

1 HB56  
2 150676-3  
3 By Representative Hill  
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8 SYNOPSIS: Under existing law, members of an insurance  
9 holding company system are required to meet certain  
10 requirements deemed appropriate to protect the  
11 solvency of the insurers within the system.

12 Under existing law, the commissioner is  
13 required to hold a public hearing to consider a  
14 proposed acquisition of control of an  
15 Alabama-domiciled insurer.

16 Under existing law, domestic insurers are  
17 required to give 30 days' notice to the  
18 commissioner prior to paying any extraordinary  
19 dividend, defined as a distribution in an amount  
20 exceeding the greater of 10 percent of the  
21 insurer's surplus or the net gain from operations  
22 for the calendar year preceding the payment.

23 Under existing law, insurers or officers,  
24 directors, employees, or agents thereof willfully  
25 violating the holding company act can be criminally  
26 prosecuted and, upon conviction, fined up to ten  
27 thousand dollars (\$10,000) for an insurer and up to

1 one thousand dollars (\$1,000) for an individual, or  
2 up to two years in prison, or both.

3 This bill, which would state the purpose of  
4 the bill is to make Alabama's law substantially  
5 similar to the current version of the model  
6 Insurance Holding Company System Regulatory Act  
7 developed by the National Association of  
8 Commissioners, would add requirements to the  
9 insurance holding company system law for assessing  
10 the "enterprise risk" within the entire holding  
11 company system, including the risk caused by  
12 non-insurance affiliates.

13 The bill would permit the commissioner to  
14 hold the public hearing required to consider a  
15 proposed acquisition of control of an  
16 Alabama-domiciled insurer on a consolidated basis  
17 with other commissioners if the approval of  
18 commissioner from other states is also required.

19 The bill would require, in certain  
20 circumstances, a pre-acquisition notification to  
21 the commissioner, and give the commissioner  
22 authority to order the acquisition not occur under  
23 certain circumstances and according to certain  
24 requirements.

25 The bill would define extraordinary dividend  
26 to be a distribution in an amount exceeding the  
27 lesser of 10 percent of the insurer's surplus or

1 the net gain from operations for the calendar year  
2 preceding the payment.

3 The bill would authorize the commissioner to  
4 participate in a supervisory college with other  
5 regulators for any domestic insurer that is part of  
6 a holding company with international operations in  
7 order to determine compliance by the insurer with  
8 this law.

9 The bill would add additional penalties for  
10 certain violations of the act, including a daily  
11 fine of up to (\$1,000) for failure to file any  
12 registration required to be filed under the act, up  
13 to a maximum of (\$50,000); a civil forfeiture of up  
14 to (\$10,000) per violation for any officers or  
15 directors of an insurance holding company system  
16 who knowingly violate, participate in, or assent  
17 to, or who knowingly permit the officers or agents  
18 of the insurer to engage in transactions or  
19 investments not properly reported or submitted  
20 pursuant to the act; and a criminal penalty of up  
21 to five years in prison or a fine of up to  
22 (\$50,000), or both, for any officer, director, or  
23 employee of an insurance holding company system who  
24 willfully and knowingly subscribes to or makes or  
25 causes to be made any false statement or false  
26 reports or false filings with the intent to deceive

1 the commissioner in the performance of the  
2 commissioner's duties under this act.

3 The bill would provide certain recovery  
4 rights to a receiver appointed to liquidate or  
5 rehabilitate a domestic insurer from any parent  
6 corporation or holding company or person or  
7 affiliate who otherwise controlled the insurer the  
8 amounts of distributions paid by the insurer on its  
9 capital stock or in the form of a bonus,  
10 termination settlement, or extraordinary lump sum  
11 salary adjustment to a director, officer, or  
12 employee made at any time during the one year  
13 preceding the petition for liquidation,  
14 conservation, or rehabilitation, with certain  
15 limitations and exceptions.

16 Amendment 621 of the Constitution of Alabama  
17 of 1901, now appearing as Section 111.05 of the  
18 Official Recompilation of the Constitution of  
19 Alabama of 1901, as amended, prohibits a general  
20 law whose purpose or effect would be to require a  
21 new or increased expenditure of local funds from  
22 becoming effective with regard to a local  
23 governmental entity without enactment by a 2/3 vote  
24 unless: it comes within one of a number of  
25 specified exceptions; it is approved by the  
26 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to  
2 the entity for the purpose.

3 The purpose or effect of this bill would be  
4 to require a new or increased expenditure of local  
5 funds within the meaning of the amendment. However,  
6 the bill does not require approval of a local  
7 governmental entity or enactment by a 2/3 vote to  
8 become effective because it comes within one of the  
9 specified exceptions contained in the amendment.

10  
11 A BILL  
12 TO BE ENTITLED  
13 AN ACT  
14

15 Relating to insurance; to revise the Alabama  
16 Insurance Holding Company System Regulatory Act; to require  
17 assessment of enterprise risk within the insurance holding  
18 company system; to provide for public hearings; to require  
19 pre-acquisition notice to the Commissioner of Insurance and  
20 give the commissioner the power to disapprove acquisitions; to  
21 define extraordinary dividends to be a distribution in an  
22 amount exceeding the lesser of a certain percent of the  
23 insurer's surplus or the net gain from operations for the  
24 calendar year preceding the payment; to authorize the  
25 commissioner to enter into supervisory colleges with other  
26 regulators for a domestic insurer that is part of an  
27 international holding company; to add additional penalties;

1 and to grant additional recovery rights to receivers for a  
2 domestic insurer and in connection, would amend Sections  
3 10A-20-6.16 and 27-21A-23, as amended by Act 2012-429, 2012  
4 Regular Session, Code of Alabama 1975, and Sections 27-29-1,  
5 27-29-2, 27-29-3, 27-29-4, 27-29-5, 27-29-6, 27-29-7,  
6 27-29-10, and 27-34-54, Code of Alabama 1975, and to add  
7 Sections 27-29-3.1, 27-29-6.1, and 27-29-11.1 to the Code of  
8 Alabama 1975; and in connection therewith would have as its  
9 purpose or effect the requirement of a new or increased  
10 expenditure of local funds within the meaning of Amendment 621  
11 of the Constitution of Alabama of 1901, now appearing as  
12 Section 111.05 of the Official Recompilation of the  
13 Constitution of Alabama of 1901, as amended.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. The purpose of this act is to revise the  
16 Alabama Insurance Holding Company System Regulatory Act to be  
17 substantially similar as the most recent version of the Model  
18 Insurance Holding Company System Regulatory Act developed by  
19 the National Association of Insurance Commissioners.

20 Section 2. Sections 10A-20-6.16 and 27-21A-23, as  
21 amended by Act 2012-429, 2012 Regular Session, Code of Alabama  
22 1975, and Sections 27-29-1, 27-29-2, 27-29-3, 27-29-4,  
23 27-29-5, 27-29-6, 27-29-7, 27-29-10, and 27-34-54, Code of  
24 Alabama 1975, are amended to read as follows:

25 "§10A-20-6.16.

26 "(a) No statute of this state applying to insurance  
27 companies shall be applicable to any corporation organized

1 under this article and amendments thereto or to any contract  
2 made by the corporation ~~unless expressly mentioned in this~~  
3 ~~article and made applicable; except as follows~~ the corporation  
4 shall be subject to the following:

5 "(1) ~~The corporation shall be subject to the~~  
6 provisions regarding annual premium tax to be paid by insurers  
7 on insurance premiums.

8 "(2) ~~The corporation shall be subject to the~~  
9 ~~provisions of Chapter 55, Chapters 12A, 29, 54, 54A, 55, 56,~~  
10 ~~57, 58, and 59, Section 27-1-17, and Articles 2 and 3 of~~  
11 ~~Chapter 19 Title 27, regarding the prohibition of unfair~~  
12 ~~discriminatory acts by insurers on the basis of an applicant's~~  
13 ~~or insured's abuse status.~~

14 "(3) ~~The corporation shall be subject to the~~  
15 ~~provisions regarding Medicare Supplement Minimum Standards set~~  
16 ~~forth in Article 2 of Chapter 19 of Title 27, and Long-Term~~  
17 ~~Care Insurance Policy Minimum Standards set forth in Article 3~~  
18 ~~of Chapter 19 of Title 27.~~

19 "(4) ~~The corporation shall be subject to Section~~  
20 ~~27-1-17, requiring insurers and health plans to pay health~~  
21 ~~care providers in a timely manner.~~

22 "(5) ~~The corporation shall be subject to the~~  
23 ~~provisions of Chapter 56 of Title 27, regarding the Access to~~  
24 ~~Eye Care Act.~~

25 "(6) ~~(3)~~ The corporation shall be subject to the  
26 regulations rules promulgated by the Commissioner of Insurance  
27 pursuant to Sections 27-7-43 and 27-7-44.

1           ~~"(7) The corporation shall be subject to the~~  
2 ~~provisions of Chapter 54 of Title 27.~~

3           ~~"(8) The corporation shall be subject to the~~  
4 ~~provisions of Chapter 57 of Title 27, requiring coverage to be~~  
5 ~~offered for the payment of colorectal cancer examinations for~~  
6 ~~covered persons who are 50 years of age or older, or for~~  
7 ~~covered persons who are less than 50 years of age and at high~~  
8 ~~risk for colorectal cancer according to current American~~  
9 ~~Cancer Society colorectal cancer screening guidelines.~~

10           ~~"(9) The corporation shall be subject to Chapter 58~~  
11 ~~of Title 27, requiring that policies and contracts including~~  
12 ~~coverage for prostate cancer early detection be offered,~~  
13 ~~together with identification of associated costs.~~

14           ~~"(10) The corporation shall be subject to Chapter 59~~  
15 ~~of Title 27 requiring that policies and contracts including~~  
16 ~~coverage for chiropractic be offered, together with~~  
17 ~~identification of associated costs.~~

18           ~~"(11) The corporation shall be subject to Chapter~~  
19 ~~54A of Title 27 requiring that policies and contracts to offer~~  
20 ~~coverage for certain treatment for Autism Spectrum Disorder~~  
21 ~~under certain conditions.~~

22           ~~"(12) The corporation shall be subject to Chapter~~  
23 ~~12A of Title 27.~~

24           (b) The provisions in subsection (a) that require  
25 specific types of coverage to be offered or provided shall not  
26 apply when the corporation is administering a self-funded

1 benefit plan or similar plan, fund, or program that it does  
2 not insure.

3 "§27-21A-23.

4 "(a) Except as otherwise provided in this chapter,  
5 provisions of the insurance law and provisions of health care  
6 service plan laws shall not be applicable to any health  
7 maintenance organization granted a certificate of authority  
8 under this chapter. This provision shall not apply to an  
9 insurer or health care service plan licensed and regulated  
10 pursuant to the insurance law or the health care service plan  
11 laws of this state except with respect to its health  
12 maintenance organization activities authorized and regulated  
13 pursuant to this chapter.

14 "(b) Solicitation of enrollees by a health  
15 maintenance organization granted a certificate of authority  
16 shall not be construed to violate any provision of law  
17 relating to solicitation or advertising by health  
18 professionals.

19 "(c) Any health maintenance organization authorized  
20 under this chapter shall not be deemed to be practicing  
21 medicine and shall be exempt from the provisions of Section  
22 34-24-310, et seq., relating to the practice of medicine.

23 "(d) No person participating in the arrangements of  
24 a health maintenance organization other than the actual  
25 provider of health care services or supplies directly to  
26 enrollees and their families shall be liable for negligence,

1 misfeasance, nonfeasance, or malpractice in connection with  
2 the furnishing of such services and supplies.

3 "(e) Nothing in this chapter shall be construed in  
4 any way to repeal or conflict with any provision of the  
5 certificate of need law.

6 "(f) Notwithstanding the provisions of subsection  
7 (a), a health maintenance organization shall be subject to all  
8 of the following:

9 "(1) Section 27-1-17.

10 "~~(g)(2) Notwithstanding the provisions of subsection~~  
11 ~~(a), a health maintenance organization shall be subject to the~~  
12 ~~provisions of Chapter 56 of this title, regarding the Access~~  
13 ~~to Eye Care Act Chapters 12A, 29, 54, 54A, 55, 56, 57, 58, and~~  
14 ~~59.~~

15 "~~(h) Notwithstanding the provisions of subsection~~  
16 ~~(a), a health maintenance organization shall be subject to the~~  
17 ~~provisions of Chapter 54 of this title.~~

18 "~~(i) Notwithstanding the provisions of subsection~~  
19 ~~(a), a health maintenance organization shall be subject to the~~  
20 ~~provisions of Chapter 57 of this title, requiring coverage to~~  
21 ~~be offered for the payment of colorectal cancer examinations~~  
22 ~~for covered persons who are 50 years of age or older, or for~~  
23 ~~covered persons who are less than 50 years of age and at high~~  
24 ~~risk for colorectal cancer according to current American~~  
25 ~~Cancer Society colorectal cancer screening guidelines.~~

26 "~~(j) Notwithstanding the provisions of subsection~~  
27 ~~(a), a health maintenance organization shall be subject to~~

1 Chapter 58 of Title 27, requiring that policies and contracts  
2 including coverage for prostate cancer early detection be  
3 offered, together with identification of associated costs.

4 "(k) Notwithstanding the provisions of subsection  
5 (a), a health maintenance organization shall be subject to  
6 Chapter 59 of this title, requiring that policies and  
7 contracts including coverage for chiropractic be offered,  
8 together with identification of associated costs.

9 "(l)(3) Notwithstanding the provisions of subsection  
10 (a), a health maintenance organization shall be subject to  
11 regulations Rules promulgated by the Commissioner of Insurance  
12 pursuant to Sections 27-7-43 and 27-7-44.

13 "(m) Notwithstanding the provisions of subsection  
14 (a), a health maintenance organization shall be subject to  
15 Chapter 12A.

16 "(n) Notwithstanding the provisions of subsection  
17 (a), a health maintenance organization shall be subject to  
18 Chapter 54A of this title requiring policies and contracts to  
19 offer coverage for certain treatment for Autism Spectrum  
20 Disorder under certain conditions.

21 "§27-29-1.

22 "For purposes of this chapter, unless otherwise  
23 stated, the following terms shall have the meanings  
24 respectively ascribed to them by this section:

25 "(1) AFFILIATE. The term shall include an  
26 "affiliate" of, or person "affiliated" with, a specific  
27 person, and shall mean a person that directly, or indirectly

1 through one or more intermediaries, controls, or is controlled  
2 by, or is under common control with, the person specified.

3 "(2) COMMISSIONER. The Commissioner of Insurance,  
4 his or her deputies, or the Insurance Department as  
5 appropriate.

6 "(3) CONTROL. The term shall include "controlling,"  
7 "controlled by," or "under common control with" and shall mean  
8 the possession, direct or indirect, of the power to direct or  
9 cause the direction of the management and policies of a  
10 person, whether through the ownership of voting securities, by  
11 contract other than a commercial contract for goods or  
12 nonmanagement services, or otherwise, unless the power is the  
13 result of an official position with or corporate office held  
14 by the person. Control shall be presumed to exist if any  
15 person, directly or indirectly owns, controls, holds with the  
16 power to vote, or holds proxies representing five percent or  
17 more of the voting securities of any other person. This  
18 presumption may be rebutted by a showing made in the manner  
19 provided by subsection ~~(i)~~ (k) of Section 27-29-4 that control  
20 does not exist in fact. ~~Such "control" as used in this section~~  
21 ~~shall not be deemed to exist where proxies have been obtained~~  
22 ~~by management of such insurer solely in connection with voting~~  
23 ~~at an annual or other regular meeting of the shareholders of~~  
24 ~~such insurer.~~ The commissioner may determine, after furnishing  
25 all persons in interest notice and opportunity to be heard and  
26 making a specific finding of fact to support such

1 determination, that control exists in fact, notwithstanding  
2 the absence of a presumption to that effect.

3 "(4) ENTERPRISE RISK. Any activity, circumstance,  
4 event, or series of events involving one or more affiliates of  
5 an insurer that, if not remedied promptly, is likely to have a  
6 material adverse effect upon the financial condition or  
7 liquidity of the insurer or its insurance holding company  
8 system as a whole, including, but not limited to, anything  
9 that would cause the insurer's risk-based capital to fall into  
10 company action level as set forth in Section 27-2B-4 or would  
11 cause the insurer to be in hazardous financial condition.

12 "(4)(5) INSURANCE HOLDING COMPANY SYSTEM. A system  
13 which consists of two or more affiliated persons, one or more  
14 of which is an insurer.

15 "(5)(6) INSURER. An insurance company as set forth  
16 in Section 27-1-2, except that it shall not include: agencies,  
17 authorities, or instrumentalities of the United States, its  
18 possessions and territories, the Commonwealth of Puerto Rico,  
19 the District of Columbia, or a state or political subdivision  
20 of a state.

21 "a. Agencies, authorities, or instrumentalities of  
22 the United States, its possessions and territories, the  
23 Commonwealth of Puerto Rico, the District of Columbia, or a  
24 state or political subdivision of a state;

25 "b. Fraternal benefit societies; or

26 "c. Nonprofit medical and hospital service  
27 associations.

1           ~~"Notwithstanding the foregoing, for purposes of~~  
2           ~~Section 27-29-3, a domestic insurer shall include any other~~  
3           ~~person controlling a domestic insurer unless such other person~~  
4           ~~is either directly or through its affiliates primarily engaged~~  
5           ~~in business other than the business of insurance.~~

6           "~~(6)~~(7) PERSON. An individual, a corporation, a  
7           limited liability company, a partnership, ~~a limited~~  
8           ~~partnership~~, an association, a joint-stock company, a trust,  
9           an unincorporated organization, or any similar entity or any  
10          combination of the foregoing acting in concert, but shall not  
11          include any ~~securities broker performing no more than the~~  
12          ~~usual and customary broker's function~~ joint venture  
13          partnership exclusively engaged in owning, managing, leasing,  
14          or developing real or tangible personal property.

15          "~~(7)~~(8) SECURITYHOLDER. One who owns any security of  
16          such person, including common stock, preferred stock, debt  
17          obligations, and other security convertible into, or  
18          evidencing, the right to acquire any of the foregoing.

19          "~~(8)~~(9) SUBSIDIARY. An affiliate controlled by such  
20          person, directly or indirectly, through one or more  
21          intermediaries.

22          "~~(9)~~(10) VOTING SECURITY. The term shall include any  
23          security convertible into, or evidencing, a right to acquire a  
24          voting security.

25          "§27-29-2.

26          "(a) Authorization. ~~Any~~ A domestic insurer, either  
27          by itself or in cooperation with one or more persons, may

1 organize or acquire one or more subsidiaries ~~or affiliates~~ in  
2 accordance with the provisions contained in this section. Such  
3 The subsidiaries ~~or affiliates~~ may conduct any kind of  
4 business, or businesses, ~~permitted by the Constitution and the~~  
5 ~~laws of this state,~~ and their authority to do so shall not be  
6 limited by reason of the fact that they are subsidiaries or  
7 affiliates of a domestic insurer.

8 "(b) Additional investment authority. In addition to  
9 investments in common stock, preferred stock, debt  
10 obligations, and other securities permitted under all other  
11 sections of this title, a domestic insurer may also:

12 "(1) Invest, in common stock, preferred stock, debt  
13 obligations, and other securities of one or more subsidiaries  
14 ~~or affiliates, including, without limitation, domestic or~~  
15 ~~foreign insurance subsidiaries or affiliates,~~ amounts which do  
16 not exceed the lesser of 10 percent of such insurer's assets  
17 or 50 percent of the ~~total of the insurer's capital and~~  
18 ~~surplus as shown in the latest annual report of the insurer~~  
19 ~~filed pursuant to subsection (a) of Section 27-3-26, less the~~  
20 ~~minimum capital and surplus required of said insurer for~~  
21 ~~authority to transact insurance by Sections 27-3-7 and 27-3-8~~  
22 as regards policyholders, provided that after such  
23 investments, the insurer's surplus as regards policyholders  
24 will be reasonable in relation to the insurer's outstanding  
25 liabilities and adequate to its financial needs. In  
26 calculating the amount of such investments, investments in  
27 domestic and foreign insurance subsidiaries and health

1 maintenance organizations shall be excluded, and there shall  
2 be included both of the following:

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

9 "b. All amounts expended in acquiring additional  
10 common stock, debt obligations, and other securities and all  
11 contributions to the capital or surplus of a subsidiary ~~or~~  
12 ~~affiliate~~ subsequent to its acquisition or formation; ~~.~~

13 "(2) Invest any amount in common stock, preferred  
14 stock, debt obligations, and other securities of one or more  
15 subsidiaries engaged or organized to engage exclusively in the  
16 ownership and management of assets authorized as investments  
17 for the insurer provided that each such subsidiary agrees to  
18 limit its investments in any asset so that such investments  
19 will not cause the amount of the total investment of the  
20 insurer to exceed any of the investment limitations specified  
21 in subdivision (1) ~~of this subsection~~ or in Sections 27-41-15  
22 through 27-41-18 and 27-41-35. For the purpose of this  
23 subdivision, "the total investment of the insurer" shall  
24 include both of the following:

25 "a. Any direct investment by the insurer in an  
26 asset; ~~and.~~

1            "b. The insurer's proportionate share of any  
2 investment in an asset by any subsidiary ~~or affiliate~~ of the  
3 insurer, which shall be calculated by multiplying the amount  
4 of the subsidiary's investment by the percentage of the  
5 insurer's ownership of such subsidiary ~~or affiliate~~.

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

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

20            "(d) Qualification of investment; when determined.  
21 Whether any investment pursuant to subsection (b) ~~of this~~  
22 ~~section~~ meets the applicable requirements thereof is to be  
23 determined ~~immediately after~~ before such investment is made,  
24 by calculating the applicable investment limitations as though  
25 the investment had already been made, taking into account the  
26 then outstanding principal balance on all previous investments  
27 in debt obligations and the value of all previous investments

1 in equity securities as of the date they were made, net of any  
2 return of capital invested, not including dividends.

3 "(e) Cessation of control. If an insurer ceases to  
4 control a subsidiary, it shall dispose of any investment  
5 therein made pursuant to this section within three years from  
6 the time of the cessation of control or within such further  
7 time as the commissioner may prescribe, unless at any time  
8 after such investment shall have been made such investment  
9 shall have met the requirements for investment under any other  
10 section of this title, and the insurer has notified the  
11 commissioner.

12 "§27-29-3.

13 "(a) ~~(1) Filing and approval requirements.~~ No person  
14 other than the issuer shall make a tender offer for or a  
15 request or invitation for tenders of, or enter into any  
16 agreement to exchange securities for, seek to acquire, or  
17 acquire in the open market any voting security of a domestic  
18 insurer if, after the consummation thereof, such person would,  
19 directly or indirectly, or by conversion or by exercise of any  
20 right to acquire, be in control of such insurer, and no person  
21 shall enter into an agreement to merge with or otherwise to  
22 acquire control of a domestic insurer, or any person  
23 controlling a domestic insurer unless, at the time any such  
24 offer, request, or invitation is made or any such agreement is  
25 entered into, or prior to the acquisition of such securities  
26 if no offer or agreement is involved ~~or within 15 days after~~  
27 ~~any such offer, request, or invitation is made or any such~~

1 ~~agreement is entered into,~~ such person has filed with the  
2 commissioner and has sent to such insurer a statement  
3 containing the information required by this section and such  
4 offer, request, invitation, agreement, or acquisition ~~either:~~  
5 has been approved by the commissioner in the manner prescribed  
6 in this section.

7 ~~"(1) Has been approved by the commissioner in the~~  
8 ~~manner prescribed in this section; or~~

9 ~~"(2) Expressly states that it is subject to approval~~  
10 ~~by the commissioner in the manner prescribed in this section.~~

11 ~~"An offer, request, invitation, agreement, or~~  
12 ~~acquisition which contains such a condition and which is~~  
13 ~~approved by the commissioner in the manner so prescribed shall~~  
14 ~~be effective and binding according to its terms from the date~~  
15 ~~on which it was made.~~

16 "(2) For purposes of this section, any controlling  
17 person of a domestic insurer seeking to divest its controlling  
18 interest in the domestic insurer, in any manner, shall file  
19 with the commissioner, with a copy to the insurer,  
20 confidential notice of its proposed divestiture at least 30  
21 days prior to the cessation of control. The commissioner shall  
22 determine those instances in which the party or parties  
23 seeking to divest or to acquire a controlling interest in an  
24 insurer, will be required to file for and obtain approval of  
25 the transaction. The information shall remain confidential  
26 until the conclusion of the transaction unless the  
27 commissioner, in his or her discretion, determines that

1 confidential treatment will interfere with enforcement of this  
2 section. If the statement referred to in subdivision (1) is  
3 otherwise filed, this subdivision shall not apply.

4 "(3) With respect to a transaction subject to this  
5 section, the acquiring person must also file a pre-acquisition  
6 notification with the commissioner, which shall contain the  
7 information set forth in subdivision (1) of subsection (c) of  
8 Section 27-29-3.1. A failure to file the notification may be  
9 subject to penalty specified in subdivision of (3) of  
10 subsection (e) of Section 27-29-3.1.

11 "(4) For purposes of this section:

12 "a. A domestic insurer includes any person  
13 controlling a domestic insurer unless the person, as  
14 determined by the commissioner, is either directly or through  
15 its affiliates primarily engaged in business other than the  
16 business of insurance.

17 "b. Person does not include any securities broker  
18 holding, in the usual and customary broker's function, less  
19 than 20 percent of the voting securities of an insurance  
20 company or of any person which controls an insurance company.

21 "(b) Content of statement.

22 "(1) The statement to be filed with the commissioner  
23 under this section shall be made under oath or affirmation and  
24 shall contain all of the following information:

25 "~~(1)~~a. The name and address of each person by whom,  
26 or on whose behalf, the merger or other acquisition of control  
27 referred to in subsection (a) ~~of this section~~ is to be

1 effected (hereinafter called "acquiring party"), and either of  
2 the following:

3 "a.1. If ~~such~~ the person is an individual, his or  
4 her principal occupation and all offices and positions held  
5 during the past five years, and any conviction of crimes other  
6 than minor traffic violations during the past 10 years; ~~or.~~

7 "b.2. If ~~such~~ the person is not an individual, a  
8 report of the nature of its business operations during the  
9 past five years or for ~~such~~ the lesser period as such person  
10 and any predecessors thereof shall have been in existence; an  
11 informative description of the business intended to be done by  
12 ~~such~~ the person and ~~such~~ the person's subsidiaries; and a list  
13 of all individuals who are, or who have been selected to  
14 become, directors or executive officers of ~~such~~ the person or  
15 who perform, or will perform, functions appropriate to ~~such~~  
16 the positions. ~~Such~~ The list shall include for each ~~such~~  
17 individual the information required by paragraph ~~a.~~ of this  
18 ~~subdivision;~~ subparagraph 1.

19 "~~(2)~~b. The source, nature, and amount of the  
20 consideration used, or to be used, in effecting the merger or  
21 other acquisition of control, a description of any transaction  
22 wherein funds were, or are to be, obtained for any such  
23 purpose, including any pledge of the insurer's stock, or the  
24 stock of any of its subsidiaries or controlling affiliates,  
25 and the identity of persons furnishing such consideration;  
26 provided, however, that where a source of such consideration  
27 is a loan made in the lender's ordinary course of business,

1 the identity of the lender shall remain confidential if the  
2 person filing such statement so requests~~7.~~

3 ~~"(3)c.~~ Fully audited financial information as to the  
4 earnings and financial condition of each acquiring party for  
5 the preceding five fiscal years of each such acquiring party,  
6 or for such lesser period as such acquiring party and any  
7 predecessors thereof shall have been in existence, and similar  
8 unaudited information as of a date not earlier than 90 days  
9 prior to the filing of the statement~~; provided, however, that~~  
10 ~~in the case of an acquiring party which is an insurer actively~~  
11 ~~engaged in the business of insurance, the financial statements~~  
12 ~~of such insurer need not be audited, except such audit may be~~  
13 ~~required if the need therefor is determined by the~~  
14 ~~commissioner;.~~

15 ~~"(4)d.~~ Any plans or proposals which each acquiring  
16 party may have to liquidate such insurer, to sell its assets,  
17 or to merge or consolidate it with any person or to make any  
18 other material change in its business or corporate structure  
19 or management~~7.~~

20 ~~"(5)e.~~ The number of shares of any security referred  
21 to in subsection (a) ~~of this section~~ which each acquiring  
22 party proposes to acquire, the terms of the offer, request,  
23 invitation, agreement, or acquisition referred to in  
24 subsection (a) ~~of this section~~, and a statement as to the  
25 method by which the fairness of the proposal was arrived at~~7.~~

26 ~~"(6)f.~~ The amount of each class of any security  
27 referred to in subsection (a) ~~of this section~~ which is

1       beneficially owned or concerning which there is a right to  
2       acquire beneficial ownership by each acquiring party~~7~~.

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

14              "~~(8)~~h. A description of the purchase of any security  
15      referred to in subsection (a) ~~of this section~~ during the 12  
16      calendar months preceding the filing of the statement by any  
17      acquiring party, including the dates of purchase, names of the  
18      purchasers, and consideration paid, or agreed to be paid,  
19      therefor~~7~~.

20              "~~(9)~~i. A description of any recommendations to  
21      purchase any security referred to in subsection (a) ~~of this~~  
22      ~~section~~ made during the 12 calendar months preceding the  
23      filing of the statement by any acquiring party or by anyone  
24      based upon interviews or at the suggestion of such acquiring  
25      party~~7~~.

26              "~~(10)~~j. Copies of all tender offers for, requests or  
27      invitations for tenders of, exchange offers for and agreements

1 to acquire or exchange any securities referred to in  
2 subsection (a) ~~of this section~~ and, if distributed, of  
3 additional soliciting material relating thereto~~;~~.

4 ~~"(11)k.~~ The terms of any agreement, contract, or  
5 understanding made with or proposed to be made with any  
6 broker-dealer as to solicitation of securities referred to in  
7 subsection (a) ~~of this section~~ for tender and the amount of  
8 any fees, commissions, or other compensation to be paid to  
9 broker-dealers with regard thereto~~;~~ and.

10 "1. An agreement by the person required to file the  
11 statement referred to in subsection (a) that it will provide  
12 the annual report, specified in subsection (1) of Section  
13 27-29-4, for so long as control exists.

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

20 ~~"(12)n.~~ Such additional information as the  
21 commissioner may, by rule or regulation, prescribe as  
22 necessary or appropriate for the protection of policyholders  
23 ~~and securityholders~~ of the insurer or in the public interest.

24 "(2) If the person required to file the statement  
25 referred to in subsection (a) ~~of this section~~ is a  
26 partnership, limited partnership, syndicate, or other group,  
27 the commissioner may require that the information called for

1 by ~~subdivisions (1) paragraphs a. through (12) n. of this~~  
2 ~~subsection~~ shall be given with respect to each partner of such  
3 partnership or limited partnership, each member of such  
4 syndicate or group, and each person who controls such partner  
5 or member. If any such partner, member, or person is a  
6 corporation or the person required to file the statement  
7 referred to in subsection (a) ~~of this section~~ is a  
8 corporation, the commissioner may require that the information  
9 called for by ~~subdivisions (1) paragraphs a. through (12) n.~~  
10 ~~of this subsection~~ subdivision (1) shall be given with respect  
11 to such corporation, each officer and director of such  
12 corporation, and each person who is, directly or indirectly,  
13 the beneficial owner of more than ~~15~~ 10 percent of the  
14 outstanding voting securities of such corporation. If any  
15 material change occurs in the facts set forth in the statement  
16 filed with the commissioner and sent to such insurer pursuant  
17 to this section, an amendment setting forth such change,  
18 together with copies of all documents and other materials  
19 relevant to such change, shall be filed with the commissioner  
20 and sent to such insurer within two business days after the  
21 person learns of such change. ~~Such insurer shall send such~~  
22 ~~amendment to its shareholders.~~

23 "(c) ~~Alternative filing materials.~~ If any offer,  
24 request, invitation, agreement, or acquisition referred to in  
25 subsection (a) ~~of this section~~ is proposed to be made by means  
26 of a registration statement under the Securities Act of 1933,  
27 or in circumstances requiring the disclosure of similar

1 information under the Securities Exchange Act of 1934, or  
2 under a state law requiring similar registration or  
3 disclosure, the person required to file the statement referred  
4 to in subsection (a) ~~of this section~~ may utilize such  
5 documents in furnishing the information called for by that  
6 statement.

7 "(d) ~~Approval by commissioner; hearings.~~

8 "(1) The commissioner shall approve any merger or  
9 other acquisition of control referred to in subsection (a) ~~of~~  
10 ~~this section~~ unless, after a public hearing thereon, he or she  
11 finds ~~that~~ any of the following:

12 "a. After the change of control, the domestic  
13 insurer referred to in subsection (a) ~~of this section~~ would  
14 not be able to satisfy the requirements for the issuance of a  
15 license to write the line, or lines, of insurance for which it  
16 is presently licensed~~7.~~

17 "b. The effect of the merger or other acquisition of  
18 control would be substantially to lessen competition in  
19 insurance in this state or tend to create a monopoly therein~~7.~~  
20 In applying the competitive standard in this paragraph:

21 "1. The informational requirements of subdivision  
22 (1) of subsection (c) of Section 27-29-3.1 and the standards  
23 of subdivision (2) of subsection (d) of Section 27-29-3.1  
24 shall apply.

25 "2. The merger or other acquisition shall not be  
26 disapproved if the commissioner finds that any of the

1 situations meeting the criteria provided by subdivision (3) of  
2 subsection (d) of Section 27-29-3.1 exist.

3 "3. The commissioner may condition the approval of  
4 the merger or other acquisition on the removal of the basis of  
5 disapproval within a specified period of time.

6 "c. The financial condition of any acquiring party  
7 is such as might jeopardize the financial stability of the  
8 insurer or prejudice the interest of its policyholders~~7.~~

9 "d. The plans or proposals which the acquiring party  
10 has to liquidate the insurer, to sell its assets, or to  
11 consolidate or merge it with any person or to make any other  
12 material change in its business or corporate structure or  
13 management are unfair and unreasonable to policyholders of the  
14 insurer and not in the public interest~~7 or.~~

15 "e. The competence, experience, and integrity of  
16 those persons who would control the operation of the insurer  
17 are such that it would not be in the interest of policyholders  
18 of the insurer and of the public to permit the merger or other  
19 acquisition of control.

20 "f. The acquisition is likely to be hazardous or  
21 prejudicial to the insurance-buying public.

22 "(2) The public hearing referred to in subdivision  
23 (1) ~~of this subsection~~ shall be held within ~~45~~ 30 days after  
24 the statement required by subsection (a) ~~of this section~~ is  
25 filed, and at least 20 days' notice thereof shall be given by  
26 the commissioner to the person filing the statement. Not less  
27 than ~~15~~ seven days' notice of such public hearing shall be

1 given by the person filing the statement to the insurer and to  
2 such other persons as may be designated by the commissioner.  
3 ~~The insurer shall give such notice to its securityholders.~~ The  
4 commissioner shall make a determination within ~~30 days after~~  
5 the conclusion of such hearing the 60-day period preceding the  
6 effective date of the proposed transaction. At such hearing,  
7 the person filing the statement, the insurer, any person to  
8 whom notice of hearing was sent, and any other person whose  
9 interest may be affected thereby shall have the right to  
10 present evidence, examine and cross-examine witnesses and  
11 offer oral and written arguments and, in connection therewith,  
12 shall be entitled to conduct discovery proceedings in the same  
13 manner as is presently allowed in the circuit courts of this  
14 state. All discovery proceedings shall be concluded not later  
15 than ~~five~~ three days prior to the commencement of the public  
16 hearing.

17 "(3) If the proposed acquisition of control will  
18 require the approval of more than one commissioner, the public  
19 hearing referred to in subdivision (2) may be held on a  
20 consolidated basis upon request of the person filing the  
21 statement referred to in subsection (a). The person shall file  
22 the statement referred to in subsection (a) with the National  
23 Association of Insurance Commissioners within five days of  
24 making the request for a public hearing. A commissioner may  
25 opt out of a consolidated hearing, and shall provide notice to  
26 the applicant of the opt-out within 10 days of the receipt of  
27 the statement referred to in subsection (a). A hearing

1 conducted on a consolidated basis shall be public and shall be  
2 held within the United States before the commissioners of the  
3 states in which the insurers are domiciled. The commissioners  
4 shall hear and receive evidence. A commissioner may attend the  
5 hearing, in person or by telecommunication.

6 "(4) In connection with a change of control of a  
7 domestic insurer, any determination by the commissioner that  
8 the person acquiring control of the insurer shall be required  
9 to maintain or restore the capital of the insurer to the level  
10 required by the laws and regulations of this state shall be  
11 made not later than 60 days after the date of notification of  
12 the change in control submitted pursuant to subdivision (1) of  
13 subsection (a).

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

19 ~~"(e) Mailings to stockholders; payments of expenses.~~  
20 ~~All statements, amendments, or other material filed pursuant~~  
21 ~~to subsections (a) or (b) of this section and all notices of~~  
22 ~~public hearings held pursuant to subsection (d) of this~~  
23 ~~section shall be mailed by the insurer to its stockholders~~  
24 ~~within 10 business days after the insurer has received such~~  
25 ~~statements, amendments, other material, or notices. The~~  
26 ~~expenses of mailing shall be borne by the person making the~~  
27 ~~filing. As security for the payment of such expenses, such~~

1 ~~person shall file with the commissioner an acceptable bond or~~  
2 ~~other deposit in an amount to be determined by the~~  
3 ~~commissioner.~~

4 ~~"(f)(e) Exemptions.~~ The provisions of this section  
5 shall not apply to ~~any offer, request, invitation, agreement,~~  
6 ~~or acquisition which the commissioner by order shall exempt~~  
7 ~~therefrom as:~~

8 "(1) Any transaction which is subject to the  
9 provisions of Sections 27-27-45 and 27-27-46, dealing with the  
10 merger or consolidation of two or more insurers.

11 "(2) Any offer, request, invitation, agreement, or  
12 acquisition which the commissioner by order shall exempt  
13 therefrom as either of the following:

14 ~~"(1)a.~~ Not having been made or entered into for the  
15 purpose and not having the effect of changing or influencing  
16 the control of a domestic insurer; ~~or~~

17 ~~"(2)b.~~ As otherwise not comprehended within the  
18 purposes of this section.

19 ~~"(g)(f) Violations.~~ The following shall be  
20 violations of this section:

21 "(1) The failure to file any statement, amendment,  
22 or other material required to be filed pursuant to subsections  
23 (a) or (b) ~~of this section; or.~~

24 "(2) The effectuation, or any attempt to effectuate,  
25 an acquisition of control of, or merger with, a domestic  
26 insurer unless the commissioner has given his or her approval  
27 thereto.

1           "~~(h)(g) Jurisdiction; consent to service of process.~~

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

15           "§27-29-4.

16           "~~(a) Registration.~~

17           "(1) Every insurer which is authorized to do  
18          business in this state and which is a member of an insurance  
19          holding company system shall register with the commissioner,  
20          except a foreign insurer subject to registration requirements  
21          and standards adopted by statute or regulation in the  
22          jurisdiction of its domicile which are substantially similar  
23          to those contained in this section and ~~Section 27-29-5.~~ both  
24          of the following:

25           "a. Subdivision (1) of subsection (a) of Section  
26          27-29-5, and subsections (b) and (d) of Section 27-29-5.

1           "b. Either subdivision (2) of subsection (a) of  
2           Section 27-29-5 or a provision such as the following: Each  
3           registered insurer shall keep current the information required  
4           to be disclosed in its registration statement by reporting all  
5           material changes or additions within 15 days after the end of  
6           the month in which it learns of each change or addition.

7           "(2) Any insurer which is subject to registration  
8           under this section shall register within 60 days after  
9           September 3, 1973, or 15 days after it becomes subject to  
10           registration, and annually thereafter by June 1 of each year  
11           for the previous calendar year, unless the commissioner for  
12           good cause shown extends the time for registration and, then,  
13           within such extended time. The commissioner may require any  
14           authorized insurer which is a member of a an insurance holding  
15           company system which is not subject to registration under this  
16           section to furnish a copy of the registration statement, the  
17           summary specified in subsection (c) or other information filed  
18           by such insurance company with the insurance regulatory  
19           authority of domiciliary jurisdiction.

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

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

1           "(2) The identity of every member of the insurance  
2 holding company system~~7.~~

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

7           "a. Loans, other investments or purchases, sales or  
8 exchanges of securities of the affiliates by the insurer or of  
9 the insurer by its affiliates~~7.~~

10           "b. Purchases, sales, or exchanges of assets~~7.~~

11           "c. Transactions not in the ordinary course of  
12 business~~7.~~

13           "d. Guarantees or undertakings for the benefit of an  
14 affiliate which result in an actual contingent exposure of the  
15 insurer's assets to liability, other than insurance contracts  
16 entered into in the ordinary course of the insurer's  
17 business~~7.~~

18           "e. All management agreements and service contracts  
19 and all cost-sharing arrangements~~7.~~

20           "f. Reinsurance agreements~~7.~~

21           "g. Dividends and other distributions to  
22 shareholders~~7.~~ ~~and.~~

23           "h. Consolidated tax allocation agreements~~7.~~

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

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

13           ~~"(5)(6)~~ Other matters concerning transactions  
14 between registered insurers and any affiliates as may be  
15 included, from time to time, in any registration forms adopted  
16 or approved by the commissioner.

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

22           "(8) Any other information required by the  
23 commissioner by rule.

24           "(c) All registration statements shall contain a  
25 summary outlining all items in the current registration  
26 statement representing changes from the prior registration  
27 statement.

1           "~~(c)~~(d) Materiality. No information need be  
2 disclosed on the registration statement filed pursuant to  
3 subsection (b) ~~of this section~~ if such information is not  
4 material for the purposes of this section. Unless the  
5 commissioner by rule, regulation, or order provides otherwise,  
6 sales, purchases, exchanges, loans, or extensions of credit or  
7 investments involving one-half of one percent or less of an  
8 insurer's admitted assets as of December 31, next preceding,  
9 shall not be deemed material for purposes of this section.

10           "~~(d)~~(e) Amendments to registration statements. Each  
11 registered insurer shall keep current the information required  
12 to be disclosed in its registration statement by reporting all  
13 material changes or additions on amendment forms provided by  
14 the commissioner within 15 days after the end of the month in  
15 which it learns of each such change or addition, but at least  
16 annually, as provided in subsection (a); provided, however,  
17 that subject Subject to subsection (b) of Section 27-29-5,  
18 each registered insurer shall so report all dividends and  
19 other distributions to shareholders within ~~five~~ 15 business  
20 days following the declaration thereof.

21           "(f) Any person within an insurance holding company  
22 system subject to registration shall be required to provide  
23 complete and accurate information to an insurer, where the  
24 information is reasonably necessary to enable the insurer to  
25 comply with the provisions of this chapter.

26           "~~(e)~~(g) Termination of registration. The  
27 commissioner shall terminate the registration of any insurer

1 which demonstrated that it no longer is a member of an  
2 insurance holding company system.

3 ~~"(f)(h) Consolidated filing.~~ The commissioner may  
4 require or allow two or more affiliated insurers subject to  
5 registration under this section to file a consolidated  
6 registration statement ~~or consolidated reports amending their~~  
7 ~~consolidated registration statement or their individual~~  
8 ~~registration statements.~~

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

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

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

1 After a disclaimer has been filed, the insurer shall be  
2 relieved of any duty to register or report under this section  
3 which may arise out of the insurer's relationship with such  
4 person, unless and until the commissioner disallows such a  
5 disclaimer. The commissioner shall disallow such a disclaimer  
6 only after furnishing all parties in interest with notice and  
7 opportunity to be heard and after making specific findings of  
8 fact to support such disallowance. A disclaimer of affiliation  
9 shall be deemed to have been granted unless the commissioner,  
10 within 30 days following receipt of a complete disclaimer,  
11 notifies the filing party the disclaimer is disallowed. In the  
12 event of disallowance, the disclaiming party may request an  
13 administrative hearing, which shall be granted. The  
14 disclaiming party shall be relieved of its duty to register  
15 under this section if approval of the disclaimer has been  
16 granted by the commissioner, or if the disclaimer is deemed to  
17 have been approved.

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

1           "~~(j)~~(m) ~~Violations~~. The failure to file a  
2 registration statement or any ~~amendment thereto~~ summary of the  
3 registration statement or enterprise risk filing required by  
4 this section within the time specified for ~~such~~ filing shall  
5 be a violation of this section.

6           "§27-29-5.

7           "~~(a) Transactions with affiliates. Material~~  
8 ~~transactions by registered insurers with their affiliates~~  
9 Transactions within an insurance holding company system to  
10 which an insurer subject to registration is a party shall be  
11 subject to all of the following standards:

12           "(1) The terms shall be fair and reasonable~~7~~.

13           "(2) Agreements for cost sharing services and  
14 management shall include such provisions as required by rule  
15 and regulation issued by the commissioner.

16           "~~(2)~~(3) Charges or fees for services performed shall  
17 be reasonable~~7~~.

18           "~~(3)~~(4) Expenses incurred and payment received shall  
19 be allocated to the insurer in conformity with customary  
20 insurance accounting practices consistently applied~~7~~.

21           "~~(4)~~(5) The books, accounts, and records of each  
22 party ~~will~~ to all such transactions shall be so maintained as  
23 to clearly and accurately disclose the ~~precise~~ nature and  
24 details of the transactions~~7~~ and including such accounting  
25 information as is necessary to support the reasonableness of  
26 the charges or fees to the respective parties.

1           "~~(5)~~(6) The insurer's surplus as regards  
2 policyholders following any dividends or distributions to  
3 shareholder affiliates shall be reasonable in relation to the  
4 insurer's outstanding liabilities and adequate to its  
5 financial needs.

6           "(b) (1) The following transactions involving a  
7 domestic insurer and any person in its insurance holding  
8 company system, including amendments or modifications of  
9 affiliate agreements previously filed pursuant to this section  
10 which are subject to any materiality standards contained in  
11 paragraphs a. through g., may not be entered into unless the  
12 insurer has notified the commissioner in writing of its  
13 intention to enter into ~~such~~ the transaction at least 30 days  
14 prior thereto, or such shorter period as the commissioner may  
15 permit, and the commissioner has not disapproved it within  
16 that period. The notice for amendments or modifications shall  
17 include the reasons for the change and the financial impact on  
18 the domestic insurer. Informal notice shall be reported,  
19 within 30 days after a termination of a previously filed  
20 agreement, to the commissioner for determination of the type  
21 of filing required, if any.

22           "~~(1)~~a. Sales, purchases, exchanges, loans or  
23 extensions of credit, ~~guarantees,~~ or investments provided the  
24 transactions are equal to or exceed the following:

25           "a.1. With respect to nonlife insurers, the lesser  
26 of three percent of the insurer's admitted assets or 25

1 percent of surplus as regards policyholders as of the 31st day  
2 of December next preceding~~7.~~

3 "~~b.2.~~ With respect to life insurers, three percent  
4 of the insurer's admitted assets as of the 31st day of  
5 December next preceding~~7.~~

6 "~~(2)b.~~ Loans or extensions of credit to any person  
7 who is not an affiliate, where the insurer makes loans or  
8 extensions of credit with the agreement or understanding that  
9 the proceeds of the transactions, in whole or in substantial  
10 part, are to be used to make loans or extensions of credit to,  
11 to purchase assets of, or to make investments in, any  
12 affiliate of the insurer making the loans or extensions of  
13 credit provided the transactions are equal to or exceed the  
14 following:

15 "~~a.1.~~ With respect to nonlife insurers, the lesser  
16 of three percent of the insurer's admitted assets or 25  
17 percent of surplus as regards policyholders as of the 31st day  
18 of December next preceding~~7.~~

19 "~~b.2.~~ With respect to life insurers, three percent  
20 of the insurer's admitted assets as of the 31st day of  
21 December next preceding~~7.~~

22 "~~(3)c.~~ Reinsurance agreements or modifications  
23 thereto, including:

24 "1. All reinsurance pooling agreements.

25 "2. Agreements in which the reinsurance premium or a  
26 change in the insurer's liabilities, or the projected  
27 reinsurance premium or a change in the insurer's liabilities

1 in any of the next three years, equals or exceeds five percent  
2 of the insurer's surplus as regards policyholders, as of the  
3 31st day of December next preceding, including those  
4 agreements which may require as consideration the transfer of  
5 assets from an insurer to a nonaffiliate, if an agreement or  
6 understanding exists between the insurer and nonaffiliate that  
7 any portion of ~~such~~ the assets will be transferred to one or  
8 more affiliates of the insurer~~7.~~

9 ~~"(4)~~d. All management agreements, service contracts,  
10 tax allocation agreements, guarantees and all cost-sharing  
11 arrangements; and.

12 "e. Guarantees when made by a domestic insurer;  
13 provided, however, that a guarantee which is quantifiable as  
14 to amount is not subject to the notice requirements of this  
15 paragraph unless it exceeds the lesser of one-half of one  
16 percent of the insurer's admitted assets or 10 percent of  
17 surplus as regards policyholders as of the 31st day of  
18 December next preceding. Further, all guarantees which are not  
19 quantifiable as to amount are subject to the notice  
20 requirements of this paragraph.

21 "f. Direct or indirect acquisitions or investments  
22 in a person that controls the insurer or in an affiliate of  
23 the insurer in an amount which, together with its present  
24 holdings in such investments, exceeds two and one-half percent  
25 of the insurer's surplus to policyholders. Direct or indirect  
26 acquisitions or investments in subsidiaries acquired pursuant  
27 to Section 27-29-2, or authorized under any other section of

1 this title, or in non-sub subsidiary insurance affiliates that are  
2 subject to this chapter, are exempt from this requirement.

3 ~~"(5)g.~~ Any material transactions, specified by  
4 regulation, which the commissioner determines may adversely  
5 affect the interests of the insurer's policyholders.

6 "(2) Nothing herein contained in this subsection  
7 shall be deemed to authorize or permit any transactions which,  
8 in the case of an insurer not a member of the same holding  
9 company system, would be otherwise contrary to law.

10 "(c) A domestic insurer may not enter into  
11 transactions which are part of a plan or series of like  
12 transactions with persons within the insurance holding company  
13 system if the purpose of those separate transactions is to  
14 avoid the statutory threshold amount and thus avoid the review  
15 that would occur otherwise. If the commissioner determines  
16 that such separate transactions were entered into over any  
17 12-month period for that purpose, ~~he or she~~ the commissioner  
18 may exercise his or her authority under Section 27-29-10.

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

24 "(e) The commissioner shall be notified within 30  
25 days of any investment of the domestic insurer in any one  
26 corporation if the total investment in ~~such~~ the corporation by

1 the insurance holding company system exceeds 10 percent of the  
2 corporation's voting securities.

3 "(f) ~~Adequacy of surplus.~~ For purposes of this  
4 chapter in determining whether an insurer's surplus as regards  
5 policyholders is reasonable in relation to the insurer's  
6 outstanding liabilities and adequate to meet its financial  
7 needs, the following factors, among others, shall be  
8 considered:

9 "(1) The size of the insurer as measured by its  
10 assets, capital and surplus, reserves, premium writings,  
11 insurance in force, and other appropriate criteria~~7.~~

12 "(2) The extent to which the insurer's business is  
13 diversified among the several lines of insurance~~7.~~

14 "(3) The number and size of risks insured in each  
15 line of business~~7.~~

16 "(4) The extent of the geographical dispersion of  
17 the insurer's insured risks~~7.~~

18 "(5) The nature and extent of the insurer's  
19 reinsurance program~~7.~~

20 "(6) The quality, diversification, and liquidity of  
21 the insurer's investment portfolio~~7.~~

22 "(7) The recent past and projected future trend in  
23 the size of the insurer's ~~surplus as regards policyholders,~~  
24 investment portfolio.

25 "(8) The surplus as regards policyholders maintained  
26 by other comparable insurers~~7.~~

27 "(9) The adequacy of the insurer's reserves~~7.~~

1           "(10) The quality and liquidity of investments in  
2 ~~subsidiaries made pursuant to Section 27-29-2~~ affiliates. The  
3 commissioner may treat any such investment as a disallowed  
4 asset for purposes of determining the adequacy of surplus as  
5 regards policyholders whenever, ~~in his or her~~ the judgment  
6 ~~such of the commissioner, the~~ investment so warrants; ~~and.~~

7           "~~(11) The quality of the company's earnings and the~~  
8 ~~extent to which the reported earnings include extraordinary~~  
9 ~~items.~~

10           "~~(g) Dividends and other distributions.~~

11           "(1) a. A domestic insurer shall not pay any  
12 extraordinary dividend or make any other extraordinary  
13 distribution to its shareholders until 30 days after the  
14 commissioner has received notice of the declaration ~~of the~~  
15 ~~dividend or distribution~~ thereof and has not disapproved such  
16 payment within the period, or until the time the commissioner  
17 has approved the payment within the 30-day period.

18           "b. For purposes of this ~~paragraph~~ section, an  
19 "extraordinary dividend or distribution" includes any dividend  
20 or distribution of cash or other property, whose fair market  
21 value together with that of other dividends or distributions  
22 made within the preceding 12 months exceeds the ~~greater~~ lesser  
23 of the following:

24           "a.1. Ten percent of the insurer's surplus as  
25 regards policyholders as of the 31st day of December next  
26 preceding; ~~or.~~

1           ~~"b.2.~~ The net gain from operations of the insurer,  
2 if the insurer is a life insurer, or the net income, if the  
3 insurer is not a life insurer, not including realized capital  
4 gains or the pro rata distribution of any class of the  
5 insurer's own securities, for the 12-month period ending the  
6 31st day of December next preceding ~~. An extraordinary~~  
7 ~~dividend or distribution does not include pro rata~~  
8 ~~distributions of any class of the insurer's own securities.~~

9           "(2) A domestic insurer subject to registration  
10 under Section 27-29-4 shall report to the commissioner all  
11 dividends to shareholders within five business days following  
12 the declaration of the dividends and not less than 10 days  
13 prior to the payment of the dividends. This report shall also  
14 include a schedule setting forth all dividends or other  
15 distributions made within the previous 12 months.

16           "(3) In determining whether a dividend or  
17 distribution is extraordinary, an insurer other than a life  
18 insurer may carry forward net income from the previous two  
19 calendar years that has not already been paid out as  
20 dividends. This carryforward shall be computed by taking the  
21 net income from the second and third preceding calendar years,  
22 not including realized capital gains, less dividends paid in  
23 the second and immediate preceding calendar years.

24           ~~"(3)~~(4) Notwithstanding any other provision of law,  
25 ~~a domestic~~ an insurer may declare an extraordinary dividend or  
26 distribution which is conditional upon the commissioner's  
27 approval of the dividend or distribution. ~~Such~~ The declaration

1 ~~does not~~ shall confer ~~any~~ no rights upon shareholders until  
2 the commissioner has approved the payment of the dividend or  
3 distribution or the commissioner has not disapproved the  
4 payment within the 30-day period as provided in subdivision  
5 (1).

6 ~~"(4)(5)~~ The commissioner shall assess such  
7 reasonable charges as he or she deems necessary for the review  
8 conducted pursuant to this section. All funds received shall  
9 be deposited in the State Treasury to the credit of the  
10 Special Examination Revolving Fund, from which the expenses  
11 incurred shall be paid.

12 "(h) (1) Notwithstanding the control of a domestic  
13 insurer by any person, the officers and directors of the  
14 insurer shall not thereby be relieved of any obligation or  
15 liability to which they would otherwise be subject by law, and  
16 the insurer shall be managed so as to assure its separate  
17 operating identity consistent with this chapter.

18 "(2) Nothing in this section shall preclude a  
19 domestic insurer from having or sharing a common management or  
20 cooperative or joint use of personnel, property, or services  
21 with one or more other persons under arrangements meeting the  
22 standards set forth in subsection (a).

23 "(3) Not less than one-third of the directors of a  
24 domestic insurer, and not less than one-third of the members  
25 of each committee of the board of directors of any domestic  
26 insurer shall be persons who are not officers or employees of  
27 the insurer or of any entity controlling, controlled by, or

1 under common control with the insurer and who are not  
2 beneficial owners of a controlling interest in the voting  
3 stock of the insurer or entity. At least one such person must  
4 be included in any quorum for the transaction of business at  
5 any meeting of the board of directors or any committee  
6 thereof.

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

19 "(5) The provisions of subdivisions (3) and (4)  
20 shall not apply to a domestic insurer if the person  
21 controlling the insurer, such as an insurer, a mutual  
22 insurance holding company, or a publicly held corporation, has  
23 a board of directors and committees thereof that meet the  
24 requirements of subdivisions (3) and (4) with respect to the  
25 controlling entity.

26 "(6) An insurer may make application to the  
27 commissioner for a waiver from the requirements of this

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

12 "§27-29-6.

13 "(a) ~~Power of commissioner.~~ Subject to the  
14 limitation contained in this section and in addition to the  
15 powers which the commissioner has under Sections 27-2-7,  
16 27-2-21, 27-2-23, and 27-2-26, relating to the examination of  
17 insurers, the commissioner shall also have the power to ~~order~~  
18 examine any insurer registered under Section 27-29-4 ~~to~~  
19 ~~produce such records, books, or other information papers in~~  
20 ~~the possession of the insurer, or its affiliates, as shall be~~  
21 ~~necessary and its affiliates~~ to ascertain the financial  
22 condition ~~or legality of conduct of such~~ the insurer, ~~and to~~  
23 ~~verify the information required to be contained in the~~  
24 ~~insurer's registration statement and any additional~~  
25 ~~information pertinent to transactions between the insurer and~~  
26 ~~its affiliates. In the event such insurer fails to comply with~~  
27 ~~such order, the commissioner shall have the power to examine~~

1 ~~such affiliates to obtain such information including the~~  
2 ~~enterprise risk to the insurer by the ultimate controlling~~  
3 ~~party, by any entity or combination of entities within the~~  
4 ~~insurance holding company system, or by the insurance holding~~  
5 ~~company system on a consolidated basis.~~

6 ~~"(b) Purpose and limitation of examination. The~~  
7 ~~commissioner shall exercise his power under subsection (a) of~~  
8 ~~this section only if the examination of the insurer under~~  
9 ~~Sections 27-2-7, 27-2-21, 27-2-23, and 27-2-26 is inadequate~~  
10 ~~or the interests of the policyholders of such insurer may be~~  
11 ~~adversely affected.~~

12 ~~"(b) (1) The commissioner may order any insurer~~  
13 ~~registered under Section 27-29-4 to produce such records,~~  
14 ~~books, or other information papers in the possession of the~~  
15 ~~insurer or its affiliates as are reasonably necessary to~~  
16 ~~determine compliance with this title.~~

17 ~~"(2) To determine compliance with this title, the~~  
18 ~~commissioner may order any insurer registered under Section~~  
19 ~~27-29-4 to produce information not in the possession of the~~  
20 ~~insurer if the insurer can obtain access to such information~~  
21 ~~pursuant to contractual relationships, statutory obligations,~~  
22 ~~or other methods. In the event the insurer cannot obtain the~~  
23 ~~information requested by the commissioner, the insurer shall~~  
24 ~~provide the commissioner a detailed explanation of the reason~~  
25 ~~that the insurer cannot obtain the information and the~~  
26 ~~identity of the holder of information. Whenever it appears to~~  
27 ~~the commissioner that the detailed explanation is without~~

1 merit, the commissioner may require, after notice and hearing,  
2 the insurer to pay a penalty of up to one thousand dollars  
3 (\$1,000) for each day's delay, or may suspend or revoke the  
4 insurer's license.

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

13 " ~~(d) Expenses.~~ Each registered insurer producing for  
14 examination records, books, and papers pursuant to subsection  
15 (a) ~~of this section~~ shall be liable for and shall pay the  
16 expense of such examination as provided in Section 27-2-25.

17 "(e) In the event the insurer fails to comply with  
18 an order, the commissioner shall have the power to examine the  
19 affiliates to obtain the information. The commissioner shall  
20 also have the power to issue subpoenas, to administer oaths,  
21 and to examine under oath any person for purposes of  
22 determining compliance with this section. Upon the failure or  
23 refusal of any person to obey a subpoena, the commissioner may  
24 petition a court of competent jurisdiction, and upon proper  
25 showing, the court may enter an order compelling the witness  
26 to appear and testify or produce documentary evidence. Failure  
27 to obey the court order shall be punishable as contempt of

1 court. Every person shall be obliged to attend as a witness at  
2 the place specified in the subpoena, when subpoenaed, anywhere  
3 within the state. He or she shall be entitled to the same fees  
4 and mileage, if claimed, as a witness in circuit court, which  
5 fees, mileage, and actual expense, if any, necessarily  
6 incurred in securing the attendance of witnesses, and their  
7 testimony, shall be itemized and charged against, and be paid  
8 by, the company being examined.

9 "§27-29-7.

10 "(a) All information, documents, materials or other  
11 information, and copies thereof, in the possession or control  
12 of the Department of Insurance that are obtained by or  
13 disclosed to the commissioner or any other person in the  
14 course of an examination or investigation made pursuant to  
15 Section 27-29-6 and all information reported pursuant to  
16 subdivisions (12) and (13) of subsection (b) of Section  
17 27-29-3, Section 27-29-4, and Section 27-29-5 shall be given  
18 confidential treatment by law and privileged, shall not be  
19 subject to any open records, freedom of information, sunshine  
20 or other public record disclosure laws, shall not be subject  
21 to subpoena, shall not be subject to discovery or admissible  
22 in evidence in any private civil action, and shall not be made  
23 public by the commissioner or any other person, except to  
24 insurance departments of other states, without the prior  
25 written consent of the insurer to which it pertains unless the  
26 commissioner, after giving the insurer and its affiliates who  
27 would be affected thereby not less than five days' written

1 notice and opportunity to be heard, determines that the  
2 interests of policyholders, shareholders, or the public will  
3 be served by the publication thereof, in which event he may  
4 publish all, or any part thereof, in such manner as he may  
5 deem appropriate.

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

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

16 "(1) May share documents, materials, or other  
17 information, including the confidential and privileged  
18 documents, materials, or information subject to subsection  
19 (a), with other state, federal, and international regulatory  
20 agencies, with the National Association of Insurance  
21 Commissioners and its affiliates and subsidiaries, and with  
22 state, federal, and international law enforcement authorities,  
23 including members of any supervisory college described in  
24 Section 27-29-6.1, provided that the recipient agrees in  
25 writing to maintain the confidentiality and privileged status  
26 of the document, material, or other information, and has

1 verified in writing the legal authority to maintain  
2 confidentiality.

3 "(2) Notwithstanding subdivision (1) above, may  
4 share confidential and privileged documents, material, or  
5 information reported pursuant to subsection (1) of Section  
6 27-29-4 only with commissioners of states having statutes or  
7 regulations substantially similar to subsection (a) and who  
8 have agreed in writing not to disclose such information.

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

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

24 "a. Specify procedures and protocols regarding the  
25 confidentiality and security of information shared with the  
26 National Association of Insurance Commissioners and its  
27 affiliates and subsidiaries pursuant to this chapter,

1 including procedures and protocols for sharing by the National  
2 Association of Insurance Commissioners with other state,  
3 federal, or international regulators.

4 "b. Specify that ownership of information shared  
5 with the National Association of Insurance Commissioners and  
6 its affiliates and subsidiaries pursuant to this chapter  
7 remains with the commissioner and the National Association of  
8 Insurance Commissioners use of the information by the National  
9 Association of Insurance Commissioners is subject to the  
10 direction of the commissioner.

11 "c. Require prompt notice to be given to an insurer  
12 whose confidential information in the possession of the  
13 National Association of Insurance Commissioners pursuant to  
14 this chapter is subject to a request or subpoena to the  
15 National Association of Insurance Commissioners for disclosure  
16 or production.

17 "d. Require the National Association of Insurance  
18 Commissioners and its affiliates and subsidiaries to consent  
19 to intervention by an insurer in any judicial or  
20 administrative action in which the National Association of  
21 Insurance Commissioners and its affiliates and subsidiaries  
22 may be required to disclose confidential information about the  
23 insurer shared with the National Association of Insurance  
24 Commissioners and its affiliates and subsidiaries pursuant to  
25 this chapter.

26 "(d) The sharing of information by the commissioner  
27 pursuant to this chapter shall not constitute a delegation of

1 regulatory authority or rulemaking, and the commissioner is  
2 solely responsible for the administration, execution, and  
3 enforcement of this chapter.

4 "(e) No waiver of any applicable privilege or claim  
5 of confidentiality in the documents, materials, or information  
6 shall occur as a result of disclosure to the commissioner  
7 under this section or as a result of sharing as authorized in  
8 subsection (c).

9 "(f) Documents, materials, or other information in  
10 the possession or control of the National Association of  
11 Insurance Commissioners pursuant to this chapter shall be  
12 confidential by law and privileged, shall not be subject to  
13 open records, freedom of information, sunshine or other public  
14 records disclosure laws, shall not be subject to subpoena, and  
15 shall not be subject to discovery or admissible in evidence in  
16 any private civil action.

17 "§27-29-10.

18 "(a) Any insurer failing, without just cause, to  
19 file any registration statement as required in this chapter  
20 shall be required, after notice and hearing, to pay a penalty  
21 of up to one thousand dollars (\$1,000) for each day's delay,  
22 to be recovered by the commissioner and the penalty so  
23 recovered shall be paid into the state General Fund. The  
24 maximum penalty under this section is fifty thousand dollars  
25 (\$50,000). The commissioner may reduce the penalty if the  
26 insurer demonstrates to the commissioner that the imposition

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

3 "(b) Every director or officer of an insurance  
4 holding company system who knowingly violates, participates  
5 in, or assents to, or who knowingly shall permit any of the  
6 officers or agents of the insurer to engage in transactions or  
7 make investments that have not been properly reported or  
8 submitted pursuant to subsection (a) of Section 27-29-4,  
9 subdivision (1) of subsection (b) of Section 27-29-5, or  
10 subsection (g) of Section 27-29-5, or which violate this  
11 chapter, shall pay, in their individual capacity, a civil  
12 forfeiture of not more than ten thousand dollars (\$10,000) per  
13 violation, after notice and hearing before the commissioner.  
14 In determining the amount of the civil forfeiture, the  
15 commissioner shall take into account the appropriateness of  
16 the forfeiture with respect to the gravity of the violation,  
17 the history of previous violations, and such other matters as  
18 justice may require.

19 "(c) Whenever it appears to the commissioner that  
20 any insurer subject to this chapter or any director, officer,  
21 employee, or agent thereof has engaged in any transaction or  
22 entered into a contract which is subject to Section 27-29-5  
23 and which would not have been approved had the approval been  
24 requested, the commissioner may order the insurer to cease and  
25 desist immediately any further activity under that transaction  
26 or contract. After notice and hearing, the commissioner may  
27 also order the insurer to void any contracts and restore the

1 status quo if the action is in the best interest of the  
2 policyholders, creditors, or the public.

3 "(d) Whenever it appears to the commissioner that  
4 any insurer or any director, officer, employee, or agent  
5 thereof has committed a willful violation of this chapter, the  
6 commissioner may cause criminal proceedings to be instituted  
7 by the district attorney for the county in which the principal  
8 office of the insurer is located, or if such insurer has no  
9 such office in the state, then by the District Attorney for  
10 Montgomery County, against such insurer or the responsible  
11 director, officer, employee, or agent thereof. Any insurer  
12 which willfully violates this chapter may upon conviction be  
13 fined not more than ~~(\$10,000.00)~~ ten thousand dollars  
14 (\$10,000). Any individual who willfully violates this chapter  
15 may upon conviction be fined not more than ~~\$1,000.00~~ one  
16 thousand dollars (\$1,000) or, if such willful violation  
17 involves the deliberate perpetration of a fraud upon the  
18 commissioner, imprisoned not more than two years, or both.

19 "(e) Any officer, director, or employee of an  
20 insurance holding company system who willfully and knowingly  
21 subscribes to or makes or causes to be made any false  
22 statements or false reports or false filings with the intent  
23 to deceive the commissioner in the performance of his or her  
24 duties under this chapter, upon conviction, shall be  
25 imprisoned for not more than five years or fined fifty  
26 thousand dollars (\$50,000), or both. Any fines imposed shall

1 be paid by the officer, director, or employee in his or her  
2 individual capacity.

3 "(f) Whenever it appears to the commissioner that  
4 any person has committed a violation of Section 27-29-3 and  
5 which prevents the full understanding of the enterprise risk  
6 to the insurer by affiliates or by the insurance holding  
7 company system, the violation may serve as an independent  
8 basis for disapproving dividends or distributions and for  
9 placing the insurer under an order of supervision in  
10 accordance with Section 27-2-33.

11 "§27-34-54.

12 "In addition to the provisions heretofore contained  
13 or referred to in this chapter, other chapters and provisions  
14 of this title shall apply to fraternal benefit societies, to  
15 the extent applicable and not in conflict with the express  
16 provisions of this chapter, and the reasonable implications  
17 thereof, as follows:

18 "(1) Chapter 1~~7~~.

19 "(2) Chapter 2~~7~~.

20 "(3) The following sections of Chapter 3:

21 "a. Section 27-3-4~~7~~ and.

22 "b. Section 27-3-5~~7~~.

23 "(4) The following sections of Chapter 10:

24 "a. Section 27-10-1~~7~~.

25 "b. Section 27-10-2~~7~~ and.

26 "c. Section 27-10-3~~7~~.

27 "(5) Chapter 12~~7~~.

1           "(6) Section 27-15-29~~7~~.

2           "(7) The following sections of Chapter 27:

3           "a. Section 27-27-26~~7~~.

4           "b. Section 27-27-27~~7~~.

5           "c. Section 27-27-29; ~~and.~~

6           "d. Section 27-27-50; ~~and.~~

7           "(8) Chapter 32.

8           "(9) Chapter 29."

9           Section 3. Sections 27-29-3.1, 27-29-6.1, and  
10         27-29-11.1 are added to the Code of Alabama 1975, to read as  
11         follows:

12                 §27-29-3.1.

13                 (a) The following definitions shall apply for the  
14         purposes of this section only:

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

21                         (2) INVOLVED INSURER. Includes an insurer which  
22         either acquires or is acquired, is affiliated with an acquirer  
23         or acquired, or is the result of a merger.

24                 (b) (1) Except as exempted in subdivision (2), this  
25         section applies to any acquisition in which there is a change  
26         in control of an insurer authorized to do business in this  
27         state.

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

2 a. A purchase of securities solely for investment  
3 purposes so long as the securities, by voting or otherwise,  
4 are not used to cause or attempt to cause the substantial  
5 lessening of competition in any insurance market in this  
6 state. If a purchase of securities results in a presumption of  
7 control under subsection (c) of Section 27-29-1, it is not  
8 solely for investment purposes unless the commissioner of the  
9 insurer's state of domicile accepts a disclaimer of control or  
10 affirmatively finds that control does not exist and the  
11 disclaimer action or affirmative finding is communicated by  
12 the domiciliary commissioner to the commissioner of this  
13 state.

14 b. The acquisition of a person by another person  
15 when both persons are neither directly nor through affiliates  
16 primarily engaged in the business of insurance, if  
17 pre-acquisition notification is filed with the commissioner in  
18 accordance with subdivision (1) of subsection (c) 30 days  
19 prior to the proposed effective date of the acquisition.  
20 However, such pre-acquisition notification is not required for  
21 exclusion from this section if the acquisition would otherwise  
22 be excluded from this section by any other paragraph of  
23 subdivision (2) of subsection (b).

24 c. The acquisition of already affiliated persons.

25 d.1. An acquisition if, as an immediate result of  
26 the acquisition, any of the follow occurs:

1 (i) The combined market share of the involved  
2 insurers does not exceed five percent of the total market in  
3 any market.

4 (ii) There is no increase in any market share.

5 (iii) Both of the following do not occur in any  
6 market:

7 A. The combined market share of the involved  
8 insurers exceeds 12 percent of the total market.

9 B. The market share increases by more than two  
10 percent of the total market.

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

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

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

1           (c) An acquisition covered by subsection (d) may be  
2 subject to an order pursuant to subsection (e) unless the  
3 acquiring person files a pre-acquisition notification and the  
4 waiting period has expired. The acquired person may file a  
5 pre-acquisition notification. The commissioner shall give  
6 confidential treatment to information submitted under this  
7 subsection in the same manner as provided in Section 27-29-7.

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

22           (2) The waiting period required shall begin on the  
23 date of receipt of the commissioner of a pre-acquisition  
24 notification and shall end on the earlier of the thirtieth day  
25 after the date of receipt, or termination of the waiting  
26 period by the commissioner. Prior to the end of the waiting  
27 period, the commissioner, on a one-time basis, may require the

1 submission of additional needed information relevant to the  
2 proposed acquisition, in which event the waiting period shall  
3 end on the earlier of the thirtieth day after receipt of the  
4 additional information by the commissioner or termination of  
5 the waiting period by the commissioner.

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

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

16 a.1. Any acquisition covered under subsection (b)  
17 involving two or more insurers competing in the same market is  
18 prima facie evidence of violation of the competitive  
19 standards.

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

22 Insurer A	Insurer B
23 4%	4% or more
24 10%	2% or more
25 15%	1% or more

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

4 Insurer A	Insurer B
5 5%	5% or more
6 10%	4% or more
7 15%	3% or more
8 19%	1% or more

9 2. A highly concentrated market is one in which the  
10 share of the four largest insurers is 75 percent or more of  
11 the market. Percentages not shown in the tables are  
12 interpolated proportionately to the percentages that are  
13 shown. If more than two insurers are involved, exceeding the  
14 total of the two columns in the table is prima facie evidence  
15 of violation of the competitive standard in subdivision (1).  
16 For the purpose of this paragraph, the insurer with the  
17 largest share of the 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  
20 of the largest insurers in the market, from the two largest to  
21 the eight largest, has increased by seven percent or more of  
22 the market over a period of time extending from any base year

1 five to 10 years prior to the acquisition up to the time of  
2 the acquisition. Any acquisition or merger covered under  
3 subsection (b) involving two or more insurers competing in the  
4 same market is prima facie evidence of violation of the  
5 competitive standard in subdivision (1) if all of the  
6 following occur:

7 1. There is a significant trend toward increased  
8 concentration in the market.

9 2. One of the insurers involved is one of the  
10 insurers in a grouping of large insurers showing the requisite  
11 increase in the market share.

12 3. Another involved insurer's market is two percent  
13 or more.

14 c. For the purposes of this subdivision:

15 1. "Insurer" includes any company or group of  
16 companies under common management, ownership, or control.

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

1 and the relevant geographical market is assumed to be this  
2 state.

3 3. The burden of showing prima facie evidence of  
4 violation of the competitive standard rests upon the  
5 commissioner.

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

19 (3) An order may not be entered under subdivision  
20 (1) of subsection (e) in either of the following instances:

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

26 b. The acquisition will substantially increase the  
27 availability of insurance, and the public benefits of the

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

3 (e) (1)a. If an acquisition violates the standards of  
4 this section, the commissioner may enter an order doing either  
5 of the following:

6 1. Requiring an involved insurer to cease and desist  
7 from doing business in this state with respect to the line or  
8 lines of insurance involved in the violation.

9 2. Denying the application of an acquired or  
10 acquiring insurer for a license to do business in this state.

11 b. The order shall not be entered unless all of the  
12 following occur:

13 1. There is a hearing.

14 2. Notice of the hearing is issued prior to the end  
15 of the waiting period and not less than 15 days prior to the  
16 hearing.

17 3. The hearing is concluded and the order is issued  
18 no later than 60 days after the date of the filing of the  
19 pre-acquisition notification with the commissioner.

20 c. Every order shall be accompanied by a written  
21 decision of the commissioner setting forth findings of fact  
22 and conclusions of law.

23 d. An order pursuant to this paragraph shall not  
24 apply if the acquisition is not consummated.

25 (2) Any person who violates a cease and desist order  
26 of the commissioner under subdivision (1) while the order is

1 in effect, after notice and hearing and upon order of the  
2 commissioner, is subject to one or more of the following:

3 a. A monetary penalty of not more than ten thousand  
4 dollars (\$10,000) for every day of violation.

5 b. Suspension or revocation of the person's license.

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

11 (f) Subsections (b) and (c) of Section 27-29-9 and  
12 Section 27-29-11 do not apply to acquisitions covered under  
13 subsection (b).

14 §27-29-6.1.

15 (a) With respect to any insurer registered under  
16 Section 27-29-4, and in accordance with subsection (c), the  
17 commissioner shall also have the power to participate in a  
18 supervisory college for any domestic insurer that is part of  
19 an insurance holding company system with international  
20 operations in order to determine compliance by the insurer  
21 with this title. The powers of the commissioner with respect  
22 to supervisory colleges include, but are not limited to, the  
23 following:

24 (1) Initiating the establishment of a supervisory  
25 college.

26 (2) Clarifying the membership and participation of  
27 other supervisors in the supervisory college.

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

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

7           (5) Establishing a crisis management plan.

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

18           (c) In order to assess the business strategy,  
19 financial position, legal and regulatory position, risk  
20 exposure, risk management, and governance processes, and as  
21 part of the examination of individual insurers in accordance  
22 with Section 27-29-6, the commissioner may participate in a  
23 supervisory college with other regulators charged with  
24 supervision of the insurer or its affiliates, including other  
25 state, federal, and international regulatory agencies. The  
26 commissioner may enter into agreements in accordance with  
27 subsection (c) of Section 27-29-7 providing the basis for

1 cooperation between the commissioner and the other regulatory  
2 agencies, and the activities of the supervisory college.  
3 Nothing in this section shall delegate to the supervisory  
4 college the authority of the commissioner to regulate or  
5 supervise the insurer or its affiliates within its  
6 jurisdiction.

7 §27-29-11.1.

8 (a) If an order for liquidation or rehabilitation of  
9 a domestic insurer has been entered, the receiver appointed  
10 under the order shall have a right to recover on behalf of the  
11 insurer, (1) from any parent corporation or holding company or  
12 person or affiliate who otherwise controlled the insurer, the  
13 amount of distributions, other than distributions of shares of  
14 the same class of stock, paid by the insurer on its capital  
15 stock, or (2) any payment in the form of a bonus, termination  
16 settlement, or extraordinary lump sum salary adjustment made  
17 by the insurer or its subsidiary to a director, officer, or  
18 employee, where the distribution or payment pursuant to (1) or  
19 (2) is made at any time during the one year preceding the  
20 petition for liquidation, conservation, or rehabilitation, as  
21 the case may be, subject to the limitations of subsections  
22 (b), (c), and (d).

23 (b) No distribution shall be recoverable if the  
24 parent or affiliate shows that when paid the distribution was  
25 lawful and reasonable, and that the insurer did not know and  
26 could not reasonably have known that the distribution might

1 adversely affect the ability of the insurer to fulfill its  
2 contractual obligations.

3 (c) Any person who was a parent corporation or  
4 holding company or a person who otherwise controlled the  
5 insurer or affiliate at the time the distributions were paid  
6 shall be liable up to the amount of distributions or payments  
7 under subsection (a) which the person received. Any person who  
8 otherwise controlled the insurer at the time the distributions  
9 were declared shall be liable up to the amount of  
10 distributions that would have been received if they had been  
11 paid immediately. If two or more persons are liable with  
12 respect to the same distributions, they shall be jointly and  
13 severally liable.

14 (d) The maximum amount recoverable under this  
15 section shall be the amount needed in excess of all other  
16 available assets of the impaired or insolvent insurer to pay  
17 the contractual obligations of the impaired or insolvent  
18 insurer and to reimburse any guaranty associations.

19 (e) To the extent that any person liable under  
20 subsection (c) is insolvent or otherwise fails to pay claims  
21 due from it, its parent corporation or holding company or  
22 person who otherwise controlled it at the time the  
23 distribution was paid, shall be jointly and severally liable  
24 for any resulting deficiency in the amount recovered from the  
25 parent corporation or holding company or person who otherwise  
26 controlled it.

1                   Section 4. Although this bill would have as its  
2                   purpose or effect the requirement of a new or increased  
3                   expenditure of local funds, the bill is excluded from further  
4                   requirements and application under Amendment 621, now  
5                   appearing as Section 111.05 of the Official Recompilation of  
6                   the Constitution of Alabama of 1901, as amended, because the  
7                   bill defines a new crime or amends the definition of an  
8                   existing crime.

9                   Section 5. This act shall become effective on the  
10                  first day of January next following its passage and approval  
11                  by the Governor, or its otherwise becoming law.