

1 HB111
2 150676-8
3 By Representative Hill
4 RFD: Insurance
5 First Read: 14-JAN-14
6 PFD: 01/10/2014

7

1 Recompilation of the Constitution of Alabama of 1901, as
2 amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

8 "§10A-20-6.16.

9 "(a) No statute of this state applying to insurance
10 companies shall be applicable to any corporation organized
11 under this article and amendments thereto or to any contract
12 made by the corporation unless expressly mentioned in this
13 article and made applicable; ~~except as follows~~ the corporation
14 shall be subject to the following:

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

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

22 "(3) ~~The corporation shall be subject to the~~
23 ~~provisions regarding~~ Medicare Supplement Minimum Standards set
24 forth in Article 2 of Chapter 19 of Title 27, and Long-Term
25 Care Insurance Policy Minimum Standards set forth in Article 3
26 of Chapter 19 of Title 27.

1 ~~"(4) The corporation shall be subject to~~ Section
2 27-1-17, requiring insurers and health plans to pay health
3 care providers in a timely manner.

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

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

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

12 ~~"(8) The corporation shall be subject to the~~
13 ~~provisions of~~ Chapter 57 of Title 27, requiring coverage to be
14 offered for the payment of colorectal cancer examinations for
15 covered persons who are 50 years of age or older, or for
16 covered persons who are less than 50 years of age and at high
17 risk for colorectal cancer according to current American
18 Cancer Society colorectal cancer screening guidelines.

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

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

1 ~~"(11) The corporation shall be subject to Chapter~~
2 54A of Title 27, requiring that policies and contracts to
3 offer coverage for certain treatment for Autism Spectrum
4 Disorder under certain conditions.

5 ~~"(12) The corporation shall be subject to Chapter~~
6 12A of Title 27.

7 "(13) Chapter 29 of Title 27.

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

13 "§27-21A-23.

14 "(a) Except as otherwise provided in this chapter,
15 provisions of the insurance law and provisions of health care
16 service plan laws shall not be applicable to any health
17 maintenance organization granted a certificate of authority
18 under this chapter. This provision shall not apply to an
19 insurer or health care service plan licensed and regulated
20 pursuant to the insurance law or the health care service plan
21 laws of this state except with respect to its health
22 maintenance organization activities authorized and regulated
23 pursuant to this chapter.

24 "(b) Solicitation of enrollees by a health
25 maintenance organization granted a certificate of authority
26 shall not be construed to violate any provision of law

1 relating to solicitation or advertising by health
2 professionals.

3 "(c) Any health maintenance organization authorized
4 under this chapter shall not be deemed to be practicing
5 medicine and shall be exempt from the provisions of Section
6 34-24-310, et seq., relating to the practice of medicine.

7 "(d) No person participating in the arrangements of
8 a health maintenance organization other than the actual
9 provider of health care services or supplies directly to
10 enrollees and their families shall be liable for negligence,
11 misfeasance, nonfeasance, or malpractice in connection with
12 the furnishing of such services and supplies.

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

16 "(f) Notwithstanding the provisions of subsection
17 (a), a health maintenance organization shall be subject to all
18 of the following:

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

20 "~~(g) Notwithstanding the provisions of subsection~~
21 ~~(a), a health maintenance organization shall be subject to the~~
22 ~~provisions of (2) Chapter 56 of this title, regarding the~~
23 ~~Access to Eye Care Act.~~

24 "~~(h) Notwithstanding the provisions of subsection~~
25 ~~(a), a health maintenance organization shall be subject to the~~
26 ~~provisions of (3) Chapter 54 of this title, regarding mental~~
27 ~~illness coverage.~~

1 ~~"(i) Notwithstanding the provisions of subsection~~
2 ~~(a), a health maintenance organization shall be subject to the~~
3 ~~provisions of (4) Chapter 57 of this title, requiring coverage~~
4 ~~to be offered for the payment of colorectal cancer~~
5 ~~examinations for covered persons who are 50 years of age or~~
6 ~~older, or for covered persons who are less than 50 years of~~
7 ~~age and at high risk for colorectal cancer according to~~
8 ~~current American Cancer Society colorectal cancer screening~~
9 ~~guidelines.~~

10 ~~"(j) Notwithstanding the provisions of subsection~~
11 ~~(a), a health maintenance organization shall be subject to (5)~~
12 ~~Chapter 58 of Title 27, requiring that policies and contracts~~
13 ~~including coverage for prostate cancer early detection be~~
14 ~~offered, together with identification of associated costs.~~

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

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

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

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

6 "(10) Chapter 29, regarding insurance holding
7 company systems.

8 "§27-29-1.

9 "For purposes of this chapter, unless otherwise
10 stated, the following terms shall have the meanings
11 respectively ascribed to them by this section:

12 "(1) AFFILIATE. The term shall include an
13 "affiliate" of, or person "affiliated" with, a specific
14 person, and shall mean a person that directly, or indirectly
15 through one or more intermediaries, controls, or is controlled
16 by, or is under common control with, the person specified.

17 "(2) COMMISSIONER. The Commissioner of Insurance,
18 his or her deputies, or the Insurance Department as
19 appropriate.

20 "(3) CONTROL. The term shall include "controlling,"
21 "controlled by," or "under common control with" and shall mean
22 the possession, direct or indirect, of the power to direct or
23 cause the direction of the management and policies of a
24 person, whether through the ownership of voting securities, by
25 contract other than a commercial contract for goods or
26 nonmanagement services, or otherwise, unless the power is the
27 result of an official position with or corporate office held

1 by the person. Control shall be presumed to exist if any
2 person, directly or indirectly owns, controls, holds with the
3 power to vote, or holds proxies representing five percent or
4 more of the voting securities of any other person. This
5 presumption may be rebutted by a showing made in the manner
6 provided by subsection ~~(i)~~ (k) of Section 27-29-4 that control
7 does not exist in fact. ~~Such "control" as used in this section~~
8 ~~shall not be deemed to exist where proxies have been obtained~~
9 ~~by management of such insurer solely in connection with voting~~
10 ~~at an annual or other regular meeting of the shareholders of~~
11 ~~such insurer.~~ The commissioner may determine, after furnishing
12 all persons in interest notice and opportunity to be heard and
13 making a specific finding of fact to support such
14 determination, that control exists in fact, notwithstanding
15 the absence of a presumption to that effect.

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

25 ~~"(4)(5)~~ INSURANCE HOLDING COMPANY SYSTEM. A system
26 which consists of two or more affiliated persons, one or more
27 of which is an insurer.

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

7 "~~a. Agencies, authorities, or instrumentalities of~~
8 ~~the United States, its possessions and territories, the~~
9 ~~Commonwealth of Puerto Rico, the District of Columbia, or a~~
10 ~~state or political subdivision of a state;~~

11 "~~b. Fraternal benefit societies; or~~

12 "~~c. Nonprofit medical and hospital service~~
13 ~~associations.~~

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

19 "~~(6)~~(7) PERSON. An individual, a corporation, a
20 limited liability company, a partnership, a limited
21 partnership, an association, a joint-stock company, a trust,
22 an unincorporated organization, or any similar entity or any
23 combination of the foregoing acting in concert, but shall not
24 include any ~~securities broker performing no more than the~~
25 ~~usual and customary broker's function~~ joint venture
26 partnership exclusively engaged in owning, managing, leasing,
27 or developing real or tangible personal property.

1 "~~(7)~~(8) SECURITYHOLDER. One who owns any security of
2 such person, including common stock, preferred stock, debt
3 obligations, and other security convertible into, or
4 evidencing, the right to acquire any of the foregoing.

5 "~~(8)~~(9) SUBSIDIARY. An affiliate controlled by such
6 person, directly or indirectly, through one or more
7 intermediaries.

8 "~~(9)~~(10) VOTING SECURITY. The term shall include any
9 security convertible into, or evidencing, a right to acquire a
10 voting security.

11 "§27-29-2.

12 "(a) Authorization. ~~Any~~ A domestic insurer, either
13 by itself or in cooperation with one or more persons, may
14 organize or acquire one or more subsidiaries ~~or affiliates in~~
15 ~~accordance with the provisions contained in this section. Such~~
16 The subsidiaries ~~or affiliates~~ may conduct any kind of
17 business~~, or businesses, permitted by the Constitution and the~~
18 ~~laws of this state,~~ and their authority to do so shall not be
19 limited by reason of the fact that they are subsidiaries or
20 affiliates of a domestic insurer.

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

25 "(1) Invest, in common stock, preferred stock, debt
26 obligations, and other securities of one or more subsidiaries
27 ~~or affiliates, including, without limitation, domestic or~~

1 ~~foreign insurance subsidiaries or affiliates~~, amounts which do
2 not exceed the lesser of 10 percent of such insurer's assets
3 or 50 percent of the ~~total of the insurer's capital and~~
4 surplus ~~as shown in the latest annual report of the insurer~~
5 ~~filed pursuant to subsection (a) of Section 27-3-26, less the~~
6 ~~minimum capital and surplus required of said insurer for~~
7 ~~authority to transact insurance by Sections 27-3-7 and 27-3-8~~
8 as regards policyholders, provided that after such
9 investments, the insurer's surplus as regards policyholders
10 will be reasonable in relation to the insurer's outstanding
11 liabilities and adequate to its financial needs. In
12 calculating the amount of such investments, investments in
13 domestic and foreign insurance subsidiaries and health
14 maintenance organizations shall be excluded, and there shall
15 be included both of the following:

16 "a. Total net moneys or other consideration expended
17 and obligations assumed in the acquisition or formation of a
18 subsidiary ~~or affiliate~~, including all organizational expenses
19 and contributions to capital and surplus of such subsidiary ~~or~~
20 ~~affiliate~~, whether or not represented by the purchase of
21 capital stock or issuance of other securities; ~~and.~~

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

26 "(2) Invest any amount in common stock, preferred
27 stock, debt obligations, and other securities of one or more

1 subsidiaries engaged or organized to engage exclusively in the
2 ownership and management of assets authorized as investments
3 for the insurer provided that each such subsidiary agrees to
4 limit its investments in any asset so that such investments
5 will not cause the amount of the total investment of the
6 insurer to exceed any of the investment limitations specified
7 in subdivision (1) ~~of this subsection~~ or in Sections 27-41-15
8 through 27-41-18 and 27-41-35. For the purpose of this
9 subdivision, "the total investment of the insurer" shall
10 include both of the following:

11 "a. Any direct investment by the insurer in an
12 asset; ~~and.~~

13 "b. The insurer's proportionate share of any
14 investment in an asset by any subsidiary ~~or affiliate~~ of the
15 insurer, which shall be calculated by multiplying the amount
16 of the subsidiary's investment by the percentage of the
17 insurer's ownership of such subsidiary ~~or affiliate~~.

18 "(3) With the approval of the commissioner, invest
19 any greater amount in common stock, preferred stock, debt
20 obligations, or other securities of one or more subsidiaries
21 ~~or affiliates~~, provided that after such investment the
22 insurer's surplus as regards policyholders will be reasonable
23 in relation to the insurer's outstanding liabilities and
24 adequate to its financial needs.

25 "(c) Exemption from investment restrictions.
26 Investments in common stock, preferred stock, debt
27 obligations, or other securities of subsidiaries ~~or affiliates~~

1 made pursuant to subsection (b) ~~of this section~~ shall not be
2 subject to any of the otherwise applicable restrictions or
3 prohibitions contained in this title applicable to such
4 investments of insurers.

5 "(d) Qualification of investment; when determined.
6 Whether any investment pursuant to subsection (b) ~~of this~~
7 ~~section~~ meets the applicable requirements thereof is to be
8 determined ~~immediately after~~ before such investment is made,
9 by calculating the applicable investment limitations as though
10 the investment had already been made, taking into account the
11 then outstanding principal balance on all previous investments
12 in debt obligations and the value of all previous investments
13 in equity securities as of the date they were made, net of any
14 return of capital invested, not including dividends.

15 "(e) Cessation of control. If an insurer ceases to
16 control a subsidiary, it shall dispose of any investment
17 therein made pursuant to this section within three years from
18 the time of the cessation of control or within such further
19 time as the commissioner may prescribe, unless at any time
20 after such investment shall have been made such investment
21 shall have met the requirements for investment under any other
22 section of this title, and the insurer has notified the
23 commissioner.

24 "§27-29-3.

25 "(a) (1) Filing and approval requirements. No person
26 other than the issuer shall make a tender offer for or a
27 request or invitation for tenders of, or enter into any

1 agreement to exchange securities for, seek to acquire, or
2 acquire in the open market any voting security of a domestic
3 insurer if, after the consummation thereof, such person would,
4 directly or indirectly, or by conversion or by exercise of any
5 right to acquire, be in control of such insurer, and no person
6 shall enter into an agreement to merge with or otherwise to
7 acquire control of a domestic insurer, or any person
8 controlling a domestic insurer unless, at the time any such
9 offer, request, or invitation is made or any such agreement is
10 entered into, or prior to the acquisition of such securities
11 if no offer or agreement is involved ~~or within 15 days after~~
12 ~~any such offer, request, or invitation is made or any such~~
13 ~~agreement is entered into,~~ such person has filed with the
14 commissioner and has sent to such insurer a statement
15 containing the information required by this section and such
16 offer, request, invitation, agreement, or acquisition ~~either:~~
17 has been approved by the commissioner in the manner prescribed
18 in this section.

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

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

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

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

16 "(3) With respect to a transaction subject to this
17 section, the acquiring person must also file a pre-acquisition
18 notification with the commissioner, which shall contain the
19 information set forth in subdivision (1) of subsection (c) of
20 Section 27-29-3.1. A failure to file the notification may be
21 subject to penalty specified in subdivision of (3) of
22 subsection (e) of Section 27-29-3.1.

23 "(4) For purposes of this section:

24 "a. A domestic insurer includes any person
25 controlling a domestic insurer unless the person, as
26 determined by the commissioner, is either directly or through

1 its affiliates primarily engaged in business other than the
2 business of insurance.

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

7 ~~"(b) Content of statement.~~

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

11 ~~"(1)~~a. The name and address of each person by whom,
12 or on whose behalf, the merger or other acquisition of control
13 referred to in subsection (a) ~~of this section~~ is to be
14 effected (hereinafter called "acquiring party"), and either of
15 the following:

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

20 "b.2. If ~~such~~ the person is not an individual, a
21 report of the nature of its business operations during the
22 past five years or for ~~such~~ the lesser period as such person
23 and any predecessors thereof shall have been in existence; an
24 informative description of the business intended to be done by
25 ~~such~~ the person and ~~such~~ the person's subsidiaries; and a list
26 of all individuals who are, or who have been selected to
27 become, directors or executive officers of ~~such~~ the person or

1 who perform, or will perform, functions appropriate to ~~such~~
2 the positions. ~~Such~~ The list shall include for each ~~such~~
3 individual the information required by paragraph ~~a. of this~~
4 ~~subdivision;~~ subparagraph 1.

5 ~~"(2)~~b. The source, nature, and amount of the
6 consideration used, or to be used, in effecting the merger or
7 other acquisition of control, a description of any transaction
8 wherein funds were, or are to be, obtained for any such
9 purpose, including any pledge of the insurer's stock, or the
10 stock of any of its subsidiaries or controlling affiliates,
11 and the identity of persons furnishing such consideration;
12 provided, however, that where a source of such consideration
13 is a loan made in the lender's ordinary course of business,
14 the identity of the lender shall remain confidential if the
15 person filing such statement so requests~~;~~.

16 ~~"(3)~~c. Fully audited financial information as to the
17 earnings and financial condition of each acquiring party for
18 the preceding five fiscal years of each such acquiring party,
19 or for such lesser period as such acquiring party and any
20 predecessors thereof shall have been in existence, and similar
21 unaudited information as of a date not earlier than 90 days
22 prior to the filing of the statement~~;~~ ~~provided, however, that~~
23 ~~in the case of an acquiring party which is an insurer actively~~
24 ~~engaged in the business of insurance, the financial statements~~
25 ~~of such insurer need not be audited, except such audit may be~~
26 ~~required if the need therefor is determined by the~~
27 ~~commissioner;~~.

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

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

12 "~~(6)~~f. The amount of each class of any security
13 referred to in subsection (a) ~~of this section~~ which is
14 beneficially owned or concerning which there is a right to
15 acquire beneficial ownership by each acquiring party~~7.~~

16 "~~(7)~~g. A full description of any contracts,
17 arrangements, or understandings with respect to any security
18 referred to in subsection (a) ~~of this section~~ in which any
19 acquiring party is involved, including, but not limited to,
20 transfer of any of the securities, joint ventures, loan or
21 option arrangements, puts or calls, guarantees of loans,
22 guarantees against loss or guarantees of profits, division of
23 losses or profits, or the giving or withholding of proxies.
24 Such description shall identify the persons with whom such
25 contracts, arrangements, or understandings have been entered
26 into~~7.~~

1 "~~(8)~~h. A description of the purchase of any security
2 referred to in subsection (a) ~~of this section~~ during the 12
3 calendar months preceding the filing of the statement by any
4 acquiring party, including the dates of purchase, names of the
5 purchasers, and consideration paid, or agreed to be paid,
6 therefor~~7.~~

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

13 "~~(10)~~j. Copies of all tender offers for, requests or
14 invitations for tenders of, exchange offers for and agreements
15 to acquire or exchange any securities referred to in
16 subsection (a) ~~of this section~~ and, if distributed, of
17 additional soliciting material relating thereto~~7.~~

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

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

1 "m. An acknowledgement by the person required to
2 file the statement referred to in subsection (a) that the
3 person and all subsidiaries within its control in the
4 insurance holding company system will provide information to
5 the commissioner upon request as necessary to evaluate
6 enterprise risk to the insurer.

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

11 "(2) If the person required to file the statement
12 referred to in subsection (a) ~~of this section~~ is a
13 partnership, limited partnership, syndicate, or other group,
14 the commissioner may require that the information called for
15 by ~~subdivisions (1)~~ paragraphs a. through (12) n. of ~~this~~
16 ~~subsection~~ subdivision (1) shall be given with respect to each
17 partner of such partnership or limited partnership, each
18 member of such syndicate or group, and each person who
19 controls such partner or member. If any such partner, member,
20 or person is a corporation or the person required to file the
21 statement referred to in subsection (a) ~~of this section~~ is a
22 corporation, the commissioner may require that the information
23 called for by ~~subdivisions (1)~~ paragraphs a. through (12) n.
24 of ~~this subsection~~ subdivision (1) shall be given with respect
25 to such corporation, each officer and director of such
26 corporation, and each person who is, directly or indirectly,
27 the beneficial owner of more than ~~15~~ 10 percent of the

1 outstanding voting securities of such corporation. If any
2 material change occurs in the facts set forth in the statement
3 filed with the commissioner and sent to such insurer pursuant
4 to this section, an amendment setting forth such change,
5 together with copies of all documents and other materials
6 relevant to such change, shall be filed with the commissioner
7 and sent to such insurer within two business days after the
8 person learns of such change. ~~Such insurer shall send such~~
9 ~~amendment to its shareholders.~~

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

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

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

26 "a. After the change of control, the domestic
27 insurer referred to in subsection (a) ~~of this section~~ would

1 not be able to satisfy the requirements for the issuance of a
2 license to write the line, or lines, of insurance for which it
3 is presently licensed~~7~~.

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

8 "1. The informational requirements of subdivision
9 (1) of subsection (c) of Section 27-29-3.1 and the standards
10 of subdivision (2) of subsection (d) of Section 27-29-3.1
11 shall apply.

12 "2. The merger or other acquisition shall not be
13 disapproved if the commissioner finds that any of the
14 situations meeting the criteria provided by subdivision (3) of
15 subsection (d) of Section 27-29-3.1 exist.

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

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

22 "d. The plans or proposals which the acquiring party
23 has to liquidate the insurer, to sell its assets, or to
24 consolidate or merge it with any person or to make any other
25 material change in its business or corporate structure or
26 management are unfair and unreasonable to policyholders of the
27 insurer and not in the public interest~~7~~~~or~~.

1 "e. The competence, experience, and integrity of
2 those persons who would control the operation of the insurer
3 are such that it would not be in the interest of policyholders
4 of the insurer and of the public to permit the merger or other
5 acquisition of control.

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

8 "(2) The public hearing referred to in subdivision
9 (1) ~~of this subsection~~ shall be held within ~~45~~ 30 days after
10 the statement required by subsection (a) ~~of this section~~ is
11 filed, and at least 20 days' notice thereof shall be given by
12 the commissioner to the person filing the statement. Not less
13 than ~~15~~ seven days' notice of such public hearing shall be
14 given by the person filing the statement to the insurer and to
15 such other persons as may be designated by the commissioner.
16 ~~The insurer shall give such notice to its securityholders.~~ The
17 commissioner shall make a determination within ~~30 days after~~
18 ~~the conclusion of such hearing~~ the 60-day period preceding the
19 effective date of the proposed transaction. At such hearing,
20 the person filing the statement, the insurer, any person to
21 whom notice of hearing was sent, and any other person whose
22 interest may be affected thereby shall have the right to
23 present evidence, examine and cross-examine witnesses and
24 offer oral and written arguments and, in connection therewith,
25 shall be entitled to conduct discovery proceedings in the same
26 manner as is presently allowed in the circuit courts of this
27 state. All discovery proceedings shall be concluded not later

1 than ~~five~~ three days prior to the commencement of the public
2 hearing.

3 "(3) If the proposed acquisition of control will
4 require the approval of more than one commissioner, the public
5 hearing referred to in subdivision (2) may be held on a
6 consolidated basis upon request of the person filing the
7 statement referred to in subsection (a). The person shall file
8 the statement referred to in subsection (a) with the National
9 Association of Insurance Commissioners within five days of
10 making the request for a public hearing. A commissioner may
11 opt out of a consolidated hearing, and shall provide notice to
12 the applicant of the opt-out within 10 days of the receipt of
13 the statement referred to in subsection (a). A hearing
14 conducted on a consolidated basis shall be public and shall be
15 held within the United States before the commissioners of the
16 states in which the insurers are domiciled. The commissioners
17 shall hear and receive evidence. A commissioner may attend the
18 hearing, in person or by telecommunication.

19 "(4) In connection with a change of control of a
20 domestic insurer, any determination by the commissioner that
21 the person acquiring control of the insurer shall be required
22 to maintain or restore the capital of the insurer to the level
23 required by the laws and regulations of this state shall be
24 made not later than 60 days after the date of notification of
25 the change in control submitted pursuant to subdivision (1) of
26 subsection (a).

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

7 ~~"(e) Mailings to stockholders; payments of expenses.~~
8 ~~All statements, amendments, or other material filed pursuant~~
9 ~~to subsections (a) or (b) of this section and all notices of~~
10 ~~public hearings held pursuant to subsection (d) of this~~
11 ~~section shall be mailed by the insurer to its stockholders~~
12 ~~within 10 business days after the insurer has received such~~
13 ~~statements, amendments, other material, or notices. The~~
14 ~~expenses of mailing shall be borne by the person making the~~
15 ~~filing. As security for the payment of such expenses, such~~
16 ~~person shall file with the commissioner an acceptable bond or~~
17 ~~other deposit in an amount to be determined by the~~
18 ~~commissioner.~~

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

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

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

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

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

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

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

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

18 "~~(h)~~(g) Jurisdiction; consent to service of process.
19 The courts of this state are hereby vested with jurisdiction
20 over every person not resident, domiciled, or authorized to do
21 business in this state who files a statement with the
22 commissioner under this section and over all actions involving
23 such person arising out of violations of this section, and
24 each such person shall be deemed to have performed acts
25 equivalent to and constituting an appointment by such a person
26 of the commissioner to be his or her true and lawful attorney
27 upon whom may be served all lawful process in any action or

1 proceeding arising out of violations of this section. Copies
2 of all such lawful process shall be served on the commissioner
3 and transmitted by registered or certified mail by the
4 commissioner to such person at his or her last known address.

5 "§27-29-4.

6 "(a) ~~Registration.~~

7 "(1) Every insurer which is authorized to do
8 business in this state and which is a member of an insurance
9 holding company system shall register with the commissioner,
10 except a foreign insurer subject to registration requirements
11 and standards adopted by statute or regulation in the
12 jurisdiction of its domicile which are substantially similar
13 to those contained in this section and ~~Section 27-29-5.~~ both
14 of the following:

15 "a. Subdivision (1) of subsection (a) of Section
16 27-29-5, and subsections (b) and (d) of Section 27-29-5.

17 "b. Either subdivision (2) of subsection (a) of
18 Section 27-29-5 or a provision such as the following: 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 within 15 days after the end of
22 the month in which it learns of each change or addition.

23 "(2) Any insurer which is subject to registration
24 under this section shall register within ~~60 days after~~
25 ~~September 3, 1973,~~ or 15 days after it becomes subject to
26 registration, and annually thereafter by June 1 of each year
27 for the previous calendar year, unless the commissioner for

1 good cause shown extends the time for registration and, then,
2 within such extended time. The commissioner may require any
3 authorized insurer which is a member of ~~a~~ an insurance holding
4 company system which is not subject to registration under this
5 section to furnish a copy of the registration statement, the
6 summary specified in subsection (c) or other information filed
7 by such insurance company with the insurance regulatory
8 authority of domiciliary jurisdiction.

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

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

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

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

22 "a. Loans, other investments or purchases, sales or
23 exchanges of securities of the affiliates by the insurer or of
24 the insurer by its affiliates~~7.~~

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

26 "c. Transactions not in the ordinary course of
27 business~~7.~~

1 "d. Guarantees or undertakings for the benefit of an
2 affiliate which result in an actual contingent exposure of the
3 insurer's assets to liability, other than insurance contracts
4 entered into in the ordinary course of the insurer's
5 business~~7~~.

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

8 "f. Reinsurance agreements~~7~~.

9 "g. Dividends and other distributions to
10 shareholders~~7~~~~and~~.

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

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

15 "(5) If requested by the commissioner, the insurer
16 shall include financial statements of or within an insurance
17 holding company system, including all affiliates. Financial
18 statements may include, but are not limited to, annual audited
19 financial statements filed with the U.S. Securities and
20 Exchange Commission pursuant to the Securities Act of 1933, as
21 amended, or the Securities Exchange Act of 1934, as amended.
22 An insurer required to file financial statements pursuant to
23 this subdivision may satisfy the request by providing the
24 commissioner with the most recently filed parent corporation
25 financial statements that have been filed with the Securities
26 Exchange Commission. Financial statements of insurer's
27 affiliates required to be filed with the commissioner may be

1 filed by the insurer in the accounting standard utilized by
2 the affiliate in its usual course of business at the time of
3 the filing.

4 "(5)(6) Other matters concerning transactions
5 between registered insurers and any affiliates as may be
6 included, from time to time, in any registration forms adopted
7 or approved by the commissioner.

8 "(7) Statements that the insurer's board of
9 directors or an appropriate committee of the board oversees
10 corporate governance and internal controls and that the
11 insurer's officers or senior management have approved,
12 implemented, and continue to maintain and monitor corporate
13 governance and internal control procedures.

14 "(8) Any other information required by the
15 commissioner by rule.

16 "(c) All registration statements shall contain a
17 summary outlining all items in the current registration
18 statement representing changes from the prior registration
19 statement.

20 "(c)(d) Materiality. No information need be
21 disclosed on the registration statement filed pursuant to
22 subsection (b) ~~of this section~~ if such information is not
23 material for the purposes of this section. Unless the
24 commissioner by rule, regulation, or order provides otherwise,
25 sales, purchases, exchanges, loans, or extensions of credit or
26 investments involving one-half of one percent or less of an

1 insurer's admitted assets as of December 31, next preceding,
2 shall not be deemed material for purposes of this section.

3 ~~"(d)(e) Amendments to registration statements. Each~~
4 ~~registered insurer shall keep current the information required~~
5 ~~to be disclosed in its registration statement by reporting all~~
6 ~~material changes or additions on amendment forms provided by~~
7 ~~the commissioner within 15 days after the end of the month in~~
8 ~~which it learns of each such change or addition, but at least~~
9 ~~annually, as provided in subsection (a); provided, however,~~
10 ~~that subject Subject to subsection (b) of Section 27-29-5,~~
11 each registered insurer shall so report all dividends and
12 other distributions to shareholders within ~~five~~ 15 business
13 days following the declaration thereof.

14 "(f) Any person within an insurance holding company
15 system subject to registration shall be required to provide
16 complete and accurate information to an insurer, where the
17 information is reasonably necessary to enable the insurer to
18 comply with the provisions of this chapter.

19 ~~"(e)(g) Termination of registration. The~~
20 commissioner shall terminate the registration of any insurer
21 which demonstrated that it no longer is a member of an
22 insurance holding company system.

23 ~~"(f)(h) Consolidated filing. The commissioner may~~
24 require or allow two or more affiliated insurers subject to
25 registration under this section to file a consolidated
26 registration statement ~~or consolidated reports amending their~~

1 ~~consolidated registration statement or their individual~~
2 ~~registration statements.~~

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

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

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

1 ~~opportunity to be heard and after making specific findings of~~
2 ~~fact to support such disallowance. A disclaimer of affiliation~~
3 ~~shall be deemed to have been granted unless the commissioner,~~
4 ~~within 30 days following receipt of a complete disclaimer,~~
5 ~~notifies the filing party the disclaimer is disallowed. In the~~
6 ~~event of disallowance, the disclaiming party may request an~~
7 ~~administrative hearing, which shall be granted. The~~
8 ~~disclaiming party shall be relieved of its duty to register~~
9 ~~under this section if approval of the disclaimer has been~~
10 ~~granted by the commissioner, or if the disclaimer is deemed to~~
11 ~~have been approved.~~

12 "(1) (1) Except as provided in subdivisions (2) and
13 (4), the ultimate controlling person of every insurer subject
14 to registration shall also file an annual enterprise risk
15 report. The report shall, to the best of the ultimate
16 controlling person's knowledge and belief, identify the
17 material risks within the insurance holding company system
18 that could pose enterprise risk to the insurer. The report
19 shall be filed with the lead state commissioner of the
20 insurance holding company system as determined by the
21 procedures within the Financial Analysis Handbook adopted by
22 the National Association of Insurance Commissioners.

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

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

7 "(4) An insurer that in the preceding calendar year
8 had direct written and assumed premiums of more than three
9 hundred million dollars (\$300,000,000) but less than five
10 hundred million dollars (\$500,000,000) may request an
11 exemption from the reporting requirements of subdivision (1)
12 by filing with the commissioner a written statement describing
13 the undue financial or organizational hardship the insurer
14 would suffer as a result of complying with subdivision (1).
15 The commissioner may grant the exemption if the commissioner
16 finds that compliance with subdivision (1) would impose an
17 undue financial or organizational hardship on the insurer.

18 ~~"(j)(m) Violations.~~ The failure to file a
19 registration statement or any ~~amendment thereto~~ summary of the
20 registration statement or enterprise risk filing required by
21 this section within the time specified for ~~such~~ filing shall
22 be a violation of this section.

23 "§27-29-5.

24 ~~"(a) Transactions with affiliates. Material~~
25 ~~transactions by registered insurers with their affiliates~~
26 Transactions within an insurance holding company system to

1 which an insurer subject to registration is a party shall be
2 subject to all of the following standards:

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

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

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

9 "~~(3)~~ (4) Expenses incurred and payment received shall
10 be allocated to the insurer in conformity with customary
11 insurance accounting practices consistently applied~~7~~.

12 "~~(4)~~ (5) The books, accounts, and records of each
13 party ~~will~~ to all such transactions shall be so maintained as
14 to clearly and accurately disclose the ~~precise~~ nature and
15 details of the transactions~~7~~, and including such accounting
16 information as is necessary to support the reasonableness of
17 the charges or fees to the respective parties.

18 "~~(5)~~ (6) The insurer's surplus as regards
19 policyholders following any dividends or distributions to
20 shareholder affiliates shall be reasonable in relation to the
21 insurer's outstanding liabilities and adequate to its
22 financial needs.

23 "(b) (1) The following transactions involving a
24 domestic insurer and any person in its insurance holding
25 company system, including amendments or modifications of
26 affiliate agreements previously filed pursuant to this section
27 which are subject to any materiality standards contained in

1 paragraphs a. through g., may not be entered into unless the
2 insurer has notified the commissioner in writing of its
3 intention to enter into ~~such~~ the transaction at least 30 days
4 prior thereto, or such shorter period as the commissioner may
5 permit, and the commissioner has not disapproved it within
6 that period. The notice for amendments or modifications shall
7 include the reasons for the change and the financial impact on
8 the domestic insurer. Informal notice shall be reported,
9 within 30 days after a termination of a previously filed
10 agreement, to the commissioner for determination of the type
11 of filing required, if any.

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

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

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

22 ~~"(2)~~b. Loans or extensions of credit to any person
23 who is not an affiliate, where the insurer makes loans or
24 extensions of credit with the agreement or understanding that
25 the proceeds of the transactions, in whole or in substantial
26 part, are to be used to make loans or extensions of credit to,
27 to purchase assets of, or to make investments in, any

1 affiliate of the insurer making the loans or extensions of
2 credit provided the transactions are equal to or exceed the
3 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 "~~(3)~~c. Reinsurance agreements or modifications
12 thereto, including:

13 "1. All reinsurance pooling agreements.

14 "2. Agreements in which the reinsurance premium or a
15 change in the insurer's liabilities, or the projected
16 reinsurance premium or a change in the insurer's liabilities
17 in any of the next three years, equals or exceeds five percent
18 of the insurer's surplus as regards policyholders, as of the
19 31st day of December next preceding, including those
20 agreements which may require as consideration the transfer of
21 assets from an insurer to a nonaffiliate, if an agreement or
22 understanding exists between the insurer and nonaffiliate that
23 any portion of ~~such~~ the assets will be transferred to one or
24 more affiliates of the insurer~~7.~~

25 "~~(4)~~d. All management agreements, service contracts,
26 tax allocation agreements, guarantees and all cost-sharing
27 arrangements~~7.~~and.

1 "e. Guarantees when made by a domestic insurer;
2 provided, however, that a guarantee which is quantifiable as
3 to amount is not subject to the notice requirements of this
4 paragraph unless it exceeds the lesser of one-half of one
5 percent of the insurer's admitted assets or 10 percent of
6 surplus as regards policyholders as of the 31st day of
7 December next preceding. Further, all guarantees which are not
8 quantifiable as to amount are subject to the notice
9 requirements of this paragraph.

10 "f. Direct or indirect acquisitions or investments
11 in a person that controls the insurer or in an affiliate of
12 the insurer in an amount which, together with its present
13 holdings in such investments, exceeds two and one-half percent
14 of the insurer's surplus to policyholders. Direct or indirect
15 acquisitions or investments in subsidiaries acquired pursuant
16 to Section 27-29-2, or authorized under any other section of
17 this title, or in non-sub subsidiary insurance affiliates that are
18 subject to this chapter, are exempt from this requirement.

19 "(5)g. Any material transactions, specified by
20 regulation, which the commissioner determines may adversely
21 affect the interests of the insurer's policyholders.

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

26 "(c) A domestic insurer may not enter into
27 transactions which are part of a plan or series of like

1 transactions with persons within the insurance holding company
2 system if the purpose of those separate transactions is to
3 avoid the statutory threshold amount and thus avoid the review
4 that would occur otherwise. If the commissioner determines
5 that such separate transactions were entered into over any
6 12-month period for that purpose, ~~he or she~~ the commissioner
7 may exercise his or her authority under Section 27-29-10.

8 "(d) The commissioner, in reviewing transactions
9 pursuant to subsection (b), shall consider whether the
10 transactions comply with the standards set forth in subsection
11 (a) and whether they may adversely affect the interests of
12 policyholders.

13 "(e) The commissioner shall be notified within 30
14 days of any investment of the domestic insurer in any one
15 corporation if the total investment in ~~such~~ the corporation by
16 the insurance holding company system exceeds 10 percent of the
17 corporation's voting securities.

18 "~~(f) Adequacy of surplus.~~ For purposes of this
19 chapter in determining whether an insurer's surplus as regards
20 policyholders is reasonable in relation to the insurer's
21 outstanding liabilities and adequate to meet its financial
22 needs, the following factors, among others, shall be
23 considered:

24 "(1) The size of the insurer as measured by its
25 assets, capital and surplus, reserves, premium writings,
26 insurance in force, and other appropriate criteria~~7.~~

1 "(2) The extent to which the insurer's business is
2 diversified among the several lines of insurance~~7.~~

3 "(3) The number and size of risks insured in each
4 line of business~~7.~~

5 "(4) The extent of the geographical dispersion of
6 the insurer's insured risks~~7.~~

7 "(5) The nature and extent of the insurer's
8 reinsurance program~~7.~~

9 "(6) The quality, diversification, and liquidity of
10 the insurer's investment portfolio~~7.~~

11 "(7) The recent past and projected future trend in
12 the size of the insurer's ~~surplus as regards policyholders;~~
13 investment portfolio.

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

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

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

23 ~~"(11) The quality of the company's earnings and the
24 extent to which the reported earnings include extraordinary
25 items.~~

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

1 "(1)a. A domestic insurer shall not pay any
2 extraordinary dividend or make any other extraordinary
3 distribution to its shareholders until 30 days after the
4 commissioner has received notice of the declaration ~~of the~~
5 ~~dividend or distribution~~ thereof and has not disapproved such
6 payment within the period, or until the time the commissioner
7 has approved the payment within the 30-day period.

8 "b. For purposes of this ~~paragraph~~ section, an
9 "extraordinary dividend or distribution" includes any dividend
10 or distribution of cash or other property, whose fair market
11 value together with that of other dividends or distributions
12 made within the preceding 12 months exceeds the greater of the
13 following:

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

17 "b.2. The net gain from operations of the insurer,
18 if the insurer is a life insurer, or the net income, if the
19 insurer is not a life insurer, not including realized capital
20 gains or the pro rata distribution of any class of the
21 insurer's own securities, for the 12-month period ending the
22 31st day of December next preceding ~~. An extraordinary~~
23 ~~dividend or distribution does not include pro rata~~
24 ~~distributions of any class of the insurer's own securities.~~

25 "(2) A domestic insurer subject to registration
26 under Section 27-29-4 shall report to the commissioner all
27 dividends to shareholders within five business days following

1 the declaration of the dividends and not less than 10 days
2 prior to the payment of the dividends. This report shall also
3 include a schedule setting forth all dividends or other
4 distributions made within the previous 12 months.

5 "(3) In determining whether a dividend or
6 distribution is extraordinary, an insurer other than a life
7 insurer may carry forward net income from the previous two
8 calendar years that has not already been paid out as
9 dividends. This carryforward shall be computed by taking the
10 net income from the second and third preceding calendar years,
11 not including realized capital gains, less dividends paid in
12 the second and immediate preceding calendar years.

13 ~~"(3)(4)~~ Notwithstanding any other provision of law,
14 ~~a domestic~~ an insurer may declare an extraordinary dividend or
15 distribution which is conditional upon the commissioner's
16 approval of the dividend or distribution. ~~Such~~ The declaration
17 ~~does not shall~~ confer ~~any~~ no rights upon shareholders until
18 the commissioner has approved the payment of the dividend or
19 distribution or the commissioner has not disapproved the
20 payment within the 30-day period as provided in subdivision
21 (1).

22 ~~"(4)(5)~~ The commissioner shall assess such
23 reasonable charges as he or she deems necessary for the review
24 conducted pursuant to this section. All funds received shall
25 be deposited in the State Treasury to the credit of the
26 Special Examination Revolving Fund, from which the expenses
27 incurred shall be paid.

1 "§27-29-6.

2 "~~(a) Power of commissioner.~~ Subject to the
3 limitation contained in this section and in addition to the
4 powers which the commissioner has under Sections 27-2-7,
5 27-2-21, 27-2-23, and 27-2-26, relating to the examination of
6 insurers, the commissioner shall also have the power to ~~order~~
7 examine any insurer registered under Section 27-29-4 ~~to~~
8 ~~produce such records, books, or other information papers in~~
9 ~~the possession of the insurer, or its affiliates, as shall be~~
10 ~~necessary and its affiliates~~ to ascertain the financial
11 condition ~~or legality of conduct of such~~ the insurer, and to
12 ~~verify the information required to be contained in the~~
13 ~~insurer's registration statement and any additional~~
14 ~~information pertinent to transactions between the insurer and~~
15 ~~its affiliates. In the event such insurer fails to comply with~~
16 ~~such order, the commissioner shall have the power to examine~~
17 ~~such affiliates to obtain such information~~ including the
18 enterprise risk to the insurer by the ultimate controlling
19 party, by any entity or combination of entities within the
20 insurance holding company system, or by the insurance holding
21 company system on a consolidated basis.

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

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

6 "(2) To determine compliance with this title, the
7 commissioner may order any insurer registered under Section
8 27-29-4 to produce information not in the possession of the
9 insurer if the insurer can obtain access to such information
10 pursuant to contractual relationships, statutory obligations,
11 or other methods. In the event the insurer cannot obtain the
12 information requested by the commissioner, the insurer shall
13 provide the commissioner a detailed explanation of the reason
14 that the insurer cannot obtain the information and the
15 identity of the holder of information. Whenever it appears to
16 the commissioner that the detailed explanation is without
17 merit, the commissioner may require, after notice and hearing,
18 the insurer to pay a penalty of up to one thousand dollars
19 (\$1,000) for each day's delay, or may suspend or revoke the
20 insurer's license.

21 ~~"(c) Use of consultants.~~ The commissioner may retain
22 at the registered insurer's expense such attorneys, actuaries,
23 accountants, and other experts not otherwise a part of the
24 commissioner's staff as shall be reasonably necessary to
25 assist in the conduct of the examination under subsection (a)
26 ~~of this section.~~ Any persons so retained shall be under the

1 direction and control of the commissioner and shall act in a
2 purely advisory capacity.

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

7 "(e) In the event the insurer fails to comply with
8 an order, the commissioner shall have the power to examine the
9 affiliates to obtain the information. In accordance with
10 Sections 27-2-26 and 27-2-27, the commissioner shall also have
11 the power to issue subpoenas, to administer oaths, and to
12 examine under oath any person for purposes of determining
13 compliance with this section. Upon the failure or refusal of
14 any person to obey a subpoena, the commissioner may petition a
15 court of competent jurisdiction, and upon proper showing, the
16 court may enter an order compelling the witness to appear and
17 testify or produce documentary evidence. Failure to obey the
18 court order shall be punishable as contempt of court. Every
19 person shall be obliged to attend as a witness at the place
20 specified in the subpoena, when subpoenaed, anywhere within
21 the state. He or she shall be entitled to the same fees and
22 mileage, if claimed, as a witness in circuit court, which
23 fees, mileage, and actual expense, if any, necessarily
24 incurred in securing the attendance of witnesses, and their
25 testimony, shall be itemized and charged against, and be paid
26 by, the company being examined.

27 "§27-29-7.

1 "(a) All information, documents, materials or other
2 information, and copies thereof, in the possession or control
3 of the Department of Insurance that are obtained by or
4 disclosed to the commissioner or any other person in the
5 course of an examination or investigation made pursuant to
6 Section 27-29-6 and all information reported pursuant to
7 subdivisions (12) and (13) paragraphs l. and m. of subdivision
8 (1) of subsection (b) of Section 27-29-3, Section 27-29-4, and
9 Section 27-29-5 shall be given confidential treatment by law
10 and privileged, shall not be subject to any open records,
11 freedom of information, sunshine or other public record
12 disclosure laws and, shall not be subject to subpoena, shall
13 not be subject to discovery or admissible in evidence in any
14 private civil action, and shall not be made to subpoena and .
15 However, the commissioner may use the documents, materials,
16 and other information in the furtherance of any regulatory or
17 legal action in the course of the commissioner's official
18 duties. The documents, materials, and other information shall
19 not be made public by the commissioner or any other person,
20 except to insurance departments of other states, without the
21 prior written consent of the insurer to which it pertains
22 unless the commissioner, after giving the insurer and its
23 affiliates who would be affected thereby not less than five
24 days' written notice and opportunity to be heard, determines
25 that the interests of policyholders, shareholders, or the
26 public will be served by the publication thereof, in which
27 event he the commissioner may publish all, or any part

1 thereof, in such manner as ~~he~~ the commissioner may deem
2 appropriate. Prior to making this determination, the
3 commissioner shall give the insurer and its affiliates who
4 would be affected thereby no less than 10 days' written notice
5 of the opportunity to request a hearing on the matter.

6 "(b) Neither the commissioner nor any person who
7 received documents, materials, or other information while
8 acting under the authority of the commissioner or with whom
9 such documents, materials, or other information are shared
10 pursuant to this chapter shall be permitted or required to
11 testify in any private civil action concerning any
12 confidential documents, materials, or information subject to
13 subsection (a).

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

16 "(1) May share documents, materials, or other
17 information, including the confidential and privileged
18 documents, materials, or information subject to subsection
19 (a), with other state, federal, and international regulatory
20 agencies, and with state, federal, and international law
21 enforcement authorities, including members of any supervisory
22 college described in Section 27-29-6.1, provided that the
23 recipient agrees in writing to maintain the confidentiality
24 and privileged status of the document, material, or other
25 information, and has verified in writing the legal authority
26 to maintain confidentiality.

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

7 "(3) May receive documents, materials, or
8 information, including otherwise confidential and privileged
9 documents, materials, or information from the National
10 Association of Insurance Commissioners and its affiliates and
11 subsidiaries and from regulatory and law enforcement officials
12 of other foreign or domestic jurisdictions, and shall maintain
13 as confidential or privileged any document, material, or
14 information received with notice or the understanding that it
15 is confidential or privileged under the laws of the
16 jurisdiction that is the source of the document, material, or
17 information.

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

22 "a. Specify procedures and protocols regarding the
23 confidentiality and security of information shared with the
24 National Association of Insurance Commissioners and its
25 affiliates and subsidiaries pursuant to this chapter,
26 including procedures and protocols for sharing by the National

1 Association of Insurance Commissioners with other state,
2 federal, or international regulators.

3 "b. Specify that ownership of information shared
4 with the National Association of Insurance Commissioners and
5 its affiliates and subsidiaries pursuant to this chapter
6 remains with the commissioner and the use of the information
7 by the National Association of Insurance Commissioners is
8 subject to the direction of the commissioner.

9 "c. Require at least 10 days' notice to be given to
10 an insurer whose confidential information in the possession of
11 the National Association of Insurance Commissioners pursuant
12 to this chapter is subject to a request or subpoena to the
13 National Association of Insurance Commissioners for disclosure
14 or production.

15 "d. Require the National Association of Insurance
16 Commissioners and its affiliates and subsidiaries to consent
17 to intervention by an insurer in any judicial or
18 administrative action in which the National Association of
19 Insurance Commissioners and its affiliates and subsidiaries
20 may be required to disclose confidential information about the
21 insurer shared with the National Association of Insurance
22 Commissioners and its affiliates and subsidiaries pursuant to
23 this chapter.

24 "(d) The sharing of information by the commissioner
25 pursuant to this chapter shall not constitute a delegation of
26 regulatory authority or rulemaking, and the commissioner is

1 solely responsible for the administration, execution, and
2 enforcement of this chapter.

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

8 "(f) Documents, materials, or other information in
9 the possession or control of the National Association of
10 Insurance Commissioners pursuant to this chapter shall be
11 confidential by law and privileged, shall not be subject to
12 open records, freedom of information, sunshine or other public
13 records disclosure laws, shall not be subject to subpoena, and
14 shall not be subject to discovery or admissible in evidence in
15 any private civil action.

16 "§27-29-10.

17 "(a) Any insurer failing, without just cause, to
18 file any registration statement as required in this chapter
19 shall be required, after notice and hearing, to pay a penalty
20 of up to one thousand dollars (\$1,000) for each day's delay,
21 to be recovered by the commissioner and the penalty so
22 recovered shall be paid into the state General Fund. The
23 maximum penalty under this section is fifty thousand dollars
24 (\$50,000). The commissioner may reduce the penalty if the
25 commissioner, in the commissioner's sole discretion,
26 determines it is equitable to do so or the insurer

1 demonstrates to the commissioner that the imposition of the
2 penalty would constitute a financial hardship to the insurer.

3 "(b) Every director or officer of an insurance
4 holding company system who knowingly violates, participates
5 in, or permits any of the officers or agents of the insurer to
6 engage in transactions or make investments that have not been
7 properly reported or submitted pursuant to subsection (a) of
8 Section 27-29-4, subdivision (1) of subsection (b) of Section
9 27-29-5, or subsection (g) of Section 27-29-5, or which
10 violate this chapter, shall pay, in their individual capacity,
11 a civil forfeiture of not more than ten thousand dollars
12 (\$10,000) per violation, after notice and hearing before the
13 commissioner. In determining the amount of the civil
14 forfeiture, the commissioner shall take into account the
15 appropriateness of the forfeiture with respect to the gravity
16 of the violation, the history of previous violations, and such
17 other matters as justice may require. A director or officer of
18 an insurance holding company system acts knowingly when he or
19 she has actual and not constructive or apparent knowledge of
20 the nature of conduct described in this section or that a
21 circumstance exists as described in this section.

22 "(c) Whenever it appears to the commissioner that
23 any insurer subject to this chapter or any director, officer,
24 employee, or agent thereof has engaged in any transaction or
25 entered into a contract which is subject to Section 27-29-5
26 and which would not have been approved had the approval been
27 requested, the commissioner may order the insurer to cease and

1 desist immediately any further activity under that transaction
2 or contract. After notice and hearing, the commissioner may
3 also order the insurer to void any contracts and restore the
4 status quo if the action is in the best interest of the
5 policyholders, creditors, or the public.

6 "(d) Whenever it appears to the commissioner that
7 any insurer or any director, officer, employee, or agent
8 thereof has committed a willful violation of this chapter, the
9 commissioner may cause criminal proceedings to be instituted
10 by the district attorney for the county in which the principal
11 office of the insurer is located, or if such insurer has no
12 such office in the state, then by the District Attorney for
13 Montgomery County, against such insurer or the responsible
14 director, officer, employee, or agent thereof. Any insurer
15 which willfully violates this chapter may upon conviction be
16 fined not more than ~~(\$10,000.00)~~ ten thousand dollars
17 (\$10,000). Any individual who willfully violates this chapter
18 may upon conviction be fined not more than ~~\$1,000.00~~ one
19 thousand dollars (\$1,000) or, if such willful violation
20 involves the deliberate perpetration of a fraud upon the
21 commissioner, imprisoned not more than two years, or both.

22 "(e) Any officer, director, or employee of an
23 insurance holding company system who willfully and knowingly
24 subscribes to or makes or causes to be made any false
25 statements or false reports or false filings with the intent
26 to deceive the commissioner in the performance of his or her
27 duties under this chapter, upon conviction, shall be

1 imprisoned for not more than five years or fined not more than
2 fifty thousand dollars (\$50,000), or both. Any fines imposed
3 shall be paid by the officer, director, or employee in his or
4 her individual capacity.

5 "(f) Whenever it appears to the commissioner that
6 any person has committed a violation of Section 27-29-3 and
7 which prevents the full understanding of the enterprise risk
8 to the insurer by affiliates or by the insurance holding
9 company system, the violation may serve as an independent
10 basis for disapproving dividends or distributions and for
11 placing the insurer under an order of supervision in
12 accordance with Section 27-2-33.

13 "§27-34-54.

14 "In addition to the provisions heretofore contained
15 or referred to in this chapter, other chapters and provisions
16 of this title shall apply to fraternal benefit societies, to
17 the extent applicable and not in conflict with the express
18 provisions of this chapter, and the reasonable implications
19 thereof, as follows:

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

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

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

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

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

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

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

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

- 1 "c. Section 27-10-3~~7~~.
- 2 "(5) Chapter 12~~7~~.
- 3 "(6) Section 27-15-29~~7~~.
- 4 "(7) The following sections of Chapter 27:
- 5 "a. Section 27-27-26~~7~~.
- 6 "b. Section 27-27-27~~7~~.
- 7 "c. Section 27-27-29; ~~and.~~
- 8 "d. Section 27-27-50; ~~and.~~
- 9 "(8) Chapter 32.
- 10 "(9) Chapter 29."

11 Section 2. Sections 27-29-3.1, 27-29-6.1, and
12 27-29-11.1 are added to the Code of Alabama 1975, to read as
13 follows:

14 §27-29-3.1.

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

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

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

25 (b) (1) Except as exempted in subdivision (2), this
26 section applies to any acquisition in which there is a change

1 in control of an insurer authorized to do business in this
2 state.

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

4 a. A purchase of securities solely for investment
5 purposes so long as the securities, by voting or otherwise,
6 are not used to cause or attempt to cause the substantial
7 lessening of competition in any insurance market in this
8 state. If a purchase of securities results in a presumption of
9 control under subsection (c) of Section 27-29-1, it is not
10 solely for investment purposes unless the commissioner of the
11 insurer's state of domicile accepts a disclaimer of control or
12 affirmatively finds that control does not exist and the
13 disclaimer action or affirmative finding is communicated by
14 the domiciliary commissioner to the commissioner of this
15 state.

16 b. The acquisition of a person by another person
17 when both persons are neither directly nor through affiliates
18 primarily engaged in the business of insurance, if
19 pre-acquisition notification is filed with the commissioner in
20 accordance with subdivision (1) of subsection (c) 30 days
21 prior to the proposed effective date of the acquisition.
22 However, such pre-acquisition notification is not required for
23 exclusion from this section if the acquisition would otherwise
24 be excluded from this section by any other paragraph of
25 subdivision (2) of subsection (b).

26 c. The acquisition of already affiliated persons.

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

3 (i) The combined market share of the involved
4 insurers does not exceed five percent of the total market in
5 any market.

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

7 (iii) Both of the following do not occur in any
8 market:

9 A. The combined market share of the involved
10 insurers exceeds 12 percent of the total market.

11 B. The market share increases by more than two
12 percent of the total market.

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

17 e. An acquisition for which a pre-acquisition
18 notification would be required pursuant to this section due
19 solely to the resulting effect on the ocean marine insurance
20 line of business.

21 f. An acquisition of an insurer whose domiciliary
22 commissioner affirmatively finds that the insurer is in
23 failing condition, there is a lack of feasible alternative to
24 improving such condition, the public benefits of improving the
25 insurer's condition through the acquisition exceed the public
26 benefits that would arise from not lessening competition, and

1 the findings are communicated by the domiciliary commissioner
2 to the commissioner of this state.

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

10 (1) The pre-acquisition notification shall be in
11 such form and contain such information as prescribed by the
12 commissioner relating to those markets which, under paragraph
13 d. of subdivision (2) of subsection (b), cause the acquisition
14 not to be exempted from this section. The commissioner may
15 require such additional material and information as deemed
16 necessary to determine whether the proposed acquisition, if
17 consummated, would violate the competitive standard of
18 subsection (d). The required information may include an
19 opinion of an economist as to the competitive impact of the
20 acquisition in this state accompanied by a summary of the
21 education and experience of such person indicating his or her
22 ability to render an informed opinion.

23 (2) The waiting period required shall begin on the
24 date of receipt of the commissioner of a pre-acquisition
25 notification and shall end on the earlier of the thirtieth day
26 after the date of receipt, or termination of the waiting
27 period by the commissioner. Prior to the end of the waiting

1 period, the commissioner, on a one-time basis, may require the
2 submission of additional needed information relevant to the
3 proposed acquisition, in which event the waiting period shall
4 end on the earlier of the thirtieth day after receipt of the
5 additional information by the commissioner or termination of
6 the waiting period by the commissioner.

7 (d) (1) The commissioner may enter an order under
8 subdivision (1) of subsection (e) with respect to an
9 acquisition if there is substantial evidence that the effect
10 of the acquisition may be substantially to lessen competition
11 in any line of insurance in this state or to create a monopoly
12 or if the insurer fails to file adequate information in
13 compliance with subsection (c).

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

17 a.1. Any acquisition covered under subsection (b)
18 involving two or more insurers competing in the same market
19 may be considered prima facie evidence of violation of the
20 competitive standards.

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

23 Insurer A	Insurer B
24 4%	4% or more
25 10%	2% or more

1 15% 1% or more

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

5 Insurer A	Insurer B
6 5%	5% or more
7 10%	4% or more
8 15%	3% or more
9 19%	1% or more

10 2. A highly concentrated market is one in which the
11 share of the four largest insurers is 75 percent or more of
12 the market. Percentages not shown in the tables are
13 interpolated proportionately to the percentages that are
14 shown. If more than two insurers are involved, exceeding the
15 total of the two columns in the table may be considered prima
16 facie evidence of violation of the competitive standard in
17 subdivision (1). For the purpose of this paragraph, the
18 insurer with the largest share of the market shall be deemed
19 to be Insurer A.

20 b. There is a significant trend toward increased
21 concentration when the aggregate market share of any grouping
22 of the largest insurers in the market, from the two largest to

1 the eight largest, has increased by seven percent or more of
2 the market over a period of time extending from any base year
3 five to 10 years prior to the acquisition up to the time of
4 the acquisition. Any acquisition or merger covered under
5 subsection (b) involving two or more insurers competing in the
6 same market may be considered prima facie evidence of
7 violation of the competitive standard in subdivision (1) if
8 all of the following occur:

9 1. There is a significant trend toward increased
10 concentration in the market.

11 2. One of the insurers involved is one of the
12 insurers in a grouping of large insurers showing the requisite
13 increase in the market share.

14 3. Another involved insurer's market is two percent
15 or more.

16 c. For the purposes of this subdivision:

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

19 2. "Market" means the relevant product and
20 geographical markets. In determining the relevant product and
21 geographical markets, the commissioner shall give due
22 consideration to, among other things, the definitions or
23 guidelines, if any, published by the National Association of
24 Insurance Commissioners and to information, if any, submitted
25 by parties to the acquisition. In the absence of sufficient
26 information to the contrary, the relevant product market is
27 assumed to be the direct written insurance premium for a line

1 of business, such line being that used in the annual statement
2 required to be filed by insurers doing business in this state,
3 and the relevant geographical market is assumed to be this
4 state.

5 3. The burden of showing prima facie evidence of
6 violation of the competitive standard rests upon the
7 commissioner.

8 d. Even though an acquisition is not prima facie
9 violative of the competitive standard under paragraphs a. and
10 b., the commissioner may establish the requisite
11 anticompetitive effect based upon other substantial evidence.
12 Even though an acquisition is prima facie violative of the
13 competitive standard under paragraphs a. and b., a party may
14 establish the absence of the requisite anticompetitive effect
15 based upon other substantial evidence. Relevant factors in
16 making a determination under this paragraph include, but are
17 not limited to, the following: Market shares, volatility of
18 ranking of market leaders, number of competitors,
19 concentration, trend of concentration in the industry, and
20 ease of entry and exit into the market.

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

23 a. The acquisition will yield substantial economies
24 of scale or economies in resource utilization that cannot be
25 feasibly achieved in any other way, and the public benefits
26 which would arise from such economies exceed the public
27 benefits which would arise from not lessening competition.

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

5 (e) (1)a. If an acquisition which takes place after
6 the effective date of this act violates the standards of this
7 section, the commissioner may enter an order doing either of
8 the following:

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

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

14 b. The order shall not be entered unless all of the
15 following occur:

16 1. There is a hearing conducted within six years of
17 the acquisition.

18 2. Notice of the hearing is issued prior to the end
19 of the waiting period and not less than 15 days prior to the
20 hearing.

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

24 c. Every order shall be accompanied by a written
25 decision of the commissioner setting forth findings of fact
26 and conclusions of law.

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

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

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

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

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

15 (f) Subsections (b) and (c) of Section 27-29-9 and
16 Section 27-29-11 do not apply to acquisitions covered under
17 subsection (b).

18 §27-29-6.1.

19 (a) With respect to any insurer registered under
20 Section 27-29-4, and in accordance with subsection (c), the
21 commissioner shall also have the power to participate in a
22 supervisory college for any domestic insurer that is part of
23 an insurance holding company system with international
24 operations in order to determine compliance by the insurer
25 with this title. The powers of the commissioner with respect
26 to supervisory colleges include, but are not limited to, the
27 following:

1 (1) Initiating the establishment of a supervisory
2 college.

3 (2) Clarifying the membership and participation of
4 other supervisors in the supervisory college.

5 (3) Clarifying the functions of the supervisory
6 college and the role of other regulators, including the
7 establishment of a group-wide supervisor.

8 (4) Coordinating the ongoing activities of the
9 supervisory college, including planning meetings, supervisory
10 activities, and processes for information sharing.

11 (5) Establishing a crisis management plan.

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

22 (c) In order to assess the business strategy,
23 financial position, legal and regulatory position, risk
24 exposure, risk management, and governance processes, and as
25 part of the examination of individual insurers in accordance
26 with Section 27-29-6, the commissioner may participate in a
27 supervisory college with other regulators charged with

1 supervision of the insurer or its affiliates, including other
2 state, federal, and international regulatory agencies. The
3 commissioner may enter into agreements in accordance with
4 subsection (c) of Section 27-29-7 providing the basis for
5 cooperation between the commissioner and the other regulatory
6 agencies, and the activities of the supervisory college.
7 Nothing in this section shall delegate to the supervisory
8 college the authority of the commissioner to regulate or
9 supervise the insurer or its affiliates within its
10 jurisdiction.

11 §27-29-11.1.

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

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

7 (c) Any person who was a parent corporation, holding
8 company, or a person who otherwise controlled the insurer or
9 affiliate at the time the distributions were paid shall be
10 liable up to the amount of distributions or payments under
11 subsection (a) which the person received. Any person who
12 otherwise controlled the insurer at the time the distributions
13 were declared shall be liable up to the amount of
14 distributions that would have been received if they had been
15 paid immediately. If two or more persons are liable with
16 respect to the same distributions, they shall be jointly and
17 severally liable.

18 (d) The maximum amount recoverable under this
19 section shall be the amount needed in excess of all other
20 available assets of the impaired or insolvent insurer to pay
21 the contractual obligations of the impaired or insolvent
22 insurer and to reimburse any guaranty associations.

23 (e) To the extent that any person liable under
24 subsection (c) is insolvent or otherwise fails to pay claims
25 due from it, its parent corporation, holding company, or
26 person who otherwise controlled it at the time the
27 distribution was paid, shall be jointly and severally liable

1 for any resulting deficiency in the amount recovered from the
2 parent corporation, holding company, or person who otherwise
3 controlled it.

4 Section 3. Although this bill would have as its
5 purpose or effect the requirement of a new or increased
6 expenditure of local funds, the bill is excluded from further
7 requirements and application under Amendment 621, now
8 appearing as Section 111.05 of the Official Recompilation of
9 the Constitution of Alabama of 1901, as amended, because the
10 bill defines a new crime or amends the definition of an
11 existing crime.

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Insurance 14-JAN-14

Read for the second time and placed
on the calendar 1 amendment 15-JAN-14

Read for the third time and passed
as amended..... 27-FEB-14

Yeas 99, Nays 0, Abstains 0

Jeff Woodard
Clerk