

1  
2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 253**

5 (By Senators Minard and Jenkins)

6 \_\_\_\_\_  
7 [Originating in the Committee on Banking and Insurance;  
8 reported February 16, 2011.]  
9 \_\_\_\_\_

10 A BILL to amend and reenact §33-27-2, §33-27-2a, §33-27-3,  
11 §33-27-4, §33-27-5, §33-27-6, §33-27-7, §33-27-9, §33-27-11  
12 and §33-27-14 of the Code of West Virginia, 1931, as amended;  
13 and to amend said code by adding thereto two new sections,  
14 designated §33-27-3a and §33-27-6a, all relating to insurance  
15 holding company systems; defining terms; excluding certain  
16 investments from determination of adequacy of surplus;  
17 requiring notice and other information with regard to  
18 divestiture or acquisition of a controlling interest; changing  
19 public hearing requirements; providing standards for review of  
20 acquisition request by commissioner; establishing process for  
21 consolidated hearings; providing standards and procedures for  
22 certain acquisitions not otherwise covered; providing  
23 requirements for insurers; expanding examinations and types of  
24 information that may be demanded and reviewed by the  
25 commissioner, including compelling production; providing for  
26 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 ~~insurance department~~ West  
20 Virginia offices of 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. ~~or controls or appoints a~~  
6 ~~majority of the board of directors, voting members or similar~~  
7 ~~governing body of any other person.~~ This presumption may be  
8 rebutted by a showing made in the manner provided by subsection ~~(l)~~  
9 (k), section four of this article that control does not exist in  
10 fact. The commissioner may determine after furnishing all persons  
11 in interest notice and opportunity to be heard and making specific  
12 findings of fact to support the determination that control exists  
13 in fact notwithstanding the absence of a presumption to that  
14 effect.

15 ~~(d) "Depository institution" means a bank or savings~~  
16 ~~association as those terms are defined in section three of the~~  
17 ~~federal deposit insurance act. The term "depository institution"~~  
18 ~~does not include an insurance company.~~

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

1 insurer to be in hazardous financial condition, as set forth in  
2 article thirty-four of this chapter.

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

5 (f) "Insurer" means any person or persons or corporation,  
6 partnership or company authorized by the laws of this state to  
7 transact the business of insurance in this state, except that it  
8 shall not include agencies, authorities or instrumentalities of the  
9 United States, its possessions and territories, the commonwealth of  
10 Puerto Rico, the District of Columbia or a state or political  
11 subdivision of a state.

12 (g) "Person" means an individual, a corporation, a limited  
13 liability company, a partnership, an association, a joint-stock  
14 company, a trust, an unincorporated organization, a depository  
15 institution or any ~~other legal~~ similar entity or any combination of  
16 the foregoing acting in concert, but ~~does not include any~~  
17 ~~securities broker performing no more than the usual and customary~~  
18 ~~broker's function and holding less than twenty percent of the~~  
19 ~~voting securities of an insurance company or of any person which~~  
20 ~~controls an insurance company~~ does not include any joint venture  
21 partnership exclusively engaged in owning, managing, leasing or  
22 developing real or tangible personal property.

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

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

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

6 **§33-27-2a. Subsidiaries of insurers; authorization; investment**  
7 **authority; exemptions; qualifications; cessation of**  
8 **controls.**

9 (a) Authorization. - Any domestic insurer, either by itself or  
10 in cooperation with one or more persons, may organize or acquire  
11 one or more subsidiaries engaged in the following kinds of business  
12 with the commissioner's prior approval:

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

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

17 (3) Investing, reinvesting or trading in securities for its  
18 own account, that of its parent, any subsidiary of its parent, or  
19 any affiliate or subsidiary;

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

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

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

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

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

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

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

11 (11) Any other business activity determined by the  
12 commissioner to be reasonably ancillary to an insurance business;

13 and

14 (12) Owning a corporation or corporations engaged or organized  
15 to engage exclusively in one or more of the businesses specified in  
16 this section; ~~and~~

17 ~~(13) Organizing or acquiring one or more subsidiaries that are~~  
18 ~~depository institutions.~~

19 (b) Additional investment authority. -- In addition to  
20 investments in common stock, preferred stock, debt obligations and  
21 other securities permitted under any other provision of this  
22 chapter, a domestic insurer may also with the commissioner's prior  
23 approval:

24 (1) Invest in common stock, preferred stock, debt obligations  
25 and other securities of one or more subsidiaries, amounts which do  
26 not exceed the lesser of ten percent of the insurer's assets or

1 fifty percent of the insurer's surplus as regards policyholders:  
2 *Provided*, That after the investments, the insurer's surplus as  
3 regards policyholders will be reasonable in relation to the  
4 insurer's outstanding liabilities and adequate to its financial  
5 needs. In calculating the amount of the investments, investments  
6 in domestic or foreign insurance subsidiaries shall be excluded and  
7 there shall be included:

8 (A) Total net moneys or other consideration expended and  
9 obligations assumed in the acquisition or formation of a  
10 subsidiary, including all organizational expenses and contributions  
11 to capital and surplus of the subsidiary whether or not represented  
12 by the purchase of capital stock or issuance of other securities;  
13 and

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

18 (2) Invest any amount in common stock, preferred stock, debt  
19 obligations and other securities of one or more subsidiaries  
20 engaged or organized to engage exclusively in the ownership and  
21 management of assets authorized as investments for the insurer:  
22 *Provided*, That each subsidiary agrees to limit its investments in  
23 any asset so that the investments will not cause the amount of the  
24 total investment of the insurer to exceed any of the investment  
25 limitations specified in subdivision (1) of this subsection or in  
26 article eight of this chapter applicable to the insurer. For the

1 purpose of this subdivision, "the total investment of the insurer"  
2 includes:

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

4 (B) The insurer's proportionate share of any investment in an  
5 asset by any subsidiary of the insurer, which shall be calculated  
6 by multiplying the amount of the subsidiary's investment by the  
7 percentage of the ownership of the subsidiary.

8 (3) With the approval of the commissioner, invest any greater  
9 amount in common stock, preferred stock, debt obligations or other  
10 securities of one or more subsidiaries: *Provided*, That after  
11 investment the insurer's surplus as regards policyholders will be  
12 reasonable in relation to the insurer's outstanding liabilities and  
13 adequate to its financial needs.

14 (c) Exemption from investment restrictions. -- Investments in  
15 common stock, preferred stock, debt obligations or other securities  
16 of subsidiaries made pursuant to subsection (b) of this section are  
17 not subject to any of the otherwise applicable restrictions or  
18 prohibitions contained in this chapter applicable to the  
19 investments of insurers.

20 (d) Qualification of investment; when determined. -- Whether  
21 any investment made pursuant to subsection ~~(a)~~ or (b) of this  
22 section meets the applicable requirements of ~~said subsections~~ that  
23 subsection is to be determined before the investment is made, by  
24 calculating the applicable investment limitations as though the  
25 investment had already been made, taking into account the then  
26 outstanding principal balance on all previous investments in debt



1 obligations, and the value of all previous investments in equity  
2 securities as of the day they were made, net of any return of  
3 capital invested, not including dividends.

4 (e) Cessation of control. -- If an insurer ceases to control  
5 a subsidiary, it shall dispose of any investment in the subsidiary  
6 made pursuant to this section within three years from the time of  
7 the cessation of control or within any further time prescribed by  
8 the commissioner, unless at any time after the investment was made,  
9 the investment meets the requirements for investment under any  
10 other provision of this chapter and the insurer has notified the  
11 commissioner of compliance with the provisions of this chapter.

12 **§33-27-3. Acquisition of control of or merger with domestic**  
13 **insurer; filing requirements; statements;**  
14 **alternative filing material; approval by the**  
15 **commissioner; hearings; notice; mailings to**  
16 **shareholders; expenses; exemptions; violations and**  
17 **jurisdiction.**

18 (a) Filing requirements. --

19 (1) Any ~~No~~ person other than the issuer ~~shall not~~ may make a  
20 tender offer for or a request or invitation for tenders of, or  
21 enter into any agreement to exchange securities for, seek to  
22 acquire or acquire, in the open market or otherwise, any voting  
23 security of a domestic insurer if, after the consummation thereof,  
24 the person would, directly or indirectly (or by conversion or by  
25 exercise of any right to acquire) be in control of the insurer and  
26 a person shall not enter into an agreement to merge with or

1 otherwise to acquire control of a domestic insurer or any person  
2 controlling a domestic insurer unless at the time ~~any such~~ the  
3 offer, request or invitation is made or ~~any such~~ the agreement is  
4 entered into, or prior to the acquisition of ~~such~~ the securities if  
5 no offer or agreement is involved, the person has filed with the  
6 commissioner and has sent to the insurer and, to the extent  
7 permitted by applicable federal laws, rules and regulations, the  
8 insurer has sent to its shareholders a statement containing the  
9 information required by this section and the offer, request,  
10 invitation, agreement or acquisition has been approved by the  
11 commissioner in the manner hereinafter prescribed.

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

26 (3) With respect to a transaction subject to this section, the

1 acquiring person must also file a preacquisition notification with  
2 the commissioner, which shall contain the information set forth in  
3 subdivision (1), subsection (c), section three-a of this article.

4 A failure to file the notification may subject the person to  
5 penalties specified in subdivision (3), subsection (e), section  
6 three-a of this article.

7 ~~(b)~~ (4) For purposes of this section, a "domestic insurer"  
8 includes any ~~other~~ person controlling a domestic insurer unless the  
9 ~~other~~ person as determined by the commissioner is either directly  
10 or through its affiliates primarily engaged in business other than  
11 the business of insurance. For purposes of this section, "person"  
12 does not include any securities broker holding, in the usual and  
13 customary broker's function, less than twenty percent of the voting  
14 securities of an insurance company or of any person that controls  
15 an insurance company.

16 ~~(c)~~ (b) Content of statement. -- The statement to be filed  
17 with the commissioner hereunder shall be made under oath or  
18 affirmation and shall contain the following information:

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

23 ~~(2)~~ (A) If such person is an individual, his or her principal  
24 occupation and all offices and positions held during the past five  
25 years and any conviction of crimes other than minor traffic  
26 violations during the past ten years; or

1       ~~(3)~~ (B) If ~~such~~ the person is not an individual, a report of  
2 the nature of its business operations during the past five years or  
3 for such lesser period as the person and any predecessors thereof  
4 shall have been in existence; an informative description of the  
5 business intended to be done by the person and the person's  
6 subsidiaries; and a list of all individuals who are or who have  
7 been selected to become directors or executive officers of the  
8 person, or who perform or will perform functions appropriate to  
9 those positions. The list shall include for each individual the  
10 information required by ~~subdivision~~ paragraph (2) of this  
11 ~~subsection~~ subdivision;

12       ~~(4)~~ (2) The source, nature and amount of the consideration  
13 used or to be used in effecting the merger or other acquisition of  
14 control, a description of any transaction wherein funds were or are  
15 to be obtained for any such purpose, including any pledge of the  
16 insurer's stock or the stock of any of its subsidiaries or  
17 controlling affiliates, and the identity of persons furnishing such  
18 consideration: *Provided*, That where a source of the consideration  
19 is a loan made in the lender's ordinary course of business, the  
20 identity of the lender shall remain confidential if the person  
21 filing the statement so requests;

22       ~~(5)~~ (3) Fully audited financial information as to the earnings  
23 and financial condition of each acquiring party for the preceding  
24 five fiscal years of each acquiring party (or for such lesser  
25 period as each acquiring party and any predecessors thereof shall  
26 have been in existence) and similar unaudited information as of a

1 date not earlier than ninety days prior to the filing of the  
2 statement;

3 ~~(6)~~ (4) Any plans or proposals which each acquiring party may  
4 have to liquidate the insurer, to sell its assets or merge or  
5 consolidate it with any person or to make any other material change  
6 in its business or corporate structure or management;

7 ~~(7)~~ (5) The number of shares of any security referred to in  
8 subsection (a) of this section which each acquiring party proposes  
9 to acquire and the terms of the offer, request, invitation,  
10 agreement or acquisition referred to in ~~said~~ that subsection and a  
11 statement as to the method by which the fairness of the proposal  
12 was arrived at;

13 ~~(8)~~ (6) The amount of each class of any security referred to  
14 in subsection (a) of this section which is beneficially owned or  
15 concerning which there is a right to acquire beneficial ownership  
16 by each acquiring party;

17 ~~(9)~~ (7) A full description of any contracts, arrangements or  
18 understanding with respect to any security referred to in  
19 subsection (a) of this section in which any acquiring party is  
20 involved, including, but not limited to, transfer of any of the  
21 securities, joint ventures, loan or option arrangements, puts or  
22 calls, guarantees of loans, guarantees against loss or guarantees  
23 of profits, division of losses or profits or the giving or  
24 withholding of proxies. The description shall identify the persons  
25 with whom such contracts, arrangements or understandings have been  
26 entered into;

1       ~~(10)~~ (8) A description of the purchase of any security  
2 referred to in subsection (a) of this section during the twelve  
3 calendar months preceding the filing of the statement by any  
4 acquiring party, including the dates of purchase, names of the  
5 purchasers and consideration paid or agreed to be paid therefor;

6       ~~(11)~~ (9) A description of any recommendations to purchase any  
7 security referred to in subsection (a) of this section made during  
8 the twelve calendar months preceding the filing of the statement by  
9 an acquiring party or by anyone based upon interviews or at the  
10 suggestion of the acquiring party;

11       ~~(12)~~ (10) Copies of all tender offers for, requests or  
12 invitations for tenders of, exchange offers for and agreements to  
13 acquire or exchange any securities referred to in subsection (a) of  
14 this section and, if distributed, of additional soliciting material  
15 relating thereto;

16       ~~(13)~~ (11) The terms of any agreement, contract or  
17 understanding made with any broker-dealer as to solicitation of  
18 securities referred to in subsection (a) of this section for tender  
19 and the amount of any fees, commissions or other compensation to be  
20 paid to broker-dealers with regard thereto; ~~and~~

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

25       (13) An acknowledgment by the person required to file the  
26 statement referred to in subsection (a) of this section that the

1 person and all subsidiaries within its control in the insurance  
2 holding company system will provide information to the commissioner  
3 upon request as necessary to evaluate enterprise risk to the  
4 insurer; and

5 (14) Any additional information as the commissioner may by  
6 rule prescribe as necessary or appropriate for the protection of  
7 policyholders and security holders of the insurer or in the public  
8 interest.

9 ~~(d)~~ (c) If the person required to file the statement referred  
10 to in subsection (a) of this section is a partnership, limited  
11 partnership, syndicate or other group, the commissioner may require  
12 that the information called for by subdivisions (1) through (14),  
13 inclusive, ~~of this subsection~~ (b) of this section shall be given  
14 with respect to each partner of the partnership or limited  
15 partnership, each member of the syndicate or group and each person  
16 who controls the partner or member. If any partner, member or  
17 person is a corporation or the person required to file the  
18 statement referred to in subsection (a) of this section is a  
19 corporation, the commissioner may require that the information  
20 called for by subdivisions (1) through (14), inclusive, subsection  
21 (b) of this section shall be given with respect to the corporation  
22 and each person who is directly or indirectly the beneficial owner  
23 of more than ten percent of the outstanding voting securities of  
24 the corporation.

25 ~~(e)~~ (d) If any material change occurs in the facts set forth  
26 in the statement filed with the commissioner and sent to the

1 insurer pursuant to this section, an amendment setting forth such  
2 change, together with copies of all documents and other material  
3 relevant to such change, shall be filed with the commissioner and  
4 sent to the insurer within two business days after the person  
5 learns of the change. The insurer shall send the amendment to its  
6 shareholders.

7       ~~(f)~~ (e) Alternative filing materials. -- If any offer,  
8 request, invitation, agreement or acquisition referred to in  
9 subsection (a) of this section is proposed to be made by means of  
10 a registration statement under the Securities Act of 1933 or in  
11 circumstances requiring the disclosure of similar information under  
12 the Securities Exchange Act of 1934 or under a state law requiring  
13 similar registration or disclosure, the person required to file the  
14 statement referred to in ~~said~~ that subsection may utilize such  
15 documents in furnishing the information called for by that  
16 statement.

17       ~~(g)~~ (f) (1) Approval by commissioner; hearings. -- The  
18 commissioner shall approve any merger or other acquisition of  
19 control referred to in subsection (a) of this section unless, after  
20 a public hearing thereon, he or she finds that: ~~any of the~~  
21 ~~following conditions exists:~~

22       ~~(1)~~ (A) After the change of control the domestic insurer  
23 referred to in subsection (a) of this section would not be able to  
24 satisfy the requirements for the issuance of a license to write the  
25 line or lines of insurance for which it is presently authorized;

26       ~~(2)~~ (B) The effect of the merger or other acquisition of



1 control would be substantially to lessen competition in insurance  
2 in this state or tend to create a monopoly therein. In applying the  
3 competitive standard in this subdivision:

4 (i) The informational requirements of subdivision (1),  
5 subsection (c), section three-a of this article and the standards  
6 of subdivision (2), subsection (d), section three-a of this article  
7 apply;

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

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

15 ~~(3) (C) The financial condition of any acquiring party is such~~  
16 ~~as might jeopardize the financial stability of the insurer or~~  
17 ~~prejudice the interest of its policyholders or the interests of any~~  
18 ~~remaining security holders who are unaffiliated with the acquiring~~  
19 ~~party;~~

20 ~~(4) The terms of the offer, request, invitation, agreement or~~  
21 ~~acquisition referred to in subsection (a) of this section are~~  
22 ~~unfair and unreasonable to the security holders of the insurer;~~

23 ~~(5) (D) The plans or proposals which the acquiring party has~~  
24 ~~to liquidate the insurer, sell its assets or consolidate or merge~~  
25 ~~it with any person or to make any other material change in its~~  
26 ~~business or corporate structure or management are unfair and~~

1 unreasonable to policyholders of the insurer and not in the public  
2 interest;

3       ~~(6)~~ (E) The competence, experience and integrity of those  
4 persons who would control the operation of the insurer are such  
5 that it would not be in the interest of policyholders of the  
6 insurer and of the public to permit the merger or other acquisition  
7 of control; or

8       ~~(7)~~ (F) The acquisition is likely to be hazardous or  
9 prejudicial to the insurance-buying public.

10       ~~(h)~~ (2) The public hearing required by this section shall be  
11 held within ~~forty~~ thirty days after the statement required by  
12 subsection (a) of this section is filed, and at least ~~fifteen~~  
13 twenty days' notice thereof shall be given by the commissioner to  
14 the person filing the statement. Not less than seven days' notice  
15 of the public hearing shall be given by the person filing the  
16 statement to the insurer and to any other persons as may be  
17 designated by the commissioner. ~~The insurer shall give notice of~~  
18 ~~the public hearing to its security holders.~~ The commissioner shall  
19 make a determination within ~~twenty days~~ after the conclusion of the  
20 hearing the sixty-day period preceding the effective date of the  
21 proposed transaction. At the hearing, the person filing the  
22 statement, the insurer, any person to whom notice of hearing was  
23 sent, and any other person whose interest may be affected has the  
24 right to present evidence, examine and cross-examine witnesses, and  
25 offer oral and written arguments and in connection therewith shall  
26 be entitled to conduct discovery proceedings in the same manner as

1 is presently allowed in the circuit courts of this state:  
2 Provided, That all discovery proceedings shall be concluded not  
3 later than three days prior to the commencement of the public  
4 hearing.

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

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

1 (1), subsection (a) of this section.

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

7 ~~(j) To the extent permitted by applicable federal laws, rules~~  
8 ~~and regulations, all statements, amendments or other material filed~~  
9 ~~pursuant to the provisions of this section and all notices of~~  
10 ~~public hearings held pursuant to the provisions of this section~~  
11 ~~shall be mailed by the insurer to its shareholders within five~~  
12 ~~business days after the insurer has received such statements,~~  
13 ~~amendments, other material or notices. The expenses of mailing~~  
14 ~~shall be borne by the person making the filing. As security for~~  
15 ~~the payment of such expenses, such person shall file with the~~  
16 ~~commissioner an acceptable bond or other deposit in an amount to be~~  
17 ~~determined by the commissioner.~~

18 ~~(k) (g) Exemptions.~~ -- The provisions of this section shall  
19 not apply to any offer, request, invitation, agreement or  
20 acquisition which the commissioner by order shall exempt therefrom  
21 as: (1) Not having been made or entered into for the purpose of,  
22 and not having the effect of, changing or influencing the control  
23 of a domestic insurer; or (2) as otherwise not comprehended within  
24 the purposes of this section.

25 ~~(l) (h)~~ The following are violations of this section:

26 (1) The failure to file any statement, amendment or other

1 material required to be filed pursuant to subsection (a) or (b) of  
2 this section; or

3 (2) The effectuation or any attempt to effectuate an  
4 acquisition of control of, divestiture of, or merger with, a  
5 domestic insurer unless the commissioner has given his or her  
6 approval thereto.

7 ~~(m)~~ (i) Jurisdiction; consent to service of process. -- The  
8 courts of this state are hereby vested with jurisdiction over every  
9 person not resident, domiciled or authorized to do business in this  
10 state who files a statement with the commissioner under this  
11 section and over all actions involving such person arising out of  
12 violations of this section and each such person shall be deemed to  
13 have performed acts equivalent to and constituting an appointment  
14 by the person of the Secretary of State to be his or her true and  
15 lawful attorney upon whom may be served all lawful process in any  
16 action, suit or proceeding arising out of violations of this  
17 section. Copies of all such lawful process shall be served on the  
18 Secretary of State and transmitted by registered or certified mail  
19 by the Secretary of State to such person at his or her last known  
20 address.

21 **§33-27-3a. Acquisitions Involving Insurers Not Otherwise Covered;**  
22 **definitions; scope; pre-acquisition notification and waiting**  
23 **period; competitive standard; orders and penalties.**

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

26 (1) "Acquisition" means any agreement, arrangement or activity

1 the consummation of which results in a person acquiring directly or  
2 indirectly the control of another person, and includes, but is not  
3 limited to, the acquisition of voting securities, the acquisition  
4 of assets, bulk reinsurance and mergers.

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

8 (b) *Scope.* - (1) Except as exempted in subdivision (2) of this  
9 subsection, this section applies to any acquisition in which there  
10 is a change in control of an insurer authorized to do business in  
11 this state.

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

13 (A) A purchase of securities solely for investment purposes so  
14 long as the securities are not used by voting or otherwise to cause  
15 or attempt to cause the substantial lessening of competition in any  
16 insurance market in this state. If a purchase of securities  
17 results in a presumption of control pursuant to subsection (c),  
18 section two of this article, it is not solely for investment  
19 purposes unless the commissioner of the insurer's state of domicile  
20 accepts a disclaimer of control or affirmatively finds that control  
21 does not exist and the disclaimer action or affirmative finding is  
22 communicated by the domiciliary commissioner to the commissioner of  
23 this state;

24 (B) The acquisition of a person by another person when both  
25 persons are neither directly nor through affiliates primarily  
26 engaged in the business of insurance, if pre-acquisition

1 notification is filed with the commissioner pursuant to subdivision  
2 (1), subsection (c) of this section thirty days prior to the  
3 proposed effective date of the acquisition. However, such  
4 pre-acquisition notification is not required for exclusion from  
5 this section if the acquisition would otherwise be excluded from  
6 this section by any other paragraph of this subdivision;

7 (C) The acquisition of already affiliated persons;

8 (D) An acquisition if, as an immediate result of the  
9 acquisition:

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

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

13 (iii) In no market would:

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

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

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

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

25 (F) An acquisition of an insurer whose domiciliary  
26 commissioner affirmatively finds that the insurer is in failing

1 condition; there is a lack of feasible alternative to improving  
2 such condition; the public benefits of improving the insurers  
3 condition through the acquisition exceed the public benefits that  
4 would arise from not lessening competition; and the findings are  
5 communicated by the domiciliary commissioner to the commissioner of  
6 this state.

7       (c) *Pre-acquisition notification and waiting period.* -- An  
8 acquisition covered by subsection (b) of this section may be  
9 subject to an order pursuant to subsection (e) of this section  
10 unless the acquiring person files a pre-acquisition notification  
11 and the waiting period has expired. The acquired person may file  
12 a pre-acquisition notification. The commissioner shall give  
13 confidential treatment to information submitted under this  
14 subsection in the same manner as provided in section seven of this  
15 article.

16       (1) The pre-acquisition notification shall be in such form and  
17 contain such information as prescribed by the National Association  
18 of Insurance Commissioners relating to those markets that, under  
19 paragraph (D), subdivision (2), subsection (b) of this section,  
20 cause the acquisition not to be exempted from the provisions of  
21 this section. The commissioner may require such additional  
22 material and information as deemed necessary to determine whether  
23 the proposed acquisition, if consummated, would violate the  
24 competitive standard of subsection (d) of this section. The  
25 required information may include an opinion of an economist as to  
26 the competitive impact of the acquisition in this state accompanied



1 by a summary of the education and experience of such person  
2 indicating his or her ability to render an informed opinion.

3 (2) The waiting period required shall begin on the date of  
4 receipt of the commissioner of a pre-acquisition notification and  
5 shall end on the earlier of the thirtieth day after the date of  
6 receipt, or termination of the waiting period by the commissioner.  
7 Prior to the end of the waiting period, the commissioner on a  
8 one-time basis may require the submission of additional needed  
9 information relevant to the proposed acquisition, in which event  
10 the waiting period shall end on the earlier of the thirtieth day  
11 after receipt of the additional information by the commissioner or  
12 termination of the waiting period by the commissioner.

13 (d) Competitive Standard. -- (1) The commissioner may enter an  
14 order under subdivision (1), subsection (e) of this section, with  
15 respect to an acquisition if there is substantial evidence that the  
16 effect of the acquisition may be substantially to lessen  
17 competition in any line of insurance in this state or tend to  
18 create a monopoly or if the insurer fails to file adequate  
19 information in compliance with subsection (c) of this section.

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

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

the market is highly concentrated and the involved insurers

1 possess the following shares of the market:

2	<b>Insurer A</b>	<b>Insurer B</b>
3	4%	4% or more
4	10%	10%
5	15%	1% or more

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

8	<b>Insurer A</b>	<b>Insurer B</b>
9	5%	5% or more
10	10%	4% or more
11	15%	3% or more
12	19%	1% or more

13 A highly concentrated market is one in which the share of the  
14 four largest insurers is seventy-five percent or more of the  
15 market. Percentages not shown in the tables are interpolated  
16 proportionately to the percentages that are shown. If more than  
17 two insurers are involved, exceeding the total of the two columns  
18 in the table is *prima facie* evidence of violation of the  
19 competitive standard in subdivision one of this subsection. For  
20 the purpose of this item, the insurer with the largest share of the  
21 market shall be deemed to be Insurer A;

22 (B) There is a significant trend toward increased  
23 concentration when the aggregate market share of any grouping of  
24 the largest insurers in the market, from the two largest to the  
25 eight largest, has increased by seven percent or more of the market  
26 over a period of time extending from any base year five to ten

1 years prior to the acquisition up to the time of the acquisition.

2 Any acquisition or merger covered under subsection (b) of this  
3 section involving two (2) or more insurers competing in the same  
4 market is *prima facie* evidence of violation of the competitive  
5 standard in subdivision (1) of this subsection if:

6 (i) There is a significant trend toward increased  
7 concentration in the market;

8 (ii) One of the insurers involved is one of the insurers in a  
9 grouping of large insurers showing the requisite increase in the  
10 market share; and

11 (iii) Another involved insurer's market is two percent or  
12 more;

13 (C) For the purposes of subdivision (2), subsection (d) of  
14 this section:

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

17 (ii) The term "market" means the relevant product and  
18 geographical markets. In determining the relevant product and  
19 geographical markets, the commissioner shall give due consideration  
20 to, among other things, the definitions or guidelines, if any,  
21 promulgated by the National Association of Insurance Commissioners  
22 and to information, if any, submitted by parties to the  
23 acquisition. In the absence of sufficient information to the  
24 contrary, the relevant product market is assumed to be the direct  
25 written insurance premium for a line of business, such line being  
26 that used in the annual statement required to be filed by insurers

1 doing business in this state, and the relevant geographical market  
2 is assumed to be this state;

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

5 (D) Even though an acquisition is not *prima facie* violative of  
6 the competitive standard under paragraphs (A) and (B), subdivision  
7 (2) of this subsection, the commissioner may establish the  
8 requisite anticompetitive effect based upon other substantial  
9 evidence. Even though an acquisition is *prima facie* violative of  
10 the competitive standard under paragraphs (A) and (B), subdivision  
11 (2) of this subsection, a party may establish the absence of the  
12 requisite anticompetitive effect based upon other substantial  
13 evidence. Relevant factors in making a determination under this  
14 paragraph include, but are not limited to, the following: market  
15 shares, volatility of ranking of market leaders, number of  
16 competitors, concentration, trend of concentration in the industry,  
17 and ease of entry and exit into the market.

18 (3) An order may not be entered under subdivision (1).  
19 subsection (e) of this section if:

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

25 (B) The acquisition will substantially increase the  
26 availability of insurance, and the public benefits of the increase

1 exceed the public benefits which would arise from not lessening  
2 competition.

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

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

8 (ii) Denying the application of an acquired or acquiring  
9 insurer for a license to do business in this state.

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

11 (i) There is a hearing;

12 (ii) Notice of the hearing is issued prior to the end of the  
13 waiting period and not less than fifteen days prior to the hearing;  
14 and

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

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

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

23 (2) Any person who violates a cease and desist order of the  
24 commissioner under subdivision one of this subsection and while the  
25 order is in effect may, after notice and hearing and upon order of  
26 the commissioner, be subject at the discretion of the commissioner

1 to one or more of the following:

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

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

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

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

12 **§33-27-4. Registration of insurers ; information and form**  
13 **required; summary of changes to registration**  
14 **statement; materiality; reporting of dividends to**  
15 **shareholders; information to insurers; termination of**  
16 **registration; consolidated filing; alternative**  
17 **registration; exemptions; disclaimer; enterprise risk**  
18 **filing; violations.**

19 (a) Registration. -- (1) Every insurer which is authorized to  
20 do business in this state and which is a member of an insurance  
21 holding company system shall register with the commissioner, except  
22 a foreign insurer subject to disclosure requirements and standards  
23 adopted by statute or regulation in the jurisdiction of its  
24 domicile which are substantially similar to those contained in this  
25 section, subsections (a), (b) and (c), section five of this  
26 article, and either subsection (d), section five of this article or

1 has a provision such as the following: "Each registered insurer  
2 shall keep current the information required to be disclosed in its  
3 registration statement by reporting all material changes or  
4 additions within fifteen days after the end of the month in which  
5 it learns of each change or addition."

6       (2) Any insurer which is subject to registration under this  
7 section shall register within ~~sixty days after the effective date~~  
8 ~~of this article or~~ fifteen days after it becomes subject to  
9 registration, ~~whichever is later,~~ and annually thereafter by June  
10 1 of each year for the previous calendar year, unless the  
11 commissioner for good cause shown extends the time for  
12 registration. ~~and then within such extended time.~~ The commissioner  
13 may require any authorized insurer which is a member of a holding  
14 company system which is not subject to registration under this  
15 section to furnish a copy of the registration statement, the  
16 summary described in subsection (c) of this section, or other  
17 information filed by such insurance company with the insurance  
18 regulatory authority of domiciliary jurisdiction.

19       (b) Information and form required. -- Every insurer subject  
20 to registration shall file a registration statement with the  
21 commissioner and the national association of insurance  
22 commissioners on a form and in a format prescribed by the National  
23 Association of Insurance Commissioners, which shall contain the  
24 following current information: ~~about:~~

25       (1) The capital structure, general financial condition,  
26 ownership and management of the insurer and any person controlling

1 the insurer.

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

4 (3) The following agreements in force, relationships  
5 subsisting, and transactions currently outstanding or which have  
6 occurred during the last calendar year between such insurer and its  
7 affiliates:

8 (A) Loans, other investments, or purchases, sales or exchanges  
9 of securities of the affiliates by the insurer or of the insurer by  
10 its affiliates;

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

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

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

17 (E) All management and service contracts and all cost-sharing  
18 arrangements;

19 (F) All reinsurance agreements;

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

21 (H) Consolidated tax allocation statements.

22 ~~(H)~~ (4) Any pledge of the insurer's stock, including stock of  
23 any subsidiary or controlling affiliate, for a loan made to any  
24 member of the insurance holding company system.

25 (5) If requested by the commissioner, the insurer shall  
26 include financial statements of or within an insurance holding



1 company system, including all affiliates. Financial statements may  
2 include, but are not limited to, annual audited financial  
3 statements filed with the U.S. Securities and Exchange Commission  
4 (SEC) pursuant to the Securities Act of 1933, as amended, or the  
5 Securities Exchange Act of 1934, as amended. An insurer required  
6 to file financial statements pursuant to this subdivision may  
7 satisfy the request by providing the commissioner with the most  
8 recently filed parent corporation financial statements that have  
9 been filed with the SEC.

10 ~~(4)~~ (6) Other matters concerning transactions between  
11 registered insurers and any affiliates as may be included from time  
12 to time in any registration forms adopted or approved by the  
13 commissioner.

14 (7) Statements that the insurer's board of directors oversees  
15 corporate governance and internal controls and that the insurer's  
16 officers or senior management have approved, implemented, and  
17 continue to maintain and monitor corporate governance and internal  
18 control procedures.

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

21 (c) Summary of changes to registration statement. -- All  
22 registration statements shall contain a summary outlining all items  
23 in the current registration statement representing changes from the  
24 prior registration statement.

25 (d) Materiality. -- Information need not be disclosed on the  
26 registration statement filed pursuant to subsection (b) of this

1 section if such information is not material for the purpose of this  
2 section. Unless the commissioner by rule or order provides  
3 otherwise, sales, purchases, exchanges, loans or extensions of  
4 credit, or investments, involving one half of one percent or less  
5 of an insurer's admitted assets as of December 31, next preceding  
6 shall not be deemed material for purposes of this section.

7 ~~(e) Each registered insurer shall keep current the information~~  
8 ~~required to be disclosed in its registration statement by reporting~~  
9 ~~all material changes or additions on amendment forms provided by~~  
10 ~~the commissioner within fifteen days after the end of the month in~~  
11 ~~which it learns of each such change or addition.~~

12 ~~(f)~~ (e) Reporting of dividends to shareholders. -- Subject to  
13 subsection (c), section five of this article, each registered  
14 insurer shall report to the commissioner all dividends and other  
15 distributions to shareholders within fifteen business days  
16 following the declaration thereof.

17 ~~(g)~~ (f) Information to insurers. -- Any person within an  
18 insurance holding company system subject to registration shall be  
19 required to provide complete and accurate information to an  
20 insurer, when such information is reasonably necessary to enable  
21 the insurer to comply with the provisions of this article.

22 ~~(h)~~ (g) Termination of registration. -- The commissioner shall  
23 terminate the registration of any insurer which demonstrates that  
24 it no longer is a member of an insurance holding company system.

25 ~~(i)~~ (h) Consolidated filing. -- The commissioner may require  
26 or allow two or more affiliated insurers subject to registration

1 hereunder to file a consolidated registration statement or  
2 consolidated reports amending their consolidated registration  
3 statement or their individual registration statements.

4 ~~(j)~~ (i) Alternative registration. -- The commissioner may  
5 allow an insurer which is authorized to do business in this state  
6 and which is a part of an insurance holding company system to  
7 register on behalf of any affiliated insurer which is required to  
8 register under subsection (a) of this section and to file all  
9 information and material required to be filed under this section.

10 ~~(k)~~ (j) Exemptions. -- The provisions of this section shall  
11 not apply to any insurer, information or transaction if and to the  
12 extent that the commissioner by rule or order shall exempt the same  
13 from the provisions of this section.

14 ~~(l)~~ (k) Disclaimer. -- Any person may file with the  
15 commissioner a disclaimer of affiliation with any authorized  
16 insurer or ~~such~~ a disclaimer may be filed by ~~such~~ the insurer or  
17 any member of an insurance holding company system. The disclaimer  
18 shall fully disclose all material relationships and bases for  
19 affiliation between ~~such~~ the person and ~~such~~ the insurer as well as  
20 the basis for disclaiming such affiliation. ~~After a disclaimer has~~  
21 ~~been filed, the insurer shall be relieved of any duty to register~~  
22 ~~or report under this section which may arise out of the insurer's~~  
23 ~~relationship with such person unless and until the commissioner~~  
24 ~~disallows such a disclaimer.~~ A disclaimer of affiliation shall be  
25 deemed to have been granted unless the commissioner, within thirty  
26 days following receipt of a complete disclaimer, notifies the

1 filing party the disclaimer is disallowed. In the event of  
2 disallowance, the disclaiming party may request an administrative  
3 hearing, which shall be granted, and ~~The~~ the commissioner shall  
4 disallow such a disclaimer only after furnishing all parties in  
5 interest with notice and opportunity to be heard and after making  
6 specific findings of fact to support such disallowance. The  
7 disclaiming party shall be relieved of its duty to register under  
8 this section if approval of the disclaimer has been granted by the  
9 commissioner, or if the disclaimer is deemed to have been approved.

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

20 (m) Violations. -- The failure to file a registration  
21 statement or ~~any amendment~~ enterprise risk filing thereto required  
22 by this section within the time specified for such filing shall be  
23 a violation of this section.

24 **§33-27-5. Standards; adequacy of surplus; dividends and other**  
25 **distributions; notice of amendments or modifications; management of**  
26 **domestic insurers subject to registration.**

1 (a) Transactions ~~by registered insurers with their affiliates~~  
2 within an insurance holding company system to which an insurer  
3 subject to registration is a party shall be subject to the  
4 following standards:

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

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

8 ~~(2)~~ (3) Charges or fees for services performed shall be  
9 reasonable;

10 ~~(3)~~ (4) Expenses incurred and payment received shall be  
11 allocated to the insurer in conformity with customary insurance  
12 accounting practices consistently applied;

13 ~~(4)~~ (5) The books, accounts and records of each party to all  
14 such transactions shall be so maintained as to clearly and  
15 accurately disclose the ~~precise~~ nature and details of the  
16 transactions, including such accounting information as is necessary  
17 to support the reasonableness of the charges or fees to the  
18 respective parties; and

19 ~~(5)~~ (6) The insurer's surplus as regards policyholders  
20 following any dividends or distributions to shareholder affiliates  
21 shall be reasonable in relation to the insurer's outstanding  
22 liabilities and adequate to its financial needs.

23 (b) Adequacy of surplus. -- For purposes of this article, in  
24 determining whether an insurer's surplus as regards policyholders  
25 is reasonable in relation to the insurer's outstanding liabilities  
26 and adequate to meet its financial needs, the following factors,

1 among others, shall be considered:

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

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

7 (3) The number and size of risks insured in each line of  
8 business;

9 (4) The extent of the geographical dispersion of the insurer's  
10 insured risks;

11 (5) The nature and extent of the insurer's reinsurance  
12 program;

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

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

17 (8) The surplus as regards policyholders maintained by other  
18 comparable insurers;

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

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

21 The commissioner may treat any such investment as a disallowed  
22 asset for purposes of determining the adequacy of surplus as  
23 regards policyholders whenever in his or her judgment such  
24 investment so warrants.

25 (c) Dividends and other distributions. - (1) ~~An insurer~~  
26 ~~subject to registration under section four of this article shall~~

1 ~~not~~ No domestic insurer may pay any extraordinary dividend or make  
2 any other extraordinary distribution to its shareholders until:

3       ~~(1)~~ (A) Thirty days after the commissioner has received notice  
4 of the declaration thereof and has not within ~~such~~ that period  
5 disapproved such payment; or

6       ~~(2)~~ (B) ~~The~~ commissioner ~~shall have~~ has approved ~~such~~ that  
7 payment within ~~such~~ the thirty-day period.

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

13       ~~(1)~~ (A) Ten percent of such insurer's surplus as regards  
14 policyholders as of December 31, next preceding; or

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

1 immediate preceding calendar years.

2       ~~(e)~~ (3) Notwithstanding any other provision of law, an insurer  
3 may declare an extraordinary dividend or distribution which is  
4 conditional upon the commissioner's approval ~~thereof~~, and ~~such a~~  
5 the declaration shall confer no rights upon shareholders until:

6       ~~(1)~~ (A) The commissioner has approved the payment of such  
7 dividend or distribution; or

8       ~~(2)~~ ~~the~~ (B) The commissioner has not disapproved such payment  
9 within the thirty-day period referred to above.

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



1 commissioner for determination of the type of filing required, if  
2 any.

3 (1) Sales, purchases, exchanges, loans or extensions of  
4 credit, guarantees or investments provided such transactions are  
5 equal to or exceed:

6 (A) With respect to nonlife insurers, the lesser of ~~one~~ three  
7 percent of the insurer's admitted assets or ~~ten~~ twenty-five percent  
8 of surplus as regards policyholders; and

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

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

19 (A) With respect to nonlife insurers, the lesser of ~~one~~ three  
20 percent of the insurer's admitted assets or ~~ten~~ twenty-five percent  
21 of surplus as regards policyholders; each as of December 31, next  
22 preceding;

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

25 (3) Reinsurance agreements or modifications thereto,  
26 including:

1        (A) All reinsurance pooling agreements; and

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

12        (4) All management agreements, service contracts, tax  
13 allocation agreements, guarantees and all cost-sharing  
14 arrangements; ~~and~~

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

23        (6) Direct or indirect acquisitions or investments in a person  
24 that controls the insurer or in an affiliate of the insurer in an  
25 amount which, together with its present holdings in such  
26 investments, exceeds two and one-half percent of the insurer's

1 surplus to policyholders. Direct or indirect acquisitions or  
2 investments in subsidiaries acquired pursuant to section two-a of  
3 this article or authorized under any other section of this chapter,  
4 or in nonsubsidiary insurance affiliates that are subject to the  
5 provisions of this article, are exempt from this requirement; and

6 ~~(5)~~ (7) Any material transactions, specified by rule, which  
7 the commissioner determines may adversely affect the interests of  
8 the insurer's policyholders.

9 ~~(g) Nothing contained in subsection (h) herein shall be deemed~~  
10 ~~to authorize or permit any transactions which, in the case of an~~  
11 ~~insurer not a member of the same holding company system, would be~~  
12 ~~otherwise contrary to law.~~

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

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

1       ~~(j)~~ (g) The commissioner shall be notified within thirty days  
2 of any investment of the domestic insurer in any one corporation if  
3 the total investment in ~~such~~ that corporation by the insurance  
4 holding company system exceeds ten percent of such corporation's  
5 voting securities.

6       ~~(k)~~ (h) ~~With regard to domestic insurers, the following~~  
7 ~~requirements apply:~~ Management of domestic insurers subject to  
8 registration. -- (1) Notwithstanding the control of a domestic  
9 insurer by any person, the officers and directors of the insurer  
10 shall not thereby be relieved of any obligation or liability to  
11 which they would otherwise be subject by law, and the insurer shall  
12 be managed so as to assure its separate operating identity  
13 consistent with the provisions of this ~~chapter~~ article.

14       (2) Nothing ~~herein shall preclude~~ in this section precludes a  
15 domestic insurer from having or sharing a common management or  
16 cooperatively, or jointly using personnel, property or services  
17 with one or more other persons under arrangements meeting the  
18 standards of subsection (a) of this section.

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

1 of business at any meeting of the board of directors or any  
2 committee thereof.

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

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

20 (6) An insurer may make application to the commissioner for a  
21 waiver from the requirements of this subsection, if the insurer's  
22 annual direct written and assumed premium, excluding premiums  
23 reinsured with the Federal Crop Insurance Corporation and Federal  
24 Flood Program, is less than \$300 million. An insurer may also make  
25 application to the commissioner for a waiver from the requirements  
26 of this subsection based upon unique circumstances. The

1 commissioner may consider various factors including, but not  
2 limited to, the type of business entity, volume of business  
3 written, availability of qualified board members, or the ownership  
4 or organizational structure of the entity.

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

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

20 (b) Access to books and records. -

21 (1) The commissioner may order any insurer registered under  
22 section four of this article to produce such records, books or  
23 other information papers in the possession of the insurer or its  
24 affiliates as ~~shall be~~ are reasonably necessary to ascertain the  
25 financial condition or legality of conduct of such insurer. In the  
26 event that such insurer fails to comply with such order, the

1 ~~commissioner shall have the power to examine such affiliates to~~  
2 ~~obtain such information~~ determine compliance with this chapter.

3 ~~(b) Purpose and limitation of examination. -- The~~  
4 ~~commissioner shall exercise his power under subsection (a) above~~  
5 ~~only if the examination of the insurer under other articles of this~~  
6 ~~chapter is inadequate or the interests of the policyholders of such~~  
7 ~~insurer may be adversely affected.~~

8 (2) To determine compliance with this chapter, the  
9 commissioner may order any insurer registered under section four of  
10 this article to produce information not in the possession of the  
11 insurer if the insurer can obtain access to such information  
12 pursuant to contractual relationships, statutory obligations, or  
13 other method. In the event the insurer cannot obtain the  
14 information requested by the commissioner, the insurer shall  
15 provide the commissioner a detailed explanation of the reason that  
16 the insurer cannot obtain the information and the identity of the  
17 holder of information. Whenever it appears to the commissioner  
18 that the detailed explanation is without merit, the commissioner  
19 may, after notice and hearing, require the insurer to pay a penalty  
20 of up to \$10,000 for each day's delay, may suspend or revoke the  
21 insurer's license, or both impose a penalty and revoke or suspend  
22 the insurer's license.

23 (c) Use of consultants. -- The commissioner may retain at the  
24 registered insurer's expense such attorneys, actuaries, accountants  
25 and other experts not otherwise a part of the commissioner's staff  
26 as shall be reasonably necessary to assist in the conduct of the

1 examination under subsection (a) ~~above~~ of this section. Any person  
2 so retained shall be under the direction and control of the  
3 commissioner and shall act in a purely advisory capacity.

4 (d) *Expenses*. -- Each registered insurer producing for  
5 examination records, books and papers pursuant to subsection (a)  
6 ~~above shall be~~ of this section is liable for and shall pay the  
7 expense of such examination in accordance with applicable laws of  
8 this state.

9 (e) *Compelling Production*. -- In the event the insurer fails  
10 to comply with an order, the commissioner may examine the affiliates  
11 to obtain the information. The commissioner may also issue  
12 subpoenas, to administer oaths, and examine under oath any person  
13 for purposes of determining compliance with this section. Upon the  
14 failure or refusal of any person to obey a subpoena, the  
15 commissioner may petition any circuit court and, upon proper  
16 showing, the court may enter an order compelling the witness to  
17 appear and testify or produce documentary evidence. Failure to obey  
18 the court order is punishable as contempt of court. Every person  
19 is obliged to attend as a witness at the place specified in the  
20 subpoena, when subpoenaed, anywhere within the state. He or she is  
21 entitled to the same fees and mileage, if claimed, as a witness in  
22 the circuit court of the county in which attendance is required,  
23 which fees, mileage, and actual expense, if any, necessarily  
24 incurred in securing the attendance of witnesses, and their  
25 testimony, shall be itemized and charged against, and be paid by,  
26 the company being examined.



1 **§33-27-6a. Supervisory Colleges; power of commissioner; expenses;**  
2 **agreements.**

3 (a) *Power of Commissioner.* -- With respect to any insurer  
4 registered under section four of this article, and in accordance  
5 with subsection (c) of this section, the commissioner may  
6 participate in a supervisory college for any domestic insurer that  
7 is part of an insurance holding company system with international  
8 operations in order to determine compliance by the insurer with this  
9 chapter. The powers of the commissioner with respect to supervisory  
10 colleges include, but are not limited to, the following:

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

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

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

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

20 (5) Establishing a crisis management plan.

21 (b) *Expenses.* - Each registered insurer subject to this  
22 section is liable for and shall pay the reasonable expenses of the  
23 commissioner's participation in a supervisory college in accordance  
24 with subsection (c) of this section, including reasonable travel  
25 expenses. For purposes of this section, a supervisory college may  
26 be convened as either a temporary or permanent forum for

1 communication and cooperation between the regulators charged with  
2 the supervision of the insurer or its affiliates, and the  
3 commissioner may establish a regular assessment to the insurer for  
4 the payment of these expenses.

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

20 **§33-27-7. Confidential treatment.**

21 (a) All information, documents and copies thereof Documents,  
22 materials or other information in the possession or control of the  
23 commissioner that are obtained by or disclosed to the commissioner  
24 or any other person in the course of an examination or investigation  
25 made pursuant to section six of this article and all information  
26 reported pursuant to subdivision thirteen or fourteen, subsection

1 (b), section three of this article, sections section four and or  
2 section five of this article shall be given is confidential  
3 treatment and are not subject to subpoena and may not be made public  
4 by the commissioner or any other person, except to insurance  
5 departments of other states and to the board of Governors of the  
6 federal reserve system or other appropriate federal banking agency  
7 in accordance with section nineteen, article two of this chapter,  
8 by law and privileged, is exempt from disclosure pursuant to chapter  
9 twenty-nine-b of this code, is not open to public inspection, is not  
10 subject to subpoena, is not subject to discovery or admissible in  
11 evidence in any criminal, private civil or administrative action and  
12 is not subject to production pursuant to court order: Provided, That  
13 the commissioner is authorized to use the documents, materials or  
14 other information in the furtherance of any regulatory or legal  
15 action brought as part of the commissioner's official duties. The  
16 commissioner may not otherwise make the documents, materials or  
17 other information public without the prior written consent of the  
18 insurer to which it pertains unless the commissioner, after giving  
19 the insurer and its affiliates who would be affected thereby notice  
20 and opportunity to be heard, determines that the interests of  
21 policyholders, shareholders or the public will be served by the  
22 publication thereof, in which event he or she may publish all or any  
23 part thereof in any manner as he or she may consider appropriate.  
24 (b) Neither the commissioner nor any person who received  
25 documents, materials or other information while acting under the  
26 authority of the commissioner or with whom such documents, materials

1 or other information are shared pursuant to this article may be  
2 permitted or required to testify in any private civil action  
3 concerning any confidential documents, materials, or information  
4 subject to subsection (a) of this section.

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

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

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

25 (3) May receive documents, materials or information, including  
26 otherwise confidential and privileged documents, materials or

1 information from the National Association of Insurance Commissioners  
2 and its affiliates and subsidiaries and from regulatory and law-  
3 enforcement officials of other foreign or domestic jurisdictions,  
4 and shall maintain as confidential or privileged any document,  
5 material or information received with notice or the understanding  
6 that it is confidential or privileged under the laws of the  
7 jurisdiction that is the source of the document, material or  
8 information; and

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

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

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

25       (C) Require prompt notice to be given to an insurer whose  
26 confidential information in the possession of the National

1 Association of Insurance Commissioners pursuant to this article is  
2 subject to a request or subpoena to the National Association of  
3 Insurance Commissioners for disclosure or production; and

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

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

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

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

1 or admissible in evidence in any private civil action.

2 **§33-27-9. Criminal proceedings; penalties; orders; fines;**  
3 **disapproval of dividends and distributions.**

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

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

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

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



1 (e) Any officer, director or employee of an insurance holding  
2 company system who willfully and knowingly subscribes to or makes  
3 or causes to be made any false statements or false reports or false  
4 filings with the intent to deceive the commissioner in the  
5 performance of his or her duties under this article, is guilty of  
6 a felony and, upon conviction thereof, shall be fined not more than  
7 ten thousand dollars, or imprisoned not less than one year nor more  
8 than three years, or both fined and imprisoned. Any fines imposed  
9 pursuant to this subsection shall be paid by the officer, director  
10 or employee in his or her individual capacity.

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

19 **§33-27-11. Revocation, suspension or nonrenewal of insurer's**  
20 **license.**

21 Whenever it appears to the commissioner that any person has  
22 committed a violation of this article which makes the continued  
23 operation of an insurer contrary to the interests of policyholders  
24 or the public, the commissioner may, after giving notice and an  
25 opportunity to be heard, determine to suspend, revoke or refuse to  
26 renew such insurer's license or authority to do business in this

1 state for such period as he or she finds is required for the  
2 protection of policyholders or the public: Provided, That any such  
3 determination shall be accompanied by specific findings of fact and  
4 conclusions of law.

5 **§33-27-14. Regulatory authority.**

15 The Insurance Commissioner ~~shall promulgate~~ may propose rules  
16 ~~pursuant to~~ for legislative approval in accordance with the  
17 ~~provisions of article three,~~ chapter twenty-nine-a of this code  
18 ~~setting forth procedural requirements~~ and may promulgate emergency  
19 rules pursuant to the provisions of section fifteen, article three,  
20 chapter twenty-nine-a of this code, as are necessary to implement  
21 the provisions of this article. ~~and specifying the reporting forms~~  
22 ~~required by this article prior to August 1, 1993.~~

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(NOTE: The purpose of this bill is to amend the insurance code to adopt recent changes to the model act adopted by the National Association of Insurance Commissioners with respect to holding companies and systemic risks arising from acquisitions and divestitures of affiliates. The bill defines terms. The bill excludes certain investments from determination of adequacy of surplus. The bill requires notice and other information with regard to divestiture or acquisition of a controlling interest. The bill also changes public hearing requirements. The bill provides standards for review of acquisition request by commissioner and establishes a process for consolidated hearings. The bill additionally sets forth standards and procedures for certain acquisitions not otherwise covered. The bill expands the types of information that may be demanded and reviewed by the commissioner. Further, the bill provides for establishment of supervisory colleges. The bill provides for additional confidentiality measures. The bill also authorizes emergency rules.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§33-27-3A and §33-27-6A are new; therefore, strike-throughs and

underscoring have been omitted.)