

H. B. 2877

(By Delegates Perry, Hartman, Walters, Hall,
Ashley and Azinger)

(By Request of the Insurance Commissioner)

[Introduced January 26, 2011; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §33-27-2, §33-27-2a, §33-27-3,
§33-27-4, §33-27-5, §33-27-6, §33-27-7, §33-27-9, §33-27-11
and §33-27-14 of the Code of West Virginia, 1931, as amended;
and to amend said code by adding thereto two new sections,
designated §33-27-3a and §33-27-6a, all relating to insurance
holding company systems; defining terms; excluding certain
investments from determination of adequacy of surplus;
requiring notice and other information with regard to
divestiture or acquisition of a controlling interest; changing
public hearing requirements; providing standards for review of
acquisition request by commissioner: establishing process for
consolidated hearings; providing standards and procedures for
certain acquisitions not otherwise covered; expanding types of
information that may be demanded and reviewed by the
commissioner; providing for establishment of supervisory
colleges; providing additional confidentiality measures; and
authorizing emergency rules.

Be it enacted by the Legislature of West Virginia:

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

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

7 **§33-27-2. Definitions.**

8 As used in this article:

9 (a) An "affiliate" of or person "affiliated" with a specific
10 person is a person that, directly or indirectly through one or more
11 intermediaries, controls or is controlled by or is under common
12 control with the person specified.

13 (b) "Commissioner" means the West Virginia Insurance
14 Commissioner, his or her deputies or the ~~insurance department~~ West
15 Virginia offices of the Insurance Commissioner, as appropriate.

16 (c) "Control" (including the terms "controlling", "controlled
17 by" and "under common control with") means the possession, direct
18 or indirect, of the power to direct or cause the direction of the
19 management and policies of a person, whether through the ownership
20 of voting securities, by contract other than a commercial contract
21 for goods or nonmanagement services or otherwise, unless the power
22 is the result of an official position with or corporate office held
23 by the person. Control shall be presumed to exist if any person,
24 directly or indirectly, owns, controls, holds with the power to
25 vote or holds proxies representing ten percent or more of the
26 voting securities of any other person. ~~or controls or appoints a~~
27 ~~majority of the board of directors, voting members or similar~~

1 ~~governing body of any other person.~~ This presumption may be
2 rebutted by a showing made in the manner provided by subsection ~~(i)~~
3 (k), section four of this article that control does not exist in
4 fact. The commissioner may determine after furnishing all persons
5 in interest notice and opportunity to be heard and making specific
6 findings of fact to support the determination that control exists
7 in fact notwithstanding the absence of a presumption to that
8 effect.

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

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

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

25 (f) "Insurer" means any person or persons or corporation,
26 partnership or company authorized by the laws of this state to
27 transact the business of insurance in this state, except that it

1 shall not include agencies, authorities or instrumentalities of the
2 United States, its possessions and territories, the commonwealth of
3 Puerto Rico, the District of Columbia or a state or political
4 subdivision of a state.

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

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

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

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

25 **§33-27-2a. Subsidiaries of insurers; authorization; investment**
26 **authority; exemptions; qualifications; cessation of**
27 **controls.**

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

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

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

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

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

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

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

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

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

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

27 (10) Financing of insurance premiums, agents and other forms

1 of consumer financing;

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

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

8 ~~(13) Organizing or acquiring one or more subsidiaries that are~~
9 ~~depository institutions.~~

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

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

25 (A) Total net moneys or other consideration expended and
26 obligations assumed in the acquisition or formation of a
27 subsidiary, including all organizational expenses and contributions

1 to capital and surplus of the subsidiary whether or not represented
2 by the purchase of capital stock or issuance of other securities;
3 and

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

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

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

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

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

1 reasonable in relation to the insurer's outstanding liabilities and
2 adequate to its financial needs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 ~~(4)~~ (2) The source, nature and amount of the consideration
24 used or to be used in effecting the merger or other acquisition of
25 control, a description of any transaction wherein funds were or are
26 to be obtained for any such purpose, including any pledge of the
27 insurer's stock or the stock of any of its subsidiaries or

1 controlling affiliates, and the identity of persons furnishing such
2 consideration: *Provided*, That where a source of the consideration
3 is a loan made in the lender's ordinary course of business, the
4 identity of the lender shall remain confidential if the person
5 filing the statement so requests;

6 ~~(5)~~ (3) Fully audited financial information as to the earnings
7 and financial condition of each acquiring party for the preceding
8 five fiscal years of each acquiring party (or for such lesser
9 period as each acquiring party and any predecessors thereof shall
10 have been in existence) and similar unaudited information as of a
11 date not earlier than ninety days prior to the filing of the
12 statement;

13 ~~(6)~~ (4) Any plans or proposals which each acquiring party may
14 have to liquidate the insurer, to sell its assets or merge or
15 consolidate it with any person or to make any other material change
16 in its business or corporate structure or management;

17 ~~(7)~~ (5) The number of shares of any security referred to in
18 subsection (a) of this section which each acquiring party proposes
19 to acquire and the terms of the offer, request, invitation,
20 agreement or acquisition referred to in ~~said~~ that subsection and a
21 statement as to the method by which the fairness of the proposal
22 was arrived at;

23 ~~(8)~~ (6) The amount of each class of any security referred to
24 in subsection (a) of this section which is beneficially owned or
25 concerning which there is a right to acquire beneficial ownership
26 by each acquiring party;

27 ~~(9)~~ (7) A full description of any contracts, arrangements or

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

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

15 ~~(11)~~ (9) A description of any recommendations to purchase any
16 security referred to in subsection (a) of this section made during
17 the twelve calendar months preceding the filing of the statement by
18 an acquiring party or by anyone based upon interviews or at the
19 suggestion of the acquiring party;

20 ~~(12)~~ (10) Copies of all tender offers for, requests or
21 invitations for tenders of, exchange offers for and agreements to
22 acquire or exchange any securities referred to in subsection (a) of
23 this section and, if distributed, of additional soliciting material
24 relating thereto;

25 ~~(13)~~ (12) The terms of any agreement, contract or
26 understanding made with any broker-dealer as to solicitation of
27 securities referred to in subsection (a) of this section for tender

1 and the amount of any fees, commissions or other compensation to be
2 paid to broker-dealers with regard thereto; ~~and~~

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

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

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

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

1 called for by subdivisions (1) through (14), inclusive, subsection
2 (b) of this section shall be given with respect to the corporation
3 and each person who is directly or indirectly the beneficial owner
4 of more than ten percent of the outstanding voting securities of
5 the corporation.

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

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

24 ~~(g)~~ (f) (1) *Approval by commissioner; hearings.* -- The
25 commissioner shall approve any merger or other acquisition of
26 control referred to in subsection (a) of this section unless, after
27 a public hearing thereon, he or she finds that ~~any of the following~~

1 ~~conditions exists:~~

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

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

10 (i) The informational requirements of subdivision one,
11 subsection (c), section three-a of this article and the standards
12 of subdivision two, subsection (d), section three-a of this article
13 shall apply;

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

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

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

26 ~~(4) The terms of the offer, request, invitation, agreement or~~
27 ~~acquisition referred to in subsection (a) of this section are~~

1 ~~unfair and unreasonable to the security holders of the insurer;~~

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

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

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

15 ~~(h)~~ (2) The public hearing required by this section shall be
16 held within ~~forty~~ thirty days after the statement required by
17 subsection (a) of this section is filed, and at least ~~fifteen~~
18 twenty days' notice thereof shall be given by the commissioner to
19 the person filing the statement. Not less than seven days' notice
20 of the public hearing shall be given by the person filing the
21 statement to the insurer and to any other persons as may be
22 designated by the commissioner. ~~The insurer shall give notice of~~
23 ~~the public hearing to its security holders.~~ The commissioner shall
24 make a determination within ~~twenty days~~ after the conclusion of the
25 hearing the sixty-day period preceding the effective date of the
26 proposed transaction. At the hearing, the person filing the
27 statement, the insurer, any person to whom notice of hearing was

1 sent, and any other person whose interest may be affected shall
2 have the right to present evidence, examine and cross-examine
3 witnesses, and offer oral and written arguments and in connection
4 therewith shall be entitled to conduct discovery proceedings in the
5 same manner as is presently allowed in the circuit courts of this
6 state: *Provided*, That all discovery proceedings shall be concluded
7 not later than three days prior to the commencement of the public
8 hearing.

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

25 (4) In connection with a change of control of a domestic
26 insurer, any determination by the commissioner that the person
27 acquiring control of the insurer shall be required to maintain or

1 restore the capital of the insurer to the level required by the
2 laws of this state shall be made not later than sixty days after
3 the date of filing the change in control submitted pursuant to
4 subdivision one, subsection (a) of this section.

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

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

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

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

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

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

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

23 **§33-27-3a. Acquisitions Involving Insurers Not Otherwise Covered.**

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

26 (1) "Acquisition" means any agreement, arrangement or activity
27 the consummation of which results in a person acquiring directly or

1 indirectly the control of another person, and includes but is not
2 limited to the acquisition of voting securities, the acquisition of
3 assets, bulk reinsurance and mergers.

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

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

11 (2) This section shall not apply to the following:

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

23 (B) The acquisition of a person by another person when both
24 persons are neither directly nor through affiliates primarily
25 engaged in the business of insurance, if pre-acquisition
26 notification is filed with the commissioner pursuant to subdivision
27 (1), subsection (c) of this section thirty days prior to the

1 proposed effective date of the acquisition. However, such
2 pre-acquisition notification is not required for exclusion from
3 this section if the acquisition would otherwise be excluded from
4 this section by any other paragraph of this subdivision; (C) ~~The~~
5 acquisition of already affiliated persons;

6 (D) An acquisition if, as an immediate result of the
7 acquisition:

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

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

11 (iii) In no market would:

12 (I) The combined market share of the involved insurers exceeds
13 twelve percent of the total market; and

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

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

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

23 (F) An acquisition of an insurer whose domiciliary
24 commissioner affirmatively finds that the insurer is in failing
25 condition; there is a lack of feasible alternative to improving
26 such condition; the public benefits of improving the insurers
27 condition through the acquisition exceed the public benefits that

1 would arise from not lessening competition; and the findings are
2 communicated by the domiciliary commissioner to the commissioner of
3 this state.

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

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

26 (2) The waiting period required shall begin on the date of
27 receipt of the commissioner of a pre-acquisition notification and

1 shall end on the earlier of the thirtieth day after the date of
 2 receipt, or termination of the waiting period by the commissioner.
 3 Prior to the end of the waiting period, the commissioner on a
 4 one-time basis may require the submission of additional needed
 5 information relevant to the proposed acquisition, in which event
 6 the waiting period shall end on the earlier of the thirtieth day
 7 after receipt of the additional information by the commissioner or
 8 termination of the waiting period by the commissioner.

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

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

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

22 (i) If the market is highly concentrated and the involved
 23 insurers possess the following shares of the market:

24	<u>Insurer A</u>	<u>Insurer B</u>
25	<u>4%</u>	<u>4% or more</u>
26	<u>10%</u>	<u>2% or more</u>
27	<u>15%</u>	<u>1% or more</u>

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

3	<u>Insurer A</u>	<u>Insurer B</u>
4	<u>5%</u>	<u>5% or more</u>
5	<u>10%</u>	<u>4% or more</u>
6	<u>15%</u>	<u>3% or more</u>
7	<u>19%</u>	<u>1% or more</u>

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

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

27 (i) There is a significant trend toward increased

1 concentration in the market;

2 (ii) One of the insurers involved is one of the insurers in a
3 grouping of large insurers showing the requisite increase in the
4 market share; and

5 (iii) Another involved insurer's market is two percent or
6 more;

7 (C) For the purposes of subdivision (2), subsection (d) of
8 this section:

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

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

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

25 (D) Even though an acquisition is not *prima facie* violative of
26 the competitive standard under paragraphs (A) and (B), subdivision
27 (2) of this subsection, the commissioner may establish the

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

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

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

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

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

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

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

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

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

3 (i) There is a hearing;

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

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

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

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

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

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

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

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

27 (f) Inapplicable Provisions. Subsections (b) and (c), section

1 ten of this article and section twelve of this article do not apply
2 to acquisitions covered under subsection (b) of this section.

3 **§33-27-4. Registration of insurers.**

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

17 (2) Any insurer which is subject to registration under this
18 section shall register within ~~sixty days after the effective date~~
19 ~~of this article or~~ fifteen days after it becomes subject to
20 registration, ~~whichever is later,~~ and annually thereafter by June
21 1 of each year for the previous calendar year, unless the
22 commissioner for good cause shown extends the time for
23 registration, ~~and then within such extended time.~~ The commissioner
24 may require any authorized insurer which is a member of a holding
25 company system which is not subject to registration under this
26 section to furnish a copy of the registration statement, the
27 summary described in subsection (c) of this section, or other

1 information filed by such insurance company with the insurance
2 regulatory authority of domiciliary jurisdiction.

3 (b) Information and form required. - Every insurer subject to
4 registration shall file a registration statement with the
5 commissioner and the national association of insurance
6 commissioners on a form and in a format prescribed by the national
7 association of Insurance Commissioners, which shall contain the
8 following current information ~~about~~:

9 (1) The capital structure, general financial condition,
10 ownership and management of the insurer and any person controlling
11 the insurer.

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

14 (3) The following agreements in force, relationships
15 subsisting, and transactions currently outstanding or which have
16 occurred during the last calendar year between such insurer and its
17 affiliates:

18 (A) Loans, other investments, or purchases, sales or exchanges
19 of securities of the affiliates by the insurer or of the insurer by
20 its affiliates;

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

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

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

27 (E) All management and service contracts and all cost-sharing

1 arrangements;

2 (F) All reinsurance agreements;

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

4 (H) Consolidated tax allocation statements.

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

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

19 ~~(4)~~ (6) Other matters concerning transactions between
20 registered insurers and any affiliates as may be included from time
21 to time in any registration forms adopted or approved by the
22 commissioner.

23 (7) Statements that the insurer's board of directors is
24 responsible for and oversees corporate governance and internal
25 controls and that the insurer's officers or senior management have
26 approved, implemented, and continue to maintain and monitor
27 corporate governance and internal control procedures.

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

3 (c) Summary of changes to registration statement. -- All
4 registration statements shall contain a summary outlining all items
5 in the current registration statement representing changes from the
6 prior registration statement.

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

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

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

25 ~~(g)~~ (f) Information to insurers. -- Any person within an
26 insurance holding company system subject to registration shall be
27 required to provide complete and accurate information to an

1 insurer, when such information is reasonably necessary to enable
2 the insurer to comply with the provisions of this article.

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

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

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

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

21 ~~(l)~~ (k) Disclaimer. -- Any person may file with the
22 commissioner a disclaimer of affiliation with any authorized
23 insurer or ~~such~~ a disclaimer may be filed by ~~such~~ the insurer or
24 any member of an insurance holding company system. The disclaimer
25 shall fully disclose all material relationships and bases for
26 affiliation between ~~such~~ the person and ~~such~~ the insurer as well as
27 the basis for disclaiming such affiliation. ~~After a disclaimer has~~

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

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

26 (m) Violations. - The failure to file a registration
27 ~~statement or any amendment~~ enterprise risk filing thereto required

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

3 **§33-27-5. Standards.**

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

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

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

11 ~~(2)~~ (3) Charges or fees for services performed shall be
12 reasonable;

13 ~~(3)~~ (4) Expenses incurred and payment received shall be
14 allocated to the insurer in conformity with customary insurance
15 accounting practices consistently applied;

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

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

26 (b) Adequacy of surplus. - For purposes of this article, in
27 determining whether an insurer's surplus as regards policyholders

1 is reasonable in relation to the insurer's outstanding liabilities
2 and adequate to meet its financial needs, the following factors,
3 among others, shall be considered:

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

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

9 (3) The number and size of risks insured in each line of
10 business;

11 (4) The extent of the geographical dispersion of the insurer's
12 insured risks;

13 (5) The nature and extent of the insurer's reinsurance
14 program;

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

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

19 (8) The surplus as regards policyholders maintained by other
20 comparable insurers;

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

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

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

27 (c) Dividends and other distributions. - (1) ~~An insurer~~

1 ~~subject to registration under section four of this article shall~~
2 ~~not~~ No domestic insurer shall pay any extraordinary dividend or
3 make any other extraordinary distribution to its shareholders
4 until:

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

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

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

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

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

1 realized capital gains, less dividends paid in the second and
2 immediate preceding calendar years.

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

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

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

11 ~~(f)~~ (d) The following transactions involving a domestic
12 insurer and any person in its insurance holding company system,
13 including amendments or modifications of affiliate agreements
14 previously filed pursuant to this section, that are subject to any
15 materiality standards contained in subdivisions (1) through (5) of
16 this subsection, may not be entered into unless the insurer has
17 notified the commissioner in writing of its intention to enter into
18 ~~such~~ the transaction at least thirty days prior thereto, or such
19 shorter period as the commissioner may permit, and the commissioner
20 has not disapproved it within ~~such~~ that period: Provided, That
21 nothing contained in this subsection shall be deemed to authorize
22 or permit any transactions which, in the case of an insurer not a
23 member of the same holding company system, would be otherwise
24 contrary to law. The notice for amendments or modifications shall
25 include the reasons for the change and the financial impact on the
26 domestic insurer. Informal notice shall be reported, within thirty
27 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 non-life 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 non-life 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 the 31st day of December next
25 preceding;

26 (3) Reinsurance agreements or modifications thereto,
27 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, That
16 a guarantee that is quantifiable as to amount is not subject to the
17 notice requirements of this subdivision unless it exceeds the
18 lesser of one-half of one percent of the insurer's admitted assets
19 or ten percent of surplus as regards policyholders as of December
20 31 next preceding: Provided, however, That all guarantees that are
21 not quantifiable as to amount are subject to the notice
22 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
27 surplus to policyholders. Direct or indirect acquisitions or

1 investments in subsidiaries acquired pursuant to section two of
2 this article or authorized under any other section of this chapter,
3 or in non-subsidiary insurance affiliates that are subject to the
4 provisions of this article, are exempt from this requirement; and

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **§33-27-6. Examination.**

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

13 **(b) Access to books and records.** - (1) The commissioner may
14 order any insurer registered under section four of this article to
15 produce such records, books or other information papers in the
16 possession of the insurer or its affiliates as ~~shall be~~ are
17 reasonably necessary to ~~ascertain the financial condition or~~
18 legality of conduct of such insurer. In the event that such
19 insurer fails to comply with such order, the commissioner shall
20 have the power to examine such affiliates to obtain such
21 information determine compliance with this chapter.

22 ~~(b) Purpose and limitation of examination. -- The~~
23 ~~commissioner shall exercise his power under subsection (a) above~~
24 ~~only if the examination of the insurer under other articles of this~~
25 ~~chapter is inadequate or the interests of the policyholders of such~~
26 ~~insurer may be adversely affected.~~

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

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

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

1 this state.

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

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

24 (d) Expenses. -- Each registered insurer producing for
25 examination records, books and papers pursuant to subsection (a)
26 ~~above~~ of this section shall be liable for and shall pay the expense
27 of such examination in accordance with applicable laws of this

1 state.

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

21 **§33-27-6a. Supervisory Colleges.**

22 (a) *Power of Commissioner.* - With respect to any insurer
23 registered under section four of this article, and in accordance
24 with subsection (c) of this section, the commissioner shall also
25 have the power to participate in a supervisory college for any
26 domestic insurer that is part of an insurance holding company
27 system with international operations in order to determine

1 compliance by the insurer with this chapter. The powers of the
2 commissioner with respect to supervisory colleges include, but are
3 not limited to, the following:

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

5 (2) Clarifying the membership and participation of other
6 supervisors in the supervisory college;

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

10 (4) Coordinating the ongoing activities of the supervisory
11 college, including planning meetings, supervisory activities, and
12 processes for information sharing; and

13 (5) Establishing a crisis management plan.

14 (b) Expenses. - Each registered insurer subject to this
15 section shall be liable for and shall pay the reasonable expenses
16 of the commissioner's participation in a supervisory college in
17 accordance with subsection (c) of this section, including
18 reasonable travel expenses. For purposes of this section, a
19 supervisory college may be convened as either a temporary or
20 permanent forum for communication and cooperation between the
21 regulators charged with the supervision of the insurer or its
22 affiliates, and the commissioner may establish a regular assessment
23 to the insurer for the payment of these expenses.

24 (c) Supervisory College. - In order to assess the business
25 strategy, financial position, legal and regulatory position, risk
26 exposure, risk management and governance processes, and as part of
27 the examination of individual insurers in accordance with section

1 six of this article, the commissioner may participate in a
2 supervisory college with other regulators charged with supervision
3 of the insurer or its affiliates, including other state, federal
4 and international regulatory agencies. The commissioner may enter
5 into agreements in accordance with subsection (c), section seven of
6 this article providing the basis for cooperation between the
7 commissioner and the other regulatory agencies, and the activities
8 of the supervisory college: *Provided*, this section may not be
9 construed as delegating to the supervisory college the authority of
10 the commissioner to regulate or supervise the insurer or its
11 affiliates within its jurisdiction.

12 **§33-27-7. Confidential treatment.**

13 (a) ~~All information, documents and copies thereof~~ Documents,
14 materials or other information in the possession or control of the
15 commissioner that are obtained by or disclosed to the commissioner
16 or any other person in the course of an examination or
17 investigation made pursuant to section six of this article and all
18 information reported pursuant to subdivision thirteen or fourteen,
19 subsection (b), section three of this article, ~~sections~~ section
20 four ~~and~~ or section five of this article shall be given
21 confidential treatment and are not subject to subpoena and may not
22 be made public by the commissioner or any other person, except to
23 insurance departments of other states and to the board of Governors
24 of the federal reserve system or other appropriate federal banking
25 agency in accordance with section nineteen, article two of this
26 chapter, by law and privileged, is exempt from disclosure pursuant
27 to chapter twenty-nine-b of this code, is not open to public

1 inspection, is not subject to subpoena, is not subject to discovery
2 or admissible in evidence in any criminal, private civil or
3 administrative action and is not subject to production pursuant to
4 court order: *Provided*, That the commissioner is authorized to use
5 the documents, materials or other information in the furtherance of
6 any regulatory or legal action brought as part of the
7 commissioner's official duties. The commissioner may not otherwise
8 make the documents, materials or other information public without
9 the prior written consent of the insurer to which it pertains
10 unless the commissioner, after giving the insurer and its
11 affiliates who would be affected thereby notice and opportunity to
12 be heard, determines that the interests of policyholders,
13 shareholders or the public will be served by the publication
14 thereof, in which event he or she may publish all or any part
15 thereof in any manner as he or she may consider appropriate.

16 (b) Neither the commissioner nor any person who received
17 documents, materials or other information while acting under the
18 authority of the commissioner or with whom such documents,
19 materials or other information are shared pursuant to this article
20 shall be permitted or required to testify in any private civil
21 action concerning any confidential documents, materials, or
22 information subject to subsection (a) of this section.

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

25 (1) May share documents, materials or other information,
26 including the confidential and privileged documents, materials or
27 information subject to subsection (a) of this section, with other

1 state, federal and international regulatory agencies, with the
2 National Association of Insurance Commissioners and its affiliates
3 and subsidiaries, and with state, federal, and international law
4 enforcement authorities, including members of any supervisory
5 college described in section six-a of this article, if the
6 recipient agrees in writing to maintain the confidentiality and
7 privileged status of the document, material or other information,
8 and has verified in writing the legal authority to maintain
9 confidentiality;

10 (2) Notwithstanding subdivision (1) of this subsection, the
11 commissioner may only share confidential and privileged documents,
12 material, or information reported pursuant to subsection (1),
13 section four of this article, with commissioners of states having
14 statutes or regulations substantially similar to subdivision (1) of
15 this subsection and who have agreed in writing not to disclose such
16 information;

17 (3) May receive documents, materials or information, including
18 otherwise confidential and privileged documents, materials or
19 information from the National Association of Insurance
20 Commissioners and its affiliates and subsidiaries and from
21 regulatory and law enforcement officials of other foreign or
22 domestic jurisdictions, and shall maintain as confidential or
23 privileged any document, material or information received with
24 notice or the understanding that it is confidential or privileged
25 under the laws of the jurisdiction that is the source of the
26 document, material or information; and

27 (4) Shall enter into written agreements with the National

1 Association of Insurance Commissioners governing sharing and use of
2 information provided pursuant to this article consistent with this
3 subsection that shall:

4 (A) Specify procedures and protocols regarding the
5 confidentiality and security of information shared with the
6 National Association of Insurance Commissioners and its affiliates
7 and subsidiaries pursuant to this article, including procedures and
8 protocols for sharing by the National Association of Insurance
9 Commissioners with other state, federal or international
10 regulators;

11 (B) Specify that ownership of information shared with the
12 National Association of Insurance Commissioners and its affiliates
13 and subsidiaries pursuant to this article remains with the
14 commissioner and the National Association of Insurance
15 Commissioners's use of the information is subject to the direction
16 of the commissioner;

17 (C) Require prompt notice to be given to an insurer whose
18 confidential information in the possession of the National
19 Association of Insurance Commissioners pursuant to this article is
20 subject to a request or subpoena to the National Association of
21 Insurance Commissioners for disclosure or production; and

22 (D) Require the National Association of Insurance
23 Commissioners and its affiliates and subsidiaries to consent to
24 intervention by an insurer in any judicial or administrative action
25 in which the National Association of Insurance Commissioners and
26 its affiliates and subsidiaries may be required to disclose
27 confidential information about the insurer shared with the National

1 Association of Insurance Commissioners and its affiliates and
2 subsidiaries pursuant to this article.

3 (d) The sharing of information by the commissioner pursuant to
4 this article shall not constitute a delegation of regulatory
5 authority, and the commissioner is solely responsible for the
6 administration, execution and enforcement of the provisions of this
7 article.

8 (e) No waiver of any applicable privilege or claim of
9 confidentiality in the documents, materials or information shall
10 occur as a result of disclosure to the commissioner under this
11 section or as a result of sharing as authorized in subsection (c)
12 of this section.

13 (f) Documents, materials or other information in the
14 possession or control of the National Association of Insurance
15 Commissioners pursuant to this article shall be confidential by law
16 and privileged, is exempt from disclosure pursuant to chapter
17 twenty-nine-b of this code, shall not be subject to subpoena, and
18 shall not be subject to discovery or admissible in evidence in any
19 private civil action.

20 **§33-27-9. Criminal proceedings; penalties.**

21 (a) Any insurer failing, without just cause, to file any
22 registration statement as required by this article shall be
23 required, after notice and hearing, to pay a penalty of up to one
24 thousand dollars for each day's delay, to be recovered by the
25 commissioner. Any penalty so recovered shall be paid into the
26 General Revenue Fund of this state. The commissioner may reduce
27 the penalty if the insurer demonstrates to the commissioner that

1 the imposition of the penalty would constitute a financial hardship
2 to the insurer.

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

17 (c) Whenever it appears to the commissioner that any insurer
18 subject to this article or any director, officer, employee or agent
19 thereof has engaged in any transaction or entered into a contract
20 which is subject to section five of this article and which would
21 not have been approved had such approval been requested, the
22 commissioner may order the insurer to cease and desist immediately
23 any further activity under that transaction or contract. After
24 notice and hearing the commissioner may also order the insurer to
25 void any such contracts and restore the status quo if ~~such~~ the
26 action is in the best interest of the policyholders, creditors or
27 the public.

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

16 (e) Any officer, director or employee of an insurance holding
17 company system who willfully and knowingly subscribes to or makes
18 or causes to be made any false statements or false reports or false
19 filings with the intent to deceive the commissioner in the
20 performance of his or her duties under this article, is guilty of
21 a felony, and, upon conviction thereof, shall be fined not more
22 than ten thousand dollars, or imprisoned not less than one year nor
23 more than three years, or both fined and imprisoned. Any fines
24 imposed pursuant to this subsection shall be paid by the officer,
25 director or employee in his or her individual capacity.

26 (f) Whenever it appears to the commissioner that any person
27 has committed a violation of section three of this article which

1 prevents the full understanding of the enterprise risk to the
2 insurer by affiliates or by the insurance holding company system,
3 the violation may serve as an independent basis for disapproving
4 dividends or distributions and for placing the insurer under an
5 order of supervision in accordance with article thirty-four of this
6 chapter.

7 **§33-27-11. Revocation, suspension or nonrenewal of insurer's**
8 **license.**

9 Whenever it appears to the commissioner that any person has
10 committed a violation of this article which makes the continued
11 operation of an insurer contrary to the interests of policyholders
12 or the public, the commissioner may, after giving notice and an
13 opportunity to be heard, determine to suspend, revoke or refuse to
14 renew such insurer's license or authority to do business in this
15 state for such period as he or she finds is required for the
16 protection of policyholders or the public: Provided, That any such
17 determination shall be accompanied by specific findings of fact and
18 conclusions of law.

19 **§33-27-14. Regulatory authority.**

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

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.