

Regular Session, 2012

HOUSE BILL NO. 970

BY REPRESENTATIVE THIBAUT

INSURANCE DEPARTMENT: Provides relative to holding companies

1 AN ACT

2 To enact Subpart G-1 of Part III of Chapter 2 of Title 22 of the Louisiana Revised Statutes
3 of 1950, to be comprised of R.S. 22:691.1 through 691.27 and to repeal Subpart G
4 of Part III of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950,
5 comprised of R.S. 22:691 through 723, relative to insurance holding company
6 systems; to provide for definitions; to provide relative to subsidiaries of insurers; to
7 provide relative to investments in subsidiaries; to provide relative to acquisitions of
8 domestic insurers; to provide relative to filing requirements for persons offering to
9 acquire domestic insurers; to provide relative to public hearings in relation to denied
10 acquisition attempts; to provide for penalties for violations of holding company laws;
11 and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Subpart G-1 of Part III of Chapter 2 of Title 22 of the Louisiana Revised
14 Statutes of 1950, comprised of R.S. 22:691.1 through 691.27, is hereby enacted to read as
15 follows:

16 SUBPART G-1. INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

17 §691.1 Title

18 This Subpart shall be known and may be cited as the "Insurance Holding
19 Company System Regulatory Law".

20 §691.2 Definitions

1 As used in this Subpart, the following terms shall have these meanings unless
2 the context shall otherwise require:

3 (1) “Affiliate.” An “affiliate” of, or person “affiliated” with, a specific
4 person, is a person that directly or indirectly, through one or more intermediaries,
5 controls, or is controlled by, or is under common control with, the person specified.

6 (2) “Commissioner.” The term “commissioner” shall mean the commissioner
7 of insurance, the commissioner’s deputies, or the Department of Insurance, as
8 appropriate.

9 (3) “Control.” The term “control”, including the terms “controlling,”
10 “controlled by” and “under common control with”, means the possession, direct or
11 indirect, of the power to direct or cause the direction of the management and policies
12 of a person, whether through the ownership of voting securities, by contract other
13 than a commercial contract for goods or nonmanagement services, or otherwise,
14 unless the power is the result of an official position with or corporate office held by
15 the person. Control shall be presumed to exist if any person, directly or indirectly,
16 owns, controls, holds with the power to vote, or holds proxies representing, ten
17 percent or more of the voting securities of any other person. This presumption may
18 be rebutted by a showing made in the manner provided by R.S. 22:691.4 (E) and
19 691.6 (K) that control does not exist in fact. The commissioner may determine, that
20 control exists in fact, notwithstanding the absence of a presumption to that effect.

21 (4) “Enterprise Risk.” “Enterprise risk” shall mean any activity,
22 circumstance, event or series of events involving one or more affiliates of an insurer
23 that, if not remedied promptly, is likely to have a material adverse effect upon the
24 financial condition or liquidity of the insurer or its insurance holding company
25 system as a whole, including, but not limited to, anything that would cause the
26 insurer’s risk-based capital to fall into company action level as set forth in R.S.
27 22:611 et seq., and 631 et seq., or would cause the insurer to be in hazardous
28 financial condition.

1 (5) “Insurance Holding Company System.” An “insurance holding company
2 system” consists of two or more affiliated persons, one or more of which is an
3 insurer.

4 (6) “Insurer.” The term “insurer” shall have the same meaning as set forth
5 in R.S. 22:46(10). For the purposes of this Subpart, a health maintenance
6 organization as defined R.S. 22:242(7) shall also be considered an insurer. The term
7 “insurer” shall not include agencies, authorities or instrumentalities of the United
8 States, its possessions and territories, the Commonwealth of Puerto Rico, the District
9 of Columbia, or a state or political subdivision of a state.

10 (7) “Person.” A “person” is an individual, a corporation, a limited liability
11 company, a partnership, an association, a joint stock company, a trust, an
12 unincorporated organization, any similar entity or any combination of the foregoing
13 acting in concert, but shall not include any joint venture partnership exclusively
14 engaged in owning, managing, leasing or developing real or tangible personal
15 property.

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

20 (9) “Subsidiary.” A “subsidiary” of a specified person is an affiliate
21 controlled by such person directly or indirectly through one or more intermediaries.

22 (10) “Voting Security.” The term “voting security” shall include any security
23 convertible into or evidencing a right to acquire a voting security.

24 §691.3. Subsidiaries of insurers

25 A. Authorization. A domestic insurer, either by itself or in cooperation with
26 one or more persons, may organize or acquire one or more subsidiaries. The
27 subsidiaries may conduct any kind of business or businesses and their authority to
28 do so shall not be limited by reason of the fact that they are subsidiaries of a
29 domestic insurer.

1 B. Additional investment authority. In addition to investments in common
2 stock, preferred stock, debt obligations and other securities permitted under all other
3 sections of this Code, a domestic insurer may also:

4 (1) Invest, in common stock, preferred stock, debt obligations, and other
5 securities of one or more subsidiaries, amounts which do not exceed the lesser of ten
6 percent of the insurer's assets or fifty percent of the insurer's surplus as regards
7 policyholders, provided that after such investments, the insurer's surplus as regards
8 policyholders will be reasonable in relation to the insurer's outstanding liabilities and
9 adequate to meet its financial needs. In calculating the amount of such investments,
10 investments in domestic or foreign insurance subsidiaries and health maintenance
11 organizations shall be excluded, and each of the following shall be included:

12 (a) Total net monies or other consideration expended and obligations
13 assumed in the acquisition or formation of a subsidiary, including all organizational
14 expenses and contributions to capital and surplus of the subsidiary whether or not
15 represented by the purchase of capital stock or issuance of other securities.

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

19 (2) Invest any amount in common stock, preferred stock, debt obligations and
20 other securities of one or more subsidiaries engaged or organized to engage
21 exclusively in the ownership and management of assets authorized as investments
22 for the insurer provided that each subsidiary agrees to limit its investments in any
23 asset so that such investments will not cause the amount of the total investment of
24 the insurer to exceed any of the investment limitations specified in Paragraph (1) or
25 in any other limitations specified in this Code applicable to the insurer. For the
26 purpose of this paragraph, "the total investment of the insurer" shall include each of
27 the following:

28 (a) Any direct investment by the insurer in an asset.

29 (b) The insurer's proportionate share of any investment in an asset by any
30 subsidiary of the insurer, which shall be calculated by multiplying the

1 amount of the subsidiary's investment by the percentage of the ownership of the
2 subsidiary.

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

8 C. Exemption from investment restrictions. Investments in common stock,
9 preferred stock, debt obligations or other securities of subsidiaries made
10 pursuant to Subsection B of this Section shall not be subject to any of the otherwise
11 applicable restrictions or prohibitions contained in this Code applicable to such
12 investments of insurers.

13 D. Qualification of investment; when determined. Whether any investment
14 made pursuant to Subsection B of this Section meets the applicable requirements of
15 that Subsection is to be determined before the investment is made, by calculating the
16 applicable investment limitations as though the investment had already been made,
17 taking into account the then outstanding principal balance on all previous
18 investments in debt obligations, and the value of all previous investments in equity
19 securities as of the day they were made, net of any return of capital invested, not
20 including dividends.

21 E. Cessation of control. If an insurer ceases to control a subsidiary, it shall
22 dispose of any investment therein made pursuant to this section within three years
23 from the time of the cessation of control or within such further time as the
24 commissioner may prescribe, unless at any time after the investment shall have been
25 made, the investment shall have met the requirements for investment under any other
26 section of this Code, and the insurer has so notified the commissioner.

27 §691.4. Acquisition of control of or merger with domestic insurer

28 A. Filing requirements.

29 (1) No person other than the issuer shall make a tender offer for or a request
30 or invitation for tenders of, or enter into any agreement to exchange securities for,

1 seek to acquire, or acquire, in the open market or otherwise, any voting security of
2 a domestic insurer if, after the consummation thereof, such person would, directly
3 or indirectly, or by conversion or by exercise of any right to acquire, be in control of
4 the insurer, and no person shall enter into an agreement to merge with or otherwise
5 to acquire control of a domestic insurer or any person controlling a domestic insurer
6 unless, at the time the offer, request or invitation is made or the agreement is entered
7 into, or prior to the acquisition of the securities if no offer or agreement is involved,
8 such person has filed with the commissioner and has sent to the insurer, a statement
9 containing the information required by this Section and the offer, request, invitation,
10 agreement or acquisition has been approved by the commissioner in the manner
11 prescribed in this Subpart.

12 (2) For purposes of this Section, any controlling person of a domestic insurer
13 seeking to divest its controlling interest in the domestic insurer, in any manner, shall
14 file with the commissioner, with a copy to the insurer, confidential notice of its
15 proposed divestiture at least thirty days prior to the cessation of control. The
16 commissioner shall determine those instances in which the person seeking to divest
17 or to acquire a controlling interest in an insurer, will be required to file for and obtain
18 approval of the transaction. The information shall remain confidential until the
19 conclusion of the transaction unless the commissioner, in his or her discretion
20 determines that confidential treatment will interfere with enforcement of this Section.
21 If the statement referred to in Paragraph (1) of this Subsection is otherwise filed, this
22 Paragraph shall not apply.

23 (3) With respect to a transaction subject to this Section, the acquiring person
24 must also file a pre-acquisition notification with the commissioner, which shall
25 contain the information set forth in R.S. 22:691.5(C)(1). Failure to file the
26 notification may subject such acquiring person to the penalties specified in R.S.
27 22:691.5 E(3).

28 (4) For purposes of this Section a domestic insurer shall include any person
29 controlling a domestic insurer unless the person, as determined by the commissioner,
30 is either directly or through its affiliates primarily engaged in business other than the

1 business of insurance. For the purposes of this Section, “person” shall not include
2 any securities broker holding, in the usual and customary broker’s function, less than
3 twenty percent of the voting securities of an insurance company or of any person
4 which controls an insurance company.

5 B. Content of Statement. The statement to be filed with the commissioner
6 shall be made under oath or affirmation and shall contain a complete disclosure of
7 the following information:

8 (1) The name and address of each person by whom or on whose behalf the
9 merger or other acquisition of control referred to in Subsection A of this Section is
10 to be effected, hereinafter called the “acquiring party.”

11 (a) If the person is an individual, he shall also disclose his principal
12 occupation and all offices and positions held during the past five years, and any
13 conviction of crimes other than minor traffic violations during the past ten years.

14 (b) If the person is not an individual, it shall include a report that
15 discloses the following information:

16 (i) The nature of its business operations during the past five years or for such
17 lesser period as such person any predecessors thereof have been in existence.

18 (ii) An informative description of the business intended to be done by the
19 person and the person’s subsidiaries.

20 (iii) A list of all individuals who are or who have been selected to become
21 directors or executive officers of the person, or who perform or will perform
22 functions appropriate to such positions. The list shall include for each individual the
23 information required by Subparagraph (a) of this Paragraph.

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

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

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

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

11 (5) The number of shares of any security referred to in Subsection A of this
12 Section which each acquiring party proposes to acquire; the terms of the offer,
13 request, invitation, agreement or acquisition referred to in Subsection A of this
14 Section; and a statement as to the method by which the fairness of the proposal was
15 arrived.

16 (6) The amount of each class of any security referred to in Subsection A of
17 this Section which is beneficially owned or concerning which there is a right to
18 acquire beneficial ownership by each acquiring party.

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

26 (8) A description of the purchase of any security referred to in Subsection A
27 of this Section during the twelve calendar months preceding the filing of the
28 statement by any acquiring party, including the dates of purchase, names of the
29 purchasers and consideration paid or agreed to be paid.

1 (9) A description of any recommendations to purchase any security referred
2 to in Subsection A of this Section made during the twelve calendar months preceding
3 the filing of the statement by any acquiring party, or by anyone based upon
4 interviews or at the suggestion of the acquiring party.

5 (10) Copies of all tender offers for, requests, or invitations for tenders of,
6 exchange offers for, and agreements to acquire or exchange any securities referred
7 to in Subsection A of this Section, and, if distributed, of additional soliciting material
8 relating to them.

9 (11) The term of any agreement, contract or understanding made with or
10 proposed to be made with any broker-dealer as to solicitation of securities referred
11 to in Subsection A of this Section for tender, and the amount of any fees,
12 commissions or other compensation to be paid to broker-dealers with regard thereto.

13 (12) An agreement by the person required to file the statement referred to in
14 Subsection A of this Section that it will provide the annual report, specified in R.S.
15 22:691.6(L) for so long as control exists.

16 (13) An acknowledgment by the person required to file the statement referred
17 to in Subsection A of this Section that the person and all subsidiaries within its
18 control in the insurance holding company system will provide information to the
19 commissioner upon request as necessary to evaluate enterprise risk to the insurer.

20 (14) Such additional information as the commissioner may by rule or
21 regulation prescribe as necessary or appropriate for the protection of policyholders
22 of the insurer or in the public interest.

23 C.(1) If the person required to file the statement referred to in Subsection A
24 of this Section is a partnership, limited partnership, syndicate or other group, the
25 commissioner may require that the information called for by Paragraphs (1) through
26 (14) of this Subsection shall be given with respect to each partner of the partnership
27 or limited partnership, each member of the syndicate or group, and each person who
28 controls the partner or member. If any partner, member or person is a corporation
29 or the person required to file the statement referred to in Subsection A of this Section
30 is a corporation, the commissioner may require that the information called for by

1 Paragraphs (1) through (14) of this Subsection shall be given with respect to the
2 corporation, each officer and director of the corporation, and each person who is
3 directly or indirectly the beneficial owner of more than ten percent of the outstanding
4 voting securities of the corporation.

5 (2) If any material change occurs in the facts set forth in the statement filed
6 with the commissioner and sent to the insurer pursuant to this Section, an amendment
7 setting forth the change, together with copies of all documents and other material
8 relevant to the change, shall be filed with the commissioner and sent to the insurer
9 within two business days after the person learns of the change.

10 D. Alternative Filing Materials. If any offer, request, invitation, agreement
11 or acquisition referred to in Subsection A of this Section is proposed to be made by
12 means of a registration statement under the Securities Act of 1933 or in
13 circumstances requiring the disclosure of similar information under the Securities
14 Exchange Act of 1934, or under a state law requiring similar registration or
15 disclosure, the person required to file the statement referred to in Subsection A of
16 this Section may utilize the documents in furnishing the information called for by
17 that statement.

18 E. Approval by Commissioner: Hearings.

19 (1) The commissioner shall approve any merger or other acquisition of
20 control referred to in Subsection A of this Section unless, after a public hearing, the
21 commissioner makes any of the following findings:

22 (a) After the change of control, the domestic insurer referred to in
23 Subsection A of this Section would not be able to satisfy the requirements for the
24 issuance of a license to write the line or lines of insurance for which it is presently
25 licensed.

26 (b) The effect of the merger or other acquisition of control would be
27 to substantially lessen competition in insurance in this state or tend to create a
28 monopoly. In applying the competitive standard mandated by this Subparagraph,
29 the following factors shall apply:

1 (i) The informational requirements of R.S. 22:691.5 C(1) and the standards
2 of R.S. 22:691.5(D)(2).

3 (ii) The merger or other acquisition shall not be disapproved if the
4 commissioner finds that any of the situations meeting the criteria provided by R.S.
5 22:691.35 (D)(3) exist.

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

9 (c) The financial condition of any acquiring party is such as might
10 jeopardize the financial stability of the insurer, or prejudice the interest of its
11 policyholders.

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

16 (e) The competence, experience, and integrity of those persons who would
17 control the operation of the insurer are such that it would not be in the interest of
18 policyholders 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 prejudicial to the
21 insurance-buying public.

22 (2) The public hearing referred to in Paragraph (1) of this Subsection shall
23 be held within thirty days after the statement required by Subsection A of this
24 Section is filed, and at least twenty days notice shall be given by the commissioner
25 to the person filing the statement and to the insurer. The commissioner shall publish
26 a notice of the hearing in a daily newspaper in each of the congressional districts of
27 the state for at least three consecutive days. The last date of publication shall be not
28 less than ten days prior to the date of the hearing. Such notice shall include the name
29 of the insurer and the name person or persons who have filed the statement pursuant
30 to Subsection A of this Section. The commissioner shall make a determination within

1 the thirty day period after the conclusion of such hearing. At the hearing, the person
2 filing the statement, the insurer, any person to whom notice of hearing was sent, and
3 any other person whose interest may be affected shall have the right to present
4 evidence, examine and cross examine witnesses, and offer oral and written
5 arguments, and in connection with such hearing shall be entitled to conduct
6 discovery proceedings in the same manner as is presently allowed in the district
7 courts of this state. All discovery proceedings shall be concluded not later than
8 three days prior to the commencement of the public hearing.

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

22 (4) In connection with a change of control of a domestic insurer, any
23 determination by the commissioner that the person acquiring control of the insurer
24 shall be required to maintain or restore the capital of the insurer to the level required
25 by the laws and regulations of this state shall be made not later than sixty days after
26 the date of notification of the change in control submitted pursuant to Paragraph (1)
27 of Subsection A of this Section.

28 (5) The commissioner may retain at the acquiring person's expense any
29 attorneys, actuaries, accountants and other experts not otherwise a part of the

1 commissioner's staff as may be reasonably necessary to assist the commissioner in
2 reviewing the proposed acquisition of control.

3 F. Exemptions.

4 (1) The provisions of this Section shall not apply to any offer, request,
5 invitation, agreement or acquisition which the commissioner, by order, shall exempt
6 for any of the following reasons:

7 (a) The offer or agreement was not made or entered into for the purpose of,
8 and did not have the effect of hanging or influencing the control of a domestic
9 insurer.

10 (b) The offer or agreement was not otherwise comprehended within the
11 purposes of this Section.

12 (c) The change in control results from an inheritance, donation, or similar
13 type transfer of ownership.

14 (2) Exemptions pursuant to Subparagraphs (a) or (b) of Paragraph (1) must
15 be requested and granted by the commissioner prior to the transaction.

16 (3) Notice of any change of control which results from an inheritance,
17 donation, or similar type transfer of ownership shall be submitted to the
18 commissioner no more than sixty days after such change in the format required by
19 the commissioner.

20 G. Violations. The following shall be violations of this Section:

21 (1) The failure to file any statement, amendment or other material required
22 to be filed pursuant to Subsection A or B of this Section.

23 (2) The effectuation or any attempt to effectuate an acquisition of control of,
24 divestiture of, or merger with, a domestic insurer unless the commissioner has given
25 approval.

26 H. Jurisdiction; consent to service of process. The courts of this state are
27 hereby vested with jurisdiction over every person not resident, domiciled or
28 authorized to do business in this state who files a statement with the commissioner
29 under this Section, and over all actions involving such person arising out of
30 violations of this Section, and each such person shall be deemed to have performed

1 acts equivalent to and constituting an appointment by the person of the
2 commissioner to be his true and lawful attorney upon whom may be served all lawful
3 process in any action, suit or proceeding arising out of violations of this Section.
4 Copies of all lawful process shall be served on the commissioner and transmitted by
5 registered or certified mail by the commissioner to the person at his last known
6 address.

7 §691.5. Acquisitions involving insurers not otherwise covered

8 A. Definitions. The following definitions shall apply for the purposes of this
9 Section only:

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

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

16 B. Scope

17 (1) Except as exempted in Paragraph (2) of this Subsection, this Section
18 applies to any acquisition in which there is a change in control of an insurer
19 authorized to do business in this state.

20 (2) This Section shall not apply to any of the following events:

21 (a) A purchase of securities solely for investment purposes so long as the
22 securities are not used by voting, or otherwise, to cause or attempt to cause the
23 substantial lessening of competition in any insurance market in this state. If a
24 purchase of securities results in a presumption of control pursuant to R.S.22:691.2,
25 it is not solely for investment purposes unless the commissioner of the insurer's
26 state of domicile accepts a disclaimer of control or affirmatively finds that control
27 does not exist and the disclaimer action or affirmative finding is communicated by
28 the domiciliary commissioner to the commissioner of this state.

29 (b) The acquisition of a person by another person when both persons are
30 neither directly nor through affiliates primarily engaged in the business of insurance.

1 if pre-acquisition notification is filed with the commissioner in accordance with
2 Subsection C of this Section thirty days prior to the proposed effective date of the
3 acquisition. However, such pre-acquisition notification is not required for exclusion
4 from this Section if the acquisition would otherwise be excluded from this Section
5 by any other Subparagraph of Subsection B of this Section.

6 (c) The acquisition of already affiliated persons.

7 (d)(i) An acquisition if, as an immediate result of the acquisition, any of the
8 following circumstances would exist:

9 (aa) There is no market where the combined market share of the involved
10 insurers would exceed five percent of the total market.

11 (bb) There would be no increase in any market share.

12 (cc) There is no market wherein the combined market share of the involved
13 insurers would exceed twelve percent of the total market and the market share would
14 increase by more than two percent of the total market.

15 (ii) For the purpose of this Subparagraph, a market means direct written
16 insurance premiums in this state for a line of business as contained in the annual
17 statement required to be filed by insurers licensed to do business in this state.

18 (e) An acquisition for which a pre-acquisition notification would be required
19 pursuant to this Section due solely to the resulting effect on the ocean marine
20 insurance line of business.

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

27 C. Pre-acquisition Notification; Waiting Period. An acquisition covered by
28 Subsection B of this Section may be subject to an order pursuant to R.S. 22:691.5(E)
29 unless the acquiring person files a pre-acquisition notification and the waiting period
30 has expired. The acquired person may file a pre-acquisition notification. The

1 commissioner shall give confidential treatment to information submitted under this
2 Subsection in the same manner as provided in R.S. 22:691.10.

3 (1) The pre-acquisition notification shall be in such form and contain such
4 information as prescribed by the commissioner relating to those markets, in
5 accordance with Subparagraph (d) of Paragraph (2) of Subsection B of this Section,
6 which cause the acquisition not to be exempted from the provisions of this Section.

7 The commissioner may require such additional material and information as deemed
8 necessary to determine whether the proposed acquisition, if consummated, would
9 violate the competitive standard set forth in R.S. 22:691.5(C). The required
10 information may include an opinion of an economist as to the competitive impact of
11 the acquisition in this state accompanied by a summary of the education and
12 experience of such person indicating his or her ability to render an informed opinion.

13 (2) The waiting period required shall begin on the date of receipt of the
14 commissioner of a pre-acquisition notification and shall end on the earlier of the
15 thirtieth day after the date of receipt or termination of the waiting period by the
16 commissioner. Prior to the end of the waiting period, the commissioner, on a one-
17 time basis, may require the submission of additional needed information relevant to
18 the proposed acquisition, in which event the waiting period shall end on the earlier
19 of the thirtieth day after receipt of the additional information by the commissioner
20 or termination of the waiting period by the commissioner.

21 D. Competitive standard

22 (1) The commissioner may enter an order pursuant to Subsection E of this
23 Section with respect to an acquisition if there is substantial evidence that the
24 effect of the acquisition may be to substantially lessen competition in any line
25 of insurance in this state or tend to create a monopoly, or if the insurer fails to file
26 adequate information in compliance with the provisions of Subsection C of this
27 Section.

28 (2) In determining whether a proposed acquisition would violate the
29 competitive standard set forth in Paragraph (1) of this Subsection, the commissioner
30 shall consider the following:

1 (a) Any acquisition covered under Subsection B of this Section that involves
2 two or more insurers competing in the same market shall be prima facie evidence of
3 violation of the competitive standards if either of the following circumstances are
4 present.

5 (i) The market is highly concentrated and the involved insurers possess the
6 following shares of the market:

<u>Insurer A</u>	<u>Insurer B</u>
4%	4% or more
10%	2% or more
15%	1% or more.

11 (ii) The market is not highly concentrated and the involved insurers possess
12 the following shares of the market:

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

18 (aa) A highly concentrated market is one in which the share of the four
19 largest insurers is seventy-five percent or more of the market.

20 (bb) Percentages not shown in the tables are interpolated proportionately to
21 the percentages that are shown. If more than two insurers are involved, exceeding the
22 total of the two columns in the table shall be prima facie evidence of violation of the
23 competitive standard set forth in Paragraph (1) of this Subsection.

24 (cc) For the purpose of Items (i) and (ii) of this Subparagraph, the insurer
25 with the largest share of the market shall be deemed to be Insurer A.

26 (b) Whether there is a significant trend toward increased concentration when
27 the aggregate market share of any grouping of the largest insurers in the market,
28 from the two largest to the eight largest, has increased by seven percent or more of
29 the market over a period of time extending from any base year of five to ten years
30 prior to the acquisition up to the time of the acquisition. Any acquisition or merger

1 covered under Subsection B of this Section involving two or more insurers
2 competing in the same market is prima facie evidence of violation of the competitive
3 standard set forth in Paragraph (1) of this Subsection if each of the following
4 circumstances exist:

5 (i) There is a significant trend toward increased concentration in the market.

6 (ii) One of the insurers involved is one of the insurers in a grouping of large
7 insurers showing the requisite increase in the market share.

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

9 (c) For the purposes of this Subsection:

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

12 (ii) The term "market" means the relevant product and geographical markets.

13 In determining the relevant product and geographical markets, the commissioner
14 shall give due consideration to any applicable definitions or guidelines promulgated
15 by the NAIC and to any relevant information submitted by parties to the acquisition,
16 as well as any other factors the commissioner deems relevant. In the absence of
17 sufficient information to the contrary, the relevant product market is assumed to be
18 the direct written insurance premium for a line of business, such line being the same
19 one that is used in the annual statement required to be filed by insurers doing
20 business in this state. The relevant geographical market shall be assumed to be this
21 state.

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

24 (d) Even if an acquisition is not a prima facie violation of the competitive
25 standard pursuant to Subparagraphs (a) and (b) of Paragraph (2) of this Subsection,
26 the commissioner may establish the requisite anticompetitive effect based upon other
27 substantial evidence. Even when an acquisition is a prima facie violation of the
28 competitive standard pursuant to Subparagraphs (a) and (b) of Paragraph (2) of
29 this Subsection, a party may establish the absence of the requisite anticompetitive
30 effect based upon other substantial evidence. Relevant factors in making a

1 determination under this Subparagraph include, but shall not be limited to market
2 shares, volatility of ranking of market leaders, number of competitors, concentration,
3 trend of concentration in the industry, and ease of entry and exit into the market.

4 (3) An order may not be entered pursuant to Subsection E of this Section if
5 either of the following circumstances exist:

6 (a) The acquisition will yield substantial economies of scale or economies in
7 resource utilization that cannot be feasibly achieved in any other way, and the public
8 benefits which would arise from such economies exceed the public benefits which
9 would arise from not lessening competition.

10 (b) The acquisition will substantially increase the availability of insurance,
11 and the public benefits of the increase exceed the public benefits which would arise
12 from not lessening competition.

13 E.Orders and Penalties

14 (1)(a) If an acquisition violates the standards of this Section, the
15 commissioner may enter an order which has the following effects:

16 (i) Requires an involved insurer to cease and desist from doing business in
17 this state with respect to the line or lines of insurance involved in the violation.

18 (ii) Denies the application of an acquired or acquiring insurer for a license to
19 do business in this state.

20 (b) Such an order shall not be entered unless each of the following
21 requirements have been satisfied:

22 (i) Interested parties have opportunity for a hearing.

23 (ii) Notice of the hearing is issued prior to the end of the waiting period and
24 not less than fifteen days prior to the hearing.

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

27 (c) Every order shall be accompanied by a written decision of the
28 commissioner setting forth findings of fact and conclusions of law.

29 (d) An order pursuant to this Paragraph shall not apply if the acquisition is
30 not consummated.

1 (2) Any person who violates a cease and desist order of the commissioner
2 issued in accordance with Paragraph (1) of this Subsection while the order is in effect
3 may be subject to one or more of the following penalties:

4 (a) A monetary penalty of not more than ten thousand dollars for every day
5 of violation.

6 (b) Suspension or revocation of the person's license.

7 (3) Any insurer or other person who fails to make any filing required by this
8 Section, and who fails to demonstrate a good faith effort to comply with any filing
9 requirement, shall be subject to a fine of not more than fifty thousand dollars.

10 F. The provisions of R.S. 22:691.12(B) and (C) and R.S. 22:691.14 do not
11 apply to acquisitions covered under Subsection B of this Section.

12 §691.6. Registration of insurers

13 A. Registration.

14 (1) Every insurer which is authorized to do business in this state and which
15 is a member of an insurance holding company system shall register with the
16 commissioner, except a foreign insurer subject to registration requirements and
17 standards adopted by statute or regulation in the jurisdiction of its domicile which
18 are substantially similar to those contained in the provisions of this Section;
19 Subsection B, D, and Paragraph (1) of Subsection A of R.S. 691.5; and either
20 Paragraph (2) of Subsection A of R.S. 22:691.7 or a provision such as the following:
21 Each registered insurer shall keep current the information required to be disclosed
22 in its registration statement by reporting all material changes or additions within
23 fifteen days after the end of the month in which it learns of each change or addition.

24 (2) Any insurer which is subject to registration under this Section shall
25 register within fifteen days after it becomes subject to registration, and annually
26 thereafter by the first of April of each year for the previous calendar year, unless the
27 commissioner for good cause shown extends the time for registration, and then
28 within the extended time. The commissioner may require any insurer authorized to
29 do business in the state which is a member of an insurance holding company system,
30 and which is not subject to registration under this Section, to furnish a copy of the

1 registration statement, the summary specified in Subsection C of this Section or other
2 information filed by the insurance company with the insurance regulatory authority
3 of its domiciliary jurisdiction.

4 B. Information and Form Required. Every insurer subject to registration shall
5 file the registration statement with the commissioner on a form and in a format
6 prescribed by the commissioner, which shall contain a complete and current
7 disclosure of the following information:

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

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

12 (3) A listing of any agreements which are of the type listed below and which
13 have transactions that are outstanding or which have occurred during the last
14 calendar year between the insurer and its affiliates:

15 (a) Loans, other investments, or purchases, sales or exchanges of securities
16 of the affiliates by the insurer or of the insurer by its affiliates.

17 (b) Purchases, sales or exchange of assets.

18 (c) Transactions not in the ordinary course of business.

19 (d) Guarantees or undertakings for the benefit of an affiliate which
20 result in an actual contingent exposure of the insurer's assets to liability, other than
21 insurance contracts entered into in the ordinary course of the insurer's business.

22 (e) All management agreements, service contracts and all cost-sharing
23 arrangements.

24 (f) Reinsurance agreements.

25 (g) Dividends and other distributions to shareholders.

26 (h) Consolidated tax allocation agreements.

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

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

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

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

17 (8) Any other information required by the commissioner by rule or
18 regulation.

19 (9) Financial statements of the ultimate controlling person in the holding
20 company system as of the end of the person's latest fiscal year.

21 C. Summary of Changes to Registration Statement. All registration
22 statements shall contain a summary outlining all items in the current registration
23 statement representing changes from the prior registration statement.

24 D. Materiality. No information need be disclosed on the registration
25 statement filed pursuant to Subsection B of this Section if the information is not
26 material for the purposes of this Section. Unless the commissioner by rule,
27 regulation, or order provides otherwise: sales, purchases, exchanges, loans or
28 extensions of credit, investments, or guarantees involving one-half of one percent or
29 less of an insurer's admitted assets as of the 31st day of December next preceding
30 shall not be deemed material for purposes of this section.

1 E. Reporting of Dividends to Shareholders. Subject to the provisions of R.S.
2 22:691.7(B), each registered insurer shall report to the commissioner all dividends
3 and other distributions to shareholders within fifteen business days following the
4 declaration thereof.

5 F. Information of Insurers. Any person within an insurance holding company
6 system subject to registration shall be required to provide complete and accurate
7 information to an insurer, where the information is reasonably necessary to enable
8 the insurer to comply with the provisions of this Act.

9 G. Termination of Registration. The commissioner shall terminate the
10 registration of any insurer which demonstrates that it no longer is a member of an
11 insurance holding company system.

12 H. Consolidated Filing. The commissioner may require or allow two or more
13 affiliated insurers subject to registration to file a consolidated registration statement.

14 I. Alternative Registration. The commissioner may allow an insurer which
15 is authorized to do business in this state and which is part of an insurance holding
16 company system to register on behalf of any affiliated insurer which is required to
17 register under Subsection A of this Section and to file all information and material
18 required to be filed under this Section.

19 J. Exemptions.

20 (1) The provisions of this Section shall not apply to any insurer,
21 information, or transaction if, and to the extent that, the commissioner by rule,
22 regulation, or order shall exempt such insurer, information, or transaction from
23 applicability of the provisions of this Section.

24 (2) Unless it appears in the discretion of the commissioner that the condition
25 of a small company renders the continuance of its business hazardous to the public
26 or its insureds, a small company shall not be required to submit to the department a
27 registration statement required by this Section, but shall be considered a registered
28 insurer for the purposes of the provisions of Subsection E of this Section, R.S.
29 22:704(A), and 705.

1 K. Disclaimer. Any person may file with the commissioner a disclaimer of
2 affiliation with any authorized insurer, or such a disclaimer may be filed by such
3 insurer or any member of an insurance holding company system. The disclaimer
4 shall fully disclose all material relationships and bases for affiliation between such
5 person and such insurer as well as the basis for disclaiming such affiliation. After
6 a disclaimer has been filed, the insurer shall be relieved of any duty to register or
7 report under this Section which may arise out of the insurer's relationship with such
8 person unless and until the commissioner disallows such a disclaimer. The person
9 filing such a disclaimer shall notify the commissioner of any material change to the
10 affiliations and relationships as reported in the disclaimer within thirty days of the
11 effective date of the change.

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

20 M. Violations. The failure to file a registration statement or any
21 summary of the registration statement or enterprise risk filing required by this
22 Section within the time specified for filing shall be a violation of this Section.

23 N. Incorporation by Reference.

24 (1) Any information contained in any financial statement, annual report,
25 proxy statement, statement filed with a governmental authority, or any other
26 document may be incorporated by reference, provided the document is filed as an
27 exhibit to the registration statement. Any excerpt of a document may be filed as an
28 exhibit if the document is extensive. Any documents currently on file with the
29 commissioner which were filed within three years need not be attached as exhibits,
30 but shall be referred to if not so attached. All references to information contained

1 in exhibits or in documents duly filed shall clearly identify the material and
2 specifically indicate that the material is to be incorporated by reference to the item.
3 No materials shall be incorporated by reference in any instance that the incorporation
4 would render the statement incomplete, unclear, or confusing.

5 (2) If a filing requires a summary or outline of the provisions of any
6 document, only a brief statement shall be made as to the pertinent provisions of the
7 document. In addition to the brief statement, the summary or outline may
8 incorporate, by reference, particular parts of any exhibit or document currently on
9 file with the commissioner which was filed within three years and may be included
10 in its entirety by the reference. In any case where two or more documents required
11 to be filed as exhibits are substantially identical in all material respects except as to
12 the parties, the dates of execution, or other details, a copy of one of the documents
13 shall be filed with a schedule identifying the omitted documents and setting forth the
14 material details in which such documents differ from the documents filed.

15 §691.7. Standards and management of an insurer within an insurance holding
16 company system

17 A. Transactions within an insurance holding company system

18 (1) Transactions within an insurance holding company system to which an
19 insurer subject to registration is a party shall be subject to the following standards:

20 (a) The terms shall be fair and reasonable.

21 (b) Agreements for cost sharing services and management shall include such
22 provisions as required by rule and regulation issued by the commissioner.

23 (c) Charges or fees for services performed shall be reasonable.

24 (d) Expenses incurred and payment received shall be allocated to the insurer
25 in conformity with customary insurance accounting practices consistently applied.

26 (e) The books, accounts and records of each party to all such transactions
27 shall be so maintained as to clearly and accurately disclose the nature and details of
28 the transactions including such accounting information as is necessary to support the
29 reasonableness of the charges or fees to the respective parties.

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

4 (2) None of the following enumerated transactions involving a domestic
5 insurer and any person in its insurance holding company system, including
6 amendments or modifications of affiliate agreements previously filed pursuant to this
7 Section, which are subject to any materiality standards contained in Subparagraphs
8 (a) through (g) of this Paragraph, may be entered into unless the insurer has notified
9 the commissioner in writing of its intention to enter into the transaction at least thirty
10 days prior thereto, or such shorter period as the commissioner may permit, and the
11 commissioner has not disapproved it within that period. The notice for amendments
12 or modifications shall include the reasons for the change and the financial impact on
13 the domestic insurer. Informal notice shall be reported, within thirty days after a
14 termination of a previously filed agreement, to the commissioner for determination
15 of the type of filing required, if any.

16 (a) Sales, purchases, exchanges, loans, extensions of credit, or
17 investments.

18 (i) Relevant transactions relative to nonlife insurers shall equal or exceed the
19 lesser of three percent of the insurer's admitted assets or twenty- five percent of
20 surplus as regards policyholders as of the 31st day of December next preceding.

21 (ii) Relevant transactions relative to life insurers shall equal or exceed three
22 percent of the insurer's admitted assets as of the 31st day of December next
23 preceding.

24 (b) Loans or extensions of credit to any person who is not an affiliate, where
25 the insurer makes loans or extensions of credit with the agreement or understanding
26 that the proceeds of the transactions, in whole or in substantial part, are to be used
27 to make loans or extensions of credit to, to purchase assets of, or to make
28 investments in, any affiliate of the insurer making the loans or extensions of credit.

1 (i) Relevant transactions relative to nonlife insurers shall equal or exceed
2 the lesser of three percent of the insurer's admitted assets or twenty- five percent
3 of surplus as regards policyholders as of the 31st day of December next preceding.

4 (ii) Relevant transactions relative to life insurers shall equal or exceed three
5 percent of the insurer's admitted assets as of the 31st day of December next
6 preceding.

7 (c) Reinsurance agreements or modifications thereto, including each of the
8 following types of reinsurance agreements:

9 (i) All reinsurance pooling agreements.

10 (ii) Agreements in which the reinsurance premium or a change in the
11 insurer's liabilities, or the projected reinsurance premium or a change in the insurer's
12 liabilities in any of the next three years, equals or exceeds five percent of the
13 insurer's surplus as regards policyholders, as of the 31st day of December next
14 preceding, including those agreements which may require as consideration the
15 transfer of assets from an insurer to a non-affiliate, if an agreement or understanding
16 exists between the insurer and non-affiliate that any portion of the assets will be
17 transferred to one or more affiliates of the insurer.

18 (d) All management agreements, service contracts, tax allocation
19 agreements, guarantees and all cost-sharing arrangements.

20 (e) Guarantees when made by a domestic insurer; provided, however, that a
21 guarantee which is quantifiable as to amount is not subject to the notice requirements
22 of this paragraph unless it exceeds the lesser of one-half of one percent of the
23 insurer's admitted assets or ten percent of surplus as regards policyholders as of the
24 31st day of December next preceding. Further, all guarantees which are not
25 quantifiable as to amount are subject to the notice requirements of this Paragraph.

26 (f) Direct or indirect acquisitions or investments in a person that
27 controls the insurer or in an affiliate of the insurer in an amount which, together
28 with its present holdings in such investments, exceeds two and one-half percent
29 of the insurer's surplus to policyholders. Direct or indirect acquisitions or
30 investments in subsidiaries acquired pursuant to R.S. 22: 691.3 or authorized under

1 any other section of this Code, or in non-sub subsidiary insurance affiliates that are
2 subject to the provisions of this Act, are exempt from this requirement.

3 (g) Any material transactions, specified by regulation, which the
4 commissioner determines may adversely affect the interests of the insurer's
5 policyholders. Nothing in this paragraph shall be deemed to authorize or permit any
6 transactions which, in the case of an insurer not a member of the same insurance
7 holding company system, would be otherwise contrary to law.

8 (3) A domestic insurer may not enter into transactions which are part of a
9 plan or series of like transactions with persons within the insurance holding company
10 system if the purpose of those separate transactions is to avoid the statutory threshold
11 amount and thus avoid the review that would occur otherwise. If the commissioner
12 determines that separate transactions were entered into over any twelve month period
13 for that purpose, the commissioner may exercise his or her authority under R.S.
14 22:691.13.

15 (4) The commissioner, in reviewing transactions pursuant to Paragraph (2)
16 of Subsection A of this Section, shall consider whether the transactions comply with
17 the standards set forth in Paragraph (1) of Subsection A of this Section and whether
18 they may adversely affect the interests of policyholders.

19 (5) The commissioner shall be notified within thirty days of any investment
20 of the domestic insurer in any one corporation if the total investment in the
21 corporation by the insurance holding company system exceeds ten percent of the
22 corporation's voting securities.

23 B. dividends and other distributions

24 (1) No domestic insurer shall pay any extraordinary dividend or make any
25 other extraordinary distribution to its shareholders until thirty days after the
26 commissioner has received notice of the declaration thereof and has not within that
27 period disapproved the payment, or until the commissioner has approved the
28 payment within the thirty-day period.

29 For purposes of this Section, an extraordinary dividend or distribution
30 includes any dividend or distribution of cash or other property, whose fair market

1 value together with that of other dividends or distributions made within the preceding
2 twelve months exceeds the lesser of the following amounts:

3 (a) Ten percent of the insurer's surplus as regards policyholders as of the
4 31st day of December next preceding.

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

15 (2) Notwithstanding any other provision of law, an insurer may declare an
16 extraordinary dividend or distribution which is conditional upon the commissioner's
17 approval, and the declaration shall confer no rights upon shareholders until either
18 the commissioner has approved the payment of the dividend or distribution, or, the
19 commissioner has not disapproved payment within the thirty-day period referred to
20 above.

21 C. Management of domestic insurers subject to registration.

22 (1) Notwithstanding the control of a domestic insurer by any person, the
23 officers and directors of the insurer shall not thereby be relieved of any obligation
24 or liability to which they would otherwise be subject by law, and the insurer shall be
25 managed so as to assure its separate operating identity consistent with this Act.

26 (2) Nothing in this Section shall preclude a domestic insurer from having or
27 sharing a common management or cooperative or joint use of personnel, property or
28 services with one or more other persons under arrangements meeting the standards
29 of Paragraph (1) of Subsection A of this Section.

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

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

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

23 (6) An insurer may make application to the commissioner for a waiver from
24 the requirements of this subsection, if the insurer's annual direct written and assumed
25 premium, excluding premiums reinsured with the Federal Crop Insurance
26 Corporation and Federal Flood Program, is less than three hundred thousand dollars.
27 An insurer may also make application to the commissioner for a waiver from the
28 requirements of this subsection based upon unique circumstances. The commissioner
29 may consider various factors including, but not limited to, the type of business entity,

1 volume of business written, availability of qualified board members, or the
2 ownership or organizational structure of the entity.

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

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

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

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

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

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

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

16 (7) The recent past and projected future trend in the size of the
17 insurer's investment portfolio.

18 (8) The surplus as regards policyholders maintained by other comparable
19 insurers.

20 (9) The adequacy of the insurer's reserves.

21 (10) The quality and liquidity of investments in affiliates. The commissioner
22 may treat any such investment as a disallowed asset for purposes of determining the
23 adequacy of surplus as regards policyholders whenever in the judgment of the
24 commissioner the investment so warrants.

25 §691.8. Examination

26 A. Power of Commissioner. Subject to the limitation contained in this section
27 and in addition to the powers which the commissioner has under this Code relating
28 to the examination of insurers, the commissioner shall have the power to examine
29 any insurer registered under R.S. 22: 691.6 and its affiliates to ascertain the
30 financial condition of the insurer, including the enterprise risk to the insurer by the

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

4 B. Access to Books and Records.

5 (1) The commissioner may order any insurer registered under R.S. 22:691.6
6 to produce such records, books, or other information papers in the possession of the
7 insurer or its affiliates as are reasonably necessary to determine compliance with this
8 Subpart.

9 (2) To determine compliance with this Subpart, the commissioner may order
10 any insurer registered under R.S. 22:691.6 to produce information not in the
11 possession of the insurer if the insurer can obtain access to such information pursuant
12 to contractual relationships, statutory obligations, or other method. In the event the
13 insurer cannot obtain the information requested by the commissioner, the insurer
14 shall provide the commissioner a detailed explanation of the reason that the insurer
15 cannot obtain the information and the identity of the holder of information.
16 Whenever it appears to the commissioner that the detailed explanation is without
17 merit, the commissioner may require, after notice and hearing, the insurer to pay a
18 penalty of one hundred dollars for each day's delay, or may suspend or revoke the
19 insurer's authority.

20 C. Use of Consultants. The commissioner may retain at the registered
21 insurer's expense such attorneys, actuaries, accountants and other experts not
22 otherwise a part of the commissioner's staff as shall be reasonably necessary to assist
23 in the conduct of the examination under Subsection A above. Any persons so
24 retained shall be under the direction and control of the commissioner and shall act
25 in a purely advisory capacity.

26 D. Expenses. Each registered insurer producing for examination records,
27 books and papers pursuant to Subsection A above shall be liable for and shall pay the
28 expense of examination in accordance with R.S. 22:1985-1988.

29 E. Compelling Production. In the event the insurer fails to comply with an
30 order, the commissioner shall have the power to examine the affiliates to

1 obtain the information. The commissioner shall also have the power to issue
2 subpoenas, to administer oaths, and to examine under oath any person for purposes
3 of determining compliance with this section. Upon the failure or refusal of any
4 person to obey a subpoena, the commissioner may petition a court of competent
5 jurisdiction, and upon proper showing, the court may enter an order compelling the
6 witness to appear and testify or produce documentary evidence. Failure to obey the
7 court order shall be punishable as contempt of court. Every person shall be obliged
8 to attend as a witness at the place specified in the subpoena, when subpoenaed,
9 anywhere within the state. He or she shall be entitled to the same fees and mileage,
10 if claimed, as a witness in R.S. 13:3661, which fees, mileage, and actual expense, if
11 any, necessarily incurred in securing the attendance of witnesses, and their
12 testimony, shall be itemized and charged against, and be paid by, the company being
13 examined.

14 §691.9. Supervisory colleges

15 A. Power of Commissioner. With respect to any insurer registered under R.S.
16 22:691.6, and in accordance with Subsection C below, the commissioner shall also
17 have the power to participate in a supervisory college for any domestic insurer that
18 is part of an insurance holding company system with international operations in order
19 to determine compliance by the insurer with this Subpart. The powers of the
20 commissioner with respect to supervisory colleges include, but are not limited to, the
21 following:

22 (1) Initiating the establishment of a supervisory college.

23 (2) Clarifying the membership and participation of other supervisors in
24 the supervisory college.

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

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

29 (5) Establishing a crisis management plan.

1 B. Expenses. Each registered insurer subject to this Section shall be liable
2 for and shall pay the reasonable expenses of the commissioner's participation in a
3 supervisory college in accordance with Subsection C below, including reasonable
4 travel expenses. For purposes of this section, a supervisory college may be convened
5 as either a temporary or permanent forum for communication and cooperation
6 between the regulators charged with the supervision of the insurer or its affiliates,
7 and the commissioner may establish a regular assessment to the insurer for the
8 payment of these expenses.

9 C. Supervisory College. In order to assess the business strategy, financial
10 position, legal and regulatory position, risk exposure, risk management and
11 governance processes, and as part of the examination of individual insurers in
12 accordance with Section 6, the commissioner may participate in a supervisory
13 college with other regulators charged with supervision of the insurer or its affiliates,
14 including other state, federal and international regulatory agencies. The
15 commissioner may enter into agreements in accordance with R.S. 22:691.10C
16 providing the basis for cooperation between the commissioner and the other
17 regulatory agencies, and the activities of the supervisory college. Nothing in this
18 section shall delegate to the supervisory college the authority of the commissioner
19 to regulate or supervise the insurer or its affiliates within its jurisdiction.

20 §691.10. Confidential treatment

21 A. Documents, materials or other information in the possession or
22 control of the Department of Insurance that are obtained by or disclosed to the
23 commissioner or any other person in the course of an examination or investigation
24 made pursuant to R.S. 22:691.8 and all information reported pursuant to R.S.
25 22:691.4B(12) and (13), R.S. 22:691.6 and 691.7 shall be confidential by law and
26 privileged, shall not be subject to subpoena, and shall not be subject to discovery or
27 admissible in evidence in any private civil action. However, the commissioner is
28 authorized to use the documents, materials or other information in the furtherance
29 of any regulatory or legal action brought as a part of the commissioner's official
30 duties. The commissioner shall not otherwise make the documents,

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

7 B. Neither the commissioner nor any person who received documents,
8 materials or other information while acting under the authority of the commissioner
9 or with whom such documents, materials or other information are shared pursuant
10 to this Act shall be permitted or required to testify in any private civil action
11 concerning any confidential documents, materials, or information subject to
12 Subsection A.

13 C. In order to assist in the performance of the commissioner's duties, the
14 commissioner:

15 (1) May share documents, materials or other information, including
16 the confidential and privileged documents, materials or information subject to
17 Subsection A of this Section, with other state, federal and international regulatory
18 agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal,
19 and international law enforcement authorities, including members of any supervisory
20 college described in R.S. 22:691.9, provided that the recipient agrees in writing to
21 maintain the confidentiality and privileged status of the document, material or other
22 information, and has verified in writing the legal authority to maintain
23 confidentiality.

24 (2) Notwithstanding the provisions of paragraph (1) of this Subsection, the
25 commissioner may only share confidential and privileged documents, material, or
26 information reported pursuant to R.S. 22:691.6L with commissioners of states having
27 statutes or regulations substantially similar to Subsection A and who have agreed in
28 writing not to disclose such information.

29 (3) Receive documents, materials or information, including otherwise
30 confidential and privileged documents, materials or information from the NAIC and

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

6 (4) Shall enter into written agreements with the NAIC governing sharing and
7 use of information provided pursuant to this Act consistent with this Subsection that
8 shall:

9 (i) Specify procedures and protocols regarding the confidentiality and
10 security of information shared with the NAIC and its affiliates and subsidiaries
11 pursuant to this Act, including procedures and protocols for sharing by the NAIC
12 with other state, federal or international regulators.

13 (ii) Specify that ownership of information shared with the NAIC and its
14 affiliates and subsidiaries pursuant to this Act remains with the commissioner and
15 the NAIC's use of the information is subject to the direction of the commissioner.

16 (iii) Require prompt notice to be given to an insurer whose confidential
17 information in the possession of the NAIC pursuant to this Act is subject to a request
18 or subpoena to the NAIC for disclosure or production.

19 (iv) Require the NAIC and its affiliates and subsidiaries to consent to
20 intervention by an insurer in any judicial or administrative action in which the NAIC
21 and its affiliates and subsidiaries may be required to disclose confidential
22 information about the insurer shared with the NAIC and its affiliates and subsidiaries
23 pursuant to this Act.

24 D. The sharing of information by the commissioner pursuant to this Act
25 shall not constitute a delegation of regulatory authority or rulemaking, and the
26 commissioner is solely responsible for the administration, execution and
27 enforcement of the provisions of this Act.

28 E. No waiver of any applicable privilege or claim of confidentiality in the
29 documents, materials or information shall occur as a result of disclosure to the

1 commissioner under this section or as a result of sharing as authorized in Subsection
2 C of this Section.

3 F. Documents, materials or other information in the possession or control of
4 the NAIC pursuant to this Act shall be confidential by law and privileged, shall not
5 be subject to subpoena, and shall not be subject to discovery or admissible in
6 evidence in any private civil action.

7 §691.11. Rules and regulations

8 The commissioner may, upon notice and opportunity for all interested
9 persons to be heard, issue such rules, regulations and orders as shall be necessary to
10 carry out the provisions of this subpart.

11 §691.12. Injunctions; prohibitions against voting securities; sequestration of voting
12 Securities

13 A. Injunctions. Whenever it appears to the commissioner that any insurer or
14 any director, officer, employee or agent thereof has committed or is about to commit
15 a violation of this Act or of any rule, regulation or order issued by the commissioner
16 hereunder, the commissioner may apply to the Nineteenth Judicial District Court in
17 and for the parish of East Baton Rouge, for an order enjoining the insurer or director,
18 officer, employee or agent thereof from violating or continuing to violate this
19 Subpart or any rule, regulation or order, and for such other equitable relief as the
20 nature of the case and the interest of the insurer's policyholders, creditors and
21 shareholders or the public may require.

22 B. Voting of Securities; When Prohibited. No security which is the subject
23 of any agreement or arrangement regarding acquisition, or which is acquired or to
24 be acquired, in contravention of the provisions of this Subpart or of any rule,
25 regulation or order issued by the commissioner hereunder may be voted at any
26 shareholder's meeting, or may be counted for quorum purposes, and any action of
27 shareholders requiring the affirmative vote of a percentage of shares may be taken
28 as though the securities were not issued and outstanding; but no action taken at any
29 such meeting shall be invalidated by the voting of the securities, unless the action
30 would materially affect control of the insurer or unless the courts of this state have

1 so ordered. If an insurer or the commissioner has reason to believe that any security
2 of the insurer has been or is about to be acquired in contravention of the provisions
3 of this Subpart or of any rule, regulation or order issued by the commissioner
4 hereunder; the insurer or the commissioner may apply to the Nineteenth Judicial
5 District Court in and for the parish of East Baton Rouge to enjoin any offer, request,
6 invitation, agreement or acquisition made in contravention of R.S. 22:691.4 or any
7 rule, regulation or order issued by the commissioner thereunder to enjoin the voting
8 of any security so acquired, to void any vote of the security already cast at any
9 meeting of shareholders and for such other equitable relief as the nature of the case
10 and the interest of the insurer's policyholders, creditor and shareholders or the public
11 may require.

12 C. Sequestration of Voting Securities. In any case where a person has
13 acquired or is proposing to acquire any voting securities in violation of this Subpart
14 or any rule, regulation or order issued by the commissioner hereunder, the
15 Nineteenth Judicial District Court in and for the parish of East Baton Rouge, on
16 such notice as the court deems appropriate, upon the application of the insurer or
17 the commissioner, seize or sequester any voting securities of the insurer owned
18 directly or indirectly by the person, and issue such order as may be appropriate to
19 effectuate the provisions of this Act.

20 D. Site of ownership. Notwithstanding any other provisions of law, for the
21 purposes of this Act the situs of the ownership of the securities of domestic insurers
22 shall be deemed to be in this state.

23 §691.13. Sanctions

24 A. Any insurer failing, without just cause, to file any registration statement
25 as required in this Subpart shall be required, after notice and hearing, to pay a
26 penalty of one hundred dollars for each day's delay, to be recovered by the
27 commissioner of Insurance and the penalty so recovered shall be paid into the
28 General Revenue Fund of this state. The maximum penalty under this section is ten
29 thousand dollars. The commissioner may reduce the penalty if the insurer

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

3 B. Every director or officer of an insurance holding company system who
4 knowingly violates, participates in, or assents to, or who knowingly shall permit any
5 of the officers or agents of the insurer to engage in transactions or make investments
6 which have not been properly reported or submitted pursuant to or which violate this
7 Subpart shall pay, in their individual capacity, a civil forfeiture of not more than one
8 thousand dollars per violation, after notice and opportunity for a hearing. In
9 determining the amount of the civil forfeiture, the commissioner shall take into
10 account the appropriateness of the forfeiture with respect to the gravity of the
11 violation, the history of previous violations, and such other matters as justice may
12 require.

13 C. Whenever it appears to the commissioner that any insurer subject to this
14 Subpart or any director, officer, employee or agent thereof has engaged in any
15 transaction or entered into a contract which is subject to R.S. 22:691.7 of this Act
16 and which would not have been approved had the approval been requested, the
17 commissioner may order the insurer to cease and desist immediately any further
18 activity under that transaction or contract. After notice and opportunity for hearing
19 the commissioner may also order the insurer to void any contracts and restore the
20 status quo if the action is in the best interest of the policyholders, creditors or the
21 public.

22 D. Whenever it appears to the commissioner that any insurer or any director,
23 officer, employee or agent thereof has committed a willful violation of this Subpart,
24 the commissioner may cause criminal proceedings to be instituted by the Nineteenth
25 Judicial District Court in and for the parish of East Baton Rouge, against the insurer
26 or the responsible director, officer, employee or agent thereof. Any insurer which
27 willfully violates this subpart may be fined not more than one hundred thousand
28 dollars. Any individual who willfully violates this Subpart may be fined in his or her
29 individual capacity not more than fifty thousand dollars or be imprisoned with or
30 without hard labor for not more than five years or both.

1 E. Any officer, director or employee of an insurance holding company
2 system who willfully and knowingly subscribes to or makes or causes to be made
3 any false statements or false reports or false filings with the intent to deceive
4 the commissioner in the performance of his or her duties under this Subpart, upon
5 conviction thereof shall be imprisoned with or without hard labor for not more
6 than five years or fined not more than fifty thousand dollars or both. Any fines
7 imposed shall be paid by the officer, director or employee in his or her individual
8 capacity.

9 F. Whenever it appears to the commissioner that any person has committed
10 a violation of R.S. 22:691.4 and which prevents the full understanding of the
11 enterprise risk to the insurer by affiliates or by the insurance holding company
12 system, the violation may serve as an independent basis for disapproving dividends
13 or distributions and for placing the insurer under an order of supervision in
14 accordance with R.S. 22:731 et seq.

15 §691.14. Receivership

16 Whenever it appears to the commissioner that any person has committed a
17 violation of this subpart which so impairs the financial condition of a domestic
18 insurer as to threaten insolvency or make the further transaction of business by it
19 hazardous to its policyholders, creditors, shareholders or the public, then the
20 commissioner may proceed as provided in R.S. 22:73 and 96 Subpart H of this Part,
21 R.S. 22:731 et seq., and Chapter 9 of this Code, R.S. 22:2001 et seq.

22 §691.15. Recovery

23 A. If an order for liquidation or rehabilitation of a domestic insurer has been
24 entered, the receiver appointed under the order shall have a right to recover on behalf
25 of the insurer, (i) from any parent corporation or holding company or person or
26 affiliate who otherwise controlled the insurer, the amount of distributions,
27 other than distributions of shares of the same class of stock, paid by the insurer on
28 its capital stock, or (ii) any payment in the form of a bonus, termination settlement
29 or extraordinary lump sum salary adjustment made by the insurer or its subsidiary
30 to a director, officer or employee, where the distribution or payment pursuant to (i)

1 or (ii) is made at any time during the one year preceding the petition for liquidation,
2 conservation or rehabilitation, as the case may be, subject to the limitations of
3 Subsections B, C, and D of this Section.

4 B. No distribution shall be recoverable if the parent or affiliate shows that
5 when paid the distribution was lawful and reasonable, and that the insurer did not
6 know and could not reasonably have known that the distribution might adversely
7 affect the ability of the insurer to fulfill its contractual obligations.

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

16 D. The maximum amount recoverable under this section shall be the amount
17 needed in excess of all other available assets of the impaired or insolvent insurer to
18 pay the contractual obligations of the impaired or insolvent insurer and to reimburse
19 any guaranty funds.

20 E. To the extent that any person liable under Subsection C of this Section is
21 insolvent or otherwise fails to pay claims due from it, its parent corporation or
22 holding company or person who otherwise controlled it at the time the distribution
23 was paid, shall be jointly and severally liable for any resulting deficiency in the
24 amount recovered from the parent corporation or holding company or person who
25 otherwise controlled it.

26 §691.16. Revocation, suspension, or nonrenewal of insurer's authority

27 Whenever it appears to the commissioner that any person has committed a
28 violation of this Subpart which makes the continued operation of an insurer contrary
29 to the interests of policyholders or the public, the commissioner may, after giving
30 notice and an opportunity to be heard, suspend, revoke or refuse to renew the

1 insurer's license or authority to do business in this state for such period as the
2 commissioner finds is required for the protection of policyholders or the public.

3 Any such determination shall be accompanied by specific findings of fact and
4 conclusions of law.

5 §691.17. Judicial review; mandamus

6 A. Any person aggrieved by any act, determination, rule, regulation or order
7 or any other action of the commissioner pursuant to this Subpart may appeal to the
8 Nineteenth Judicial District Court in and for the parish of East Baton Rouge. The
9 court shall conduct its review without a jury and by trial de novo, except that if all
10 parties, including the commissioner, so stipulate, the review shall be confined to the
11 record. Portions of the record may be introduced by stipulation into evidence in a
12 trial de novo as to those parties so stipulating.

13 B. The filing of an appeal pursuant to this Section shall stay the application
14 of any rule, regulation, order or other action of the commissioner to the appealing
15 party unless the court, after giving the party notice and an opportunity to be heard,
16 determines that a stay would be detrimental to the interest of policyholders,
17 shareholders, creditors or the public.

18 C. Any person aggrieved by any failure of the commissioner to act or
19 make a determination required by this Subpart may petition the Nineteenth Judicial
20 District Court in and for the parish of East Baton Rouge for a writ in the nature of a
21 mandamus or a peremptory mandamus directing the commissioner to act or make a
22 determination forthwith.

23 §691.18. Severability

24 The provisions of this Act are severable. If any provision or item of this
25 Subpart, or application thereof, is held invalid, such invalidity shall not affect other
26 provisions, items, or applications of this Subpart which are to be given effect without
27 the invalid provision, item or application of the Subpart.

28 ~~§714.~~ §691.19 Substitution of policies; charge by lender prohibited; penalty

29 A. It shall be unlawful for any person, firm, or corporation engaged in
30 financing the purchase of real or personal property, or of lending money on the

1 security of real or personal property, or for any trustee, director, officer, agent, or
2 other employee of any such person, firm or corporation, to require, directly or
3 indirectly, that a borrower, or any other person, in obtaining insurance coverage on
4 the property, pay a service charge or fee of any kind to substitute the insurance
5 policy of one insurance company for that of another.

6 B. Any violation of any of the provisions of this Section by any person, firm,
7 or corporation is declared to be a misdemeanor and is punishable by a fine of not less
8 than one hundred dollars or more than five hundred dollars, or imprisonment for not
9 less than sixty days or more than one year, or both fine and imprisonment, for each
10 offense, in the discretion of the court.

11 ~~§715:~~ §691.20 Ownership of domestic stock insurance company equity securities;
12 filing of statements

13 Every person who is directly or indirectly the beneficial owner of more than
14 ten percent of any class of any equity security of a domestic stock insurance
15 company, or who is a director or an officer of such company, shall file in the office
16 of the commissioner of insurance within ten days after he becomes such beneficial
17 owner, director, or officer, a statement, in such form as the commissioner of
18 insurance may prescribe, of the amount of all equity securities of such company of
19 which he is the beneficial owner, and within ten days after the close of each calendar
20 month thereafter, if there has been a change in such ownership during such month,
21 shall file in the office of the commissioner of insurance a statement, in such form as
22 the commissioner of insurance may prescribe, indicating his ownership at the close
23 of the calendar month and such changes in his ownership as have occurred during
24 such calendar month.

25 ~~§716:~~ §691.21 Profits to inure to company; suits to recover

26 For the purpose of preventing the unfair use of information which may have
27 been obtained by such beneficial owner, director or officer by reason of his
28 relationship to such company, any profit realized by him from any purchase and sale,
29 or any sale and purchase, of any equity security of such company within any period
30 of less than six months, unless such security was acquired in good faith in connection

1 with a debt previously contracted, shall inure to and be recoverable by the company,
2 irrespective of any intention on the part of such beneficial owner, director or officer
3 in entering into such transaction of holding the security purchased or of not
4 repurchasing the security sold for a period exceeding six months. Suit to recover
5 such profit may be instituted at law or in equity in any court of competent
6 jurisdiction by the company, or by the owner of any security of the company in the
7 name and in behalf of the company if the company shall fail or refuse to bring such
8 suit within sixty days after request or shall fail to diligently prosecute the same
9 thereafter; but no such suit shall be brought more than two years after the date such
10 profit was realized. This Section shall not be construed to cover any transaction
11 where such beneficial owner was not such, both at the time of the purchase and sale,
12 or the sale and purchase, of the security involved, or any transaction or transactions
13 which the commissioner of insurance, by rules and regulations may exempt as not
14 comprehended within the purpose of this Section.

15 ~~§717.~~ §691.22 Unlawful sales

16 It shall be unlawful for any such beneficial owner, director or officer, directly
17 or indirectly, to sell any equity security of such company if the person selling the
18 security or his principal (1) does not own the security sold, or (2) if owning the
19 security, does not deliver it against such sale within twenty days thereafter, or does
20 not within five days after such sale deposit it in the mails, or other usual channels of
21 transportation; but no person shall be deemed to have violated this Section if he
22 proves that notwithstanding the exercise of good faith he was unable to make such
23 delivery or deposit within such time, or that to do so would cause undue
24 inconvenience or expense.

25 ~~§718.~~ §691.23 Sales exempt

26 The provisions of R.S. 22:716 shall not apply to any purchase and sale, or
27 sale and purchase, and the provisions of R.S. 22:717 shall not apply to any sale, of
28 an equity security of a domestic stock insurance company not then or theretofore
29 held by him in an investment account, by a dealer in the ordinary course of his
30 business and incident to the establishment or maintenance by him of a primary or

1 secondary market (otherwise than on an exchange as defined in the Securities
2 Exchange Act of 1934) for such security. The commissioner of insurance may, by
3 such rules and regulations as he deems necessary or appropriate in the public interest,
4 define and prescribe terms and conditions with respect to securities held in an
5 investment account and transactions made in the ordinary course of business and
6 incident to the establishment or maintenance of a primary or secondary market.

7 ~~§719.~~ §691.24 Arbitrage transactions

8 The provisions of R.S. 22:715 through 22:717 shall not apply to foreign or
9 domestic arbitrage transactions unless made in contravention of such rules and
10 regulations as the commissioner of insurance may adopt in order to carry out the
11 purposes of R.S. 22:49 and 715 through 723.

12 ~~§720.~~ §691.25 "Equity security" defined

13 The term "equity security" when used in R.S. 22:49, 715 through 720, 722,
14 and 723, means any stock or similar security; or any security convertible, with or
15 without consideration, into such a security, or carrying any warrant or right to
16 subscribe to or purchase such a security; or any such warrant or right; or any other
17 equity security of a domestic stock insurance company which the commissioner of
18 insurance shall deem to be of a similar nature and consider necessary or appropriate,
19 by such rules and regulations as he may prescribe in the public interest or for the
20 protection of investors, to treat as an equity security of a domestic stock insurance
21 company.

22 ~~§722.~~ §691.26 Securities exempt

23 The provisions of R.S. 22:715 through 717 shall not apply to such equity
24 securities of a domestic stock insurance company if either of the following apply:

25 (1) Such securities shall be registered or shall be required to be registered
26 pursuant to Section 12 of the Securities Exchange Act of 1934, as amended.

27 (2) Such domestic stock insurance company shall not have any class of its
28 equity securities held of record by one hundred or more persons on the last business
29 day of the year next preceding the year in which equity securities of the company

1 would be subject to the provisions of R.S. 22:715 through 717 except for the
2 provisions of this Paragraph.

3 ~~§723:~~ §691.27 Rules and regulations

4 The commissioner of insurance shall have the power to make such rules and
5 regulations as may be necessary for the execution of the functions vested in him by
6 R.S. 22:49, 715 through 720, and 722, and 723 and may for such purpose classify
7 domestic stock insurance companies, securities, and other persons or matters within
8 his jurisdiction. No provision of R.S. 22:715 through 717 imposing any liability
9 shall apply to any act done or omitted in good faith in conformity with any rule or
10 regulation of the commissioner of insurance, notwithstanding that such rule or
11 regulation may, after such act or omission, be amended or rescinded or determined
12 by judicial or other authority to be invalid for any reason.

13 Section 2. Subpart G of Part III of Chapter 2 of Title 22 of the Louisiana Revised
14 Statutes of 1950, comprised of R.S. 22:691 through 723, is hereby repealed in its entirety.

15 Section 3. R.S. 22:695 through 702 are hereby redesignated in their entirety to R.S.
16 22:232.1 through 232.8.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Thibaut

HB No. 970

Abstract: Provides relative to insurance holding company systems.

Proposed law provides for definitions relative to insurance holding company systems.

Present law provides that a domestic insurer may organize or acquire one or more subsidiaries, and that such subsidiaries have the authority to conduct any kind of business.

Proposed law restates present law.

Present law provides relative to a domestic insurer's authority to make investments using common stock, preferred stock, debt obligations, and other securities.

Proposed law restates present law.

Present law requires an insurer who ceases to control a subsidiary to dispose of any investment in that subsidiary within a three year period.

Proposed law restates present law.

Present law prohibits any person from making an offer of acquisition, agreement to merge, or other attempt to acquire a domestic insurer without first filing a statement to the commissioner which includes the contents required by present law.

Proposed law restates present law, and further adds additional filing requirements for controlling persons of domestic insurers.

Proposed law clarifies who shall be considered a controlling person for purposes of proposed law.

Present law provides relative to public hearings for persons who have submitted filings, which were subsequently denied.

Proposed law restates present law and makes clarifications.

Proposed law grants the commissioner the authority to issue cease and desist orders to persons who violate the provisions of proposed law.

(Adds R.S. 22:691.1-691.27; Repeals R.S. 22:691-723)