

**Senate Bill No. 253**

(By Senators Minard and Jenkins)

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[Introduced January 25, 2011; referred to the Committee on  
Banking and Insurance.]

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

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

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

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

8 **§33-27-2. Definitions.**

9 As used in this article:

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

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

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

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

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

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

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

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

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

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

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

26 (j) "Voting security" includes any security convertible into

1 or evidencing a right to acquire a voting security.

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

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

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

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

13 (3) Investing, reinvesting or trading in securities for its  
14 own account, that of its parent, any subsidiary of its parent, or  
15 any affiliate or subsidiary;

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

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

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

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

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

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

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

7 (11) Any other business activity determined by the  
8 commissioner to be reasonably ancillary to an insurance business;  
9 and

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

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

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

20 (1) Invest in common stock, preferred stock, debt obligations  
21 and other securities of one or more subsidiaries, amounts which do  
22 not exceed the lesser of ten percent of the insurer's assets or  
23 fifty percent of the insurer's surplus as regards policyholders:  
24 *Provided*, That after the investments, the insurer's surplus as  
25 regards policyholders will be reasonable in relation to the  
26 insurer's outstanding liabilities and adequate to its financial

1 needs. In calculating the amount of the investments, investments  
2 in domestic or foreign insurance subsidiaries shall be excluded and  
3 there shall be included:

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

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

14 (2) Invest any amount in common stock, preferred stock, debt  
15 obligations and other securities of one or more subsidiaries  
16 engaged or organized to engage exclusively in the ownership and  
17 management of assets authorized as investments for the insurer:

18 *Provided*, That each subsidiary agrees to limit its investments in  
19 any asset so that the investments will not cause the amount of the  
20 total investment of the insurer to exceed any of the investment  
21 limitations specified in subdivision (1) of this subsection or in  
22 article eight of this chapter applicable to the insurer. For the  
23 purpose of this subdivision, "the total investment of the insurer"  
24 includes:

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

26 (B) The insurer's proportionate share of any investment in an

1 asset by any subsidiary of the insurer, which shall be calculated  
2 by multiplying the amount of the subsidiary's investment by the  
3 percentage of the ownership of the subsidiary.

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

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

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

26 (e) Cessation of control. -- If an insurer ceases to control



1 a subsidiary, it shall dispose of any investment in the subsidiary  
 2 made pursuant to this section within three years from the time of  
 3 the cessation of control or within any further time prescribed by  
 4 the commissioner, unless at any time after the investment was made,  
 5 the investment meets the requirements for investment under any  
 6 other provision of this chapter and the insurer has notified the  
 7 commissioner of compliance with the provisions of this chapter.

8 **§33-27-3. Acquisition of control of or merger with domestic**  
 9 **insurer; filing requirements; statements;**  
 10 **alternative filing material; approval by the**  
 11 **commissioner; hearings; notice; mailings to**  
 12 **shareholders; expenses; exemptions; violations and**  
 13 **jurisdiction.**

14 (a) Filing requirements. --

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

1 no offer or agreement is involved, the person has filed with the  
2 commissioner and has sent to the insurer and, to the extent  
3 permitted by applicable federal laws, rules and regulations, the  
4 insurer has sent to its shareholders a statement containing the  
5 information required by this section and the offer, request,  
6 invitation, agreement or acquisition has been approved by the  
7 commissioner in the manner hereinafter prescribed.

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

22 (3) With respect to a transaction subject to this section, the  
23 acquiring person must also file a preacquisition notification with  
24 the commissioner, which shall contain the information set forth in  
25 subdivision (1), subsection (c), section three-a of this article.  
26 A failure to file the notification may subject the person to

1 penalties specified in subdivision (3), subsection (e), section  
2 three-a of this article.

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

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

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

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

23 ~~(3)~~ (B) If ~~such~~ the person is not an individual, a report of  
24 the nature of its business operations during the past five years or  
25 for such lesser period as the person and any predecessors thereof  
26 shall have been in existence; an informative description of the

1 business intended to be done by the person and the person's  
2 subsidiaries; and a list of all individuals who are or who have  
3 been selected to become directors or executive officers of the  
4 person, or who perform or will perform functions appropriate to  
5 those positions. The list shall include for each individual the  
6 information required by ~~subdivision~~ paragraph (2) of this  
7 ~~subsection~~ subdivision;

8       ~~(4)~~ (2) The source, nature and amount of the consideration  
9 used or to be used in effecting the merger or other acquisition of  
10 control, a description of any transaction wherein funds were or are  
11 to be obtained for any such purpose, including any pledge of the  
12 insurer's stock or the stock of any of its subsidiaries or  
13 controlling affiliates, and the identity of persons furnishing such  
14 consideration: *Provided*, That where a source of the consideration  
15 is a loan made in the lender's ordinary course of business, the  
16 identity of the lender shall remain confidential if the person  
17 filing the statement so requests;

18       ~~(5)~~ (3) Fully audited financial information as to the earnings  
19 and financial condition of each acquiring party for the preceding  
20 five fiscal years of each acquiring party (or for such lesser  
21 period as each acquiring party and any predecessors thereof shall  
22 have been in existence) and similar unaudited information as of a  
23 date not earlier than ninety days prior to the filing of the  
24 statement;

25       ~~(6)~~ (4) Any plans or proposals which each acquiring party may  
26 have to liquidate the insurer, to sell its assets or merge or

1 consolidate it with any person or to make any other material change  
2 in its business or corporate structure or management;

3 ~~(7)~~ (5) The number of shares of any security referred to in  
4 subsection (a) of this section which each acquiring party proposes  
5 to acquire and the terms of the offer, request, invitation,  
6 agreement or acquisition referred to in ~~said~~ that subsection and a  
7 statement as to the method by which the fairness of the proposal  
8 was arrived at;

9 ~~(8)~~ (6) The amount of each class of any security referred to  
10 in subsection (a) of this section which is beneficially owned or  
11 concerning which there is a right to acquire beneficial ownership  
12 by each acquiring party;

13 ~~(9)~~ (7) A full description of any contracts, arrangements or  
14 understanding with respect to any security referred to in  
15 subsection (a) of this section in which any acquiring party is  
16 involved, including, but not limited to, transfer of any of the  
17 securities, joint ventures, loan or option arrangements, puts or  
18 calls, guarantees of loans, guarantees against loss or guarantees  
19 of profits, division of losses or profits or the giving or  
20 withholding of proxies. The description shall identify the persons  
21 with whom such contracts, arrangements or understandings have been  
22 entered into;

23 ~~(10)~~ (8) A description of the purchase of any security  
24 referred to in subsection (a) of this section during the twelve  
25 calendar months preceding the filing of the statement by any  
26 acquiring party, including the dates of purchase, names of the

1 purchasers and consideration paid or agreed to be paid therefor;

2 ~~(11)~~ (9) A description of any recommendations to purchase any  
3 security referred to in subsection (a) of this section made during  
4 the twelve calendar months preceding the filing of the statement by  
5 an acquiring party or by anyone based upon interviews or at the  
6 suggestion of the acquiring party;

7 ~~(12)~~ (10) Copies of all tender offers for, requests or  
8 invitations for tenders of, exchange offers for and agreements to  
9 acquire or exchange any securities referred to in subsection (a) of  
10 this section and, if distributed, of additional soliciting material  
11 relating thereto;

12 ~~(13)~~ (11) The terms of any agreement, contract or  
13 understanding made with any broker-dealer as to solicitation of  
14 securities referred to in subsection (a) of this section for tender  
15 and the amount of any fees, commissions or other compensation to be  
16 paid to broker-dealers with regard thereto; ~~and~~

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

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

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

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

21 ~~(e)~~ (d) If any material change occurs in the facts set forth  
22 in the statement filed with the commissioner and sent to the  
23 insurer pursuant to this section, an amendment setting forth such  
24 change, together with copies of all documents and other material  
25 relevant to such change, shall be filed with the commissioner and  
26 sent to the insurer within two business days after the person

1 learns of the change. The insurer shall send the amendment to its  
2 shareholders.

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

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

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

22 ~~(2)~~ (B) The effect of the merger or other acquisition of  
23 control would be substantially to lessen competition in insurance  
24 in this state or tend to create a monopoly therein. In applying the  
25 competitive standard in this subdivision:

26 (i) The informational requirements of subdivision (1),



1 subsection (c), section three-a of this article and the standards  
2 of subdivision (2), subsection (d), section three-a of this article  
3 apply;

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

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

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

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

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

25 ~~(6) (E)~~ The competence, experience and integrity of those  
26 persons who would control the operation of the insurer are such

1 that it would not be in the interest of policyholders of the  
2 insurer and of the public to permit the merger or other acquisition  
3 of control; or

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

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

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

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

24       ~~(i)~~ (5) The commissioner may retain at the acquiring person's  
25 expense any attorneys, actuaries, accountants and other experts not  
26 otherwise a part of the commissioner's staff as may be reasonably

1 necessary to assist the commissioner in reviewing the proposed  
2 acquisition of control.

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

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

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

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

25 (2) The effectuation or any attempt to effectuate an  
26 acquisition of control of, divestiture of, or merger with, a

1 domestic insurer unless the commissioner has given his or her  
2 approval thereto.

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

17 **§33-27-3a. Acquisitions Involving Insurers Not Otherwise Covered.**

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

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

25 (2) An "involved insurer" includes an insurer which either  
26 acquires or is acquired, is affiliated with an acquirer or

1 acquired, or is the result of a merger.

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

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

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

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

1 (C) The acquisition of already affiliated persons;

2 (D) An acquisition if, as an immediate result of the  
3 acquisition:

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

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

7 (iii) In no market would:

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

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

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

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

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

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

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

23           (2) The waiting period required shall begin on the date of  
24 receipt of the commissioner of a pre-acquisition notification and  
25 shall end on the earlier of the thirtieth day after the date of  
26 receipt, or termination of the waiting period by the commissioner.



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

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

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

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

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

22	Insurer A	Insurer B
23	four percent	four percent or more
24	ten percent	ten percent
25	fifteen percent	one percent or more

26

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

3 Insurer A	Insurer B
4 five percent	five percent or more
5 ten percent	four percent or more
6 fifteen percent	three percent or more
7 nineteen percent	one percent or more

8

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

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

1 standard in subdivision (1) of this subsection if:

2 (i) There is a significant trend toward increased  
3 concentration in the market;

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

7 (iii) Another involved insurer's market is two percent or  
8 more;

9 (C) For the purposes of subdivision (2), subsection (d) of  
10 this section:

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

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

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

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

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

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

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

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

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

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

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

7 (i) There is a hearing;

8 (ii) Notice of the hearing is issued prior to the end of the  
9 waiting period and not less than fifteen days prior to the hearing;  
10 and

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

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

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

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

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

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

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

5 (f) Inapplicable Provisions. Subsections (b) and (c), section  
6 ten of this article and section twelve of this article do not apply  
7 to acquisitions covered under subsection (b) of this section.

8 **§33-27-4. Registration of insurers.**

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

22 (2) Any insurer which is subject to registration under this  
23 section shall register within ~~sixty days after the effective date~~  
24 ~~of this article or~~ fifteen days after it becomes subject to  
25 registration, ~~whichever is later,~~ and annually thereafter by June  
26 1 of each year for the previous calendar year, unless the

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

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

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

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

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

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

- 1 (B) Purchases, sales or exchanges of assets;
- 2 (C) Transactions not in the ordinary course of business;
- 3 (D) Guarantees or undertakings for the benefit of an affiliate  
4 which result in an actual contingent exposure of the insurer's  
5 assets to liability, other than insurance contracts entered into in  
6 the ordinary course of the insurer's business;
- 7 (E) All management and service contracts and all cost-sharing  
8 arrangements;
- 9 (F) All reinsurance agreements;
- 10 (G) Dividends and other distributions to shareholders; and
- 11 (H) Consolidated tax allocation statements.
- 12 ~~(H)~~ (4) Any pledge of the insurer's stock, including stock of  
13 any subsidiary or controlling affiliate, for a loan made to any  
14 member of the insurance holding company system.
- 15 (5) If requested by the commissioner, the insurer shall  
16 include financial statements of or within an insurance holding  
17 company system, including all affiliates. Financial statements may  
18 include, but are not limited to, annual audited financial  
19 statements filed with the U.S. Securities and Exchange Commission  
20 (SEC) pursuant to the Securities Act of 1933, as amended, or the  
21 Securities Exchange Act of 1934, as amended. An insurer required  
22 to file financial statements pursuant to this subdivision may  
23 satisfy the request by providing the commissioner with the most  
24 recently filed parent corporation financial statements that have  
25 been filed with the SEC.
- 26 ~~(4)~~ (6) Other matters concerning transactions between



1 registered insurers and any affiliates as may be included from time  
2 to time in any registration forms adopted or approved by the  
3 commissioner.

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

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

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

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

23 ~~(e) Each registered insurer shall keep current the information~~  
24 ~~required to be disclosed in its registration statement by reporting~~  
25 ~~all material changes or additions on amendment forms provided by~~  
26 ~~the commissioner within fifteen days after the end of the month in~~

1 ~~which it learns of each such change or addition.~~

2       ~~(f)~~ (e) Reporting of dividends to shareholders. -- Subject to  
3 subsection (c), section five of this article, each registered  
4 insurer shall report to the commissioner all dividends and other  
5 distributions to shareholders within fifteen business days  
6 following the declaration thereof.

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

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

15       ~~(i)~~ (h) Consolidated filing. -- The commissioner may require  
16 or allow two or more affiliated insurers subject to registration  
17 hereunder to file a consolidated registration statement or  
18 consolidated reports amending their consolidated registration  
19 statement or their individual registration statements.

20       ~~(j)~~ (i) Alternative registration. -- The commissioner may  
21 allow an insurer which is authorized to do business in this state  
22 and which is a part of an insurance holding company system to  
23 register on behalf of any affiliated insurer which is required to  
24 register under subsection (a) of this section and to file all  
25 information and material required to be filed under this section.

26       ~~(k)~~ (j) Exemptions. -- The provisions of this section shall

1 not apply to any insurer, information or transaction if and to the  
2 extent that the commissioner by rule or order shall exempt the same  
3 from the provisions of this section.

4 ~~(l)~~ (k) Disclaimer. -- Any person may file with the  
5 commissioner a disclaimer of affiliation with any authorized  
6 insurer or ~~such~~ a disclaimer may be filed by ~~such~~ the insurer or  
7 any member of an insurance holding company system. The disclaimer  
8 shall fully disclose all material relationships and bases for  
9 affiliation between ~~such~~ the person and ~~such~~ the insurer as well as  
10 the basis for disclaiming such affiliation. ~~After a disclaimer has~~  
11 ~~been filed, the insurer shall be relieved of any duty to register~~  
12 ~~or report under this section which may arise out of the insurer's~~  
13 ~~relationship with such person unless and until the commissioner~~  
14 ~~disallows such a disclaimer.~~ A disclaimer of affiliation shall be  
15 deemed to have been granted unless the commissioner, within thirty  
16 days following receipt of a complete disclaimer, notifies the  
17 filing party the disclaimer is disallowed. In the event of  
18 disallowance, the disclaiming party may request an administrative  
19 hearing, which shall be granted, and ~~The~~ the commissioner shall  
20 disallow such a disclaimer only after furnishing all parties in  
21 interest with notice and opportunity to be heard and after making  
22 specific findings of fact to support such disallowance. The  
23 disclaiming party shall be relieved of its duty to register under  
24 this section if approval of the disclaimer has been granted by the  
25 commissioner, or if the disclaimer is deemed to have been approved.

26 (l) Enterprise Risk Filing. -- The ultimate controlling

1 person of every insurer subject to registration shall also file an  
2 annual enterprise risk report. The report shall, to the best of the  
3 ultimate controlling person's knowledge and belief, identify the  
4 material risks within the insurance holding company system that  
5 could pose enterprise risk to the insurer. The report shall be  
6 filed with the lead state commissioner of the insurance holding  
7 company system as determined by the procedures within the Financial  
8 Analysis Handbook adopted by the National Association of Insurance  
9 Commissioners.

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

14 **§33-27-5. Standards.**

15 (a) ~~Transactions by registered insurers with their affiliates~~  
16 within an insurance holding company system to which an insurer  
17 subject to registration is a party shall be subject to the  
18 following standards:

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

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

22 ~~(2)~~ (3) Charges or fees for services performed shall be  
23 reasonable;

24 ~~(3)~~ (4) Expenses incurred and payment received shall be  
25 allocated to the insurer in conformity with customary insurance  
26 accounting practices consistently applied;

1       ~~(4)~~ (5) The books, accounts and records of each party to all  
2 such transactions shall be so maintained as to clearly and  
3 accurately disclose the ~~precise~~ nature and details of the  
4 transactions, including such accounting information as is necessary  
5 to support the reasonableness of the charges or fees to the  
6 respective parties; and

7       ~~(5)~~ (6) The insurer's surplus as regards policyholders  
8 following any dividends or distributions to shareholder affiliates  
9 shall be reasonable in relation to the insurer's outstanding  
10 liabilities and adequate to its financial needs.

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

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

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

21       (3) The number and size of risks insured in each line of  
22 business;

23       (4) The extent of the geographical dispersion of the insurer's  
24 insured risks;

25       (5) The nature and extent of the insurer's reinsurance  
26 program;

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

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

5 (8) The surplus as regards policyholders maintained by other  
6 comparable insurers;

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

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

9 The commissioner may treat any such investment as a disallowed  
10 asset for purposes of determining the adequacy of surplus as  
11 regards policyholders whenever in his or her judgment such  
12 investment so warrants.

13 (c) Dividends and other distributions. - (1) ~~An insurer~~  
14 ~~subject to registration under section four of this article shall~~  
15 ~~not~~ No domestic insurer may pay any extraordinary dividend or make  
16 any other extraordinary distribution to its shareholders until:

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

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

22 ~~(d)~~ (2) For purposes of this section, an extraordinary  
23 dividend or distribution includes any dividend or distribution of  
24 cash or other property, whose fair market value together with that  
25 of other dividends or distributions made within the preceding  
26 twelve months exceeds the lesser of:

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

3       ~~(2)~~ (B) ~~the~~ The net gain from operations of such insurer, if  
4 such insurer is a life insurer, or the net income, if ~~such~~ the  
5 insurer is not a life insurer, not including realized capital  
6 gains, for the twelve-month period ending December 31, next  
7 preceding, but shall not include pro rata distributions of any  
8 class of the insurer's own securities. In determining whether a  
9 dividend or distribution is extraordinary, an insurer other than a  
10 life insurer may carry forward net income from the previous two  
11 calendar years that has not already been paid out as dividends.  
12 This carry-forward shall be computed by taking the net income from  
13 the second and third preceding calendar years, not including  
14 realized capital gains, less dividends paid in the second and  
15 immediate preceding calendar years.

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

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

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

24       ~~(f)~~ (d) The following transactions involving a domestic  
25 insurer and any person in its insurance holding company system,  
26 including amendments or modifications of affiliate agreements

1 previously filed pursuant to this section, that are subject to any  
2 materiality standards contained in subdivisions (1) through (5) of  
3 this subsection, may not be entered into unless the insurer has  
4 notified the commissioner in writing of its intention to enter into  
5 ~~such the~~ transaction at least thirty days prior thereto, or such  
6 shorter period as the commissioner may permit, and the commissioner  
7 has not disapproved it within ~~such that~~ period: Provided, That  
8 nothing contained in this subsection shall be deemed to authorize  
9 or permit any transactions which, in the case of an insurer not a  
10 member of the same holding company system, would be otherwise  
11 contrary to law. The notice for amendments or modifications shall  
12 include the reasons for the change and the financial impact on the  
13 domestic insurer. Informal notice shall be reported, within thirty  
14 days after a termination of a previously filed agreement, to the  
15 commissioner for determination of the type of filing required, if  
16 any.

17 (1) Sales, purchases, exchanges, loans or extensions of  
18 credit, guarantees or investments provided such transactions are  
19 equal to or exceed:

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

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

25 (2) Loans or extensions of credit to any person who is not an  
26 affiliate, where the insurer makes ~~such the~~ loans or extensions of



1 credit with the agreement or understanding that the proceeds of  
2 such transactions, in whole or in substantial part, are to be used  
3 to make loans or extensions of credit to, purchase assets of, or to  
4 make investments in, any affiliate of the insurer making such loans  
5 or extensions of credit provided ~~such~~ the transactions are equal to  
6 or exceed:

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

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

13 (3) Reinsurance agreements or modifications thereto,  
14 including:

15 (A) All reinsurance pooling agreements; and

16 (B) Agreements in which the reinsurance premium or a change in  
17 the insurer's liabilities, or the projected reinsurance premium or  
18 a change in the insurer's liabilities in any of the next three  
19 years, equals or exceeds five percent of the insurer's surplus as  
20 regards policyholders, as of December 31, next preceding, including  
21 those agreements which may require as consideration the transfer of  
22 assets from an insurer to a nonaffiliate, if an agreement or  
23 understanding exists between the insurer and nonaffiliate that any  
24 portion of ~~such~~ the assets will be transferred to one or more  
25 affiliates of the insurer;

26 (4) All management agreements, service contracts, tax

1 allocation agreements, guarantees and all cost-sharing  
2 arrangements; and

3 (5) Guarantees when made by a domestic insurer; Provided,  
4 That a guarantee that is quantifiable as to amount is not subject  
5 to the notice requirements of this subdivision unless it exceeds  
6 the lesser of one half of one percent of the insurer's admitted  
7 assets or ten percent of surplus as regards policyholders as of  
8 December 31, next preceding: Provided, however, That all  
9 guarantees that are not quantifiable as to amount are subject to  
10 the notice requirements of this subdivision.

11 (6) Direct or indirect acquisitions or investments in a person  
12 that controls the insurer or in an affiliate of the insurer in an  
13 amount which, together with its present holdings in such  
14 investments, exceeds two and one-half percent of the insurer's  
15 surplus to policyholders. Direct or indirect acquisitions or  
16 investments in subsidiaries acquired pursuant to section two of  
17 this article or authorized under any other section of this chapter,  
18 or in nonsubsidiary insurance affiliates that are subject to the  
19 provisions of this article, are exempt from this requirement; and

20 ~~(5)~~ (7) Any material transactions, specified by rule, which  
21 the commissioner determines may adversely affect the interests of  
22 the insurer's policyholders.

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

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

10       ~~(i)~~ (f) The commissioner, in reviewing transactions pursuant  
11 to subsection ~~(f)~~ (d) of this section, shall consider whether the  
12 transactions comply with the standards set forth in subsection (a)  
13 of this section and whether they may adversely affect the interests  
14 of policyholders.

15       ~~(j)~~ (g) The commissioner shall be notified within thirty days  
16 of any investment of the domestic insurer in any one corporation if  
17 the total investment in ~~such~~ that corporation by the insurance  
18 holding company system exceeds ten percent of such corporation's  
19 voting securities.

20       ~~(k)~~ (h) ~~With regard to domestic insurers, the following~~  
21 ~~requirements apply:~~ Management of domestic insurers subject to  
22 registration. -- (1) Notwithstanding the control of a domestic  
23 insurer by any person, the officers and directors of the insurer  
24 shall not thereby be relieved of any obligation or liability to  
25 which they would otherwise be subject by law, and the insurer shall  
26 be managed so as to assure its separate operating identity

1 consistent with the provisions of this ~~chapter~~ article.

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

7 (3) Not less than one third of the directors of a domestic  
8 insurer, and not less than one third of the members of each  
9 committee of the board of directors of any domestic insurer, shall  
10 be persons who are not officers or employees of the insurer or of  
11 any entity controlling, controlled by, or under common control with  
12 the insurer and who are not beneficial owners of a controlling  
13 interest in the voting stock of the insurer or entity. At least  
14 one such person must be included in any quorum for the transaction  
15 of business at any meeting of the board of directors or any  
16 committee thereof.

17 (4) The board of directors of a domestic insurer shall  
18 establish one or more committees comprised solely of directors who  
19 are not officers or employees of the insurer or of any entity  
20 controlling, controlled by, or under common control with the  
21 insurer and who are not beneficial owners of a controlling interest  
22 in the voting stock of the insurer or any such entity. The  
23 committee or committees have responsibility for nominating  
24 candidates for director for election by shareholders or  
25 policyholders, evaluating the performance of officers deemed to be  
26 principal officers of the insurer and recommending to the board of

1 directors the selection and compensation of the principal officers.

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

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

19 **§33-27-6. Examination.**

20 (a) *Power of commissioner.* -- Subject to the limitation  
21 contained in this section and in addition to the powers which the  
22 commissioner has under other ~~articles~~ provisions of this chapter  
23 relating to the examination of insurers, the commissioner ~~shall~~  
24 ~~also have~~ has the power to examine any insurer registered under  
25 section four of this article and its affiliates to ascertain the  
26 financial condition of the insurer, including the enterprise risk

1 to the insurer by the ultimate controlling party, or by any entity  
2 or combination of entities within the insurance holding company  
3 system, or by the insurance holding company system on a  
4 consolidated basis.

5 (b) Access to books and records. -

6 (1) The commissioner may order any insurer registered under  
7 section four of this article to produce such records, books or  
8 other information papers in the possession of the insurer or its  
9 affiliates as ~~shall be~~ are reasonably necessary to ~~ascertain the~~  
10 ~~financial condition or legality of conduct of such insurer. In the~~  
11 ~~event that such insurer fails to comply with such order, the~~  
12 ~~commissioner shall have the power to examine such affiliates to~~  
13 ~~obtain such information~~ determine compliance with this chapter.

14 ~~(b) Purpose and limitation of examination. -- The~~  
15 ~~commissioner shall exercise his power under subsection (a) above~~  
16 ~~only if the examination of the insurer under other articles of this~~  
17 ~~chapter is inadequate or the interests of the policyholders of such~~  
18 ~~insurer may be adversely affected.~~

19 (2) To determine compliance with this chapter, the  
20 commissioner may order any insurer registered under section four of  
21 this article to produce information not in the possession of the  
22 insurer if the insurer can obtain access to such information  
23 pursuant to contractual relationships, statutory obligations, or  
24 other method. In the event the insurer cannot obtain the  
25 information requested by the commissioner, the insurer shall  
26 provide the commissioner a detailed explanation of the reason that

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

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

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

20       (e) *Compelling Production.* -- In the event the insurer fails  
21 to comply with an order, the commissioner may examine the affiliates  
22 to obtain the information. The commissioner may also issue  
23 subpoenas, to administer oaths, and examine under oath any person  
24 for purposes of determining compliance with this section. Upon the  
25 failure or refusal of any person to obey a subpoena, the  
26 commissioner may petition any circuit court and, upon proper

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

12 **§33-27-6a. Supervisory Colleges.**

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

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

22 (2) Clarifying the membership and participation of other  
23 supervisors in the supervisory college;

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



1 (4) Coordinating the ongoing activities of the supervisory  
2 college, including planning meetings, supervisory activities, and  
3 processes for information sharing; and

4 (5) Establishing a crisis management plan.

5 (b) *Expenses.* - Each registered insurer subject to this  
6 section is liable for and shall pay the reasonable expenses of the  
7 commissioner's participation in a supervisory college in accordance  
8 with subsection (c) of this section, including reasonable travel  
9 expenses. For purposes of this section, a supervisory college may  
10 be convened as either a temporary or permanent forum for  
11 communication and cooperation between the regulators charged with  
12 the supervision of the insurer or its affiliates, and the  
13 commissioner may establish a regular assessment to the insurer for  
14 the payment of these expenses.

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

1 construed as delegating to the supervisory college the authority of  
2 the commissioner to regulate or supervise the insurer or its  
3 affiliates within its jurisdiction.

4 **§33-27-7. Confidential treatment.**

5 (a) All information, documents and copies thereof Documents,  
6 materials or other information in the possession or control of the  
7 commissioner that are obtained by or disclosed to the commissioner  
8 or any other person in the course of an examination or investigation  
9 made pursuant to section six of this article and all information  
10 reported pursuant to subdivision thirteen or fourteen, subsection  
11 (b), section three of this article, sections section four and or  
12 section five of this article shall be given is confidential  
13 treatment and are not subject to subpoena and may not be made public  
14 by the commissioner or any other person, except to insurance  
15 departments of other states and to the board of Governors of the  
16 federal reserve system or other appropriate federal banking agency  
17 in accordance with section nineteen, article two of this chapter,  
18 by law and privileged, is exempt from disclosure pursuant to chapter  
19 twenty-nine-b of this code, is not open to public inspection, is not  
20 subject to subpoena, is not subject to discovery or admissible in  
21 evidence in any criminal, private civil or administrative action and  
22 is not subject to production pursuant to court order: Provided, That  
23 the commissioner is authorized to use the documents, materials or  
24 other information in the furtherance of any regulatory or legal  
25 action brought as part of the commissioner's official duties. The  
26 commissioner may not otherwise make the documents, materials or

1 other information public without the prior written consent of the  
2 insurer to which it pertains unless the commissioner, after giving  
3 the insurer and its affiliates who would be affected thereby notice  
4 and opportunity to be heard, determines that the interests of  
5 policyholders, shareholders or the public will be served by the  
6 publication thereof, in which event he or she may publish all or any  
7 part thereof in any manner as he or she may consider appropriate.

8 (b) Neither the commissioner nor any person who received  
9 documents, materials or other information while acting under the  
10 authority of the commissioner or with whom such documents, materials  
11 or other information are shared pursuant to this article may be  
12 permitted or required to testify in any private civil action  
13 concerning any confidential documents, materials, or information  
14 subject to subsection (a) of this section.

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

17 (1) May share documents, materials or other information,  
18 including the confidential and privileged documents, materials or  
19 information subject to subsection (a) of this section, with other  
20 state, federal and international regulatory agencies, with the  
21 National Association of Insurance Commissioners and its affiliates  
22 and subsidiaries, and with state, federal, and international law  
23 enforcement authorities, including members of any supervisory  
24 college described in section six-a of this article, if the recipient  
25 agrees in writing to maintain the confidentiality and privileged  
26 status of the document, material or other information, and has

1 verified in writing the legal authority to maintain confidentiality;

2 (2) Notwithstanding subdivision (1) of this subsection, the  
3 commissioner may only share confidential and privileged documents,  
4 material, or information reported pursuant to subsection (1),  
5 section four of this article, with commissioners of states having  
6 statutes or regulations substantially similar to subdivision (1) of  
7 this subsection and who have agreed in writing not to disclose such  
8 information;

9 (3) May receive documents, materials or information, including  
10 otherwise confidential and privileged documents, materials or  
11 information from the National Association of Insurance Commissioners  
12 and its affiliates and subsidiaries and from regulatory and law-  
13 enforcement officials of other foreign or domestic jurisdictions,  
14 and shall maintain as confidential or privileged any document,  
15 material or information received with notice or the understanding  
16 that it is confidential or privileged under the laws of the  
17 jurisdiction that is the source of the document, material or  
18 information; and

19 (4) Shall enter into written agreements with the National  
20 Association of Insurance Commissioners governing sharing and use of  
21 information provided pursuant to this article consistent with this  
22 subsection that:

23 (A) Specify procedures and protocols regarding the  
24 confidentiality and security of information shared with the National  
25 Association of Insurance Commissioners and its affiliates and  
26 subsidiaries pursuant to this article, including procedures and

1 protocols for sharing by the National Association of Insurance  
2 Commissioners with other state, federal or international regulators;

3 (B) Specify that ownership of information shared with the  
4 National Association of Insurance Commissioners and its affiliates  
5 and subsidiaries pursuant to this article remains with the  
6 commissioner, and the National Association of Insurance  
7 Commissioners's use of the information is subject to the direction  
8 of the commissioner;

9 (C) Require prompt notice to be given to an insurer whose  
10 confidential information in the possession of the National  
11 Association of Insurance Commissioners pursuant to this article is  
12 subject to a request or subpoena to the National Association of  
13 Insurance Commissioners for disclosure or production; and

14 (D) Require the National Association of Insurance Commissioners  
15 and its affiliates and subsidiaries to consent to intervention by  
16 an insurer in any judicial or administrative action in which the  
17 National Association of Insurance Commissioners and its affiliates  
18 and subsidiaries may be required to disclose confidential  
19 information about the insurer shared with the National Association  
20 of Insurance Commissioners and its affiliates and subsidiaries  
21 pursuant to this article.

22 (d) The sharing of information by the commissioner pursuant to  
23 this article does not constitute a delegation of regulatory  
24 authority, and the commissioner is solely responsible for the  
25 administration, execution and enforcement of the provisions of this  
26 article.

1 (e) No waiver of any applicable privilege or claim of  
2 confidentiality in the documents, materials or information occurs  
3 as a result of disclosure to the commissioner under this section or  
4 as a result of sharing as authorized in subsection (c) of this  
5 section.

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

12 **§33-27-9. Criminal proceedings; penalties.**

13 (a) Any insurer failing, without just cause, to file any  
14 registration statement as required by this article shall be  
15 required, after notice and hearing, to pay a penalty of up to one  
16 thousand dollars for each day's delay, to be recovered by the  
17 commissioner. Any penalty so recovered shall be paid into the  
18 General Revenue Fund of this state. The commissioner may reduce the  
19 penalty if the insurer demonstrates to the commissioner that the  
20 imposition of the penalty would constitute a financial hardship to  
21 the insurer.

22 (b) Every director or officer of an insurance holding company  
23 system who knowingly violates, participates in, or assents to, or  
24 who knowingly permits any of the officers or agents of the insurer  
25 to engage in transactions or make investments which have not been  
26 properly reported or submitted pursuant to subsection (a), section

1 four of this article and subsections (c) and (d), ~~of~~ section five  
2 of this article, or which violate any other provision of this  
3 article, shall pay, in his or her individual capacity, a civil  
4 forfeiture of not more than \$5,000 per violation, after notice and  
5 hearing before the commissioner. In determining the amount of the  
6 civil forfeiture, the commissioner shall take into account the  
7 appropriateness of the forfeiture with respect to the gravity of the  
8 violation, the history of previous violations, and such other  
9 matters as justice may require.

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

21 (d) Whenever it appears to the commissioner that any person or  
22 any director, officer, employee or agent thereof has committed a  
23 willful violation of this article, the commissioner may cause  
24 criminal proceedings to be instituted against such person or the  
25 responsible director, officer, employee or agent thereof. Any  
26 insurer who willfully violates this article is guilty of a

1 misdemeanor and, upon conviction thereof, shall be fined not more  
2 than ten thousand dollars. Any individual who willfully violates  
3 this article is guilty of a misdemeanor and, upon conviction  
4 thereof, shall be fined in his or her individual capacity not more  
5 than ten thousand dollars or, if such willful violation involves the  
6 deliberate perpetration of a fraud upon the commissioner, is guilty  
7 of a felony and, upon conviction thereof, shall be imprisoned not  
8 less than one year nor more than three years, or both fined and  
9 imprisoned.

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

20 (f) Whenever it appears to the commissioner that any person has  
21 committed a violation of section three of this article which  
22 prevents the full understanding of the enterprise risk to the  
23 insurer by affiliates or by the insurance holding company system,  
24 the violation may serve as an independent basis for disapproving  
25 dividends or distributions and for placing the insurer under an  
26 order of supervision in accordance with article thirty-four of this



1 chapter.

2 **§33-27-11. Revocation, suspension or nonrenewal of insurer's**  
3 **license.**

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

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

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

NOTE: The purpose of this bill is to amend the insurance code to adopt recent changes to the model act adopted by the National Association of Insurance Commissioners with respect to holding companies and systemic risks arising from acquisitions and divestitures of affiliates. The bill defines terms. The bill

excludes certain investments from determination of adequacy of surplus. The bill requires notice and other information with regard to divestiture or acquisition of a controlling interest. The bill also changes public hearing requirements. The bill provides standards for review of acquisition request by commissioner and establishes a process for consolidated hearings. The bill additionally sets forth standards and procedures for certain acquisitions not otherwise covered. The bill expands the types of information that may be demanded and reviewed by the commissioner. Further, the bill provides for establishment of supervisory colleges. The bill provides for additional confidentiality measures. The bill also authorizes emergency rules.

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

§33-27-3A and §33-27-6A are new; therefore, strike-throughs and underscoring have been omitted.