
WEST VIRGINIA CODE CHAPTER 33
ARTICLE 27

WV Legislature

§33-27-1. Short title.

This article may be cited as the "West Virginia Insurance Holding Company Systems Act."

WV Legislature

§33-27-2. Definitions.

As used in this article:

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

(2) "Commissioner" means the West Virginia Insurance Commissioner, his or her deputies, or the West Virginia offices of the Insurance Commissioner, as appropriate.

(3) "Control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by §33-27-4(k) of this code that control does not exist in fact. The commissioner may determine after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination that control exists in fact, notwithstanding the absence of a presumption to that effect.

(4) "Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level, as set forth in §33-40-1 *et seq.* of this code, or would cause the insurer to be in hazardous financial condition, as set forth in §33-34-1 *et seq.* of this code.

(5) "Group capital calculation instructions" means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC, from time to time, in accordance with the procedures adopted by the NAIC.

(6) "Group-wide supervisor" means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under §33-27-6b of this code to have sufficient significant contacts with the internationally active insurance group.

(7) "Insurance holding company system" means a system that consists of two or more affiliated persons, one or more of which is an insurer.

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

(9) "Internationally active insurance group" means an insurance holding company system that includes an insurer registered under §33-27-4 of this code and meets the following criteria:

(A) Premiums written in at least three countries;

(B) The percentage of gross premiums written outside the United States is at least 10 percent of the insurance holding company system's total gross written premiums; and

(C) Based on a three-year rolling average, the total assets of the insurance holding company system are at least \$50 billion or the total gross written premiums of the insurance holding company system are at least \$10 billion.

(10) "NAIC" means the National Association of Insurance Commissioners.

(11) "NAIC liquidity stress test framework" means a NAIC publication that includes a history of the NAIC's development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year, such scope criteria, instructions, and reporting template being as adopted by the NAIC and as amended by the NAIC, from time to time, in accordance with the procedures adopted by the NAIC.

(12) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but does not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

(13) "Scope criteria," as detailed in the NAIC liquidity stress test framework, means the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC liquidity stress test framework for that data year.

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

(15) A "subsidiary" of a specified person means an affiliate controlled by such person directly or indirectly through one or more intermediaries.

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

WV Legislature

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

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

- (1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;
- (2) Acting as an insurance agent for its parent or for any of its parent's insurer subsidiaries;
- (3) Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;
- (4) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
- (5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
- (6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups;
- (7) Rendering other services related to the operations of an insurance business, including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;
- (8) Ownership and management of assets which the parent corporation could itself own or manage;
- (9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function;
- (10) Financing of insurance premiums, agents and other forms of consumer financing;
- (11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and
- (12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section;

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

- (1) Invest in common stock, preferred stock, debt obligations and other securities of one or

more subsidiaries, amounts which do not exceed the lesser of ten percent of the insurer's assets or fifty percent of the insurer's surplus as regards policyholders: Provided, That after the investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries shall be excluded and there shall be included:

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

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

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

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

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

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

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

(d) Qualification of investment; when determined. -- Whether any investment made pursuant to subsection (b) of this section meets the applicable requirements of that subsection is to be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then

outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

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

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

(a) Filing requirements. --

(1) No person other than the issuer may make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer and a person shall not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless at the time the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer and, to the extent permitted by applicable federal laws, rules and regulations, the insurer has sent to its shareholders a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If the person required to file the statement referred to in subsection (a) of this section is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by subdivisions (1) through (14), inclusive, subsection (b) of this section shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group and each person who controls the

partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) of this section is a corporation, the commissioner may require that the information called for by subdivisions (1) through (14), inclusive, subsection (b) of this section shall be given with respect to the corporation and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

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

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

(f) (1) Approval by commissioner; hearings. -- The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) of this section unless, after a public hearing thereon, he or she finds that:

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

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

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

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

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

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

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

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

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

(2) The public hearing required by this section shall be held within thirty days after the statement required by subsection (a) of this section is filed, and at least twenty days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons as may be designated by the commissioner. The commissioner shall make a determination within the sixty-day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected has the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the circuit courts of this state: Provided, That all discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

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

(4) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer is required to maintain or restore the capital of the insurer to the level required by the laws of this state shall be made not later than sixty days after the date of filing the change in control submitted pursuant to

subdivision (1), subsection (a) of this section.

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

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

(h) The following are violations of this section:

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

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

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

§33-27-3a. Acquisitions Involving Insurers Not Otherwise Covered; definitions; scope; pre-acquisition notification and waiting period; competitive standard; orders and penalties.

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

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

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

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

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

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

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

(C) The acquisition of already affiliated persons;

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

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

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

(iii) In no market would:

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

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

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

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

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

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

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

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

(d) Competitive Standard. -- (1) The commissioner may enter an order under subdivision (1),

subsection (e) of this section, with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly or if the insurer fails to file adequate information in compliance with subsection (c) of this section.

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

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

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

Insurer A Insurer B

4% 4% or more

10% 10%

15% 1% or more

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

Insurer A Insurer B

5% 5% or more

10% 4% or more

15% 3% or more

19% 1% or more

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

(B) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven percent or more of the market over a period of time

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) There is a hearing;

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

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

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

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

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

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

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

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

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

§33-27-4. Registration of insurers; information and form required; summary of changes to registration statement; materiality; reporting of dividends to shareholders; information to insurers; termination of registration; consolidated filing; alternative registration; exemptions; disclaimer; enterprise risk filing; group capital calculation filing; liquidity stress test filing; violations.

(a) Registration. — (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

(A) This section;

(B) §33-27-5(a), §33-27-5(b), and §33-27-5(c) of this code; and

(C) Either §33-27-5(d) of this code or a provision such as the following: "Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition".

(2) Any insurer which is subject to registration under this section shall register within 15 days after it becomes subject to registration and annually thereafter by June 1 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration. The commissioner may require any authorized insurer which is a member of an insurance holding company system which is not subject to registration under this section to furnish a copy of the registration statement, the summary described in subsection (c) of this section, or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Information and form required. — Every insurer subject to registration shall file a registration statement with the commissioner on a form and in a format prescribed by the National Association of Insurance Commissioners (NAIC), which shall contain the following current information:

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

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

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

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

- (B) Purchases, sales, or exchanges of assets;
 - (C) Transactions not in the ordinary course of business;
 - (D) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
 - (E) All management agreements, service contracts, and all cost-sharing arrangements;
 - (F) All reinsurance agreements;
 - (G) Dividends and other distributions to shareholders; and
 - (H) Consolidated tax allocation statements;
- (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;
- (5) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this subdivision may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;
- (6) Other matters concerning transactions between registered insurers and any affiliates as may be included, from time to time, in any registration forms adopted or approved by the commissioner;
- (7) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and
- (8) Any other information required by the commissioner by rule.
- (c) Summary of changes to registration statement. — All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
- (d) Materiality. — Information need not be disclosed on the registration statement filed pursuant to subsection (b) of this section if such information is not material for the purpose of this section. Unless the commissioner by rule or order provides otherwise, sales,

purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section. The definition of materiality provided in this subsection shall not apply for the purposes of the group capital calculation or the liquidity stress test framework.

(e) Reporting of dividends to shareholders. — Subject to §33-27-5(c) of this code, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within 15 business days following the declaration thereof.

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

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

(h) Consolidated filing. — The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(i) Alternative registration. — The commissioner may allow an insurer which is authorized to do business in this state and which is a part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under §33-27-4(a) of this code and to file all information and material required to be filed under this section.

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

(k) Disclaimer. — Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming such affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within 30 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted, and the commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the

disclaimer is deemed to have been approved.

(l) Enterprise Risk Filings. —

(1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC.

(2) Group capital calculation. —

(A) Except as provided below, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the NAIC group capital calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC. The following insurance holding company systems are exempt from filing the group capital calculation:

(i) An insurance holding company system that has only one insurer within its holding company structure, that only writes business, and is only licensed in its domestic state, and assumes no business from any other insurer;

(ii) An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board. The lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing;

(iii) An insurance holding company system whose non-United States group-wide supervisor is located within a reciprocal jurisdiction as described in §33-4-15a(b)(2)(F) of this code that recognizes the United States state regulatory approach to group supervision and group capital; and

(iv) An insurance holding company system:

(I) That provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to

allow the lead state to comply with the NAIC group supervision approach, as detailed in the Financial Analysis Handbook adopted by the NAIC; and

(II) Whose non-United States group-wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified by the commissioner in rule, the group capital calculation as the world-wide group capital assessment for United States insurance groups who operate in that jurisdiction.

(B) Notwithstanding the provisions of §33-27-4(1)(2)(A)(iii) and §33-27-4(1)(2)(A)(iv) of this code, a lead state commissioner shall require the group capital calculation for United States operations of any non-United States based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

(C) Notwithstanding the exemptions from filing the group capital calculation stated in §33-27-4(1)(2)(A) of this code, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in rule or regulation.

(D) If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.

(3) Liquidity stress test. —

(A) The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC liquidity stress test framework shall file the results of a specific year's liquidity stress test. The filing shall be made to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC.

(i) The NAIC liquidity stress test framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the NAIC Financial Stability Task Force or its successor. Any change to the NAIC liquidity stress test framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the scope criteria are considered scoped into the NAIC liquidity stress test framework for the specified data year unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the framework for that data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria are considered scoped out of the

NAIC liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the framework for that data year.

(I) Regulators wish to avoid having insurers scoped in and out of the NAIC liquidity stress test framework on a frequent basis. The lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, will assess this concern as part of the determination for an insurer.

(ii) The performance of, and filing of the results from, a specific year's liquidity stress test shall comply with the NAIC liquidity stress test framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations, in consultation with the NAIC Financial Stability Task Force or its successor, provided within the framework.

(m) Violations. — The failure to file a registration statement, or any summary of the registration statement, or enterprise risk filing required by this section within the time specified for such filing shall be a violation of this section.

§33-27-5. Standards; adequacy of surplus; dividends and other distributions; notice of amendments or modifications; management of domestic insurers subject to registration.

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

- (1) The terms shall be fair and reasonable;
- (2) Agreements for cost-sharing services and management shall include such provisions as required by rule;
- (3) Charges or fees for services performed shall be reasonable;
- (4) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
- (5) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties;
- (6) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;
- (7) If an insurer subject to this article is deemed by the commissioner to be in a hazardous financial condition as defined by §33-34-3a of this code or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, then the commissioner may require the insurer to secure and maintain either a deposit, held by the commissioner, or a bond, as determined by the insurer at the insurer's discretion, for the protection of the insurer for the duration of the contract(s) or agreement(s), or the existence of the condition for which the commissioner required the deposit or the bond.

In determining whether a deposit or a bond is required, the commissioner should consider whether concerns exist with respect to the affiliated person's ability to fulfill the contract(s) or agreement(s) if the insurer were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, and a deposit or bond is necessary, the commissioner has discretion to determine the amount of the deposit or bond, not to exceed the value of the contract(s) or agreement(s) in any one year, and whether such deposit or bond should be required for a single contract, multiple contracts, or a contract only with a specific person(s);

- (8) All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to control of the insurer, are identifiable, and are segregated or readily

capable of segregation, at no additional cost to the insurer, from all other persons' records and data. This includes all records and data that are otherwise the property of the insurer, in whatever form maintained, including, but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records, or similar records within the possession, custody, or control of the affiliate. At the request of the insurer, the affiliate shall provide that the receiver can obtain a complete set of all records of any type that pertain to the insurer's business; obtain access to the operating systems on which the data is maintained; obtain the software that runs those systems either through assumption of licensing agreements or otherwise; and restrict the use of the data by the affiliate if it is not operating the insurer's business. The affiliate shall provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement; and

(9) Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. Any right of offset in the event an insurer is placed into receivership shall be subject to §33-10-1 *et seq.* of this code.

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

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

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

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

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

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

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

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

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

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

(10) The quality and liquidity of investments in affiliates. The commissioner may treat any

such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his or her judgment such investment so warrants.

(c) Dividends and other distributions. — (1) No domestic insurer may pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

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

(B) The commissioner has approved that payment within the 30-day period.

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

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

(B) The net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending December 31, next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(3) In determining whether a dividend or distribution is extraordinary for purposes of this subsection, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

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

(A) The commissioner has approved the payment of such dividend or distribution; or

(B) The commissioner has not disapproved such payment within the 30-day period referred to above.

(d) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, that are subject to any materiality standards contained in subdivisions (1) through (7) of this subsection, may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days prior thereto, or such shorter period as the commissioner may

permit, and the commissioner has not disapproved it within that period: *Provided*, That nothing contained in this subsection shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within 30 days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any.

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

(A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders as of December 31, next preceding;

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

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

(A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders as of December 31, next preceding;

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

(3) Reinsurance agreements or modifications thereto, including:

(A) All reinsurance pooling agreements; and

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

(4) All management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing arrangements;

(5) Guarantees when made by a domestic insurer: *Provided*, That a guarantee that is

quantifiable as to amount is not subject to the notice requirements of this subsection unless it exceeds the lesser of one half of one percent of the insurer's admitted assets or 10 percent of surplus as regards policyholders as of December 31, next preceding: *Provided, however,* That all guarantees that are not quantifiable as to amount are subject to the notice requirements of this subsection;

(6) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to §33-27-2a of this code or authorized under any other section of this chapter, or in non-subsidiary insurance affiliates that are subject to the provisions of this article, are exempt from this requirement; and

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

(e) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that separate transactions were entered into over any 12-month period for that purpose, he or she may exercise his or her authority under §33-27-9 of this code.

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

(g) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in that corporation by the insurance holding company system exceeds 10 percent of such corporation's voting securities.

(h) Management of domestic insurers subject to registration. — (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with the provisions of this article.

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

(3) Not less than one third of the directors of a domestic insurer, and not less than one third of the members of each committee of the board of directors of any domestic insurer, shall be

persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

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

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

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

(i) Supervision, seizure, conservatorship, or receivership proceedings. — (1) Any affiliate that is party to an agreement or contract with a domestic insurer that is subject to §33-27-5(d)(4) of this code shall be subject to the jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed pursuant to §33-10-1 *et seq.* and §33-34-1 *et seq.* of this code for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that:

(A) Are an integral part of the insurer's operations, including, but not limited to, management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions; or

(B) Are essential to the insurer's ability to fulfill its obligations under insurance policies.

(2) The commissioner may require that an agreement or contract pursuant to §33-27-5(d)(4)

of this code for the provision of services described in §33-27-5(i)(1)(A) and §33-27-5(i)(1)(B) of this code specify that the affiliate consents to the jurisdiction as set forth in this subsection.

WV Legislature

§33-27-6. Examination; power of commissioner; access to books and records; use of consultants; expenses; compelling production, contempt and payment of fees, mileage and actual expenses.

(a) Power of commissioner. -- Subject to the limitation contained in this section and in addition to the powers which the commissioner has under other provisions of this chapter relating to the examination of insurers, the commissioner has the power to examine any insurer registered under section four of this article and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(b) Access to books and records. -

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

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

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

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

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

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

WV Legislature

§33-27-6a. Supervisory colleges; power of commissioner; expenses; agreements.

(a) Power of commissioner. — With respect to any insurer registered under §33-27-4 of this code, and in accordance with subsection (c) of this section, the commissioner may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this chapter. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

- (1) Initiating the establishment of a supervisory college;
- (2) Clarifying the membership and participation of other supervisors in the supervisory college;
- (3) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
- (4) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and
- (5) Establishing a crisis management plan.

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

(c) Supervisory college. — In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with §33-27-6 of this code, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. The commissioner may enter into agreements in accordance with §33-27-7(c) of this code providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college: *Provided*, That this section may not be construed as delegating to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

§33-27-6b. Group-wide supervision of internationally active insurance groups.

(a) The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section.

However, the commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

- (1) Does not have substantial insurance operations in the United States;
- (2) Has substantial insurance operations in the United States, but not in this state; or
- (3) Has substantial insurance operations in the United States and this state, but the commissioner has determined pursuant to the factors set forth in subsections (c) and (g) of this section that the other regulatory official is the appropriate group-wide supervisor.

(b) An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the commissioner make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

(c) In cooperation with other state, federal and international regulatory agencies, the commissioner will identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:

- (1) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets or liabilities;
- (2) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;
- (3) The location of the executive offices or largest operational offices of the internationally active insurance group;
- (4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be:
 - (A) Substantially similar to the system of regulation provided under the laws of this state; or
 - (B) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(5) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in subdivisions (1) through (5) of this subsection, and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

(d) Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, the commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to subsection (c) of this section in the event of a material change in the internationally active insurance group that results in:

(1) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets or liabilities; or

(2) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group.

(e) Pursuant to §33-27-6 of this code, the commissioner is authorized to collect from any insurer registered pursuant to §33-27-4 of this code all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered pursuant to §33-27-4 of this code and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than 30 days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish on the agency's internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

(f) If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

(1) Assess the enterprise risks within the internationally active insurance group to ensure that:

(A) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

(B) Reasonable and effective mitigation measures are in place;

(2) Request from any member of an internationally active insurance group subject to the commissioner's supervision information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:

(A) Governance, risk assessment and management;

(B) Capital adequacy; and

(C) Material intercompany transactions;

(3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;

(4) Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of section seven of this article, through supervisory colleges as set forth in §33-27-6 of this code or otherwise;

(5) Enter into agreements with or obtain documentation from any insurer registered under §33-27-4 of this code, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.

(g) If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide

supervisor: Provided, That:

- (1) The commissioner's cooperation is in compliance with the laws of this state; and
- (2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.
- (h) The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under §33-27-4 of this code, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.
- (i) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

§33-27-7. Confidential treatment.

(a) Documents, materials or other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to §33-27-6 of this code and all information reported or provided to the commissioner pursuant to §33-27-3(b)(12), §33-27-3(b)(13), §33-27-4, §33-27-5, or §33-27-6b of this code is confidential by law and privileged, is exempt from disclosure pursuant to chapter 29B of this code, is not open to public inspection, is not subject to subpoena, is not subject to discovery or admissible in evidence in any criminal, private civil, or administrative action, and is not subject to production pursuant to court order: *Provided*, That the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in any manner as he or she may consider appropriate.

(1) For purposes of the information reported and provided to the commissioner pursuant to §33-27-4(l)(2) of this code, the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any United States group-wide supervisor.

(2) For purposes of the information reported and provided to the commissioner pursuant to §33-27-4(l)(3) of this code, the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-United States group-wide supervisors.

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

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

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (a) of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners (NAIC) and its affiliates and subsidiaries, with any third-party consultants designated by the commissioner, and with state, federal, and international law-

enforcement authorities, including members of any supervisory college described in §33-27-6a of this code, if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality;

(2) Notwithstanding subdivision (1) of this subsection, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to §33-27-4(l)(1) of this code, with commissioners of states having statutes or regulations substantially similar to subsection (a) of this section and who have agreed in writing not to disclose such information;

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

(4) Shall enter into written agreements with the NAIC and any third-party consultant designated by the commissioner governing sharing and use of information provided pursuant to this article consistent with this subsection that shall:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner pursuant to this article, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information, and has verified in writing the legal authority to maintain such confidentiality;

(B) Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner pursuant to this article remains with the commissioner, and the NAIC's or third-party consultant's use of the information is subject to the direction of the commissioner;

(C) Excluding documents, material, or information reported pursuant to §33-27-4(l)(3) of this code, prohibit the NAIC or a third-party consultant designated by the commissioner from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;

(D) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant designated by the commissioner pursuant to this article is subject to a request or subpoena to the NAIC or third-party consultant for disclosure or production;

(E) Require the NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries or third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries or third-party consultant pursuant to this article; and

(F) For documents, material, or information reported pursuant to §33-27-4(l)(3) of this code, in the case of an agreement involving a third-party consultant designated by the commissioner, provide for notification of the identity of the consultant to the applicable insurers.

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

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

(f) Documents, materials, or other information in the possession or control of the NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner pursuant to this article is confidential by law and privileged, is exempt from disclosure pursuant to chapter 29B of this code, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action.

(g) The group capital calculation and resulting group capital ratio required under §33-27-4(l)(2) of this code and the liquidity stress test along with its results and supporting disclosures required under §33-27-4(l)(3) of this code are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this article, the making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited: *Provided*, That if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result,

supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

WV Legislature

§33-27-8. Injunctions; prohibitions against voting securities; sequestration of voting securities.

(a) Injunctions. — Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed or is about to commit a violation of this article or of any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the circuit court for the county in which the principal officer of the insurer or, if the insurer has no office in this state, then to the circuit court of Kanawha County for an order enjoining such insurer or such director, officer, employee, or agent thereof from violating or continuing to violate this article or any such rule, regulation, or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(b) Voting of securities: when prohibited. — No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this article or of any rule, regulation, or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation, or order issued by the commissioner hereunder, the insurer or the commissioner may apply to the circuit court for the county in which the insurer has its principle place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of §33-27-3 of this code, or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(c) Sequestration of voting securities. — In any case where a person has acquired or is proposing to acquire any voting securities in violation of this article or any rule, regulation, or order issued by the commissioner hereunder, the circuit court may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this article.

(d) Notwithstanding any other provisions of law, for the purposes of this article, the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

§33-27-9. Criminal proceedings; penalties; orders; fines; disapproval of dividends and distributions.

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

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

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

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

(e) Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his or her duties under this article, is guilty of a felony and, upon conviction thereof, shall be

fined not more than ten thousand dollars, or imprisoned not less than one year nor more than three years, or both fined and imprisoned. Any fines imposed pursuant to this subsection shall be paid by the officer, director or employee in his or her individual capacity.

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

§33-27-10. Receivership.

Whenever it appears to the commissioner that any person has committed a violation of this article which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may take possession of the property of such domestic insurer and proceed as provided in article ten of this chapter.

WV Legislature

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

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

§33-27-12. Conflict with other laws.

All laws and parts of laws of this state inconsistent with this article are hereby superseded with respect to matters covered by this article.

WV Legislature

§33-27-13. Recovery.

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

(b) No such distribution may be recoverable if the parent corporation or affiliate shows that when paid such distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that such distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time such distributions were paid shall be liable up to the amount of distributions or payments under subsection (a) of this section that such person received. Any person who otherwise controlled the insurer at the time such distributions were declared is liable up to the amount of distributions he or she would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(e) To the extent that any person liable under subsection (c) of this section is insolvent or otherwise fails to pay claims due from it pursuant to subsection (c), its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from such parent corporation or holding company or person who otherwise controlled it.

§33-27-14. Regulatory authority.

The Insurance Commissioner may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code and may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code, as are necessary to implement the provisions of this article.

WV Legislature