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WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2011

SECRETARY OF STATE

—●—
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 253

(SENATORS MINARD AND JENKINS, ORIGINAL SPONSORS)

[PASSED MARCH 12, 2011; TO TAKE EFFECT JULY 1, 2012.]

SB 253

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COMMITTEE SUBSTITUTE

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(SENATORS MINARD AND JENKINS, *original sponsors*)

[Passed March 12, 2011; to take effect July 1, 2012.]

AN ACT to amend and reenact §33-27-2, §33-27-2a, §33-27-3, §33-27-4, §33-27-5, §33-27-6, §33-27-7, §33-27-9, §33-27-11 and §33-27-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §33-27-3a and §33-27-6a, all relating to insurance holding company systems; defining terms; excluding certain investments from determination of adequacy of surplus; requiring notice and other information with regard to divestiture or acquisition of a controlling interest; changing public hearing requirements; providing standards for review of acquisition request by commissioner; establishing process for consolidated hearings; providing standards and procedures for certain acquisitions not otherwise covered; providing requirements for insurers; expanding examinations and types of information that may be demanded and reviewed by the commissioner, including compelling production; providing for management of domestic insurers subject to registration; providing for establishment of supervisory colleges; providing additional confidentiality measures; providing for payments of costs, expenses and mileage; providing for fines, orders and penalties; and authorizing emergency rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-2. Definitions.

1 As used in this article:

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

6 (b) "Commissioner" means the West Virginia Insurance
7 Commissioner, his or her deputies or the West Virginia
8 offices of the Insurance Commissioner, as appropriate.

9 (c) "Control" (including the terms "controlling", "con-
10 trolled by" and "under common control with") means the
11 possession, direct or indirect, of the power to direct or cause
12 the direction of the management and policies of a person,
13 whether through the ownership of voting securities, by
14 contract other than a commercial contract for goods or
15 nonmanagement services or otherwise, unless the power is
16 the result of an official position with or corporate office held
17 by the person. Control shall be presumed to exist if any
18 person, directly or indirectly, owns, controls, holds with the
19 power to vote or holds proxies representing ten percent or
20 more of the voting securities of any other person. This
21 presumption may be rebutted by a showing made in the
22 manner provided by subsection (k), section four of this
23 article that control does not exist in fact. The commissioner

24 may determine after furnishing all persons in interest notice
25 and opportunity to be heard and making specific findings of
26 fact to support the determination that control exists in fact
27 notwithstanding the absence of a presumption to that effect.

28 (d) "Enterprise risk" means any activity, circumstance,
29 event or series of events involving one or more affiliates of an
30 insurer that, if not remedied promptly, is likely to have a
31 material adverse effect upon the financial condition or
32 liquidity of the insurer or its insurance holding company
33 system as a whole, including, but not limited to, anything
34 that would cause the insurer's risk-based capital to fall into
35 company action level, as set forth in article forty of this
36 chapter, or would cause the insurer to be in hazardous
37 financial condition, as set forth in article thirty-four of this
38 chapter.

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

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

48 (g) "Person" means an individual, a corporation, a limited
49 liability company, a partnership, an association, a joint-
50 stock company, a trust, an unincorporated organization, a
51 depository institution or any similar entity or any combina-
52 tion of the foregoing acting in concert, but does not include
53 any joint venture partnership exclusively engaged in owning,
54 managing, leasing or developing real or tangible personal
55 property.

56 (h) A "security holder" of a specified person is one who
57 owns any security of such person, including common stock,
58 preferred stock, debt obligations and any other security

59 convertible into or evidencing the right to acquire any of the
60 foregoing.

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

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

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

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

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

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

9 (3) Investing, reinvesting or trading in securities for its
10 own account, that of its parent, any subsidiary of its parent,
11 or any affiliate or subsidiary;

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

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

18 (6) Rendering investment advice to governments, govern-
19 ment agencies, corporations or other organizations or groups;

20 (7) Rendering other services related to the operations of an
21 insurance business, including, but not limited to, actuarial,
22 loss prevention, safety engineering, data processing, account-
23 ing, claims, appraisal and collection services;

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

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

28 (10) Financing of insurance premiums, agents and other
29 forms of consumer financing;

30 (11) Any other business activity determined by the commis-
31 sioner to be reasonably ancillary to an insurance business;
32 and

33 (12) Owning a corporation or corporations engaged or
34 organized to engage exclusively in one or more of the
35 businesses specified in this section;

36 (b) *Additional investment authority.* — In addition to
37 investments in common stock, preferred stock, debt obliga-
38 tions and other securities permitted under any other provi-
39 sion of this chapter, a domestic insurer may also with the
40 commissioner's prior approval:

41 (1) Invest in common stock, preferred stock, debt obliga-
42 tions and other securities of one or more subsidiaries,
43 amounts which do not exceed the lesser of ten percent of the
44 insurer's assets or fifty percent of the insurer's surplus as
45 regards policyholders: *Provided*, That after the investments,
46 the insurer's surplus as regards policyholders will be reason-
47 able in relation to the insurer's outstanding liabilities and
48 adequate to its financial needs. In calculating the amount of
49 the investments, investments in domestic or foreign insur-
50 ance subsidiaries shall be excluded and there shall be
51 included:

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

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

62 (2) Invest any amount in common stock, preferred stock,
63 debt obligations and other securities of one or more subsid-
64 iaries engaged or organized to engage exclusively in the
65 ownership and management of assets authorized as invest-
66 ments for the insurer: *Provided*, That each subsidiary agrees
67 to limit its investments in any asset so that the investments
68 will not cause the amount of the total investment of the
69 insurer to exceed any of the investment limitations specified
70 in subdivision (1) of this subsection or in article eight of this
71 chapter applicable to the insurer. For the purpose of this
72 subdivision, "the total investment of the insurer" includes:

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

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

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

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

92 (d) *Qualification of investment; when determined.* —
93 Whether any investment made pursuant to subsection (b) of
94 this section meets the applicable requirements of that
95 subsection is to be determined before the investment is made,
96 by calculating the applicable investment limitations as
97 though the investment had already been made, taking into
98 account the then outstanding principal balance on all
99 previous investments in debt obligations, and the value of all
100 previous investments in equity securities as of the day they
101 were made, net of any return of capital invested, not includ-
102 ing dividends.

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

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

1 (a) *Filing requirements.* —

2 (1) No person other than the issuer may make a tender
3 offer for or a request or invitation for tenders of, or enter
4 into any agreement to exchange securities for, seek to

5 acquire or acquire, in the open market or otherwise, any
6 voting security of a domestic insurer if, after the consumma-
7 tion thereof, the person would, directly or indirectly (or by
8 conversion or by exercise of any right to acquire) be in
9 control of the insurer and a person shall not enter into an
10 agreement to merge with or otherwise to acquire control of
11 a domestic insurer or any person controlling a domestic
12 insurer unless at the time the offer, request or invitation is
13 made or the agreement is entered into, or prior to the
14 acquisition of the securities if no offer or agreement is
15 involved, the person has filed with the commissioner and has
16 sent to the insurer and, to the extent permitted by applicable
17 federal laws, rules and regulations, the insurer has sent to its
18 shareholders a statement containing the information re-
19 quired by this section and the offer, request, invitation,
20 agreement or acquisition has been approved by the commis-
21 sioner in the manner hereinafter prescribed.

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

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

42 person to penalties specified in subdivision (3), subsection
43 (e), section three-a of this article.

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

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

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

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

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

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

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

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

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

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

107 (7) A full description of any contracts, arrangements or
108 understanding with respect to any security referred to in
109 subsection (a) of this section in which any acquiring party is

110 involved, including, but not limited to, transfer of any of the
111 securities, joint ventures, loan or option arrangements, puts
112 or calls, guarantees of loans, guarantees against loss or
113 guarantees of profits, division of losses or profits or the
114 giving or withholding of proxies. The description shall
115 identify the persons with whom such contracts, arrange-
116 ments or understandings have been entered into;

117 (8) A description of the purchase of any security referred to
118 in subsection (a) of this section during the twelve calendar
119 months preceding the filing of the statement by any acquir-
120 ing party, including the dates of purchase, names of the
121 purchasers and consideration paid or agreed to be paid
122 therefor;

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

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

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

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

142 (13) An acknowledgment by the person required to file the
143 statement referred to in subsection (a) of this section that the

144 person and all subsidiaries within its control in the insur-
145 ance holding company system will provide information to the
146 commissioner upon request as necessary to evaluate enter-
147 prise risk to the insurer; and

148 (14) Any additional information as the commissioner may
149 by rule prescribe as necessary or appropriate for the protec-
150 tion of policyholders and security holders of the insurer or in
151 the public interest.

152 (c) If the person required to file the statement referred to
153 in subsection (a) of this section is a partnership, limited
154 partnership, syndicate or other group, the commissioner may
155 require that the information called for by subdivisions (1)
156 through (14), inclusive, subsection (b) of this section shall be
157 given with respect to each partner of the partnership or
158 limited partnership, each member of the syndicate or group
159 and each person who controls the partner or member. If any
160 partner, member or person is a corporation or the person
161 required to file the statement referred to in subsection (a) of
162 this section is a corporation, the commissioner may require
163 that the information called for by subdivisions (1) through
164 (14), inclusive, subsection (b) of this section shall be given
165 with respect to the corporation and each person who is
166 directly or indirectly the beneficial owner of more than ten
167 percent of the outstanding voting securities of the corpora-
168 tion.

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

177 (e) *Alternative filing materials.* — If any offer, request,
178 invitation, agreement or acquisition referred to in subsection
179 (a) of this section is proposed to be made by means of a

180 registration statement under the Securities Act of 1933 or in
181 circumstances requiring the disclosure of similar information
182 under the Securities Exchange Act of 1934 or under a state
183 law requiring similar registration or disclosure, the person
184 required to file the statement referred to in that subsection
185 may utilize such documents in furnishing the information
186 called for by that statement.

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

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

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

200 (i) The informational requirements of subdivision (1),
201 subsection (c), section three-a of this article and the stan-
202 dards of subdivision (2), subsection (d), section three-a of
203 this article apply;

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

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

211 (C) The financial condition of any acquiring party is such
212 as might jeopardize the financial stability of the insurer or

213 prejudice the interest of its policyholders or the interests of
214 any remaining security holders who are unaffiliated with the
215 acquiring party;

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

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

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

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

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

266 (4) In connection with a change of control of a domestic
267 insurer, any determination by the commissioner that the
268 person acquiring control of the insurer is required to main-
269 tain or restore the capital of the insurer to the level required
270 by the laws of this state shall be made not later than sixty
271 days after the date of filing the change in control submitted
272 pursuant to subdivision (1), subsection (a) of this section.

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

278 (g) *Exemptions.* — The provisions of this section shall not
279 apply to any offer, request, invitation, agreement or acquisi-
280 tion which the commissioner by order shall exempt there-
281 from as: (1) Not having been made or entered into for the
282 purpose of, and not having the effect of, changing or influ-
283 encing the control of a domestic insurer; or (2) as otherwise
284 not comprehended within the purposes of this section.

285 (h) The following are violations of this section:

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

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

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

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

1 (a) *Definitions.* — The following definitions apply to only
2 this section:

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

7 securities, the acquisition of assets, bulk reinsurance and
8 mergers.

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

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

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

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

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

39 (C) The acquisition of already affiliated persons;

40 (D) An acquisition if, as an immediate result of the acquisi-
41 tion:

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

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

45 (iii) In no market would:

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

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

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

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

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

66 (c) *Pre-acquisition notification and waiting period.* — An
67 acquisition covered by subsection (b) of this section may be
68 subject to an order pursuant to subsection (e) of this section
69 unless the acquiring person files a pre-acquisition notifica-
70 tion and the waiting period has expired. The acquired person

71 may file a pre-acquisition notification. The commissioner
72 shall give confidential treatment to information submitted
73 under this subsection in the same manner as provided in
74 section seven of this article.

75 (1) The pre-acquisition notification shall be in such form
76 and contain such information as prescribed by the National
77 Association of Insurance Commissioners relating to those
78 markets that, under paragraph (D), subdivision (2), subsec-
79 tion (b) of this section, cause the acquisition not to be
80 exempted from the provisions of this section. The commis-
81 sioner may require such additional material and information
82 as deemed necessary to determine whether the proposed
83 acquisition, if consummated, would violate the competitive
84 standard of subsection (d) of this section. The required
85 information may include an opinion of an economist as to the
86 competitive impact of the acquisition in this state accompa-
87 nied by a summary of the education and experience of such
88 person indicating his or her ability to render an informed
89 opinion.

90 (2) The waiting period required shall begin on the date of
91 receipt of the commissioner of a pre-acquisition notification
92 and shall end on the earlier of the thirtieth day after the date
93 of receipt, or termination of the waiting period by the
94 commissioner. Prior to the end of the waiting period, the
95 commissioner on a one-time basis may require the submis-
96 sion of additional needed information relevant to the
97 proposed acquisition, in which event the waiting period shall
98 end on the earlier of the thirtieth day after receipt of the
99 additional information by the commissioner or termination
100 of the waiting period by the commissioner.

101 (d) Competitive Standard. -- (1) The commissioner may
102 enter an order under subdivision (1), subsection (e) of this
103 section, with respect to an acquisition if there is substantial
104 evidence that the effect of the acquisition may be substan-
105 tially to lessen competition in any line of insurance in this
106 state or tend to create a monopoly or if the insurer fails to
107 file adequate information in compliance with subsection (c)
108 of this section.

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

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

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

118	Insurer A	Insurer B
119	4%	4% or more
120	10%	10%
121	15%	1% or more

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

124	Insurer A	Insurer B
125	5%	5% or more
126	10%	4% or more
127	15%	3% or more
128	19%	1% or more

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

139 (B) There is a significant trend toward increased concen-
 140 tration when the aggregate market share of any grouping of
 141 the largest insurers in the market, from the two largest to the

142 eight largest, has increased by seven percent or more of the
143 market over a period of time extending from any base year
144 five to ten years prior to the acquisition up to the time of the
145 acquisition. Any acquisition or merger covered under
146 subsection (b) of this section involving two (2) or more
147 insurers competing in the same market is *prima facie*
148 evidence of violation of the competitive standard in subdivi-
149 sion (1) of this subsection if:

150 (i) There is a significant trend toward increased concentra-
151 tion in the market;

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

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

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

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

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

175 (iii) The burden of showing *prima facie* evidence of viola-
176 tion of the competitive standard rests upon the commis-
177 sioner.

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

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

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

200 (B) The acquisition will substantially increase the avail-
201 ability of insurance, and the public benefits of the increase
202 exceed the public benefits which would arise from not
203 lessening competition.

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

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

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

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

213 (i) There is a hearing;

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

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

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

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

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

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

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

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

237 (f) Inapplicable Provisions. Subsections (b) and (c), section
238 eight of this article and section ten of this article do not

239 apply to acquisitions covered under subsection (b) of this
240 section.

**§33-27-4. Registration of insurers ; information and form re-
quired; summary of changes to registration state-
ment; materiality; reporting of dividends to share-
holders; information to insurers; termination of
registration; consolidated filing; alternative regis-
tration; exemptions; disclaimer; enterprise risk
filing; violations.**

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

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

27 (b) *Information and form required.* — Every insurer subject
28 to registration shall file a registration statement with the

29 commissioner on a form and in a format prescribed by the
30 National Association of Insurance Commissioners, which
31 shall contain the following current information:

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

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

37 (3) The following agreements in force, relationships
38 subsisting, and transactions currently outstanding or which
39 have occurred during the last calendar year between such
40 insurer and its affiliates:

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

44 (B) Purchases, sales or exchanges of assets;

45 (C) Transactions not in the ordinary course of business;

46 (D) Guarantees or undertakings for the benefit of an
47 affiliate which result in an actual contingent exposure of the
48 insurer's assets to liability, other than insurance contracts
49 entered into in the ordinary course of the insurer's business;

50 (E) All management and service contracts and all
51 cost-sharing arrangements;

52 (F) All reinsurance agreements;

53 (G) Dividends and other distributions to shareholders; and

54 (H) Consolidated tax allocation statements.

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

58 (5) If requested by the commissioner, the insurer shall
59 include financial statements of or within an insurance
60 holding company system, including all affiliates. Financial
61 statements may include, but are not limited to, annual
62 audited financial statements filed with the U.S. Securities
63 and Exchange Commission (SEC) pursuant to the Securities
64 Act of 1933, as amended, or the Securities Exchange Act of
65 1934, as amended. An insurer required to file financial
66 statements pursuant to this subdivision may satisfy the
67 request by providing the commissioner with the most
68 recently filed parent corporation financial statements that
69 have been filed with the SEC.

70 (6) Other matters concerning transactions between regis-
71 tered insurers and any affiliates as may be included from
72 time to time in any registration forms adopted or approved
73 by the commissioner.

74 (7) Statements that the insurer's board of directors over-
75 sees corporate governance and internal controls and that the
76 insurer's officers or senior management have approved,
77 implemented, and continue to maintain and monitor corpo-
78 rate governance and internal control procedures.

79 (8) Any other information required by the commissioner by
80 rule.

81 (c) *Summary of changes to registration statement.* — All
82 registration statements shall contain a summary outlining all
83 items in the current registration statement representing
84 changes from the prior registration statement.

85 (d) *Materiality.* — Information need not be disclosed on the
86 registration statement filed pursuant to subsection (b) of this
87 section if such information is not material for the purpose of
88 this section. Unless the commissioner by rule or order
89 provides otherwise, sales, purchases, exchanges, loans or
90 extensions of credit, or investments, involving one half of one
91 percent or less of an insurer's admitted assets as of December

92 31, next preceding shall not be deemed material for purposes
93 of this section.

94 (e) *Reporting of dividends to shareholders.* — Subject to
95 subsection (c), section five of this article, each registered
96 insurer shall report to the commissioner all dividends and
97 other distributions to shareholders within fifteen business
98 days following the declaration thereof.

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

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

109 (h) *Consolidated filing.* — The commissioner may require
110 or allow two or more affiliated insurers subject to registra-
111 tion hereunder to file a consolidated registration statement
112 or consolidated reports amending their consolidated regis-
113 tration statement or their individual registration statements.

114 (i) *Alternative registration.* — The commissioner may allow
115 an insurer which is authorized to do business in this state
116 and which is a part of an insurance holding company system
117 to register on behalf of any affiliated insurer which is
118 required to register under subsection (a) of this section and
119 to file all information and material required to be filed under
120 this section.

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

125 (k) *Disclaimer.* — Any person may file with the commis-
126 sioner a disclaimer of affiliation with any authorized insurer
127 or a disclaimer may be filed by the insurer or any member of
128 an insurance holding company system. The disclaimer shall
129 fully disclose all material relationships and bases for
130 affiliation between the person and the insurer as well as the
131 basis for disclaiming such affiliation. A disclaimer of
132 affiliation shall be deemed to have been granted unless the
133 commissioner, within thirty days following receipt of a
134 complete disclaimer, notifies the filing party the disclaimer
135 is disallowed. In the event of disallowance, the disclaiming
136 party may request an administrative hearing, which shall be
137 granted, and the commissioner shall disallow such a dis-
138 claimer only after furnishing all parties in interest with
139 notice and opportunity to be heard and after making specific
140 findings of fact to support such disallowance. The disclaim-
141 ing party shall be relieved of its duty to register under this
142 section if approval of the disclaimer has been granted by the
143 commissioner, or if the disclaimer is deemed to have been
144 approved.

145 (l) *Enterprise Risk Filing.* — The ultimate controlling
146 person of every insurer subject to registration shall also file
147 an annual enterprise risk report. The report shall, to the best
148 of the ultimate controlling person's knowledge and belief,
149 identify the material risks within the insurance holding
150 company system that could pose enterprise risk to the
151 insurer. The report shall be filed with the lead state commis-
152 sioner of the insurance holding company system as deter-
153 mined by the procedures within the Financial Analysis
154 Handbook adopted by the National Association of Insurance
155 Commissioners.

156 (m) *Violations.* — The failure to file a registration state-
157 ment or enterprise risk filing thereto required by this section
158 within the time specified for such filing shall be a violation
159 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.

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

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

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

7 (3) Charges or fees for services performed shall be reason-
8 able;

9 (4) Expenses incurred and payment received shall be
10 allocated to the insurer in conformity with customary
11 insurance accounting practices consistently applied;

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

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

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

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

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

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

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

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

38 (6) The quality, diversification and liquidity of the in-
39 surer's investment portfolio;

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

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

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

45 (10) The quality and liquidity of investments in affiliates.
46 The commissioner may treat any such investment as a
47 disallowed asset for purposes of determining the adequacy of
48 surplus as regards policyholders whenever in his or her
49 judgment such investment so warrants.

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

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

56 (B) The commissioner has approved that payment within
57 the thirty-day period.

58 (2) For purposes of this section, an extraordinary dividend
59 or distribution includes any dividend or distribution of cash
60 or other property, whose fair market value together with that

61 of other dividends or distributions made within the preced-
62 ing twelve months exceeds the lesser of:

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

65 (B) The net gain from operations of such insurer, if such
66 insurer is a life insurer, or the net income, if s the insurer is
67 not a life insurer, not including realized capital gains, for the
68 twelve-month period ending December 31, next preceding,
69 but shall not include pro rata distributions of any class of the
70 insurer's own securities. In determining whether a dividend
71 or distribution is extraordinary, an insurer other than a life
72 insurer may carry forward net income from the previous two
73 calendar years that has not already been paid out as divi-
74 dends. This carry-forward shall be computed by taking the
75 net income from the second and third preceding calendar
76 years, not including realized capital gains, less dividends
77 paid in the second and immediate preceding calendar years.

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

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

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

86 (d) The following transactions involving a domestic insurer
87 and any person in its insurance holding company system,
88 including amendments or modifications of affiliate agree-
89 ments previously filed pursuant to this section, that are
90 subject to any materiality standards contained in subdivi-
91 sions (1) through (5) of this subsection, may not be entered
92 into unless the insurer has notified the commissioner in
93 writing of its intention to enter into the transaction at least
94 thirty days prior thereto, or such shorter period as the

95 commissioner may permit, and the commissioner has not
96 disapproved it within that period: *Provided*, That nothing
97 contained in this subsection shall be deemed to authorize or
98 permit any transactions which, in the case of an insurer not
99 a member of the same holding company system, would be
100 otherwise contrary to law. The notice for amendments or
101 modifications shall include the reasons for the change and
102 the financial impact on the domestic insurer. Informal notice
103 shall be reported, within thirty days after a termination of a
104 previously filed agreement, to the commissioner for determi-
105 nation of the type of filing required, if any.

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

109 (A) With respect to nonlife insurers, the lesser of three
110 percent of the insurer's admitted assets or twenty-five
111 percent of surplus as regards policyholders; and

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

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

122 (A) With respect to nonlife insurers, the lesser of three
123 percent of the insurer's admitted assets or twenty-five
124 percent of surplus as regards policyholders; each as of
125 December 31, next preceding;

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

128 (3) Reinsurance agreements or modifications thereto,
129 including:

130 (A) All reinsurance pooling agreements; and

131 (B) Agreements in which the reinsurance premium or a
132 change in the insurer's liabilities, or the projected reinsur-
133 ance premium or a change in the insurer's liabilities in any
134 of the next three years, equals or exceeds five percent of the
135 insurer's surplus as regards policyholders, as of December
136 31, next preceding, including those agreements which may
137 require as consideration the transfer of assets from an
138 insurer to a nonaffiliate, if an agreement or understanding
139 exists between the insurer and nonaffiliate that any portion
140 of the assets will be transferred to one or more affiliates of
141 the insurer;

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

145 (5) Guarantees when made by a domestic insurer; *Pro-*
146 *vided*, That a guarantee that is quantifiable as to amount is
147 not subject to the notice requirements of this subdivision
148 unless it exceeds the lesser of one half of one percent of the
149 insurer's admitted assets or ten percent of surplus as regards
150 policyholders as of December 31, next preceding; *Provided*,
151 *however*, That all guarantees that are not quantifiable as to
152 amount are subject to the notice requirements of this
153 subdivision.

154 (6) Direct or indirect acquisitions or investments in a
155 person that controls the insurer or in an affiliate of the
156 insurer in an amount which, together with its present
157 holdings in such investments, exceeds two and one-half
158 percent of the insurer's surplus to policyholders. Direct or
159 indirect acquisitions or investments in subsidiaries acquired
160 pursuant to section two-a of this article or authorized under
161 any other section of this chapter, or in nonsubsidiary

162 insurance affiliates that are subject to the provisions of this
163 article, are exempt from this requirement; and

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

167 (e) A domestic insurer may not enter into transactions
168 which are part of a plan or series of like transactions with
169 persons within the insurance holding company system if the
170 purpose of those separate transactions is to avoid the
171 statutory threshold amount and thus avoid the review that
172 would occur otherwise. If the commissioner determines that
173 separate transactions were entered into over any
174 twelve-month period for that purpose, he or she may exercise
175 his or her authority under section nine of this article.

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

181 (g) The commissioner shall be notified within thirty days
182 of any investment of the domestic insurer in any one corpo-
183 ration if the total investment in that corporation by the
184 insurance holding company system exceeds ten percent of
185 such corporation's voting securities.

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

193 (2) Nothing in this section precludes a domestic insurer
194 from having or sharing a common management or coopera-
195 tively, or jointly using personnel, property or services with

196 one or more other persons under arrangements meeting the
197 standards of subsection (a) of this section.

198 (3) Not less than one third of the directors of a domestic
199 insurer, and not less than one third of the members of each
200 committee of the board of directors of any domestic insurer,
201 shall be persons who are not officers or employees of the
202 insurer or of any entity controlling, controlled by, or under
203 common control with the insurer and who are not beneficial
204 owners of a controlling interest in the voting stock of the
205 insurer or entity. At least one such person must be included
206 in any quorum for the transaction of business at any meeting
207 of the board of directors or any committee thereof.

208 (4) The board of directors of a domestic insurer shall
209 establish one or more committees comprised solely of
210 directors who are not officers or employees of the insurer or
211 of any entity controlling, controlled by, or under common
212 control with the insurer and who are not beneficial owners
213 of a controlling interest in the voting stock of the insurer or
214 any such entity. The committee or committees have responsi-
215 bility for nominating candidates for director for election by
216 shareholders or policyholders, evaluating the performance of
217 officers deemed to be principal officers of the insurer and
218 recommending to the board of directors the selection and
219 compensation of the principal officers.

220 (5) The provisions of subdivisions three and four of this
221 subsection do not apply to a domestic insurer if the person
222 controlling the insurer, such as an insurer, a mutual insur-
223 ance holding company, or a publicly held corporation, has a
224 board of directors and committees thereof that meet the
225 requirements of such subdivisions with respect to such
226 controlling entity.

227 (6) An insurer may make application to the commissioner
228 for a waiver from the requirements of this subsection, if the
229 insurer's annual direct written and assumed premium,
230 excluding premiums reinsured with the Federal Crop
231 Insurance Corporation and Federal Flood Program, is less
232 than \$300 million. An insurer may also make application to

233 the commissioner for a waiver from the requirements of this
234 subsection based upon unique circumstances. The commis-
235 sioner may consider various factors including, but not
236 limited to, the type of business entity, volume of business
237 written, availability of qualified board members, or the
238 ownership or organizational structure of the entity.

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

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

12 (b) *Access to books and records.* —

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

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

26 tion of the reason that the insurer cannot obtain the informa-
27 tion and the identity of the holder of information. Whenever
28 it appears to the commissioner that the detailed explanation
29 is without merit, the commissioner may, after notice and
30 hearing, require the insurer to pay a penalty of up to \$10,000
31 for each day's delay, may suspend or revoke the insurer's
32 license, or both impose a penalty and revoke or suspend the
33 insurer's license.

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

42 (d) *Expenses.* — Each registered insurer producing for
43 examination records, books and papers pursuant to subsec-
44 tion (a) of this section is liable for and shall pay the expense
45 of such examination in accordance with applicable laws of
46 this state.

47 (e) *Compelling Production.* — In the event the insurer fails
48 to comply with an order, the commissioner may examine the
49 affiliates to obtain the information. The commissioner may
50 also issue subpoenas, to administer oaths, and examine under
51 oath any person for purposes of determining compliance with
52 this section. Upon the failure or refusal of any person to obey
53 a subpoena, the commissioner may petition any circuit court
54 and, upon proper showing, the court may enter an order
55 compelling the witness to appear and testify or produce
56 documentary evidence. Failure to obey the court order is
57 punishable as contempt of court. Every person is obliged to
58 attend as a witness at the place specified in the subpoena,
59 when subpoenaed, anywhere within the state. He or she is
60 entitled to the same fees and mileage, if claimed, as a witness
61 in the circuit court of the county in which attendance is
62 required, which fees, mileage, and actual expense, if any,

63 necessarily incurred in securing the attendance of witnesses,
64 and their testimony, shall be itemized and charged against,
65 and be paid by, the company being examined.

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

1 (a) *Power of Commissioner.* — With respect to any insurer
2 registered under section four of this article, and in accordance with subsection (c) of this section, the commissioner
3 may participate in a supervisory college for any domestic
4 insurer that is part of an insurance holding company system
5 with international operations in order to determine compliance by the insurer with this chapter. The powers of the
6 commissioner with respect to supervisory colleges include,
7 but are not limited to, the following:
8
9

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

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

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

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

19 (5) Establishing a crisis management plan.

20 (b) *Supervisory College.* — In order to assess the business
21 strategy, financial position, legal and regulatory position,
22 risk exposure, risk management and governance processes,
23 and as part of the examination of individual insurers in
24 accordance with section six of this article, the commissioner
25 may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates,
26 including other state, federal and international regulatory
27

28 agencies. The commissioner may enter into agreements in
29 accordance with subsection (c), section seven of this article
30 providing the basis for cooperation between the commis-
31 sioner and the other regulatory agencies, and the activities
32 of the supervisory college: *Provided*, That this section may
33 not be construed as delegating to the supervisory college the
34 authority of the commissioner to regulate or supervise the
35 insurer or its affiliates within its jurisdiction.

§33-27-7. Confidential treatment.

1 (a) Documents, materials or other information in the
2 possession or control of the commissioner that are obtained
3 by or disclosed to the commissioner or any other person in
4 the course of an examination or investigation made pursuant
5 to section six of this article and all information reported
6 pursuant to subdivision thirteen or fourteen, subsection (b),
7 section three of this article, section four or section five of this
8 article is confidential by law and privileged, is exempt from
9 disclosure pursuant to chapter twenty-nine-b of this code, is
10 not open to public inspection, is not subject to subpoena, is
11 not subject to discovery or admissible in evidence in any
12 criminal, private civil or administrative action and is not
13 subject to production pursuant to court order: *Provided*, That
14 the commissioner is authorized to use the documents,
15 materials or other information in the furtherance of any
16 regulatory or legal action brought as part of the commis-
17 sioner's official duties. The commissioner may not otherwise
18 make the documents, materials or other information public
19 without the prior written consent of the insurer to which it
20 pertains unless the commissioner, after giving the insurer
21 and its affiliates who would be affected thereby notice and
22 opportunity to be heard, determines that the interests of
23 policyholders, shareholders or the public will be served by
24 the publication thereof, in which event he or she may publish
25 all or any part thereof in any manner as he or she may
26 consider appropriate.

27 (b) Neither the commissioner nor any person who received
28 documents, materials or other information while acting
29 under the authority of the commissioner or with whom such

30 documents, materials or other information are shared
31 pursuant to this article may be permitted or required to
32 testify in any private civil action concerning any confidential
33 documents, materials, or information subject to subsection
34 (a) of this section.

35 (c) In order to assist in the performance of the commis-
36 sioner's duties, the commissioner:

37 (1) May share documents, materials or other information,
38 including the confidential and privileged documents,
39 materials or information subject to subsection (a) of this
40 section, with other state, federal and international regulatory
41 agencies, with the National Association of Insurance Com-
42 missioners and its affiliates and subsidiaries, and with state,
43 federal, and international law enforcement authorities,
44 including members of any supervisory college described in
45 section six-a of this article, if the recipient agrees in writing
46 to maintain the confidentiality and privileged status of the
47 document, material or other information, and has verified in
48 writing the legal authority to maintain confidentiality;

49 (2) Notwithstanding subdivision (1) of this subsection, the
50 commissioner may only share confidential and privileged
51 documents, material, or information reported pursuant to
52 subsection (l), section four of this article, with commissioners
53 of states having statutes or regulations substantially similar
54 to subdivision (1) of this subsection and who have agreed in
55 writing not to disclose such information;

56 (3) May receive documents, materials or information,
57 including otherwise confidential and privileged documents,
58 materials or information from the National Association of
59 Insurance Commissioners and its affiliates and subsidiaries
60 and from regulatory and law-enforcement officials of other
61 foreign or domestic jurisdictions, and shall maintain as
62 confidential or privileged any document, material or infor-
63 mation received with notice or the understanding that it is
64 confidential or privileged under the laws of the jurisdiction

65 that is the source of the document, material or information;
66 and

67 (4) Shall enter into written agreements with the National
68 Association of Insurance Commissioners governing sharing
69 and use of information provided pursuant to this article
70 consistent with this subsection that:

71 (A) Specify procedures and protocols regarding the
72 confidentiality and security of information shared with the
73 National Association of Insurance Commissioners and its
74 affiliates and subsidiaries pursuant to this article, including
75 procedures and protocols for sharing by the National
76 Association of Insurance Commissioners with other state,
77 federal or international regulators;

78 (B) Specify that ownership of information shared with the
79 National Association of Insurance Commissioners and its
80 affiliates and subsidiaries pursuant to this article remains
81 with the commissioner, and the National Association of
82 Insurance Commissioners's use of the information is subject
83 to the direction of the commissioner;

84 (C) Require prompt notice to be given to an insurer whose
85 confidential information in the possession of the National
86 Association of Insurance Commissioners pursuant to this
87 article is subject to a request or subpoena to the National
88 Association of Insurance Commissioners for disclosure or
89 production; and

90 (D) Require the National Association of Insurance Com-
91 missioners and its affiliates and subsidiaries to consent to
92 intervention by an insurer in any judicial or administrative
93 action in which the National Association of Insurance
94 Commissioners and its affiliates and subsidiaries may be
95 required to disclose confidential information about the
96 insurer shared with the National Association of Insurance
97 Commissioners and its affiliates and subsidiaries pursuant to
98 this article.

99 (d) The sharing of information by the commissioner
100 pursuant to this article does not constitute a delegation of
101 regulatory authority, and the commissioner is solely respon-
102 sible for the administration, execution and enforcement of
103 the provisions of this article.

104 (e) No waiver of any applicable privilege or claim of
105 confidentiality in the documents, materials or information
106 occurs as a result of disclosure to the commissioner under
107 this section or as a result of sharing as authorized in subsec-
108 tion (c) of this section.

109 (f) Documents, materials or other information in the
110 possession or control of the National Association of Insur-
111 ance Commissioners pursuant to this article is confidential
112 by law and privileged, is exempt from disclosure pursuant to
113 chapter twenty-nine-b of this code, is not subject to sub-
114 poena, and is not subject to discovery or admissible in
115 evidence in any private civil action.

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

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

10 (b) Every director or officer of an insurance holding
11 company system who knowingly violates, participates in, or
12 assents to, or who knowingly permits any of the officers or
13 agents of the insurer to engage in transactions or make
14 investments which have not been properly reported or
15 submitted pursuant to subsection (a), section four of this
16 article and subsections (c) and (d), section five of this article,

17 or which violate any other provision of this article, shall pay,
18 in his or her individual capacity, a civil forfeiture of not
19 more than \$5,000 per violation, after notice and hearing
20 before the commissioner. In determining the amount of the
21 civil forfeiture, the commissioner shall take into account the
22 appropriateness of the forfeiture with respect to the gravity
23 of the violation, the history of previous violations, and such
24 other matters as justice may require.

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

36 (d) Whenever it appears to the commissioner that any
37 person or any director, officer, employee or agent thereof has
38 committed a willful violation of this article, the commis-
39 sioner may cause criminal proceedings to be instituted
40 against such person or the responsible director, officer,
41 employee or agent thereof. Any insurer who willfully violates
42 this article is guilty of a misdemeanor and, upon conviction
43 thereof, shall be fined not more than ten thousand dollars.
44 Any individual who willfully violates this article is guilty of
45 a misdemeanor and, upon conviction thereof, shall be fined
46 in his or her individual capacity not more than ten thousand
47 dollars or, if such willful violation involves the deliberate
48 perpetration of a fraud upon the commissioner, is guilty of a
49 felony and, upon conviction thereof, shall be imprisoned not
50 less than one year nor more than three years, or both fined
51 and imprisoned.

52 (e) Any officer, director or employee of an insurance
53 holding company system who willfully and knowingly
54 subscribes to or makes or causes to be made any false

55 statements or false reports or false filings with the intent to
56 deceive the commissioner in the performance of his or her
57 duties under this article, is guilty of a felony and, upon
58 conviction thereof, shall be fined not more than ten thousand
59 dollars, or imprisoned not less than one year nor more than
60 three years, or both fined and imprisoned. Any fines imposed
61 pursuant to this subsection shall be paid by the officer,
62 director or employee in his or her individual capacity.

63 (f) Whenever it appears to the commissioner that any
64 person has committed a violation of section three of this
65 article which prevents the full understanding of the enter-
66 prise risk to the insurer by affiliates or by the insurance
67 holding company system, the violation may serve as an
68 independent basis for disapproving dividends or distribu-
69 tions and for placing the insurer under an order of supervi-
70 sion in accordance with article thirty-four of this chapter.

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

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

§33-27-14. Regulatory authority.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]

.....
Chairman Senate Committee

[Handwritten Signature]

.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2012.

[Handwritten Signature]

.....
Clerk of the Senate

[Handwritten Signature]

.....
Clerk of the House of Delegates

[Handwritten Signature]

.....
Acting President of the Senate

[Handwritten Signature]

.....
Speaker of the House of Delegates

The within *is* approved this the *5th*

Day of *April*, 2011.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 29 2011

Time 20:10 am