

1 SB77
2 150676-5
3 By Senator Blackwell
4 RFD: Banking and Insurance
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8 SYNOPSIS: Under existing law, members of an insurance
9 holding company system are required to meet certain
10 requirements deemed appropriate to protect the
11 solvency of the insurers within the system.

12 Under existing law, the commissioner is
13 required to hold a public hearing to consider a
14 proposed acquisition of control of an
15 Alabama-domiciled insurer.

16 Under existing law, insurers or officers,
17 directors, employees, or agents thereof willfully
18 violating the holding company act can be criminally
19 prosecuted and, upon conviction, fined up to ten
20 thousand dollars (\$10,000) for an insurer and up to
21 one thousand dollars (\$1,000) for an individual, or
22 up to two years in prison, or both.

23 This bill would add requirements to the
24 insurance holding company system law for assessing
25 the "enterprise risk" within the entire holding
26 company system, including the risk caused by
27 non-insurance affiliates.

1 The bill would permit the commissioner to
2 hold the public hearing required to consider a
3 proposed acquisition of control of an
4 Alabama-domiciled insurer on a consolidated basis
5 with other commissioners if the approval of
6 commissioner from other states is also required.

7 The bill would require, in certain
8 circumstances, a pre-acquisition notification to
9 the commissioner, and give the commissioner
10 authority to order the acquisition not occur under
11 certain circumstances and according to certain
12 requirements.

13 The bill would authorize the commissioner to
14 participate in a supervisory college with other
15 regulators for any domestic insurer that is part of
16 a holding company with international operations in
17 order to determine compliance by the insurer with
18 this law.

19 The bill would add additional penalties for
20 certain violations of the act, including a daily
21 fine of up to (\$1,000) for failure to file any
22 registration required to be filed under the act, up
23 to a maximum of (\$50,000); a civil forfeiture of up
24 to (\$10,000) per violation for any officers or
25 directors of an insurance holding company system
26 who knowingly violate, participate in, or assent
27 to, or who knowingly permit the officers or agents

1 of the insurer to engage in transactions or
2 investments not properly reported or submitted
3 pursuant to the act; and a criminal penalty of up
4 to five years in prison or a fine of up to
5 (\$50,000), or both, for any officer, director, or
6 employee of an insurance holding company system who
7 willfully and knowingly subscribes to or makes or
8 causes to be made any false statement or false
9 reports or false filings with the intent to deceive
10 the commissioner in the performance of the
11 commissioner's duties under this act.

12 The bill would provide certain recovery
13 rights to a receiver appointed to liquidate or
14 rehabilitate a domestic insurer from any parent
15 corporation or holding company or person or
16 affiliate who otherwise controlled the insurer the
17 amounts of distributions paid by the insurer on its
18 capital stock or in the form of a bonus,
19 termination settlement, or extraordinary lump sum
20 salary adjustment to a director, officer, or
21 employee made at any time during the one year
22 preceding the petition for liquidation,
23 conservation, or rehabilitation, with certain
24 limitations and exceptions.

25 Amendment 621 of the Constitution of Alabama
26 of 1901, now appearing as Section 111.05 of the
27 Official Recompilation of the Constitution of

1 Alabama of 1901, as amended, prohibits a general
2 law whose purpose or effect would be to require a
3 new or increased expenditure of local funds from
4 becoming effective with regard to a local
5 governmental entity without enactment by a 2/3 vote
6 unless: it comes within one of a number of
7 specified exceptions; it is approved by the
8 affected entity; or the Legislature appropriates
9 funds, or provides a local source of revenue, to
10 the entity for the purpose.

11 The purpose or effect of this bill would be
12 to require a new or increased expenditure of local
13 funds within the meaning of the amendment. However,
14 the bill does not require approval of a local
15 governmental entity or enactment by a 2/3 vote to
16 become effective because it comes within one of the
17 specified exceptions contained in the amendment.

18
19 A BILL

20 TO BE ENTITLED

21 AN ACT

22
23 Relating to insurance; to revise the Alabama
24 Insurance Holding Company System Regulatory Act; to require
25 assessment of enterprise risk within the insurance holding
26 company system; to provide for public hearings; to require
27 pre-acquisition notice to the Commissioner of Insurance and

1 give the commissioner the power to disapprove acquisitions; to
2 authorize the commissioner to enter into supervisory colleges
3 with other regulators for a domestic insurer that is part of
4 an international holding company; to add additional penalties;
5 and to grant additional recovery rights to receivers for a
6 domestic insurer and in connection, would amend Sections
7 10A-20-6.16, 27-21A-23, 27-29-1, 27-29-2, 27-29-3, 27-29-4,
8 27-29-5, 27-29-6, 27-29-7, 27-29-10, and 27-34-54, Code of
9 Alabama 1975, and to add Sections 27-29-3.1, 27-29-6.1, and
10 27-29-11.1 to the Code of Alabama 1975; and in connection
11 therewith would have as its purpose or effect the requirement
12 of a new or increased expenditure of local funds within the
13 meaning of Amendment 621 of the Constitution of Alabama of
14 1901, now appearing as Section 111.05 of the Official
15 Recompilation of the Constitution of Alabama of 1901, as
16 amended.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 10A-20-6.16, 27-21A-23, 27-29-1,
19 27-29-2, 27-29-3, 27-29-4, 27-29-5, 27-29-6, 27-29-7,
20 27-29-10, and 27-34-54, Code of Alabama 1975, are amended to
21 read as follows:

22 "§10A-20-6.16.

23 "(a) No statute of this state applying to insurance
24 companies shall be applicable to any corporation organized
25 under this article and amendments thereto or to any contract
26 made by the corporation unless expressly mentioned in this

1 article and made applicable; except ~~as follows~~ the corporation
2 shall be subject to the following:

3 "(1) ~~The corporation shall be subject to the~~
4 provisions regarding annual premium tax to be paid by insurers
5 on insurance premiums.

6 "(2) ~~The corporation shall be subject to the~~
7 ~~provisions of~~ Chapter 55~~7~~, of Title 27, regarding the
8 prohibition of unfair discriminatory acts by insurers on the
9 basis of an applicant's or insured's abuse status.

10 "(3) ~~The corporation shall be subject to the~~
11 ~~provisions regarding~~ Medicare Supplement Minimum Standards set
12 forth in Article 2 of Chapter 19 of Title 27, and Long-Term
13 Care Insurance Policy Minimum Standards set forth in Article 3
14 of Chapter 19 of Title 27.

15 "(4) ~~The corporation shall be subject to~~ Section
16 27-1-17, requiring insurers and health plans to pay health
17 care providers in a timely manner.

18 "(5) ~~The corporation shall be subject to the~~
19 ~~provisions of~~ Chapter 56 of Title 27, regarding the Access to
20 Eye Care Act.

21 "(6) ~~The corporation shall be subject to the~~
22 ~~regulations~~ Rules promulgated by the Commissioner of Insurance
23 pursuant to Sections 27-7-43 and 27-7-44.

24 "(7) ~~The corporation shall be subject to the~~
25 ~~provisions of~~ Chapter 54 of Title 27.

26 "(8) ~~The corporation shall be subject to the~~
27 ~~provisions of~~ Chapter 57 of Title 27, requiring coverage to be

1 offered for the payment of colorectal cancer examinations for
2 covered persons who are 50 years of age or older, or for
3 covered persons who are less than 50 years of age and at high
4 risk for colorectal cancer according to current American
5 Cancer Society colorectal cancer screening guidelines.

6 ~~"(9) The corporation shall be subject to Chapter 58~~
7 of Title 27, requiring that policies and contracts including
8 coverage for prostate cancer early detection be offered,
9 together with identification of associated costs.

10 ~~"(10) The corporation shall be subject to Chapter 59~~
11 of Title 27, requiring that policies and contracts including
12 coverage for chiropractic be offered, together with
13 identification of associated costs.

14 ~~"(11) The corporation shall be subject to Chapter~~
15 54A of Title 27, requiring that policies and contracts to
16 offer coverage for certain treatment for Autism Spectrum
17 Disorder under certain conditions.

18 ~~"(12) The corporation shall be subject to Chapter~~
19 12A of Title 27.

20 "(13) Chapter 29 of Title 27.

21 "(b) The provisions in subsection (a) that require
22 specific types of coverage to be offered or provided shall not
23 apply when the corporation is administering a self-funded
24 benefit plan or similar plan, fund, or program that it does
25 not insure.

26 "§27-21A-23.

1 "(a) Except as otherwise provided in this chapter,
2 provisions of the insurance law and provisions of health care
3 service plan laws shall not be applicable to any health
4 maintenance organization granted a certificate of authority
5 under this chapter. This provision shall not apply to an
6 insurer or health care service plan licensed and regulated
7 pursuant to the insurance law or the health care service plan
8 laws of this state except with respect to its health
9 maintenance organization activities authorized and regulated
10 pursuant to this chapter.

11 "(b) Solicitation of enrollees by a health
12 maintenance organization granted a certificate of authority
13 shall not be construed to violate any provision of law
14 relating to solicitation or advertising by health
15 professionals.

16 "(c) Any health maintenance organization authorized
17 under this chapter shall not be deemed to be practicing
18 medicine and shall be exempt from the provisions of Section
19 34-24-310, et seq., relating to the practice of medicine.

20 "(d) No person participating in the arrangements of
21 a health maintenance organization other than the actual
22 provider of health care services or supplies directly to
23 enrollees and their families shall be liable for negligence,
24 misfeasance, nonfeasance, or malpractice in connection with
25 the furnishing of such services and supplies.

1 "(e) Nothing in this chapter shall be construed in
2 any way to repeal or conflict with any provision of the
3 certificate of need law.

4 "(f) Notwithstanding the provisions of subsection
5 (a), a health maintenance organization shall be subject to all
6 of the following:

7 "(1) Section 27-1-17.

8 "~~(g) Notwithstanding the provisions of subsection~~
9 ~~(a), a health maintenance organization shall be subject to the~~
10 ~~provisions of (2) Chapter 56 of this title, regarding the~~
11 ~~Access to Eye Care Act.~~

12 "~~(h) Notwithstanding the provisions of subsection~~
13 ~~(a), a health maintenance organization shall be subject to the~~
14 ~~provisions of (3) Chapter 54 of this title, regarding mental~~
15 ~~illness coverage.~~

16 "~~(i) Notwithstanding the provisions of subsection~~
17 ~~(a), a health maintenance organization shall be subject to the~~
18 ~~provisions of (4) Chapter 57 of this title, requiring coverage~~
19 ~~to be offered for the payment of colorectal cancer~~
20 ~~examinations for covered persons who are 50 years of age or~~
21 ~~older, or for covered persons who are less than 50 years of~~
22 ~~age and at high risk for colorectal cancer according to~~
23 ~~current American Cancer Society colorectal cancer screening~~
24 ~~guidelines.~~

25 "~~(j) Notwithstanding the provisions of subsection~~
26 ~~(a), a health maintenance organization shall be subject to (5)~~
27 ~~Chapter 58 of Title 27, requiring that policies and contracts~~

1 including coverage for prostate cancer early detection be
2 offered, together with identification of associated costs.

3 ~~"(k) Notwithstanding the provisions of subsection~~
4 ~~(a), a health maintenance organization shall be subject to (6)~~
5 Chapter 59 ~~of this title~~, requiring that policies and
6 contracts including coverage for chiropractic be offered,
7 together with identification of associated costs.

8 ~~"(l) Notwithstanding the provisions of subsection~~
9 ~~(a), a health maintenance organization shall be subject to~~
10 ~~regulations (7) Rules~~ promulgated by the Commissioner of
11 Insurance pursuant to Sections 27-7-43 and 27-7-44.

12 ~~"(m) Notwithstanding the provisions of subsection~~
13 ~~(a), a health maintenance organization shall be subject to (8)~~
14 Chapter 12A.

15 ~~"(n) Notwithstanding the provisions of subsection~~
16 ~~(a), a health maintenance organization shall be subject to (9)~~
17 Chapter 54A, ~~of this title~~ requiring policies and contracts to
18 offer coverage for certain treatment for Autism Spectrum
19 Disorder under certain conditions.

20 "(10) Chapter 29, regarding insurance holding
21 company systems.

22 "§27-29-1.

23 "For purposes of this chapter, unless otherwise
24 stated, the following terms shall have the meanings
25 respectively ascribed to them by this section:

26 "(1) AFFILIATE. The term shall include an
27 "affiliate" of, or person "affiliated" with, a specific

1 person, and shall mean a person that directly, or indirectly
2 through one or more intermediaries, controls, or is controlled
3 by, or is under common control with, the person specified.

4 "(2) COMMISSIONER. The Commissioner of Insurance,
5 his or her deputies, or the Insurance Department as
6 appropriate.

7 "(3) CONTROL. The term shall include "controlling,"
8 "controlled by," or "under common control with" and shall mean
9 the possession, direct or indirect, of the power to direct or
10 cause the direction of the management and policies of a
11 person, whether through the ownership of voting securities, by
12 contract other than a commercial contract for goods or
13 nonmanagement services, or otherwise, unless the power is the
14 result of an official position with or corporate office held
15 by the person. Control shall be presumed to exist if any
16 person, directly or indirectly owns, controls, holds with the
17 power to vote, or holds proxies representing five percent or
18 more of the voting securities of any other person. This
19 presumption may be rebutted by a showing made in the manner
20 provided by subsection ~~(i)~~ (k) of Section 27-29-4 that control
21 does not exist in fact. ~~Such "control" as used in this section~~
22 ~~shall not be deemed to exist where proxies have been obtained~~
23 ~~by management of such insurer solely in connection with voting~~
24 ~~at an annual or other regular meeting of the shareholders of~~
25 ~~such insurer.~~ The commissioner may determine, after furnishing
26 all persons in interest notice and opportunity to be heard and
27 making a specific finding of fact to support such

1 determination, that control exists in fact, notwithstanding
2 the absence of a presumption to that effect.

3 "(4) ENTERPRISE RISK. Any activity, circumstance,
4 event, or series of events involving one or more affiliates of
5 an insurer that, if not remedied promptly, is likely to have a
6 material adverse effect upon the financial condition or
7 liquidity of the insurer or its insurance holding company
8 system as a whole, including, but not limited to, anything
9 that would cause the insurer's risk-based capital to fall into
10 company action level as set forth in Section 27-2B-4 or would
11 cause the insurer to be in hazardous financial condition.

12 "(4)(5) INSURANCE HOLDING COMPANY SYSTEM. A system
13 which consists of two or more affiliated persons, one or more
14 of which is an insurer.

15 "(5)(6) INSURER. An insurance company as set forth
16 in Section 27-1-2, except that it shall not include: agencies,
17 authorities, or instrumentalities of the United States, its
18 possessions and territories, the Commonwealth of Puerto Rico,
19 the District of Columbia, or a state or political subdivision
20 of a state.

21 "a. Agencies, authorities, or instrumentalities of
22 the United States, its possessions and territories, the
23 Commonwealth of Puerto Rico, the District of Columbia, or a
24 state or political subdivision of a state;

25 "b. Fraternal benefit societies; or

26 "c. Nonprofit medical and hospital service
27 associations.

1 ~~"Notwithstanding the foregoing, for purposes of~~
2 ~~Section 27-29-3, a domestic insurer shall include any other~~
3 ~~person controlling a domestic insurer unless such other person~~
4 ~~is either directly or through its affiliates primarily engaged~~
5 ~~in business other than the business of insurance.~~

6 "~~(6)~~(7) PERSON. An individual, a corporation, a
7 limited liability company, a partnership, ~~a limited~~
8 ~~partnership~~, an association, a joint-stock company, a trust,
9 an unincorporated organization, or any similar entity or any
10 combination of the foregoing acting in concert, but shall not
11 include any ~~securities broker performing no more than the~~
12 ~~usual and customary broker's function~~ joint venture
13 partnership exclusively engaged in owning, managing, leasing,
14 or developing real or tangible personal property.

15 "~~(7)~~(8) SECURITYHOLDER. One who owns any security of
16 such person, including common stock, preferred stock, debt
17 obligations, and other security convertible into, or
18 evidencing, the right to acquire any of the foregoing.

19 "~~(8)~~(9) SUBSIDIARY. An affiliate controlled by such
20 person, directly or indirectly, through one or more
21 intermediaries.

22 "~~(9)~~(10) VOTING SECURITY. The term shall include any
23 security convertible into, or evidencing, a right to acquire a
24 voting security.

25 "§27-29-2.

26 "(a) Authorization. ~~Any~~ A domestic insurer, either
27 by itself or in cooperation with one or more persons, may

1 organize or acquire one or more subsidiaries ~~or affiliates~~ in
2 accordance with the provisions contained in this section. Such
3 The subsidiaries ~~or affiliates~~ may conduct any kind of
4 business, ~~or businesses, permitted by the Constitution and the~~
5 ~~laws of this state,~~ and their authority to do so shall not be
6 limited by reason of the fact that they are subsidiaries or
7 affiliates of a domestic insurer.

8 "(b) Additional investment authority. In addition to
9 investments in common stock, preferred stock, debt
10 obligations, and other securities permitted under all other
11 sections of this title, a domestic insurer may also:

12 "(1) Invest, in common stock, preferred stock, debt
13 obligations, and other securities of one or more subsidiaries
14 ~~or affiliates, including, without limitation, domestic or~~
15 ~~foreign insurance subsidiaries or affiliates,~~ amounts which do
16 not exceed the lesser of 10 percent of such insurer's assets
17 or 50 percent of the ~~total of the insurer's capital and~~
18 ~~surplus as shown in the latest annual report of the insurer~~
19 ~~filed pursuant to subsection (a) of Section 27-3-26, less the~~
20 ~~minimum capital and surplus required of said insurer for~~
21 ~~authority to transact insurance by Sections 27-3-7 and 27-3-8~~
22 as regards policyholders, provided that after such
23 investments, the insurer's surplus as regards policyholders
24 will be reasonable in relation to the insurer's outstanding
25 liabilities and adequate to its financial needs. In
26 calculating the amount of such investments, investments in
27 domestic and foreign insurance subsidiaries and health

1 maintenance organizations shall be excluded, and there shall
2 be included both of the following:

3 "a. Total net moneys or other consideration expended
4 and obligations assumed in the acquisition or formation of a
5 subsidiary ~~or affiliate~~, including all organizational expenses
6 and contributions to capital and surplus of such subsidiary ~~or~~
7 ~~affiliate~~, whether or not represented by the purchase of
8 capital stock or issuance of other securities; ~~and.~~

9 "b. All amounts expended in acquiring additional
10 common stock, debt obligations, and other securities and all
11 contributions to the capital or surplus of a subsidiary ~~or~~
12 ~~affiliate~~ subsequent to its acquisition or formation; ~~.~~

13 "(2) Invest any amount in common stock, preferred
14 stock, debt obligations, and other securities of one or more
15 subsidiaries engaged or organized to engage exclusively in the
16 ownership and management of assets authorized as investments
17 for the insurer provided that each such subsidiary agrees to
18 limit its investments in any asset so that such investments
19 will not cause the amount of the total investment of the
20 insurer to exceed any of the investment limitations specified
21 in subdivision (1) ~~of this subsection~~ or in Sections 27-41-15
22 through 27-41-18 and 27-41-35. For the purpose of this
23 subdivision, "the total investment of the insurer" shall
24 include both of the following:

25 "a. Any direct investment by the insurer in an
26 asset; ~~and.~~

1 "b. The insurer's proportionate share of any
2 investment in an asset by any subsidiary ~~or affiliate~~ of the
3 insurer, which shall be calculated by multiplying the amount
4 of the subsidiary's investment by the percentage of the
5 insurer's ownership of such subsidiary ~~or affiliate~~.

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

13 "(c) Exemption from investment restrictions.
14 Investments in common stock, preferred stock, debt
15 obligations, or other securities of subsidiaries ~~or affiliates~~
16 made pursuant to subsection (b) ~~of this section~~ shall not be
17 subject to any of the otherwise applicable restrictions or
18 prohibitions contained in this title applicable to such
19 investments of insurers.

20 "(d) Qualification of investment; when determined.
21 Whether any investment pursuant to subsection (b) ~~of this~~
22 ~~section~~ meets the applicable requirements thereof is to be
23 determined ~~immediately after~~ before such investment is made,
24 by calculating the applicable investment limitations as though
25 the investment had already been made, taking into account the
26 then outstanding principal balance on all previous investments
27 in debt obligations and the value of all previous investments

1 in equity securities as of the date they were made, net of any
2 return of capital invested, not including dividends.

3 "(e) Cessation of control. If an insurer ceases to
4 control a subsidiary, it shall dispose of any investment
5 therein made pursuant to this section within three years from
6 the time of the cessation of control or within such further
7 time as the commissioner may prescribe, unless at any time
8 after such investment shall have been made such investment
9 shall have met the requirements for investment under any other
10 section of this title, and the insurer has notified the
11 commissioner.

12 "§27-29-3.

13 "(a) ~~(1) Filing and approval requirements.~~ No person
14 other than the issuer shall make a tender offer for or a
15 request or invitation for tenders of, or enter into any
16 agreement to exchange securities for, seek to acquire, or
17 acquire in the open market any voting security of a domestic
18 insurer if, after the consummation thereof, such person would,
19 directly or indirectly, or by conversion or by exercise of any
20 right to acquire, be in control of such insurer, and no person
21 shall enter into an agreement to merge with or otherwise to
22 acquire control of a domestic insurer, or any person
23 controlling a domestic insurer unless, at the time any such
24 offer, request, or invitation is made or any such agreement is
25 entered into, or prior to the acquisition of such securities
26 if no offer or agreement is involved ~~or within 15 days after~~
27 ~~any such offer, request, or invitation is made or any such~~

1 ~~agreement is entered into,~~ such person has filed with the
2 commissioner and has sent to such insurer a statement
3 containing the information required by this section and such
4 offer, request, invitation, agreement, or acquisition ~~either:~~
5 has been approved by the commissioner in the manner prescribed
6 in this section.

7 ~~"(1) Has been approved by the commissioner in the~~
8 ~~manner prescribed in this section; or~~

9 ~~"(2) Expressly states that it is subject to approval~~
10 ~~by the commissioner in the manner prescribed in this section.~~

11 ~~"An offer, request, invitation, agreement, or~~
12 ~~acquisition which contains such a condition and which is~~
13 ~~approved by the commissioner in the manner so prescribed shall~~
14 ~~be effective and binding according to its terms from the date~~
15 ~~on which it was made.~~

16 "(2) For purposes of this section, any controlling
17 person of a domestic insurer seeking to divest its controlling
18 interest in the domestic insurer, in any manner, shall file
19 with the commissioner, with a copy to the insurer,
20 confidential notice of its proposed divestiture at least 30
21 days prior to the cessation of control. The commissioner shall
22 determine those instances in which the party or parties
23 seeking to divest or to acquire a controlling interest in an
24 insurer, will be required to file for and obtain approval of
25 the transaction. The information shall remain confidential
26 until the conclusion of the transaction unless the
27 commissioner, in his or her discretion, determines that

1 confidential treatment will interfere with enforcement of this
2 section. If the statement referred to in subdivision (1) is
3 otherwise filed, this subdivision shall not apply.

4 "(3) With respect to a transaction subject to this
5 section, the acquiring person must also file a pre-acquisition
6 notification with the commissioner, which shall contain the
7 information set forth in subdivision (1) of subsection (c) of
8 Section 27-29-3.1. A failure to file the notification may be
9 subject to penalty specified in subdivision of (3) of
10 subsection (e) of Section 27-29-3.1.

11 "(4) For purposes of this section:

12 "a. A domestic insurer includes any person
13 controlling a domestic insurer unless the person, as
14 determined by the commissioner, is either directly or through
15 its affiliates primarily engaged in business other than the
16 business of insurance.

17 "b. Person does not include any securities broker
18 holding, in the usual and customary broker's function, less
19 than 20 percent of the voting securities of an insurance
20 company or of any person which controls an insurance company.

21 "(b) Content of statement.

22 "(1) The statement to be filed with the commissioner
23 under this section shall be made under oath or affirmation and
24 shall contain all of the following information:

25 ~~(1)~~a. The name and address of each person by whom,
26 or on whose behalf, the merger or other acquisition of control
27 referred to in subsection (a) ~~of this section~~ is to be

1 effected (hereinafter called "acquiring party"), and either of
2 the following:

3 "a.1. If ~~such~~ the person is an individual, his or
4 her principal occupation and all offices and positions held
5 during the past five years, and any conviction of crimes other
6 than minor traffic violations during the past 10 years; ~~or.~~

7 "b.2. If ~~such~~ the person is not an individual, a
8 report of the nature of its business operations during the
9 past five years or for ~~such~~ the lesser period as such person
10 and any predecessors thereof shall have been in existence; an
11 informative description of the business intended to be done by
12 ~~such~~ the person and ~~such~~ the person's subsidiaries; and a list
13 of all individuals who are, or who have been selected to
14 become, directors or executive officers of ~~such~~ the person or
15 who perform, or will perform, functions appropriate to ~~such~~
16 the positions. ~~Such~~ The list shall include for each ~~such~~
17 individual the information required by paragraph ~~a.~~ of this
18 ~~subdivision;~~ subparagraph 1.

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

1 the identity of the lender shall remain confidential if the
2 person filing such statement so requests~~7.~~

3 ~~"(3)c.~~ Fully audited financial information as to the
4 earnings and financial condition of each acquiring party for
5 the preceding five fiscal years of each such acquiring party,
6 or for such lesser period as such acquiring party and any
7 predecessors thereof shall have been in existence, and similar
8 unaudited information as of a date not earlier than 90 days
9 prior to the filing of the statement; ~~provided, however, that~~
10 ~~in the case of an acquiring party which is an insurer actively~~
11 ~~engaged in the business of insurance, the financial statements~~
12 ~~of such insurer need not be audited, except such audit may be~~
13 ~~required if the need therefor is determined by the~~
14 ~~commissioner;.~~

15 ~~"(4)d.~~ Any plans or proposals which each acquiring
16 party may have to liquidate such insurer, to sell its assets,
17 or to merge or consolidate it with any person or to make any
18 other material change in its business or corporate structure
19 or management~~7.~~

20 ~~"(5)e.~~ The number of shares of any security referred
21 to in subsection (a) ~~of this section~~ which each acquiring
22 party proposes to acquire, the terms of the offer, request,
23 invitation, agreement, or acquisition referred to in
24 subsection (a) ~~of this section~~, and a statement as to the
25 method by which the fairness of the proposal was arrived at~~7.~~

26 ~~"(6)f.~~ The amount of each class of any security
27 referred to in subsection (a) ~~of this section~~ which is

1 beneficially owned or concerning which there is a right to
2 acquire beneficial ownership by each acquiring party~~7~~.

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

14 ~~"(8)h.~~ A description of the purchase of any security
15 referred to in subsection (a) ~~of this section~~ during the 12
16 calendar months preceding the filing of the statement by any
17 acquiring party, including the dates of purchase, names of the
18 purchasers, and consideration paid, or agreed to be paid,
19 therefor~~7~~.

20 ~~"(9)i.~~ A description of any recommendations to
21 purchase any security referred to in subsection (a) ~~of this~~
22 ~~section~~ made during the 12 calendar months preceding the
23 filing of the statement by any acquiring party or by anyone
24 based upon interviews or at the suggestion of such acquiring
25 party~~7~~.

26 ~~"(10)j.~~ Copies of all tender offers for, requests or
27 invitations for tenders of, exchange offers for and agreements

1 to acquire or exchange any securities referred to in
2 subsection (a) ~~of this section~~ and, if distributed, of
3 additional soliciting material relating thereto~~;~~.

4 "~~(11)~~k. The terms of any agreement, contract, or
5 understanding made with or proposed to be made with any
6 broker-dealer as to solicitation of securities referred to in
7 subsection (a) ~~of this section~~ for tender and the amount of
8 any fees, commissions, or other compensation to be paid to
9 broker-dealers with regard thereto~~;~~ ~~and.~~

10 "l. An agreement by the person required to file the
11 statement referred to in subsection (a) that it will provide
12 the annual report, specified in subsection (l) of Section
13 27-29-4, for so long as control exists.

14 "m. An acknowledgement by the person required to
15 file the statement referred to in subsection (a) that the
16 person and all subsidiaries within its control in the
17 insurance holding company system will provide information to
18 the commissioner upon request as necessary to evaluate
19 enterprise risk to the insurer.

20 "~~(12)~~n. Such additional information as the
21 commissioner may, by rule or regulation, prescribe as
22 necessary or appropriate for the protection of policyholders
23 ~~and securityholders~~ of the insurer or in the public interest.

24 "(2) If the person required to file the statement
25 referred to in subsection (a) ~~of this section~~ is a
26 partnership, limited partnership, syndicate, or other group,
27 the commissioner may require that the information called for

1 by ~~subdivisions (1) paragraphs a. through (12) n. of this~~
2 ~~subsection~~ subdivision (1) shall be given with respect to each
3 partner of such partnership or limited partnership, each
4 member of such syndicate or group, and each person who
5 controls such partner or member. If any such partner, member,
6 or person is a corporation or the person required to file the
7 statement referred to in subsection (a) ~~of this section~~ is a
8 corporation, the commissioner may require that the information
9 called for by ~~subdivisions (1) paragraphs a. through (12) n.~~
10 ~~of this subsection~~ subdivision (1) shall be given with respect
11 to such corporation, each officer and director of such
12 corporation, and each person who is, directly or indirectly,
13 the beneficial owner of more than ~~15~~ 10 percent of the
14 outstanding voting securities of such corporation. If any
15 material change occurs in the facts set forth in the statement
16 filed with the commissioner and sent to such insurer pursuant
17 to this section, an amendment setting forth such change,
18 together with copies of all documents and other materials
19 relevant to such change, shall be filed with the commissioner
20 and sent to such insurer within two business days after the
21 person learns of such change. ~~Such insurer shall send such~~
22 ~~amendment to its shareholders.~~

23 "(c) ~~Alternative filing materials.~~ If any offer,
24 request, invitation, agreement, or acquisition referred to in
25 subsection (a) ~~of this section~~ is proposed to be made by means
26 of a registration statement under the Securities Act of 1933,
27 or in circumstances requiring the disclosure of similar

1 information under the Securities Exchange Act of 1934, or
2 under a state law requiring similar registration or
3 disclosure, the person required to file the statement referred
4 to in subsection (a) ~~of this section~~ may utilize such
5 documents in furnishing the information called for by that
6 statement.

7 "(d) ~~Approval by commissioner; hearings.~~

8 "(1) The commissioner shall approve any merger or
9 other acquisition of control referred to in subsection (a) ~~of~~
10 ~~this section~~ unless, after a public hearing thereon, he or she
11 finds ~~that~~ any of the following:

12 "a. After the change of control, the domestic
13 insurer referred to in subsection (a) ~~of this section~~ would
14 not be able to satisfy the requirements for the issuance of a
15 license to write the line, or lines, of insurance for which it
16 is presently licensed~~7.~~.

17 "b. The effect of the merger or other acquisition of
18 control would be substantially to lessen competition in
19 insurance in this state or to create a monopoly therein~~7.~~. In
20 applying the competitive standard in this paragraph:

21 "1. The informational requirements of subdivision
22 (1) of subsection (c) of Section 27-29-3.1 and the standards
23 of subdivision (2) of subsection (d) of Section 27-29-3.1
24 shall apply.

25 "2. The merger or other acquisition shall not be
26 disapproved if the commissioner finds that any of the

1 situations meeting the criteria provided by subdivision (3) of
2 subsection (d) of Section 27-29-3.1 exist.

3 "3. The commissioner may condition the approval of
4 the merger or other acquisition on the removal of the basis of
5 disapproval within a specified period of time.

6 "c. The financial condition of any acquiring party
7 is such as might jeopardize the financial stability of the
8 insurer or prejudice the interest of its policyholders~~7~~.

9 "d. The plans or proposals which the acquiring party
10 has to liquidate the insurer, to sell its assets, or to
11 consolidate or merge it with any person or to make any other
12 material change in its business or corporate structure or
13 management are unfair and unreasonable to policyholders of the
14 insurer and not in the public interest~~7~~~~or~~.

15 "e. The competence, experience, and integrity of
16 those persons who would control the operation of the insurer
17 are such that it would not be in the interest of policyholders
18 of the insurer and of the public to permit the merger or other
19 acquisition of control.

20 "f. The acquisition is likely to be hazardous or
21 prejudicial to the insurance-buying public.

22 "(2) The public hearing referred to in subdivision
23 (1) ~~of this subsection~~ shall be held within ~~45~~ 30 days after
24 the statement required by subsection (a) ~~of this section~~ is
25 filed, and at least 20 days' notice thereof shall be given by
26 the commissioner to the person filing the statement. Not less
27 than ~~15~~ seven days' notice of such public hearing shall be

1 given by the person filing the statement to the insurer and to
2 such other persons as may be designated by the commissioner.
3 ~~The insurer shall give such notice to its securityholders.~~ The
4 commissioner shall make a determination within ~~30 days after~~
5 the conclusion of such hearing the 60-day period preceding the
6 effective date of the proposed transaction. At such hearing,
7 the person filing the statement, the insurer, any person to
8 whom notice of hearing was sent, and any other person whose
9 interest may be affected thereby shall have the right to
10 present evidence, examine and cross-examine witnesses and
11 offer oral and written arguments and, in connection therewith,
12 shall be entitled to conduct discovery proceedings in the same
13 manner as is presently allowed in the circuit courts of this
14 state. All discovery proceedings shall be concluded not later
15 than ~~five~~ three days prior to the commencement of the public
16 hearing.

17 "(3) If the proposed acquisition of control will
18 require the approval of more than one commissioner, the public
19 hearing referred to in subdivision (2) may be held on a
20 consolidated basis upon request of the person filing the
21 statement referred to in subsection (a). The person shall file
22 the statement referred to in subsection (a) with the National
23 Association of Insurance Commissioners within five days of
24 making the request for a public hearing. A commissioner may
25 opt out of a consolidated hearing, and shall provide notice to
26 the applicant of the opt-out within 10 days of the receipt of
27 the statement referred to in subsection (a). A hearing

1 conducted on a consolidated basis shall be public and shall be
2 held within the United States before the commissioners of the
3 states in which the insurers are domiciled. The commissioners
4 shall hear and receive evidence. A commissioner may attend the
5 hearing, in person or by telecommunication.

6 "(4) In connection with a change of control of a
7 domestic insurer, any determination by the commissioner that
8 the person acquiring control of the insurer shall be required
9 to maintain or restore the capital of the insurer to the level
10 required by the laws and regulations of this state shall be
11 made not later than 60 days after the date of notification of
12 the change in control submitted pursuant to subdivision (1) of
13 subsection (a).

14 "(5) The commissioner may retain any attorneys,
15 actuaries, accountants, and other experts not otherwise a part
16 of the commissioner's staff as may be reasonably necessary to
17 assist the commissioner in reviewing the proposed acquisition
18 of control, the reasonable expenses of which shall be borne by
19 the acquiring person.

20 ~~"(e) Mailings to stockholders; payments of expenses.~~
21 ~~All statements, amendments, or other material filed pursuant~~
22 ~~to subsections (a) or (b) of this section and all notices of~~
23 ~~public hearings held pursuant to subsection (d) of this~~
24 ~~section shall be mailed by the insurer to its stockholders~~
25 ~~within 10 business days after the insurer has received such~~
26 ~~statements, amendments, other material, or notices. The~~
27 ~~expenses of mailing shall be borne by the person making the~~

1 filing. As security for the payment of such expenses, such
2 person shall file with the commissioner an acceptable bond or
3 other deposit in an amount to be determined by the
4 commissioner.

5 ~~"(f)(e) Exemptions.~~ The provisions of this section
6 shall not apply to any offer, request, invitation, agreement,
7 or acquisition which the commissioner by order shall exempt
8 therefrom as:

9 "(1) Any transaction which is subject to the
10 provisions of Sections 27-27-45 and 27-27-46, dealing with the
11 merger or consolidation of two or more insurers.

12 "(2) Any offer, request, invitation, agreement, or
13 acquisition which the commissioner by order shall exempt
14 therefrom as either of the following:

15 ~~"(1)a.~~ Not having been made or entered into for the
16 purpose and not having the effect of changing or influencing
17 the control of a domestic insurer; ~~or~~

18 ~~"(2)b.~~ As otherwise not comprehended within the
19 purposes of this section.

20 ~~"(g)(f) Violations.~~ The following shall be
21 violations of this section:

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

25 "(2) The effectuation, or any attempt to effectuate,
26 an acquisition of control of, or merger with, a domestic

1 insurer unless the commissioner has given his or her approval
2 thereto.

3 ~~"(h) (g) Jurisdiction; consent to service of process.~~

4 The courts of this state are hereby vested with jurisdiction
5 over every person not resident, domiciled, or authorized to do
6 business in this state who files a statement with the
7 commissioner under this section and over all actions involving
8 such person arising out of violations of this section, and
9 each such person shall be deemed to have performed acts
10 equivalent to and constituting an appointment by such a person
11 of the commissioner to be his or her true and lawful attorney
12 upon whom may be served all lawful process in any action or
13 proceeding arising out of violations of this section. Copies
14 of all such lawful process shall be served on the commissioner
15 and transmitted by registered or certified mail by the
16 commissioner to such person at his or her last known address.

17 "§27-29-4.

18 ~~"(a) Registration.~~

19 "(1) Every insurer which is authorized to do
20 business in this state and which is a member of an insurance
21 holding company system shall register with the commissioner,
22 except a foreign insurer subject to registration requirements
23 and standards adopted by statute or regulation in the
24 jurisdiction of its domicile which are substantially similar
25 to those contained in this section and ~~Section 27-29-5.~~ both
26 of the following:

1 "a. Subdivision (1) of subsection (a) of Section
2 27-29-5, and subsections (b) and (d) of Section 27-29-5.

3 "b. Either subdivision (2) of subsection (a) of
4 Section 27-29-5 or a provision such as the following: Each
5 registered insurer shall keep current the information required
6 to be disclosed in its registration statement by reporting all
7 material changes or additions within 15 days after the end of
8 the month in which it learns of each change or addition.

9 "(2) Any insurer which is subject to registration
10 under this section shall register within 60 days after
11 September 3, 1973, or 15 days after it becomes subject to
12 registration, and annually thereafter by June 1 of each year
13 for the previous calendar year, unless the commissioner for
14 good cause shown extends the time for registration and, then,
15 within such extended time. The commissioner may require any
16 authorized insurer which is a member of a ~~an~~ an insurance holding
17 company system which is not subject to registration under this
18 section to furnish a copy of the registration statement, the
19 summary specified in subsection (c) or other information filed
20 by such insurance company with the insurance regulatory
21 authority of domiciliary jurisdiction.

22 "(b) ~~Information and form required.~~ Every insurer
23 subject to registration shall file a registration statement on
24 a form ~~provided~~ prescribed by the commissioner by rule which
25 shall contain the following current information ~~about~~:

1 "(1) The capital structure, general financial
2 condition, ownership, and management of the insurer and any
3 person controlling the insurer~~7~~.

4 "(2) The identity of every member of the insurance
5 holding company system~~7~~.

6 "(3) The following agreements in force,
7 ~~relationships subsisting,~~ and transactions currently
8 outstanding or which have occurred during the last calendar
9 year between such insurer and its affiliates:

10 "a. Loans, other investments or purchases, sales or
11 exchanges of securities of the affiliates by the insurer or of
12 the insurer by its affiliates~~7~~.

13 "b. Purchases, sales, or exchanges of assets~~7~~.

14 "c. Transactions not in the ordinary course of
15 business~~7~~.

16 "d. Guarantees or undertakings for the benefit of an
17 affiliate which result in an actual contingent exposure of the
18 insurer's assets to liability, other than insurance contracts
19 entered into in the ordinary course of the insurer's
20 business~~7~~.

21 "e. All management agreements and service contracts
22 and all cost-sharing arrangements~~7~~.

23 "f. Reinsurance agreements~~7~~.

24 "g. Dividends and other distributions to
25 shareholders~~7~~ ~~and~~.

26 "h. Consolidated tax allocation agreements~~7~~

1 "(4) Any pledge of the insurer's stock, including
2 stock of any subsidiary or controlling affiliate, for a loan
3 made to any member of the insurance holding company system~~7~~.

4 "(5) If requested by the commissioner, the insurer
5 shall include financial statements of or within an insurance
6 holding company system, including all affiliates. Financial
7 statements may include, but are not limited to, annual audited
8 financial statements filed with the U.S. Securities and
9 Exchange Commission pursuant to the Securities Act of 1933, as
10 amended, or the Securities Exchange Act of 1934, as amended.
11 An insurer required to file financial statements pursuant to
12 this subdivision may satisfy the request by providing the
13 commissioner with the most recently filed parent corporation
14 financial statements that have been filed with the Securities
15 Exchange Commission. Financial statements of insurer's
16 affiliates required to be filed with the commissioner may be
17 filed by the insurer in the accounting standard utilized by
18 the affiliate in its usual course of business at the time of
19 the filing.

20 "~~(5)~~ (6) Other matters concerning transactions
21 between registered insurers and any affiliates as may be
22 included, from time to time, in any registration forms adopted
23 or approved by the commissioner.

24 "(7) Statements that the insurer's board of
25 directors or an appropriate committee of the board oversees
26 corporate governance and internal controls and that the
27 insurer's officers or senior management have approved,

1 implemented, and continue to maintain and monitor corporate
2 governance and internal control procedures.

3 "(8) Any other information required by the
4 commissioner by rule.

5 "(c) All registration statements shall contain a
6 summary outlining all items in the current registration
7 statement representing changes from the prior registration
8 statement.

9 ~~"(c)(d) Materiality.~~ No information need be
10 disclosed on the registration statement filed pursuant to
11 subsection (b) ~~of this section~~ if such information is not
12 material for the purposes of this section. Unless the
13 commissioner by rule, regulation, or order provides otherwise,
14 sales, purchases, exchanges, loans, or extensions of credit or
15 investments involving one-half of one percent or less of an
16 insurer's admitted assets as of December 31, next preceding,
17 shall not be deemed material for purposes of this section.

18 ~~"(d)(e) Amendments to registration statements. Each~~
19 ~~registered insurer shall keep current the information required~~
20 ~~to be disclosed in its registration statement by reporting all~~
21 ~~material changes or additions on amendment forms provided by~~
22 ~~the commissioner within 15 days after the end of the month in~~
23 ~~which it learns of each such change or addition, but at least~~
24 ~~annually, as provided in subsection (a); provided, however,~~
25 ~~that subject~~ Subject to subsection (b) of Section 27-29-5,
26 each registered insurer shall so report all dividends and

1 other distributions to shareholders within ~~five~~ 15 business
2 days following the declaration thereof.

3 "(f) Any person within an insurance holding company
4 system subject to registration shall be required to provide
5 complete and accurate information to an insurer, where the
6 information is reasonably necessary to enable the insurer to
7 comply with the provisions of this chapter.

8 ~~"(e)(g) Termination of registration.~~ The
9 commissioner shall terminate the registration of any insurer
10 which demonstrated that it no longer is a member of an
11 insurance holding company system.

12 ~~"(f)(h) Consolidated filing.~~ The commissioner may
13 require or allow two or more affiliated insurers subject to
14 registration under this section to file a consolidated
15 registration statement ~~or consolidated reports amending their~~
16 ~~consolidated registration statement or their individual~~
17 ~~registration statements.~~

18 ~~"(g)(i) Alternative registration.~~ The commissioner
19 may allow an insurer which is authorized to do business in
20 this state and which is part of an insurance holding company
21 system to register on behalf of any affiliated insurer which
22 is required to register under subsection (a) ~~of this section~~
23 and to file all information and material required to be filed
24 under this section.

25 ~~"(h)(j) Exemptions.~~ The provisions of this section
26 shall not apply to any insurer, information, or transaction
27 if, and to the extent that, the commissioner by rule,

1 regulation, or order shall exempt the same from the provisions
2 of this section.

3 ~~"(i)(k) Disclaimer.~~ Any person may file with the
4 commissioner a disclaimer of affiliation with any authorized
5 insurer or ~~such~~ a disclaimer may be filed by ~~such~~ the insurer
6 or any member of an insurance holding company system. The
7 disclaimer shall fully disclose all material relationships and
8 bases for affiliation between ~~such~~ the person and ~~such~~ the
9 insurer as well as the basis for disclaiming such affiliation.
10 ~~After a disclaimer has been filed, the insurer shall be~~
11 ~~relieved of any duty to register or report under this section~~
12 ~~which may arise out of the insurer's relationship with such~~
13 ~~person, unless and until the commissioner disallows such a~~
14 ~~disclaimer. The commissioner shall disallow such a disclaimer~~
15 ~~only after furnishing all parties in interest with notice and~~
16 ~~opportunity to be heard and after making specific findings of~~
17 ~~fact to support such disallowance. A disclaimer of affiliation~~
18 ~~shall be deemed to have been granted unless the commissioner,~~
19 ~~within 30 days following receipt of a complete disclaimer,~~
20 ~~notifies the filing party the disclaimer is disallowed. In the~~
21 ~~event of disallowance, the disclaiming party may request an~~
22 ~~administrative hearing, which shall be granted. The~~
23 ~~disclaiming party shall be relieved of its duty to register~~
24 ~~under this section if approval of the disclaimer has been~~
25 ~~granted by the commissioner, or if the disclaimer is deemed to~~
26 ~~have been approved.~~

1 "(1) (1) Except as provided in subdivisions (2) and
2 (4), the ultimate controlling person of every insurer subject
3 to registration shall also file an annual enterprise risk
4 report. The report shall, to the best of the ultimate
5 controlling person's knowledge and belief, identify the
6 material risks within the insurance holding company system
7 that could pose enterprise risk to the insurer. The report
8 shall be filed with the lead state commissioner of the
9 insurance holding company system as determined by the
10 procedures within the Financial Analysis Handbook adopted by
11 the National Association of Insurance Commissioners.

12 "(2) Except as provided in subdivision (3), the
13 ultimate controlling person of an insurer with total direct or
14 assumed annual premiums of less than three hundred million
15 dollars (\$300,000,000) is not required to submit an enterprise
16 risk report under subdivision (1).

17 "(3) Regardless of total direct or assumed annual
18 premium, the ultimate controlling person of an insurer that is
19 not in compliance with applicable risk-based capital standards
20 or that is otherwise in hazardous condition, as determined by
21 the commissioner, shall file an enterprise risk report
22 required by subdivision (1) as directed by the commissioner.

23 "(4) An insurer that in the preceding calendar year
24 had direct written and assumed premiums of more than three
25 hundred million dollars (\$300,000,000) but less than five
26 hundred million dollars (\$500,000,000) may request an
27 exemption from the reporting requirements of subdivision (1)

1 by filing with the commissioner a written statement describing
2 the undue financial or organizational hardship the insurer
3 would suffer as a result of complying with subdivision (1).
4 The commissioner may grant the exemption if the commissioner
5 finds that compliance with subdivision (1) would impose an
6 undue financial or organizational hardship on the insurer.

7 ~~"(j)(m) Violations.~~ The failure to file a
8 registration statement or any ~~amendment thereto~~ summary of the
9 registration statement or enterprise risk filing required by
10 this section within the time specified for ~~such~~ filing shall
11 be a violation of this section.

12 "§27-29-5.

13 ~~"(a) Transactions with affiliates. Material~~
14 ~~transactions by registered insurers with their affiliates~~
15 Transactions within an insurance holding company system to
16 which an insurer subject to registration is a party shall be
17 subject to all of the following standards:

18 "(1) The terms shall be fair and reasonable~~7.~~

19 "(2) Agreements for cost sharing services and
20 management shall include such provisions as required by rule
21 and regulation issued by the commissioner.

22 ~~"(2)(3) Charges or fees for services performed shall~~
23 ~~be reasonable~~7.~~~~

24 ~~"(3)(4) Expenses incurred and payment received shall~~
25 ~~be allocated to the insurer in conformity with customary~~
26 ~~insurance accounting practices consistently applied~~7.~~~~

1 "~~(4)~~(5) The books, accounts, and records of each
2 party ~~will~~ to all such transactions shall be so maintained as
3 to clearly and accurately disclose the ~~precise~~ nature and
4 details of the transactions, ~~and~~ including such accounting
5 information as is necessary to support the reasonableness of
6 the charges or fees to the respective parties.

7 "~~(5)~~(6) The insurer's surplus as regards
8 policyholders following any dividends or distributions to
9 shareholder affiliates shall be reasonable in relation to the
10 insurer's outstanding liabilities and adequate to its
11 financial needs.

12 "(b) (1) The following transactions involving a
13 domestic insurer and any person in its insurance holding
14 company system, including amendments or modifications of
15 affiliate agreements previously filed pursuant to this section
16 which are subject to any materiality standards contained in
17 paragraphs a. through g., may not be entered into unless the
18 insurer has notified the commissioner in writing of its
19 intention to enter into ~~such~~ the transaction at least 30 days
20 prior thereto, or such shorter period as the commissioner may
21 permit, and the commissioner has not disapproved it within
22 that period. The notice for amendments or modifications shall
23 include the reasons for the change and the financial impact on
24 the domestic insurer. Informal notice shall be reported,
25 within 30 days after a termination of a previously filed
26 agreement, to the commissioner for determination of the type
27 of filing required, if any.

1 "~~(1)~~a. Sales, purchases, exchanges, loans or
2 extensions of credit, ~~guarantees,~~ or investments provided the
3 transactions are equal to or exceed the following:

4 "~~a.~~1. With respect to nonlife insurers, the lesser
5 of three percent of the insurer's admitted assets or 25
6 percent of surplus as regards policyholders as of the 31st day
7 of December next preceding~~7.~~

8 "~~b.~~2. With respect to life insurers, three percent
9 of the insurer's admitted assets as of the 31st day of
10 December next preceding~~7.~~

11 "~~(2)~~b. Loans or extensions of credit to any person
12 who is not an affiliate, where the insurer makes loans or
13 extensions of credit with the agreement or understanding that
14 the proceeds of the transactions, in whole or in substantial
15 part, are to be used to make loans or extensions of credit to,
16 to purchase assets of, or to make investments in, any
17 affiliate of the insurer making the loans or extensions of
18 credit provided the transactions are equal to or exceed the
19 following:

20 "~~a.~~1. With respect to nonlife insurers, the lesser
21 of three percent of the insurer's admitted assets or 25
22 percent of surplus as regards policyholders as of the 31st day
23 of December next preceding~~7.~~

24 "~~b.~~2. With respect to life insurers, three percent
25 of the insurer's admitted assets as of the 31st day of
26 December next preceding~~7.~~

1 "~~(3)~~c. Reinsurance agreements or modifications
2 thereto, including:

3 "1. All reinsurance pooling agreements.

4 "2. Agreements in which the reinsurance premium or a
5 change in the insurer's liabilities, or the projected
6 reinsurance premium or a change in the insurer's liabilities
7 in any of the next three years, equals or exceeds five percent
8 of the insurer's surplus as regards policyholders, as of the
9 31st day of December next preceding, including those
10 agreements which may require as consideration the transfer of
11 assets from an insurer to a nonaffiliate, if an agreement or
12 understanding exists between the insurer and nonaffiliate that
13 any portion of ~~such~~ the assets will be transferred to one or
14 more affiliates of the insurer~~;~~.

15 "~~(4)~~d. All management agreements, service contracts,
16 tax allocation agreements, guarantees and all cost-sharing
17 arrangements~~;~~ and.

18 "e. Guarantees when made by a domestic insurer;
19 provided, however, that a guarantee which is quantifiable as
20 to amount is not subject to the notice requirements of this
21 paragraph unless it exceeds the lesser of one-half of one
22 percent of the insurer's admitted assets or 10 percent of
23 surplus as regards policyholders as of the 31st day of
24 December next preceding. Further, all guarantees which are not
25 quantifiable as to amount are subject to the notice
26 requirements of this paragraph.

1 "f. Direct or indirect acquisitions or investments
2 in a person that controls the insurer or in an affiliate of
3 the insurer in an amount which, together with its present
4 holdings in such investments, exceeds two and one-half percent
5 of the insurer's surplus to policyholders. Direct or indirect
6 acquisitions or investments in subsidiaries acquired pursuant
7 to Section 27-29-2, or authorized under any other section of
8 this title, or in non-sub subsidiary insurance affiliates that are
9 subject to this chapter, are exempt from this requirement.

10 ~~"(5)g.~~ Any material transactions, specified by
11 regulation, which the commissioner determines may adversely
12 affect the interests of the insurer's policyholders.

13 "(2) Nothing herein contained in this subsection
14 shall be deemed to authorize or permit any transactions which,
15 in the case of an insurer not a member of the same holding
16 company system, would be otherwise contrary to law.

17 "(c) A domestic insurer may not enter into
18 transactions which are part of a plan or series of like
19 transactions with persons within the insurance holding company
20 system if the purpose of those separate transactions is to
21 avoid the statutory threshold amount and thus avoid the review
22 that would occur otherwise. If the commissioner determines
23 that such separate transactions were entered into over any
24 12-month period for that purpose, ~~he or she~~ the commissioner
25 may exercise his or her authority under Section 27-29-10.

26 "(d) The commissioner, in reviewing transactions
27 pursuant to subsection (b), shall consider whether the

1 transactions comply with the standards set forth in subsection
2 (a) and whether they may adversely affect the interests of
3 policyholders.

4 "(e) The commissioner shall be notified within 30
5 days of any investment of the domestic insurer in any one
6 corporation if the total investment in ~~such~~ the corporation by
7 the insurance holding company system exceeds 10 percent of the
8 corporation's voting securities.

9 "~~(f) Adequacy of surplus.~~ For purposes of this
10 chapter in determining whether an insurer's surplus as regards
11 policyholders is reasonable in relation to the insurer's
12 outstanding liabilities and adequate to meet its financial
13 needs, the following factors, among others, shall be
14 considered:

15 "(1) The size of the insurer as measured by its
16 assets, capital and surplus, reserves, premium writings,
17 insurance in force, and other appropriate criteria7.

18 "(2) The extent to which the insurer's business is
19 diversified among the several lines of insurance7.

20 "(3) The number and size of risks insured in each
21 line of business7.

22 "(4) The extent of the geographical dispersion of
23 the insurer's insured risks7.

24 "(5) The nature and extent of the insurer's
25 reinsurance program7.

26 "(6) The quality, diversification, and liquidity of
27 the insurer's investment portfolio7.

1 "(7) The recent past and projected future trend in
2 the size of the insurer's ~~surplus as regards policyholders,~~
3 investment portfolio.

4 "(8) The surplus as regards policyholders maintained
5 by other comparable insurers~~7.~~

6 "(9) The adequacy of the insurer's reserves~~7.~~

7 "(10) The quality and liquidity of investments in
8 ~~subsidiaries made pursuant to Section 27-29-2~~ affiliates. The
9 commissioner may treat any such investment as a disallowed
10 asset for purposes of determining the adequacy of surplus as
11 regards policyholders whenever, ~~in his or her~~ the judgment
12 ~~such of the commissioner, the~~ investment so warrants~~; and.~~

13 ~~"(11) The quality of the company's earnings and the
14 extent to which the reported earnings include extraordinary
15 items.~~

16 ~~"(g) Dividends and other distributions.~~

17 "(1)a. A domestic insurer shall not pay any
18 extraordinary dividend or make any other extraordinary
19 distribution to its shareholders until 30 days after the
20 commissioner has received notice of the declaration ~~of the~~
21 ~~dividend or distribution~~ thereof and has not disapproved such
22 payment within the period, or until the time the commissioner
23 has approved the payment within the 30-day period.

24 "b. For purposes of this ~~paragraph~~ section, an
25 "extraordinary dividend or distribution" includes any dividend
26 or distribution of cash or other property, whose fair market
27 value together with that of other dividends or distributions

1 made within the preceding 12 months exceeds the greater of the
2 following:

3 ~~"a.1.~~ Ten percent of the insurer's surplus as
4 regards policyholders as of the 31st day of December next
5 preceding; ~~or.~~

6 ~~"b.2.~~ The net gain from operations of the insurer,
7 if the insurer is a life insurer, or the net income, if the
8 insurer is not a life insurer, not including realized capital
9 gains or the pro rata distribution of any class of the
10 insurer's own securities, for the 12-month period ending the
11 31st day of December next preceding . ~~An extraordinary~~
12 ~~dividend or distribution does not include pro rata~~
13 ~~distributions of any class of the insurer's own securities.~~

14 "(2) A domestic insurer subject to registration
15 under Section 27-29-4 shall report to the commissioner all
16 dividends to shareholders within five business days following
17 the declaration of the dividends and not less than 10 days
18 prior to the payment of the dividends. This report shall also
19 include a schedule setting forth all dividends or other
20 distributions made within the previous 12 months.

21 "(3) In determining whether a dividend or
22 distribution is extraordinary, an insurer other than a life
23 insurer may carry forward net income from the previous two
24 calendar years that has not already been paid out as
25 dividends. This carryforward shall be computed by taking the
26 net income from the second and third preceding calendar years,

1 not including realized capital gains, less dividends paid in
2 the second and immediate preceding calendar years.

3 ~~"(3)(4)~~ Notwithstanding any other provision of law,
4 ~~a domestic~~ an insurer may declare an extraordinary dividend or
5 distribution which is conditional upon the commissioner's
6 approval of the dividend or distribution. ~~Such~~ The declaration
7 ~~does not shall~~ confer ~~any~~ no rights upon shareholders until
8 the commissioner has approved the payment of the dividend or
9 distribution or the commissioner has not disapproved the
10 payment within the 30-day period as provided in subdivision
11 (1).

12 ~~"(4)(5)~~ The commissioner shall assess such
13 reasonable charges as he or she deems necessary for the review
14 conducted pursuant to this section. All funds received shall
15 be deposited in the State Treasury to the credit of the
16 Special Examination Revolving Fund, from which the expenses
17 incurred shall be paid.

18 "§27-29-6.

19 "(a) ~~Power of commissioner.~~ Subject to the
20 limitation contained in this section and in addition to the
21 powers which the commissioner has under Sections 27-2-7,
22 27-2-21, 27-2-23, and 27-2-26, relating to the examination of
23 insurers, the commissioner shall also have the power to ~~order~~
24 examine any insurer registered under Section 27-29-4 ~~to~~
25 ~~produce such records, books, or other information papers in~~
26 ~~the possession of the insurer, or its affiliates, as shall be~~
27 ~~necessary~~ and its affiliates to ascertain the financial

1 condition or legality of conduct of such the insurer, and to
2 verify the information required to be contained in the
3 insurer's registration statement and any additional
4 information pertinent to transactions between the insurer and
5 its affiliates. In the event such insurer fails to comply with
6 such order, the commissioner shall have the power to examine
7 such affiliates to obtain such information including the
8 enterprise risk to the insurer by the ultimate controlling
9 party, by any entity or combination of entities within the
10 insurance holding company system, or by the insurance holding
11 company system on a consolidated basis.

12 ~~"(b) Purpose and limitation of examination. The~~
13 ~~commissioner shall exercise his power under subsection (a) of~~
14 ~~this section only if the examination of the insurer under~~
15 ~~Sections 27-2-7, 27-2-21, 27-2-23, and 27-2-26 is inadequate~~
16 ~~or the interests of the policyholders of such insurer may be~~
17 ~~adversely affected.~~

18 "(b) (1) The commissioner may order any insurer
19 registered under Section 27-29-4 to produce such records,
20 books, or other information papers in the possession of the
21 insurer or its affiliates as are reasonably necessary to
22 determine compliance with this title.

23 "(2) To determine compliance with this title, the
24 commissioner may order any insurer registered under Section
25 27-29-4 to produce information not in the possession of the
26 insurer if the insurer can obtain access to such information
27 pursuant to contractual relationships, statutory obligations,

1 or other methods. In the event the insurer cannot obtain the
2 information requested by the commissioner, the insurer shall
3 provide the commissioner a detailed explanation of the reason
4 that the insurer cannot obtain the information and the
5 identity of the holder of information. Whenever it appears to
6 the commissioner that the detailed explanation is without
7 merit, the commissioner may require, after notice and hearing,
8 the insurer to pay a penalty of up to one thousand dollars
9 (\$1,000) for each day's delay, or may suspend or revoke the
10 insurer's license.

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

19 " ~~(d) Expenses.~~ Each registered insurer producing for
20 examination records, books, and papers pursuant to subsection
21 (a) ~~of this section~~ shall be liable for and shall pay the
22 expense of such examination as provided in Section 27-2-25.

23 "(e) In the event the insurer fails to comply with
24 an order, the commissioner shall have the power to examine the
25 affiliates to obtain the information. In accordance with
26 Sections 27-2-26 and 27-2-27, the commissioner shall also have
27 the power to issue subpoenas, to administer oaths, and to

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

16 "§27-29-7.

17 "(a) All information, documents, materials or other
18 information, and copies thereof, in the possession or control
19 of the Department of Insurance that are obtained by or
20 disclosed to the commissioner or any other person in the
21 course of an examination or investigation made pursuant to
22 Section 27-29-6 and all information reported pursuant to
23 subdivisions (12) and (13) of subsection (b) of Section
24 27-29-3, Section 27-29-4, and Section 27-29-5 shall be given
25 confidential treatment by law and privileged, shall not be
26 subject to any open records, freedom of information, sunshine
27 or other public record disclosure laws, shall not be subject

1 to subpoena, shall not be subject to discovery or admissible
2 in evidence in any private civil action, and shall not be made
3 public by the commissioner or any other person, ~~except to~~
4 ~~insurance departments of other states,~~ without the prior
5 written consent of the insurer to which it pertains unless the
6 commissioner, ~~after giving the insurer and its affiliates who~~
7 ~~would be affected thereby not less than five days' written~~
8 ~~notice and opportunity to be heard,~~ determines that the
9 interests of policyholders, shareholders, or the public will
10 be served by the publication thereof, in which event ~~he~~ the
11 commissioner may publish all, or any part thereof, in such
12 manner as ~~he~~ the commissioner may deem appropriate. Prior to
13 making this determination, the commissioner shall give the
14 insurer and its affiliates who would be affected thereby no
15 less than 10 days' written notice of the opportunity to
16 request a hearing on the matter.

17 "(b) Neither the commissioner nor any person who
18 received documents, materials, or other information while
19 acting under the authority of the commissioner or with whom
20 such documents, materials, or other information are shared
21 pursuant to this chapter shall be permitted or required to
22 testify in any private civil action concerning any
23 confidential documents, materials, or information subject to
24 subsection (a).

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

1 "(1) May share documents, materials, or other
2 information, including the confidential and privileged
3 documents, materials, or information subject to subsection
4 (a), with other state, federal, and international regulatory
5 agencies, and with state, federal, and international law
6 enforcement authorities, including members of any supervisory
7 college described in Section 27-29-6.1, provided that the
8 recipient agrees in writing to maintain the confidentiality
9 and privileged status of the document, material, or other
10 information, and has verified in writing the legal authority
11 to maintain confidentiality.

12 "(2) Notwithstanding subdivision (1) above, may
13 share confidential and privileged documents, material, or
14 information reported pursuant to subsection (1) of Section
15 27-29-4 only with commissioners of states having statutes or
16 regulations substantially similar to subsection (a) and who
17 have agreed in writing not to disclose such information.

18 "(3) May receive documents, materials, or
19 information, including otherwise confidential and privileged
20 documents, materials, or information from the National
21 Association of Insurance Commissioners and its affiliates and
22 subsidiaries and from regulatory and law enforcement officials
23 of other foreign or domestic jurisdictions, and shall maintain
24 as confidential or privileged any document, material, or
25 information received with notice or the understanding that it
26 is confidential or privileged under the laws of the

1 jurisdiction that is the source of the document, material, or
2 information.

3 "(4) Shall enter into written agreements with the
4 National Association of Insurance Commissioners governing
5 sharing and use of information provided pursuant to this
6 chapter consistent with this subsection that shall:

7 "a. Specify procedures and protocols regarding the
8 confidentiality and security of information shared with the
9 National Association of Insurance Commissioners and its
10 affiliates and subsidiaries pursuant to this chapter,
11 including procedures and protocols for sharing by the National
12 Association of Insurance Commissioners with other state,
13 federal, or international regulators.

14 "b. Specify that ownership of information shared
15 with the National Association of Insurance Commissioners and
16 its affiliates and subsidiaries pursuant to this chapter
17 remains with the commissioner and the use of the information
18 by the National Association of Insurance Commissioners is
19 subject to the direction of the commissioner.

20 "c. Require at least 10 days' notice to be given to
21 an insurer whose confidential information in the possession of
22 the National Association of Insurance Commissioners pursuant
23 to this chapter is subject to a request or subpoena to the
24 National Association of Insurance Commissioners for disclosure
25 or production.

26 "d. Require the National Association of Insurance
27 Commissioners and its affiliates and subsidiaries to consent

1 to intervention by an insurer in any judicial or
2 administrative action in which the National Association of
3 Insurance Commissioners and its affiliates and subsidiaries
4 may be required to disclose confidential information about the
5 insurer shared with the National Association of Insurance
6 Commissioners and its affiliates and subsidiaries pursuant to
7 this chapter.

8 "(d) The sharing of information by the commissioner
9 pursuant to this chapter shall not constitute a delegation of
10 regulatory authority or rulemaking, and the commissioner is
11 solely responsible for the administration, execution, and
12 enforcement of this chapter.

13 "(e) No waiver of any applicable privilege or claim
14 of confidentiality in the documents, materials, or information
15 shall occur as a result of disclosure to the commissioner
16 under this section or as a result of sharing as authorized in
17 subsection (c).

18 "(f) Documents, materials, or other information in
19 the possession or control of the National Association of
20 Insurance Commissioners pursuant to this chapter shall be
21 confidential by law and privileged, shall not be subject to
22 open records, freedom of information, sunshine or other public
23 records disclosure laws, shall not be subject to subpoena, and
24 shall not be subject to discovery or admissible in evidence in
25 any private civil action.

26 "§27-29-10.

1 "(a) Any insurer failing, without just cause, to
2 file any registration statement as required in this chapter
3 shall be required, after notice and hearing, to pay a penalty
4 of up to one thousand dollars (\$1,000) for each day's delay,
5 to be recovered by the commissioner and the penalty so
6 recovered shall be paid into the state General Fund. The
7 maximum penalty under this section is fifty thousand dollars
8 (\$50,000). The commissioner may reduce the penalty if the
9 commissioner, in the commissioner's sole discretion,
10 determines it is equitable to do so or the insurer
11 demonstrates to the commissioner that the imposition of the
12 penalty would constitute a financial hardship to the insurer.

13 "(b) Every director or officer of an insurance
14 holding company system who knowingly violates, participates
15 in, or permits any of the officers or agents of the insurer to
16 engage in transactions or make investments that have not been
17 properly reported or submitted pursuant to subsection (a) of
18 Section 27-29-4, subdivision (1) of subsection (b) of Section
19 27-29-5, or subsection (g) of Section 27-29-5, or which
20 violate this chapter, shall pay, in their individual capacity,
21 a civil forfeiture of not more than ten thousand dollars
22 (\$10,000) per violation, after notice and hearing before the
23 commissioner. In determining the amount of the civil
24 forfeiture, the commissioner shall take into account the
25 appropriateness of the forfeiture with respect to the gravity
26 of the violation, the history of previous violations, and such
27 other matters as justice may require. A director or officer of

1 an insurance holding company system acts knowingly when he or
2 she has actual and not constructive or apparent knowledge of
3 the nature of conduct described in this section or that a
4 circumstance exists as described in this section.

5 "(c) Whenever it appears to the commissioner that
6 any insurer subject to this chapter or any director, officer,
7 employee, or agent thereof has engaged in any transaction or
8 entered into a contract which is subject to Section 27-29-5
9 and which would not have been approved had the approval been
10 requested, the commissioner may order the insurer to cease and
11 desist immediately any further activity under that transaction
12 or contract. After notice and hearing, the commissioner may
13 also order the insurer to void any contracts and restore the
14 status quo if the action is in the best interest of the
15 policyholders, creditors, or the public.

16 "(d) Whenever it appears to the commissioner that
17 any insurer or any director, officer, employee, or agent
18 thereof has committed a willful violation of this chapter, the
19 commissioner may cause criminal proceedings to be instituted
20 by the district attorney for the county in which the principal
21 office of the insurer is located, or if such insurer has no
22 such office in the state, then by the District Attorney for
23 Montgomery County, against such insurer or the responsible
24 director, officer, employee, or agent thereof. Any insurer
25 which willfully violates this chapter may upon conviction be
26 fined not more than ~~(\$10,000.00)~~ ten thousand dollars
27 (\$10,000). Any individual who willfully violates this chapter

1 may upon conviction be fined not more than ~~\$1,000.00~~ one
2 thousand dollars (\$1,000) or, if such willful violation
3 involves the deliberate perpetration of a fraud upon the
4 commissioner, imprisoned not more than two years, or both.

5 "(e) Any officer, director, or employee of an
6 insurance holding company system who willfully and knowingly
7 subscribes to or makes or causes to be made any false
8 statements or false reports or false filings with the intent
9 to deceive the commissioner in the performance of his or her
10 duties under this chapter, upon conviction, shall be
11 imprisoned for not more than five years or fined not more than
12 fifty thousand dollars (\$50,000), or both. Any fines imposed
13 shall be paid by the officer, director, or employee in his or
14 her individual capacity.

15 "(f) Whenever it appears to the commissioner that
16 any person has committed a violation of Section 27-29-3 and
17 which prevents the full understanding of the enterprise risk
18 to the insurer by affiliates or by the insurance holding
19 company system, the violation may serve as an independent
20 basis for disapproving dividends or distributions and for
21 placing the insurer under an order of supervision in
22 accordance with Section 27-2-33.

23 "§27-34-54.

24 "In addition to the provisions heretofore contained
25 or referred to in this chapter, other chapters and provisions
26 of this title shall apply to fraternal benefit societies, to
27 the extent applicable and not in conflict with the express

1 provisions of this chapter, and the reasonable implications
2 thereof, as follows:

3 "(1) Chapter 1~~7~~.

4 "(2) Chapter 2~~7~~.

5 "(3) The following sections of Chapter 3:

6 "a. Section 27-3-4~~7~~ and.

7 "b. Section 27-3-5~~7~~.

8 "(4) The following sections of Chapter 10:

9 "a. Section 27-10-1~~7~~.

10 "b. Section 27-10-2~~7~~ and.

11 "c. Section 27-10-3~~7~~.

12 "(5) Chapter 12~~7~~.

13 "(6) Section 27-15-29~~7~~.

14 "(7) The following sections of Chapter 27:

15 "a. Section 27-27-26~~7~~.

16 "b. Section 27-27-27~~7~~.

17 "c. Section 27-27-29~~7~~ and.

18 "d. Section 27-27-50~~7~~ and.

19 "(8) Chapter 32.

20 "(9) Chapter 29."

21 Section 2. Sections 27-29-3.1, 27-29-6.1, and
22 27-29-11.1 are added to the Code of Alabama 1975, to read as
23 follows:

24 §27-29-3.1.

25 (a) The following definitions shall apply for the
26 purposes of this section only:

1 (1) ACQUISITION. Any agreement or arrangement the
2 consummation of which results in a person acquiring directly
3 or indirectly the control of another person, and includes, but
4 is not limited to, the acquisition of voting securities, the
5 acquisition of assets, bulk reinsurance, and mergers.

6 (2) INVOLVED INSURER. Includes an insurer which
7 either acquires or is acquired, is affiliated with an acquirer
8 or acquired, or is the result of a merger.

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

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

14 a. A purchase of securities solely for investment
15 purposes so long as the securities, by voting or otherwise,
16 are not used to cause or attempt to cause the substantial
17 lessening of competition in any insurance market in this
18 state. If a purchase of securities results in a presumption of
19 control under subsection (c) of Section 27-29-1, it is not
20 solely for investment purposes unless the commissioner of the
21 insurer's state of domicile accepts a disclaimer of control or
22 affirmatively finds that control does not exist and the
23 disclaimer action or affirmative finding is communicated by
24 the domiciliary commissioner to the commissioner of this
25 state.

26 b. The acquisition of a person by another person
27 when both persons are neither directly nor through affiliates

1 primarily engaged in the business of insurance, if
2 pre-acquisition notification is filed with the commissioner in
3 accordance with subdivision (1) of subsection (c) 30 days
4 prior to the proposed effective date of the acquisition.
5 However, such pre-acquisition notification is not required for
6 exclusion from this section if the acquisition would otherwise
7 be excluded from this section by any other paragraph of
8 subdivision (2) of subsection (b).

9 c. The acquisition of already affiliated persons.

10 d.1. An acquisition if, as an immediate result of
11 the acquisition, any of the follow occurs:

12 (i) The combined market share of the involved
13 insurers does not exceed five percent of the total market in
14 any market.

15 (ii) There is no increase in any market share.

16 (iii) Both of the following do not occur in any
17 market:

18 A. The combined market share of the involved
19 insurers exceeds 12 percent of the total market.

20 B. The market share increases by more than two
21 percent of the total market.

22 2. For the purpose of this paragraph, a market means
23 direct written insurance premium in this state for a line of
24 business as contained in the annual statement required to be
25 filed by insurers licensed to do business in this state.

26 e. An acquisition for which a pre-acquisition
27 notification would be required pursuant to this section due

1 solely to the resulting effect on the ocean marine insurance
2 line of business.

3 f. An acquisition of an insurer whose domiciliary
4 commissioner affirmatively finds that the insurer is in
5 failing condition, there is a lack of feasible alternative to
6 improving such condition, the public benefits of improving the
7 insurer's condition through the acquisition exceed the public
8 benefits that would arise from not lessening competition, and
9 the findings are communicated by the domiciliary commissioner
10 to the commissioner of this state.

11 (c) An acquisition covered by subsection (d) may be
12 subject to an order pursuant to subsection (e) unless the
13 acquiring person files a pre-acquisition notification and the
14 waiting period has expired. The acquired person may file a
15 pre-acquisition notification. The commissioner shall give
16 confidential treatment to information submitted under this
17 subsection in the same manner as provided in Section 27-29-7.

18 (1) The pre-acquisition notification shall be in
19 such form and contain such information as prescribed by the
20 commissioner relating to those markets which, under paragraph
21 d. of subdivision (2) of subsection (b), cause the acquisition
22 not to be exempted from this section. The commissioner may
23 require such additional material and information as deemed
24 necessary to determine whether the proposed acquisition, if
25 consummated, would violate the competitive standard of
26 subsection (d). The required information may include an
27 opinion of an economist as to the competitive impact of the

1 acquisition in this state accompanied by a summary of the
2 education and experience of such person indicating his or her
3 ability to render an informed opinion.

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

15 (d)(1) The commissioner may enter an order under
16 subdivision (1) of subsection (e) with respect to an
17 acquisition if there is substantial evidence that the effect
18 of the acquisition may be substantially to lessen competition
19 in any line of insurance in this state or to create a monopoly
20 or if the insurer fails to file adequate information in
21 compliance with subsection (c).

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

25 a.1. Any acquisition covered under subsection (b)
26 involving two or more insurers competing in the same market

1 may be considered prima facie evidence of violation of the
2 competitive standards.

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

5 Insurer A	Insurer B
6 4%	4% or more
7 10%	2% or more
8 15%	1% or more

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

12 Insurer A	Insurer B
13 5%	5% or more
14 10%	4% or more
15 15%	3% or more
16 19%	1% or more

17 2. A highly concentrated market is one in which the
18 share of the four largest insurers is 75 percent or more of
19 the market. Percentages not shown in the tables are
20 interpolated proportionately to the percentages that are

1 shown. If more than two insurers are involved, exceeding the
2 total of the two columns in the table may be considered prima
3 facie evidence of violation of the competitive standard in
4 subdivision (1). For the purpose of this paragraph, the
5 insurer with the largest share of the market shall be deemed
6 to be Insurer A.

7 b. There is a significant trend toward increased
8 concentration when the aggregate market share of any grouping
9 of the largest insurers in the market, from the two largest to
10 the eight largest, has increased by seven percent or more of
11 the market over a period of time extending from any base year
12 five to 10 years prior to the acquisition up to the time of
13 the acquisition. Any acquisition or merger covered under
14 subsection (b) involving two or more insurers competing in the
15 same market may be considered prima facie evidence of
16 violation of the competitive standard in subdivision (1) if
17 all of the following occur:

18 1. There is a significant trend toward increased
19 concentration in the market.

20 2. One of the insurers involved is one of the
21 insurers in a grouping of large insurers showing the requisite
22 increase in the market share.

23 3. Another involved insurer's market is two percent
24 or more.

25 c. For the purposes of this subdivision:

26 1. "Insurer" includes any company or group of
27 companies under common management, ownership, or control.

1 2. "Market" means the relevant product and
2 geographical markets. In determining the relevant product and
3 geographical markets, the commissioner shall give due
4 consideration to, among other things, the definitions or
5 guidelines, if any, published by the National Association of
6 Insurance Commissioners and to information, if any, submitted
7 by parties to the acquisition. In the absence of sufficient
8 information to the contrary, the relevant product market is
9 assumed to be the direct written insurance premium for a line
10 of business, such line being that used in the annual statement
11 required to be filed by insurers doing business in this state,
12 and the relevant geographical market is assumed to be this
13 state.

14 3. The burden of showing prima facie evidence of
15 violation of the competitive standard rests upon the
16 commissioner.

17 d. Even though an acquisition is not prima facie
18 violative of the competitive standard under paragraphs a. and
19 b., the commissioner may establish the requisite
20 anticompetitive effect based upon other substantial evidence.
21 Even though an acquisition is prima facie violative of the
22 competitive standard under paragraphs a. and b., a party may
23 establish the absence of the requisite anticompetitive effect
24 based upon other substantial evidence. Relevant factors in
25 making a determination under this paragraph include, but are
26 not limited to, the following: Market shares, volatility of
27 ranking of market leaders, number of competitors,

1 concentration, trend of concentration in the industry, and
2 ease of entry and exit into the market.

3 (3) An order may not be entered under subdivision
4 (1) of subsection (e) in either of the following instances:

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

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

14 (e) (1) a. If an acquisition which takes place after
15 the effective date of this act violates the standards of this
16 section, the commissioner may enter an order doing either of
17 the following:

18 1. Requiring an involved insurer to cease and desist
19 from doing business in this state with respect to the line or
20 lines of insurance involved in the violation.

21 2. Denying the application of an acquired or
22 acquiring insurer for a license to do business in this state.

23 b. The order shall not be entered unless all of the
24 following occur:

25 1. There is a hearing conducted within six years of
26 the acquisition.

1 2. Notice of the hearing is issued prior to the end
2 of the waiting period and not less than 15 days prior to the
3 hearing.

4 3. The hearing is concluded and the order is issued
5 no later than 60 days after the date of the filing of the
6 pre-acquisition notification with the commissioner.

7 c. Every order shall be accompanied by a written
8 decision of the commissioner setting forth findings of fact
9 and conclusions of law.

10 d. An order pursuant to this paragraph shall not
11 apply if the acquisition is not consummated.

12 (2) Any person who violates a cease and desist order
13 of the commissioner under subdivision (1) while the order is
14 in effect, after notice and hearing and upon order of the
15 commissioner, is subject to one or more of the following:

16 a. A monetary penalty of not more than ten thousand
17 dollars (\$10,000) for every day of violation.

18 b. Suspension or revocation of the person's license.

19 (3) Any insurer or other person who fails to make
20 any filing required by this section, and who also fails to
21 demonstrate a good faith effort to comply with any filing
22 requirement, is subject to a fine of not more than fifty
23 thousand dollars (\$50,000).

24 (f) Subsections (b) and (c) of Section 27-29-9 and
25 Section 27-29-11 do not apply to acquisitions covered under
26 subsection (b).

27 §27-29-6.1.

1 (a) With respect to any insurer registered under
2 Section 27-29-4, and in accordance with subsection (c), the
3 commissioner shall also have the power to participate in a
4 supervisory college for any domestic insurer that is part of
5 an insurance holding company system with international
6 operations in order to determine compliance by the insurer
7 with this title. The powers of the commissioner with respect
8 to supervisory colleges include, but are not limited to, the
9 following:

10 (1) Initiating the establishment of a supervisory
11 college.

12 (2) Clarifying the membership and participation of
13 other supervisors in the supervisory college.

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

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

20 (5) Establishing a crisis management plan.

21 (b) Each registered insurer subject to this section
22 shall be liable for and shall pay the reasonable expenses of
23 the commissioner's participation in a supervisory college in
24 accordance with subsection (c), including reasonable travel
25 expenses. For purposes of this section, a supervisory college
26 may be convened as either a temporary or permanent forum for
27 communication and cooperation between the regulators charged

1 with the supervision of the insurer or its affiliates, and the
2 commissioner may establish a regular assessment to the insurer
3 for the payment of these expenses.

4 (c) In order to assess the business strategy,
5 financial position, legal and regulatory position, risk
6 exposure, risk management, and governance processes, and as
7 part of the examination of individual insurers in accordance
8 with Section 27-29-6, the commissioner may participate in a
9 supervisory college with other regulators charged with
10 supervision of the insurer or its affiliates, including other
11 state, federal, and international regulatory agencies. The
12 commissioner may enter into agreements in accordance with
13 subsection (c) of Section 27-29-7 providing the basis for
14 cooperation between the commissioner and the other regulatory
15 agencies, and the activities of the supervisory college.
16 Nothing in this section shall delegate to the supervisory
17 college the authority of the commissioner to regulate or
18 supervise the insurer or its affiliates within its
19 jurisdiction.

20 §27-29-11.1.

21 (a) If an order for liquidation or rehabilitation of
22 a domestic insurer has been entered, the receiver appointed
23 under the order shall have a right to recover on behalf of the
24 insurer, (1) from any parent corporation, holding company,
25 person, or affiliate who otherwise controlled the insurer, the
26 amount of distributions, other than distributions of shares of
27 the same class of stock, paid by the insurer on its capital

1 stock, or (2) any payment in the form of a bonus, termination
2 settlement, or extraordinary lump sum salary adjustment made
3 by the insurer or its subsidiary to a director, officer, or
4 employee, where the distribution or payment pursuant to (1) or
5 (2) is made at any time during the one year preceding the
6 petition for liquidation, conservation, or rehabilitation, as
7 the case may be, subject to the limitations of subsections
8 (b), (c), and (d).

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

15 (c) Any person who was a parent corporation, holding
16 company, or a person who otherwise controlled the insurer or
17 affiliate at the time the distributions were paid shall be
18 liable up to the amount of distributions or payments under
19 subsection (a) which the person received. Any person who
20 otherwise controlled the insurer at the time the distributions
21 were declared shall be liable up to the amount of
22 distributions that would have been received if they had been
23 paid immediately. If two or more persons are liable with
24 respect to the same distributions, they shall be jointly and
25 severally liable.

26 (d) The maximum amount recoverable under this
27 section shall be the amount needed in excess of all other

1 available assets of the impaired or insolvent insurer to pay
2 the contractual obligations of the impaired or insolvent
3 insurer and to reimburse any guaranty associations.

4 (e) To the extent that any person liable under
5 subsection (c) is insolvent or otherwise fails to pay claims
6 due from it, its parent corporation, holding company, or
7 person who otherwise controlled it at the time the
8 distribution was paid, shall be jointly and severally liable
9 for any resulting deficiency in the amount recovered from the
10 parent corporation, holding company, or person who otherwise
11 controlled it.

12 Section 3. Although this bill would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds, the bill is excluded from further
15 requirements and application under Amendment 621, now
16 appearing as Section 111.05 of the Official Recompilation of
17 the Constitution of Alabama of 1901, as amended, because the
18 bill defines a new crime or amends the definition of an
19 existing crime.

20 Section 4. This act shall become effective on
21 January 1, 2016, following its passage and approval by the
22 Governor, or its otherwise becoming law.