WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2011

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 253
(SENATORS MINARD AND JENKINS, ORIGINAL SPONSORS)

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

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 253

(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:


ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.


1 As used in this article:

2 (a) An “affiliate” of or person “affiliated” with a specific person is 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.

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

9 (c) “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 ten 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 subsection (k), section four of this article 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.

(d) "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 article forty of this
chapter, or would cause the insurer to be in hazardous
financial condition, as set forth in article thirty-four of this
chapter.

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

(f) "Insurer" means any person or persons or 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.

(g) "Person" means an individual, a corporation, a limited
liability company, a partnership, an association, a joint-
stock company, a trust, an unincorporated organization, a
depository institution or any similar entity or any combina-
tion 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.

(h) A "security holder" of a specified person is one who
owns any security of such person, including common stock,
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;
(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 consumma-
tion 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 re-
quired by this section and the offer, request, invitation,
agreement or acquisition has been approved by the commis-
sioner 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, arrange-
ments 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 acquir-
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 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 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
(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:

<table>
<thead>
<tr>
<th>Insurer A</th>
<th>Insurer B</th>
</tr>
</thead>
<tbody>
<tr>
<td>4%</td>
<td>4% or more</td>
</tr>
<tr>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>15%</td>
<td>1% or more</td>
</tr>
</tbody>
</table>

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
§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; 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 this section, subsections (a), (b) and (c), section five of this article, and either subsection (d), section five of this article or has 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 fifteen 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 fifteen 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 a 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, 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, relationships subsisting, 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 and 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.

(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, or investments, 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.

(e) Reporting of dividends to shareholders. — Subject to
subsection (c), section five of this article, each registered
insurer shall report to the commissioner all dividends and
other distributions to shareholders within fifteen 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 informa-
tion 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 registra-
tion hereunder to file a consolidated registration statement
or consolidated reports amending their consolidated regis-
tration 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 subsection (a) of this section 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.

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.**
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; and
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.

(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 surplus as regards policyholders;

(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 thirty-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 twelve 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 twelve-month period ending December 31, next preceding, but shall not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, 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.

(3) 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 thirty-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 (5) 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 thirty 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 thirty days after a termination of a
previously filed agreement, to the commissioner for determi-
nation of the type of filing required, if any.

(1) Sales, purchases, exchanges, loans or extensions of
credit, guarantees 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 twenty-five
percent of surplus as regards policyholders; and

(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 twenty-five
percent of surplus as regards policyholders; each 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;
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 subdivision unless it exceeds the lesser of one half of one percent of the insurer's admitted assets or ten 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 subdivision.

(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 section two-a of this article or authorized under any other section of this chapter, or in nonsubsidiary
(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 twelve-month period for that purpose, he or she may exercise his or her authority under section nine of this article.

(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 thirty 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 ten 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 responsi-
bility 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 three and four of this
subsection do not apply to a domestic insurer if the person
controlling the insurer, such as an insurer, a mutual insur-
ance 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
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; compelling 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-
tion 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.

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

(a) Power of Commissioner. — With respect to any insurer registered under section four of this article, 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) 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 section six of this article, 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 subsection (c), section seven of this article 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.


(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 section six of this article and all information reported pursuant to subdivision thirteen or fourteen, subsection (b), section three of this article, section four or section five of this article is confidential by law and privileged, is exempt from disclosure pursuant to chapter twenty-nine-b 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.

(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 and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in section six-a of this article, 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 subsection (I), section four of this article, with commissioners of states having statutes or regulations substantially similar to subdivision (1) of this subsection 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 National Association of Insurance Commissioners 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
(4) Shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this article consistent with this subsection that:

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

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

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

(D) Require the National Association of Insurance Commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this article.
(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 National Association of Insurance Commissioners pursuant to this article is confidential by law and privileged, is exempt from disclosure pursuant to chapter twenty-nine-b of this code, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action.

§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
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
1 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.


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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2012.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within ___2___ approved ___this the 5th___ Day of ___April___, 2011.

Governor
PRESENTED TO THE GOVERNOR

MAR 29 2011

Time 10:10 AM