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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO INSURANCE -- INSURANCE HOLDING COMPANY SYSTEMS

Introduced By: Representatives Keable, Tanzi, Blazejewski, Marcello, and Edwards

Date Introduced: March 03, 2011

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 27-35 of the General Laws entitled "Insurance Holding Company
2 Systems" is hereby amended by adding thereto the following section:

3 **27-35-5.5. Supervisory colleges. – (a) Power of the Commissioner. With respect to any**
4 insurer registered under section 27-35-3, and in accordance with subsection (c) below, the
5 commissioner shall also have the power to participate in a supervisory college for any domestic
6 insurer that is part of an insurance holding company system with international operations in order
7 to determine compliance by the insurer with this chapter. The powers of the commissioner with
8 respect to supervisory colleges include, but are not limited to, the following:

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

10 (2) Clarifying the membership and participation of other supervisors in the supervisory
11 college;

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

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

16 (5) Establishing a crisis management plan.

17 (b) Expenses. Each registered insurer subject to this section shall be liable for and shall
18 pay the reasonable expenses of the commissioner's participation in a supervisory college in
19 accordance with subsection (c) below, including reasonable travel expenses. For purposes of this

1 section, a supervisory college may be convened as either a temporary or permanent forum for
2 communication and cooperation between the regulators charged with the supervision of the
3 insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for
4 the payment of these expenses.

5 (c) Supervisory College. In order to assess the business strategy, financial position, legal
6 and regulatory position, risk exposure, risk management and governance processes, and as part of
7 the examination of individual insurers in accordance with section 27-35-5, the commissioner may
8 participate in a supervisory college with other regulators charged with supervision of the insurer
9 or its affiliates, including other state, federal and international regulatory agencies. The
10 commissioner may enter into agreements in accordance with subsection 27-35-6(c) providing the
11 basis for cooperation between the commissioner and the other regulatory agencies, and the
12 activities of the supervisory college. Nothing in this section shall delegate to the supervisory
13 college the authority of the commissioner to regulate or supervise the insurer or its affiliates
14 within its jurisdiction.

15 SECTION 2. Sections 27-35-1, 27-35-2, 27-35-2.5, 27-35-3, 27-35-4, 27-35-5, 27-35-6,
16 27-35-9 and 27-35-10 of the General Laws in Chapter 27-35 entitled "Insurance Holding
17 Company Systems" are hereby amended to read as follows:

18 **27-35-1. Definitions.** -- (a) "Affiliate." An "affiliate" of, or person "affiliated" with, a
19 specific person, is a person that directly, or indirectly through one or more intermediaries
20 controls, or is controlled by, or is under common control with, the person specified. An "affiliate"
21 does not include a protected cell of a protected cell company organized under the Protected Cell
22 Companies Act, chapter 64 of this title.

23 (b) "Commissioner." The term "commissioner" means the director of the department of
24 business regulation and any assistant to the director designated and authorized by him or her
25 while acting under that designation.

26 (c) "Control." The term "control" (including the terms "controlling," "controlled by" and
27 "under common control with"), means the possession, direct or indirect, of the power to direct or
28 cause the direction of the management and policies of a person, whether through the ownership of
29 voting securities, by contract other than a commercial contract for goods or management services,
30 or otherwise, unless the power is the result of an official position with or corporate office held by
31 the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls,
32 holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the
33 voting securities of any other person. This presumption may be rebutted by a showing made in
34 the manner provided by section ~~27-35-3(i)~~ 27-35-3(k) that control does not exist in fact. The

1 commissioner may determine, after furnishing all persons in interest notice and opportunity to be
2 heard and making specific findings of fact to support the determination, that control exists in fact,
3 notwithstanding the absence of a presumption to that effect.

4 (d) "Insurance holding company system." An "insurance holding company system"
5 consists of two (2) or more affiliated persons, one or more of which is an insurer.

6 (e) "Insurer." The term "insurer" means any person or persons or corporation, partnership
7 or company authorized by the laws of this state to transact the business of insurance in this state,
8 including entities organized or authorized to transact business in this state pursuant to chapters
9 19, 20, 20.1, 20.2, 20.3, and 41 of this title, except that it shall not include: ~~(4)~~ agencies,
10 authorities, or instrumentalities of the United States, its possessions and territories, the
11 Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a
12 state. ~~;~~

13 ~~(2) Fraternal benefit societies.~~

14 (f) ~~"NAIC" means the National Association of Insurance Commissioners.~~ "Enterprise
15 Risk." "Enterprise Risk" means any activity, circumstance, event or series of events involving
16 one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material
17 adverse effect upon the financial condition or liquidity of the insurer or its insurance holding
18 company system as a whole, including, but not limited to, anything that would cause the insurer's
19 risk-based capital to fall into company action level as set forth in chapters 27-4.6 and 27-4.7 or
20 would cause the insurer to be in a hazardous financial condition as set forth in chapters 27-14.2

21 (g) "NAIC." means the national association of insurance commissioners.

22 ~~(g)~~(h) "Person." A "person" is an individual, a corporation, a limited liability company, a
23 partnership, an association, a joint stock company, a trust, an unincorporated organization, or any
24 similar entity or any combination of the foregoing acting in concert, but shall not include any
25 joint venture partnership exclusively engaged in owning, managing, leasing or developing real or
26 tangible personal property.

27 ~~(h)~~(i) "Securityholder." A "securityholder" of a specified person is one who owns any
28 security of such person, including common stock, preferred stock, debt obligations, and any other
29 security convertible into or evidencing the right to acquire any of the foregoing.

30 ~~(i)~~(j) "Subsidiary." A "subsidiary" of a specified person is an affiliate controlled by such
31 person directly, or indirectly through one or more intermediaries.

32 ~~(j)~~(k) "Voting security." The term "voting security" shall include any security convertible
33 into or evidencing a right to acquire a voting security.

34 **27-35-2. Acquisition of control of or merger with domestic insurer.** -- (a) Filing

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

12 (2) For purposes of this section, any controlling person of a domestic insurer seeking to
13 divest its controlling interest in the domestic insurer, in any manner, shall file with the
14 commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least
15 thirty (30) days prior to the cessation of control. The commissioner shall determine those
16 instances in which the party(ies) seeking to divest or to acquire a controlling interest in an insurer
17 will be required to file for and obtain approval of the transaction. The information shall remain
18 confidential until the conclusion of the transaction unless the commissioner, in his or her
19 discretion, determines that confidential treatment will interfere with enforcement of this section.
20 If the statement referred to in subdivision (a)(1) of this section is otherwise filed, this paragraph
21 shall not apply.

22 (3) With respect to a transaction subject to this section, the acquiring person must also
23 file a pre-acquisition notification with the commissioner, which shall contain the information set
24 forth in subdivision 27-35-2.5(c)(1). A failure to file the notification may be subject to penalties
25 specified in subdivision 27-35-2.5(e)(3).

26 ~~(2)(4)~~ For the purposes of this section, a domestic insurer shall include any person
27 controlling a domestic insurer unless the person, as determined by the commissioner, is either
28 directly or through its affiliates primarily engaged in business other than the business of
29 insurance. ~~However, the person shall file a pre-acquisition notification with the commissioner~~
30 ~~containing the information set forth in subdivision 27-35-2.5(e)(1) sixty (60) days prior to the~~
31 ~~proposed effective date of the acquisition. Failure to file is subject to subdivision 27-35-2.5(e)(3).~~
32 For the purposes of this section, "person" shall not include any securities broker holding, in the
33 usual and customary broker's function, less than twenty percent (20%) of the voting securities of
34 an insurance company or of any person which controls an insurance company.

1 (b) Content of Statement. - (1) The statement to be filed with the commissioner under
2 this section shall be made under oath or affirmation and shall contain the following **information**:

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

6 (A) If the person is an individual, his or her principal occupation and all offices and
7 positions held during the past five (5) years, and any conviction for crimes other than minor
8 traffic violations during the past ten (10) years;

9 (B) If the person is not an individual, a report of the nature of its business operations
10 during the past five (5) years or for the lesser period as the person and any predecessors shall
11 have been in existence; an informative description of the business intended to be done by the
12 person and the person's subsidiaries, and a list of all individuals who are or who have been
13 selected to become directors or executive officers of the person, or who perform or will perform
14 functions appropriate to such positions. The list shall include for each individual the information
15 required by [subparagraph \(A\) of](#) this subdivision;

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

23 (iii) Fully audited financial information as to the earnings and financial condition of each
24 acquiring party for the preceding five (5) fiscal years of each acquiring party (or for such lesser
25 period as the acquiring party and any predecessors shall have been in existence) and similar
26 unaudited information as of a date not earlier than ninety (90) days prior to the filing of the
27 statement;

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

31 (v) The number of shares of any security referred to in subsection (a) of this section
32 which each acquiring party proposes to acquire, and the terms of the offer, request, invitation,
33 agreement, or acquisition referred to in subsection (a) of this section, and a statement as to the
34 method by which the fairness of the proposal was arrived at;

1 (vi) The amount of each class of any security referred to in subsection (a) of this section
2 which is beneficially owned or concerning which there is a right to acquire beneficial ownership
3 by each acquiring party;

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

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

14 (ix) A description of any recommendations to purchase any security referred to in
15 subsection (a) of this section made during the twelve (12) calendar months preceding the filing of
16 the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of
17 the acquiring party;

18 (x) Copies of all tender offers for, requests or invitations for tenders of, exchange offers
19 for, and agreements to acquire or exchange any securities referred to in subsection (a) of this
20 section, and (if distributed) of additional soliciting material relating to them;

21 (xi) The terms of any agreement, contract, or understanding made with or proposed to be
22 made with any broker-dealer as to solicitation of securities referred to in subsection (a) of this
23 section for tender, and the amount of any fees, commissions, or other compensation to be paid to
24 broker-dealers with regard thereto; ~~and~~

25 (xii) An agreement by the person required to file the statement referred to in subsection
26 (a) of this section that it will provide the annual report, specified in subsection 27-35-3(l), for so
27 long as control exists;

28 (xiii) An acknowledgement by the person required to file the statement referred to in
29 subsection (a) of this section that the person and all subsidiaries within its control in the insurance
30 holding company system will provide information to the commissioner upon request as necessary
31 to evaluate enterprise risk to the insurer; and

32 ~~(xii)~~(xiv) Such additional information that the commissioner may by rule or regulation
33 prescribe as necessary or appropriate for the protection of policyholders and securityholders of
34 the insurer or in the public interest;

1 (2) If the person required to file the statement referred to in subsection (a) of this section
2 is a partnership, limited partnership, syndicate, or other group, the commissioner may require that
3 the information called for by paragraphs (1)(i) -- ~~(1)(xiii)~~ (1)(xiv) of this subsection shall be given
4 with respect to each partner of the partnership or limited partnership, each member of the
5 syndicate or group, and each person who controls the partner or member. If any partner, member,
6 or person is a corporation, or the person required to file the statement referred to in subsection (a)
7 of this section is a corporation, the commissioner may require that the information called for by
8 paragraphs (1)(i) -- ~~(1)(xiii)~~ (1)(xiv) of this subsection shall be given with respect to the
9 corporation, each officer and director of the corporation, and each person who is directly or
10 indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting
11 securities of the corporation;

12 (3) If any material change occurs in the facts set forth in the statement filed with the
13 commissioner and sent to the insurer pursuant to this section, an amendment setting forth the
14 change, together with copies of all documents and other material relevant to the change, shall be
15 filed with the commissioner and sent to the insurer within two (2) business days after the person
16 learns of the change.

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

24 (d) Approval by commissioner: Hearings. - (1) The commissioner shall approve any
25 merger or other acquisition of control referred to in subsection (a) of this section unless, after a
26 public hearing held on the merger or acquisition, at the discretion of the commissioner or upon
27 the request of the acquiring party, the insurer or any other interested party, he or she finds that
28 any of the following conditions exist:

29 (i) After the change of control the domestic insurer referred to in subsection (a) of this
30 section would not be able to satisfy the requirements for the issuance of a license to write the line
31 or lines of insurance for which it is presently licensed;

32 (ii) The effect of the merger or other acquisition of control would be substantially to
33 lessen competition in insurance in this state or tend to create a monopoly. In applying the
34 competitive standard in this subparagraph:

1 (A) The informational requirements of subdivision 27-35-2.5(c)(1) and the standards of
2 subdivision 27-35-2.5(d)(2) shall apply;

3 (B) The merger or other acquisition shall not be disapproved if the commissioner finds
4 that any of the situations meeting the criteria provided by subdivision 27-35-2.5(d)(3) exist; and

5 (C) The commissioner may condition the approval of the merger or other acquisition on
6 the removal of the basis of disapproval within a specified period of time;

7 (iii) The financial condition of any acquiring party is such as might jeopardize the
8 financial stability of the insurer, or prejudice the interest of its policyholders;

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

13 (v) The competence, experience, and integrity of those persons who would control the
14 operation of the insurer are such that it would not be in the interest of policyholders of the insurer
15 and of the public to permit the merger or other acquisition of control; or

16 (vi) The acquisition is likely to be hazardous or prejudicial to the insurance-buying
17 public.

18 (2) The public hearing referred to in subdivision (1) of this subsection, if required, shall
19 be held within thirty (30) days after the statement required by subsection (a) of this section is
20 filed, and at least twenty (20) days notice of the public hearing shall be given by the
21 commissioner to the person filing the statement. Not less than seven (7) days notice of the public
22 hearing shall be given by the person filing the statement to the insurer and to such other persons
23 as may be designated by the commissioner. The commissioner shall make a determination within
24 ~~a~~ the sixty (60) day period preceding the effective date of the proposed transaction. At the
25 hearing, the person filing the statement, the insurer, any person to whom notice of hearing was
26 sent, and any other person whose interest may be affected shall have the right to present evidence,
27 examine and cross examine witnesses, and offer oral and written arguments and in connection
28 therewith shall be entitled to conduct discovery proceedings in the same manner as is presently
29 allowed in the superior court of this state. All discovery proceedings shall be concluded not later
30 than three (3) days prior to the commencement of the public hearing. ~~;~~

31 (3) If the proposed acquisition of control will require the approval of more than one
32 commissioner, the public hearing referred to in subdivision (2) of this subsection may be held on
33 a consolidated basis upon request of the person filing the statement referred to in subsection (a) of
34 this section. Such person shall file the statement referred to in subsection (a) of this section with

1 the national association of insurance commissioners (NAIC) within five (5) days of making the
2 request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall
3 provide notice to the applicant of the opt-out within ten (10) days of the receipt of the statement
4 referred to in subsection (a) of this section. A hearing conducted on a consolidated basis shall be
5 public and shall be held within the United States before the commissioners of the states in which
6 the insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner
7 may attend such hearing, in person or by telecommunication.

8 ~~(3)~~(4) In connection with a change of control of a domestic insurer, any determination by
9 the commissioner that the person acquiring control of the insurer shall be required to maintain or
10 restore the capital of the insurer to the level required by the laws and regulations of this state shall
11 be made not later than sixty (60) days after the date of notification of the change in control
12 submitted pursuant to section 27-35-2(a).

13 ~~(4)~~(5) The commissioner may retain at the acquiring person's expense any attorneys,
14 actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may
15 be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of
16 control.

17 (e) Exemptions. - The provisions of this section shall not apply to any offer, request,
18 invitation, agreement or acquisition which the commissioner by order shall exempt from this
19 section as not having been made or entered into for the purpose and not having the effect of
20 changing or influencing the control of a domestic insurer, or as otherwise not comprehended
21 within the purposes of this section.

22 (f) Violations. - The following shall be violations of this section:

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

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

27 (g) Jurisdiction; consent to service of process. - The courts of this state are hereby vested
28 with jurisdiction over every person not resident, domiciled, or authorized to do business in this
29 state who files a statement with the commissioner under this section, and over all actions
30 involving such person arising out of violations of this section, and each such person shall be
31 deemed to have performed acts equivalent to and constituting an appointment by the person of the
32 commissioner to be his true and lawful attorney upon whom may be served all lawful process in
33 any action, suit, or proceeding arising out of violations of this section. Copies of all lawful
34 process shall be served on the commissioner and transmitted by registered or certified mail by the

1 commissioner to the person at his or her last known address.

2 **27-35-2.5. Acquisitions involving insurers not otherwise covered.** -- (a) Definitions. -

3 The following definitions shall apply for the purposes of this section only:

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

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

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

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

14 ~~(a) An acquisition subject to approval or disapproval by the commissioner pursuant to~~
15 ~~section 27-35-2;~~

16 ~~(b)~~(a) A purchase of securities solely for investment purposes so long as the securities
17 are not used by voting or otherwise to cause or attempt to cause the substantial lessening of
18 competition in any insurance market in this state. If a purchase of securities results in a
19 presumption of control under subsection 27-35-1(c), it is not solely for investment purposes
20 unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or
21 affirmatively finds that control does not exist and the disclaimer action or affirmative finding is
22 communicated by the domiciliary commissioner to the commissioner of this state;

23 ~~(c)~~(b) The acquisition of a person by another person when both persons are neither
24 directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition
25 notification is filed with the commissioner in accordance with ~~subsection 27-35-2.5(e)~~
26 subdivision 27-35-2.5(c)(1) thirty (30) days prior to the proposed effective date of the acquisition.
27 However, such pre-acquisition notification is not required for exclusion from this section if the
28 acquisition would otherwise be excluded from this section by any other subparagraph of
29 subdivision 27-35-2.5(b)(2);

30 ~~(d)~~(c) The acquisition of already affiliated persons;

31 ~~(e)~~(d) An acquisition if, as an immediate result of the acquisition,

32 (i) In no market would the combined market share of the involved insurers exceed five
33 percent (5%) of the total market,

34 (ii) There would be no increase in any market share, or

1 (iii) In no market would

2 (I) The combined market share of the involved insurers exceed twelve percent (12%) of
3 the total market, and

4 (II) The market share increase by more than two percent (2%) of the total market.

5 For the purpose of section (2)~~(e)~~ (d), a market means direct written insurance premium in
6 this state for a line of business as contained in the annual statement required to be filed by
7 insurers licensed to do business in this state;

8 ~~(f)~~(e) An acquisition for which a pre-acquisition notification would be required pursuant
9 to this section due solely to the resulting effect on the ocean marine insurance line of business;

10 ~~(g)~~(f) An acquisition of an insurer whose domiciliary commissioner affirmatively finds
11 that the insurer is in failing condition; there is a lack of feasible alternative to improving such
12 condition; the public benefits of improving the insurer's condition through the acquisition exceed
13 the public benefits that would arise from not lessening competition; and the findings are
14 communicated by the domiciliary commissioner to the commissioner of this state.

15 (c) Pre-acquisition Notification; Waiting Period. - An acquisition covered by subsection
16 27-35-2.5(b) may be subject to an order pursuant to subsection 27-35-2.5(e) unless the acquiring
17 person files a pre-acquisition notification and the waiting period has expired. The acquired person
18 may file a pre-acquisition notification. The commissioner shall give confidential treatment to
19 information submitted under this subsection in the same manner as provided in section 27-35-6.

20 (1) The pre-acquisition notification shall be in such form and contain such information as
21 prescribed by the NAIC relating to those markets which, under subdivision ~~27-35-2.5(b)(2)(e)~~ 27-
22 35-2.5(b)(2)(d), cause the acquisition not to be exempted from the provisions of this section. The
23 commissioner may require such additional material and information as deemed necessary to
24 determine whether the proposed acquisition, if consummated, would violate the competitive
25 standard of subsection 27-35-2.5(d). The required information may include an opinion of an
26 economist as to the competitive impact of the acquisition in this state accompanied by a summary
27 of the education and experience of such person indicating his or her ability to render an informed
28 opinion.

29 (2) The waiting period required shall begin on the date of receipt of the commissioner of
30 a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of
31 receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting
32 period, the commissioner on a one-time basis may require the submission of additional needed
33 information relevant to the proposed acquisition, in which event the waiting period shall end on
34 the earlier of the thirtieth day after receipt of the additional information by the commissioner or

1 termination of the waiting period by the commissioner.

2 (d) Competitive Standard.

3 (1) The commissioner may enter an order under subdivision 27-35-2.5(e)(1) with respect
4 to an acquisition if there is substantial evidence that the effect of the acquisition may be
5 substantially to lessen competition in any line of insurance in this state or tend to create a
6 monopoly or if the insurer fails to file adequate information in compliance with subsection 27-35-
7 2.5(c).

8 (2) In determining whether a proposed acquisition would violate the competitive
9 standard of paragraph (1) of this subsection, the commissioner shall consider the following:

10 (a) Any acquisition covered under subsection 27-35-2.5(b) involving two (2) or more
11 insurers competing in the same market is prima facie evidence of violation of the competitive
12 standards.

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

| 15 Insurer A | Insurer B |
|--------------|------------|
| 16 4% | 4% or more |
| 17 10% | 2% or more |
| 18 15% | 1% or more |

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

| 21 Insurer A | Insurer B |
|--------------|------------|
| 22 5% | 5% or more |
| 23 10% | 4% or more |
| 24 15% | 3% or more |
| 25 19% | 1% or more |

26 A highly concentrated market is one in which the share of the four (4) largest insurers is
27 seventy-five percent (75%) or more of the market. Percentages not shown in the tables are
28 interpolated proportionately to the percentages that are shown. If more than two (2) insurers are
29 involved, exceeding the total of the two columns in the table is prima facie evidence of violation
30 of the competitive standard in paragraph (1) of this subsection. For the purpose of this item, the
31 insurer with the largest share of the market shall be deemed to be Insurer A.

32 (b) There is a significant trend toward increased concentration when the aggregate
33 market share of any grouping of the largest insurers in the market, from the two (2) largest to the
34 eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time

1 extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of
2 the acquisition. Any acquisition or merger covered under subsection 27-35-2.5(b) involving two
3 (2) or more insurers competing in the same market is prima facie evidence of violation of the
4 competitive standard in paragraph (1) of this subsection if:

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 insurers
7 showing the requisite increase in the market share; and

8 (iii) Another involved insurer's market is two percent (2%) or more.

9 (c) For the purposes of subdivision 27-35-2.5(d)(2):

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

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

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

22 (d) Even though an acquisition is not prima facie violative of the competitive standard
23 under paragraphs (2)(a) and (2)(b) of this subsection, the commissioner may establish the
24 requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition
25 is prima facie violative of the competitive standard under sections (2)(a) and (2)(b) of this
26 subsection, a party may establish the absence of the requisite anticompetitive effect based upon
27 other substantial evidence. Relevant factors in making a determination under this subparagraph
28 include, but are not limited to, the following: market shares, volatility of ranking of market
29 leaders, number of competitors, concentration, trend of concentration in the industry, and ease of
30 entry and exit into the market.

31 (3) An order may not be entered under subdivision 27-35-2.5(e)(1) if:

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

1 competition; or

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

5 (e) Orders and Penalties.

6 (1) (a) If an acquisition violates the standards of this section, the commissioner may
7 enter an order:

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

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

12 (b) Such an order shall not be entered unless:

13 (i) There is a hearing;

14 (ii) Notice of the hearing is issued prior to the end of the waiting period and not less than
15 fifteen (15) days prior to the hearing; and

16 (iii) The hearing is concluded and the order is issued no later than sixty (60) days after
17 the date of the filing of the pre-acquisition notification with the commissioner.

18 Every order shall be accompanied by a written decision of the commissioner setting forth
19 findings of fact and conclusions of law.

20 (c) An order pursuant to this paragraph shall not apply if the acquisition is not
21 consummated.

22 (2) Any person who violates a cease and desist order of the commissioner under
23 paragraph (1) and while the order is in effect may, after notice and hearing and upon order of the
24 commissioner, be subject to one or more of the penalties set forth in section 42-14-16:

25 (3) Any insurer or other person who fails to make any filing required by this section, and
26 who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be
27 subject to one or more penalties set forth in section 42-14-16.

28 (f) Inapplicable Provisions. - Subsections 27-35-8(b), 27-35-8(c), and 27-35-10 do not
29 apply to acquisitions covered under subsection 27-35-2.5(b).

30 **27-35-3. Registration of insurers.** -- (a) Registration. - Every insurer which is
31 authorized to do business in this state and which is a member of an insurance holding company
32 system shall register with the commissioner, except a foreign insurer subject to registration
33 requirements and standards adopted by statute or regulation in the jurisdiction of its domicile
34 which are substantially similar to those contained in:

1 (1) this section;

2 (2) section 27-35-4(a)(1), (b) and (d) and

3 (3) Either subdivision 27-35-4(a)(2) or a provision such as the following: Each registered
4 insurer shall keep current the information required to be disclosed in its registration statement by
5 reporting all material changes or additions within fifteen (15) days after the end of the month in
6 which it learns of each change or addition.

7 Any insurer which is subject to registration under this section shall register fifteen (15)
8 days after it becomes subject to registration, and annually thereafter by March 1 of each year for
9 the previous calendar year, unless the commissioner for good cause shown extends the time for
10 registration, and then within the extended time. The commissioner may require any insurer
11 authorized to do business in the state which is a member of ~~a~~ [an insurance](#) holding company
12 system and which is not subject to registration under this section to furnish a copy of the
13 registration statement, the summary specified in subsection (c) of this section or other information
14 filed by the insurance company with the insurance regulatory authority of domiciliary
15 jurisdiction.

16 (b) Information and form required. - Every insurer subject to registration shall file a
17 registration statement [with the commissioner](#) on a form [and in a format](#) prescribed by the NAIC,
18 which shall contain the following current information:

19 (1) The capital structure, general financial condition, ownership, and management of the
20 insurer and any person controlling the insurer;

21 (2) The identity and relationship of every member of the insurance holding company
22 system;

23 (3) The following agreements in force and transactions currently outstanding or which
24 have occurred during the last calendar year between the insurer and its affiliates:

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

27 (ii) Purchases, sales, or exchanges of assets;

28 (iii) Transactions not in the ordinary course of business;

29 (iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual
30 contingent exposure of the insurer's assets to liability, other than insurance contracts entered into
31 in the ordinary course of the insurer's business;

32 (v) All management service contracts, service contracts and all cost sharing
33 arrangements;

34 (vi) Reinsurance agreements;

1 (vii) Dividends and other distributions to shareholders; and

2 (viii) Consolidated tax allocation agreements;

3 (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling
4 affiliate, for a loan made to any member of the insurance holding company system; ~~and~~

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

12 ~~(5)~~(6) Other matters concerning transactions between registered insurers and any
13 affiliates as may be included from time to time in any registration forms adopted or approved by
14 the commissioner. ;

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

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

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

23 (d) Materiality. - No information need be disclosed on the registration statement filed
24 pursuant to subsection (b) of this section if that information is not material for the purposes of this
25 section. Unless the commissioner by rule, regulation, or order provides otherwise, sales,
26 purchases, exchanges, loans, or extensions of credit, investments or guarantees involving one-half
27 of one percent (.5%) or less of an insurer's admitted assets as of the ~~thirty-first~~ 31st day of
28 December next preceding shall not be deemed material for purposes of this section.

29 (e) Reporting of Dividends to Shareholders. - Subject to subsection 27-35-4(b), each
30 registered insurer shall report to the commissioner all dividends and other distributions to
31 shareholders within fifteen (15) business days following the declaration thereof.

32 (f) Information of Insurers. - Any person within an insurance holding company system
33 subject to registration shall be required to provide complete and accurate information to an
34 insurer, where the information is reasonably necessary to enable the insurer to comply with the

1 provisions of this act.

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

5 (h) Consolidated filing. - The commissioner may require or allow two (2) or more
6 affiliated insurers subject to registration to file a consolidated registration statement.

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

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

14 (k) Disclaimer. - Any person may file with commissioner a disclaimer of affiliation with
15 any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance
16 holding company system. The disclaimer shall fully disclose all material relationships and bases
17 for affiliation between the person and the insurer as well as the basis for disclaiming the
18 affiliation. ~~After a disclaimer has been filed, the insurer shall be relieved of any duty to register or
19 report under this section which may arise out of the insurer's relationship with the person unless
20 and until the commissioner disallows the disclaimer. The commissioner shall disallow a
21 disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and
22 after making specific findings of fact to support the disallowance.~~

23 A disclaimer of affiliation shall be deemed to have been granted unless the commissioner,
24 within thirty (30) days following receipt of a complete disclaimer, notifies the filing party that the
25 disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an
26 administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty
27 to register under this section if approval of the disclaimer has been granted by the commissioner,
28 or if the disclaimer is deemed to have been approved.

29 (l) Enterprise Risk Filing. The ultimate controlling person of every insurer subject to
30 registration shall also file an annual enterprise risk report. The report shall, to the best of the
31 ultimate controlling person's knowledge and belief, identify the material risks within the
32 insurance holding company system that could pose enterprise risk to the insurer. The report shall
33 be filed with the lead state commissioner of the insurance holding company system as determined
34 by the procedures within the financial analysis handbook adopted by the national association of

1 [insurance commissioners.](#)

2 ~~(m)~~ Violations. - The failure to file a registration statement or any summary of the
3 registration statement [or enterprise risk filing](#) required by this section within the time specified for
4 the filing shall be a violation of this section.

5 **27-35-4. Standards and management of an insurer within a holding company**

6 **system.** -- (a) Transactions within ~~a~~ [an Insurance](#) Holding Company System. - (1) Transactions
7 within ~~a~~ [an insurance](#) holding company system to which an insurer subject to registration is a
8 party shall be subject to the following standards:

9 (i) The terms shall be fair and reasonable;

10 [\(ii\) Agreements for cost sharing and management services shall include such provisions](#)
11 [as required by rule and regulation issued by the commissioner;](#)

12 ~~(iii)~~ (iii) Charges or fees for services performed shall be reasonable;

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

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

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

22 ~~(vii)~~ (vii) The charges or fees for services performed shall be reasonable; and

23 (2) The following transactions involving a domestic insurer and any person in its
24 [insurance](#) holding company system, [including amendments or modifications of affiliate](#)
25 [agreements previously filed pursuant to this section, which are subject to any materiality](#)
26 [standards contained in subparagraphs \(A\) through \(G\) of this subsection,](#) may not be entered into
27 unless the insurer has notified the commissioner in writing of its intention to enter into the
28 transaction at least thirty (30) days prior, or such shorter period as the commissioner may permit,
29 and the commissioner has not disapproved it within that period. [The notice for amendments or](#)
30 [modifications shall include the reasons for the change and the financial impact on the domestic](#)
31 [insurer. Informal notice shall be reported, within thirty \(30\) days after a termination of a](#)
32 [previously filed agreement, to the commissioner for determination of the type of filing required, if](#)
33 [any.](#)

34 (A) Sales, purchases, exchanges, loans, extensions of credit, or investments, provided the

1 transactions are equal to or exceed:

2 (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's
3 admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st
4 day of December next preceding; or

5 (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets; as of
6 the 31st day of December next preceding;

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

12 (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's
13 admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st
14 day of December next preceding;

15 (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets; as of
16 the 31st day of December next preceding;

17 (C) Reinsurance agreements or modifications thereto, including:

18 (I) All reinsurance pooling agreements;

19 (II) Agreements in which the reinsurance premium or a change in the insurer's liabilities,
20 or the projected reinsurance premiums or a change in the insurer's liabilities in any of the next
21 three (3) years, equals or exceeds five percent (5%) of the insurer's surplus as regards
22 policyholders as of the 31st day of December next preceding, including those agreements which
23 may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an
24 agreement or understanding exists between the insurer and nonaffiliate that any portion of those
25 assets will be transferred to one or more affiliates of the insurer;

26 (D) All management agreements, service contracts, tax allocation agreements,
27 guarantees and all cost sharing arrangements;

28 (E) Guarantees when made by a domestic insurer; provided, however, that a guarantee
29 which is quantifiable as to amount is not subject to the notice requirements of this subsection
30 unless it exceeds the lesser of one-half of one percent (.5%) of the insurer's admitted assets or ten
31 percent (10%) of surplus as regards policyholders as of the 31st day of December next preceding.
32 Further, all guarantees which are not quantifiable as to amount are subject to the notice
33 requirements of this subsection;

34

1 ~~(E)~~(F) Direct or indirect acquisitions or investments in a person that controls the insurer
2 or in an affiliate of the insurer in an amount which, together with its present holdings in such
3 investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders.
4 Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to ~~section 2~~
5 [section 27-35-1.5](#) of this ~~act~~ [chapter](#) (or authorized under any other section of this chapter), or in
6 non-subsidiary insurance affiliates that are subject to the provisions of this act, are exempt from
7 this requirements; and

8 (G) Any material transactions, specified by regulation, which the commissioner
9 determines may adversely affect the interests of the insurer's policyholders;

10 Nothing contained in this paragraph shall be deemed to authorize or permit any
11 transactions which, in the case of an insurer not a member of the same [insurance](#) holding
12 company system, would be otherwise contrary to law.

13 (3) A domestic insurer may not enter into transactions which are part of a plan or series
14 of like transactions with persons within the [insurance](#) holding company system if the purpose of
15 those separate transactions is to avoid the statutory threshold amount and thus avoid the review
16 that would occur otherwise. If the commissioner determines that the separate transactions were
17 entered into over any twelve (12) month period for that purpose, he or she may exercise his or her
18 authority under section 27-35-9.

19 (4) The commissioner, in reviewing transactions pursuant to ~~subsection (b)~~ [subdivision](#)
20 [\(a\)\(2\)](#) of this section shall consider whether the transactions comply with the standards set forth in
21 ~~subsection (a)~~ [subdivision \(a\)\(1\)](#) of this section and whether they may adversely affect the
22 interests of policyholders.

23 (5) The commissioner shall be notified within thirty (30) days of any investment of the
24 domestic insurer in any one corporation if the total investment in the corporation by the insurance
25 holding company system exceeds ten percent (10%) of the corporation's voting securities.

26 (b) Adequacy of surplus. - For the purposes of this chapter, in determining whether an
27 insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding
28 liabilities and adequate to its financial needs, the following factors, among others, shall be
29 considered:

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

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

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

- 1 (4) The extent of the geographical dispersion of the insurer's insured risks;
- 2 (5) The nature and extent of the insurer's reinsurance program;
- 3 (6) The quality, diversification, and liquidity of the insurer's investment portfolio;
- 4 (7) The recent past and projected future trend in the size of the insurer's investment
- 5 portfolio;
- 6 (8) The surplus as regards policyholders maintained by other comparable insurers;
- 7 (9) The adequacy of the insurer's reserves; and
- 8 (10) The quality and liquidity of investment in affiliates. The commissioner may treat
- 9 this investment as a disallowed asset for the purposes of determining the adequacy of surplus as
- 10 regards policyholders whenever in his or her judgment the investment warrants.

11 (c) Dividends and other distributions. - (1) No domestic insurer shall pay any

12 extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty

13 (30) days after the commissioner has received notice of the declaration thereof and has not within

14 that period disapproved the payment, or until the commissioner has approved the payment within

15 the thirty (30) day period;

16 (2) For purposes of this section, an "extraordinary dividend or distribution" includes any

17 dividend or distribution of cash or other property, whose fair market value together with that of

18 other dividends or distributions made within the preceding twelve (12) months exceeds the lesser

19 of:

20 (i) ten percent (10%) of the insurer's surplus as regards policyholders as of the ~~thirty-first~~

21 31st day of December next preceding; ; or

22 (ii) the net gain from operations of the insurer, if the insurer is a life insurer, or the net

23 income, if the insurer is not a life insurer, not including realized capital gains, for the twelve (12)

24 month period ending the 31st day of December next preceding, but shall not include pro rata

25 distributions of any class of the insurer's own securities.

26 In determining whether a dividend or distribution is extraordinary, an insurer other than

27 a life insurer may carry forward net income from the previous two (2) calendar years that has not

28 already been paid out as dividends. This carry forward shall be computed by taking the net

29 income from the second and third preceding calendar years, not including realized capital gains,

30 less dividends paid in the second and immediate preceding calendar years;

31 (3) Notwithstanding any other provision of law, an insurer may declare an extraordinary

32 dividend or distribution which is conditional upon the commissioner's approval, and the

33 declaration shall confer no rights upon shareholders until: (i) the commissioner has approved the

34 payment of the dividend or distribution or (ii) the commissioner has not disapproved the payment

1 within the thirty (30) day period referred to in subdivision (1) of this subsection.

2 (d) Management of Domestic Insurers Subject to Registration. - All domestic insurers
3 shall become in compliance and maintain compliance with the provisions of this title addressing
4 good corporate governance standards section 27-1-2.1, unless otherwise exempted in section 27-
5 1-2.1.

6 **27-35-5. Examination.** -- (a) Power of commissioner. - Subject to the limitation
7 contained in this section and in addition to the powers which the commissioner has under other
8 sections of this title relating to the examination of insurers, the commissioner shall ~~also~~ have the
9 power to examine ~~order~~ any insurer registered under 27-35-3 ~~to produce such records, books, or~~
10 ~~other information papers in the possession of the insurer or its affiliates as are reasonably~~
11 ~~necessary to ascertain the financial condition of the insurer or to determine compliance with this~~
12 ~~chapter. In the event the insurer fails to comply with the order, the commissioner shall have the~~
13 ~~power to examine the affiliates to obtain the information.~~ and its affiliates to ascertain the
14 financial condition of the insurer, including the enterprise risk to the insurer by the ultimate
15 controlling party, or by any entity or combination of entities within the insurance holding
16 company system, or by the insurance holding company system on a consolidated basis.

17 (b) Access to books and records.

18 (1) The commissioner may order any insurer registered under section 27-35-3 to produce
19 such records, books, or other information papers in the possession of the insurer or its affiliates as
20 are reasonably necessary to determine compliance with this chapter.

21 (2) To determine compliance with this chapter, the commissioner may order any insurer
22 registered under section 27-35-3 to produce information not in the possession of the insurer if the
23 insurer can obtain access to such information pursuant to contractual relationships, statutory
24 obligations, or other method. In the event the insurer cannot obtain the information requested by
25 the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason
26 that the insurer cannot obtain the information and the identity of the holder of information.
27 Whenever it appears to the commissioner that the detailed explanation is without merit, the
28 commissioner may require, after notice and hearing, the insurer to pay a penalty for each day's
29 delay, or may suspend or revoke the insurer's license.

30 ~~(b)~~(c) Use of consultants. - The commissioner may retain at the registered insurer's
31 expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the
32 commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination
33 under subsection (a) of this section. Any persons so retained shall be under the direction and
34 control of the commissioner and shall act in a purely advisory capacity.

1 ~~(e)~~(d) Expenses. - Each registered insurer producing for examination records, books and
2 papers pursuant to subsection (a) of this section shall be liable for and shall pay the expense of the
3 examination in accordance with applicable laws of this state.

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

17 **27-35-6. Confidential treatment.** -- (a) Documents, materials or other information in the
18 possession or control of the department of business regulation that are obtained by or disclosed to
19 the commissioner or any other person in the course of an examination or investigation made
20 pursuant to section 27-35-5, and all information reported pursuant to sections 27-35-2(b)(xii), 27-
21 35-2(b)(viii), 27-35-3, and ~~27-35-5~~ 27-35-4, shall be confidential by law and privileged, shall not
22 be subject to the access of public records act, shall not be subject to subpoena and shall not be
23 subject to discovery or admissible in evidence in any private civil action. However, the
24 commissioner is authorized to use the documents, materials or other information in the
25 furtherance of any regulatory or legal action brought as part of the commissioner's official duties.
26 The commissioner shall not otherwise make the documents, materials or other information public,
27 without the prior written consent of the insurer to which it pertains unless the commissioner, after
28 giving the insurer and its affiliates who would be affected thereby notice and opportunity to be
29 heard, determines that the interests of policyholders, shareholders, or the public will be served by
30 the publication thereof, in which event the commissioner may publish all or any part of it in a
31 manner that he or she may deem appropriate.

32 (b) Neither the commissioner nor any person who received documents, materials or other
33 information while acting under the authority of the commissioner or with whom such documents,
34 materials, or other information are shared pursuant to this chapter shall be permitted or required

1 to testify in any private civil action concerning any confidential documents, materials, or
2 information subject to subsection (a) of this section.

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

4 (1) May share documents, materials or other information, including the confidential and
5 privileged documents, materials or information subject to subsection (a), with other state, federal
6 and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with
7 state, federal, and international law enforcement authorities, including members of any
8 supervisory college described in section 27-35-5.5, provided that the recipient agrees in writing to
9 maintain the confidentiality and privileged status of the document, material or other information;
10 and has verified in writing the legal authority to maintain confidentiality.

11 (2) Notwithstanding subparagraph (c)(1) above, the commissioner may only share
12 confidential and privileged documents, material, or information reported pursuant to subsection
13 27-35-3(1) with commissioners of states having statutes or regulations substantially similar to
14 subsection (a) of this section and who have agreed in writing not to disclose such information.

15 ~~(2)~~(3) May receive documents, materials or information, including otherwise
16 confidential and privileged documents, materials or information from the NAIC and its affiliates
17 and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic
18 jurisdictions, and shall maintain as confidential or privileged any document, material or
19 information received with notice or the understanding that it is confidential or privileged under
20 the laws of the jurisdiction that is the source of the document, material or information. ~~and~~

21 ~~(3)~~(4) ~~May~~ Shall enter into written agreements with the NAIC governing sharing and use
22 of information provided pursuant to this chapter consistent with this subsection. ~~that shall:~~

23 (i) Specify procedures and protocols regarding the confidentiality and security of
24 information shared with the NAIC and its affiliates and subsidiaries pursuant to this chapter,
25 including procedures and protocols for sharing by the NAIC with other state, federal or
26 international regulators;

27 (ii) Specify that ownership of information shared with the NAIC and its affiliates and
28 subsidiaries pursuant to this chapter remains with the commissioner and the NAIC's use of the
29 information is subject to the direction of the commissioner;

30 (iii) Require prompt notice to be given to an insurer whose confidential information in the
31 possession of the NAIC pursuant to this chapter is subject to a request or subpoena to the NAIC
32 for disclosure or production; and

33 (iv) Require the NAIC and its affiliates and subsidiaries to consent to intervention by an
34 insurer in any judicial or administrative action in which the NAIC and its affiliates and

1 subsidiaries may be required to disclose confidential information about the insurer shared with
2 the NAIC and its affiliates and subsidiaries pursuant to this chapter.

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

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

9 (f) Documents, materials or other information in the possession or control of the NAIC
10 pursuant to this chapter shall be confidential by law and privileged, shall not be subject to section
11 38-2-3, shall not be subject to subpoena, and shall not be subject to discovery or admissible in
12 evidence in any private civil action.

13 **27-35-9. Sanctions.** -- (a) Any insurer failing, without just cause, to file any registration
14 statement as required in this chapter shall be required, after notice and hearing, to pay a penalty of
15 five hundred dollars (\$500) for each day's delay, to be recovered by the commissioner, and the
16 penalty so recovered shall be paid into the general revenue fund of this state. The maximum
17 penalty under this section is that determined pursuant to section 42-14-16. The commissioner may
18 reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the
19 penalty would constitute a financial hardship to the insurer; .

20 (b) Every director or officer of an insurance holding company system who knowingly
21 violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents
22 of the insurer to engage in transactions or make investments which have not been properly
23 reported or submitted as required by this chapter or which violate this chapter shall pay, in their
24 individual capacity, a civil forfeiture determined pursuant to section 42-14-16, ~~of not more than~~
25 ~~one thousand dollars (\$1,000) per violation,~~ after notice and hearing. In determining the amount
26 of the civil forfeiture, the commissioner shall take into account the appropriateness of the
27 forfeiture with respect to the gravity of the violation, the history of previous violations, and such
28 other matters as justice may require; .

29 (c) Whenever it appears to the commissioner that any insurer subject to this act or any
30 director, officer, employee, or agent of the insurer has engaged in any transaction or entered into
31 a contract which is subject to section 27-35-4 of this chapter and which would not have been
32 approved had approval been requested, the commissioner may order the insurer to immediately
33 cease and desist any further activity under the transaction or contract. After notice and hearing the
34 commissioner may also order the insurer to void any contracts and restore the status quo if that

1 action is in the best interest of the policyholders, creditors, or the public.

2 (d) Whenever it appears to the commissioner that any insurer or any director, officer,
3 employee or agent thereof has committed a willful violation of this chapter, that ~~any~~ insurer or
4 any director, officer, employee or agent thereof shall be in violation of chapter 54 of title 27.

5 (e) Whenever it appears to the commissioner that any person has committed a violation of
6 section 27-35-2 of this chapter and which prevents the full understanding of the enterprise risk to
7 the insurer by affiliates or by the insurance holding company system, the violation may serve as
8 an independent basis for disapproving dividends or distributions and for placing the insurer under
9 an order of supervision in accordance with chapter 27-14.1.

10 **27-35-10. Receivership.** -- Whenever it appears to the commissioner that any person has
11 committed a violation of this chapter which impairs the financial condition of a domestic insurer
12 as to threaten insolvency or make the further transaction of business by it hazardous to its
13 policyholders, creditors, shareholders, or the public, then the commissioner may proceed as
14 provided in chapter 14.3 of this title to take possession of the property of the domestic insurer and
15 to conduct ~~the its~~ business ~~of the insurer~~.

16 SECTION 3. This act shall take effect upon passage, except for the requirement to file an
17 Enterprise Risk Report included in subdivision 27-35-3(1) which shall take effect upon July 1,
18 2013.

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LC01328/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE -- INSURANCE HOLDING COMPANY SYSTEMS

1 This act would update the Insurance Holding Company Systems statutes to incorporate
2 changes from a recently revised model version prepared by the National Association of Insurance
3 Commissioners' ("NAIC"). This act would regulate transactions within an insurance holding
4 company system such as payment of dividends, intercompany agreements, change in control, etc.
5 It would provide authority to examine the enterprise risk of an insurance holding company system
6 where the risk could impact the financial condition of a domestic insurer. This act would also
7 require certain statements relating to corporate governance within the holding company structure.

8 This act would take effect upon passage, except for the requirement to file an Enterprise
9 Risk Report included in subdivision 27-35-3(1) which would take effect upon July 1, 2013.

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