) No waiver of any applicable privilege or claim of
16 confidentiality in the documents, materials or information occurs
17 as a result of disclosure to the commissioner under this section or
18 as a result of sharing as authorized in subsection (c) of this
19 section.

20 (f) Documents, materials or other information in the possession
21 or control of the National Association of Insurance Commissioners
22 pursuant to this article is confidential by law and privileged, is
23 exempt from disclosure pursuant to chapter twenty-nine-b of this
24 code, is not subject to subpoena, and is not subject to discovery
25 or admissible in evidence in any private civil action.

26 **§33-27-9. Criminal proceedings; penalties; orders; fines;**

1 **disapproval of dividends and distributions.**

2 (a) Any insurer failing, without just cause, to file any
3 registration statement as required by this article shall be
4 required, after notice and hearing, to pay a penalty of up to one
5 thousand dollars for each day's delay, to be recovered by the
6 commissioner. Any penalty so recovered shall be paid into the
7 General Revenue Fund of this state. The commissioner may reduce the
8 penalty if the insurer demonstrates to the commissioner that the
9 imposition of the penalty would constitute a financial hardship to
10 the insurer.

11 (b) Every director or officer of an insurance holding company
12 system who knowingly violates, participates in, or assents to, or
13 who knowingly permits any of the officers or agents of the insurer
14 to engage in transactions or make investments which have not been
15 properly reported or submitted pursuant to subsection (a), section
16 four of this article and subsections (c) and (d), section five of
17 this article, or which violate any other provision of this article,
18 shall pay, in his or her individual capacity, a civil forfeiture of
19 not more than \$5,000 per violation, after notice and hearing before
20 the commissioner. In determining the amount of the civil
21 forfeiture, the commissioner shall take into account the
22 appropriateness of the forfeiture with respect to the gravity of the
23 violation, the history of previous violations, and such other
24 matters as justice may require.

25 (c) Whenever it appears to the commissioner that any insurer
26 subject to this article or any director, officer, employee or agent

1 thereof has engaged in any transaction or entered into a contract
2 which is subject to section five of this article and which would not
3 have been approved had such approval been requested, the
4 commissioner may order the insurer to cease and desist immediately
5 any further activity under that transaction or contract. After
6 notice and hearing the commissioner may also order the insurer to
7 void any such contracts and restore the status quo if the action is
8 in the best interest of the policyholders, creditors or the public.

9 (d) Whenever it appears to the commissioner that any person or
10 any director, officer, employee or agent thereof has committed a
11 willful violation of this article, the commissioner may cause
12 criminal proceedings to be instituted against such person or the
13 responsible director, officer, employee or agent thereof. Any
14 insurer who willfully violates this article is guilty of a
15 misdemeanor and, upon conviction thereof, shall be fined not more
16 than ten thousand dollars. Any individual who willfully violates
17 this article is guilty of a misdemeanor and, upon conviction
18 thereof, shall be fined in his or her individual capacity not more
19 than ten thousand dollars or, if such willful violation involves the
20 deliberate perpetration of a fraud upon the commissioner, is guilty
21 of a felony and, upon conviction thereof, shall be imprisoned not
22 less than one year nor more than three years, or both fined and
23 imprisoned.

24 (e) Any officer, director or employee of an insurance holding
25 company system who willfully and knowingly subscribes to or makes
26 or causes to be made any false statements or false reports or false

1 filings with the intent to deceive the commissioner in the
2 performance of his or her duties under this article, is guilty of
3 a felony and, upon conviction thereof, shall be fined not more than
4 ten thousand dollars, or imprisoned not less than one year nor more
5 than three years, or both fined and imprisoned. Any fines imposed
6 pursuant to this subsection shall be paid by the officer, director
7 or employee in his or her individual capacity.

8 (f) Whenever it appears to the commissioner that any person has
9 committed a violation of section three of this article which
10 prevents the full understanding of the enterprise risk to the
11 insurer by affiliates or by the insurance holding company system,
12 the violation may serve as an independent basis for disapproving
13 dividends or distributions and for placing the insurer under an
14 order of supervision in accordance with article thirty-four of this
15 chapter.

16 **§33-27-11. Revocation, suspension or nonrenewal of insurer's**
17 **license.**

18 Whenever it appears to the commissioner that any person has
19 committed a violation of this article which makes the continued
20 operation of an insurer contrary to the interests of policyholders
21 or the public, the commissioner may, after giving notice and an
22 opportunity to be heard, determine to suspend, revoke or refuse to
23 renew such insurer's license or authority to do business in this
24 state for such period as he or she finds is required for the
25 protection of policyholders or the public: *Provided*, That any such
26 determination shall be accompanied by specific findings of fact and

1 conclusions of law.

2 **§33-27-14. Regulatory authority.**

15 The Insurance Commissioner may propose rules for legislative
16 approval in accordance with article three, chapter twenty-nine-a of
17 this code and may promulgate emergency rules pursuant to the
18 provisions of section fifteen, article three, chapter twenty-nine-a
19 of this code, as are necessary to implement the provisions of this
20 article.