

1 HB111
2 150676-9
3 By Representative Hill
4 RFD: Insurance
5 First Read: 14-JAN-14
6 PFD: 01/10/2014

1
2 ENROLLED, An Act,

3 Relating to insurance; to revise the Alabama
4 Insurance Holding Company System Regulatory Act; to require
5 assessment of enterprise risk within the insurance holding
6 company system; to provide for public hearings; to require
7 pre-acquisition notice to the Commissioner of Insurance and
8 give the commissioner the power to disapprove acquisitions; to
9 authorize the commissioner to enter into supervisory colleges
10 with other regulators for a domestic insurer that is part of
11 an international holding company; to add additional penalties;
12 and to grant additional recovery rights to receivers for a
13 domestic insurer and in connection, would amend Sections
14 10A-20-6.16, 27-21A-23, 27-29-1, 27-29-2, 27-29-3, 27-29-4,
15 27-29-5, 27-29-6, 27-29-7, 27-29-10, and 27-34-54, Code of
16 Alabama 1975, and to add Sections 27-29-3.1, 27-29-6.1, and
17 27-29-11.1 to the Code of Alabama 1975; and in connection
18 therewith would have as its purpose or effect the requirement
19 of a new or increased expenditure of local funds within the
20 meaning of Amendment 621 of the Constitution of Alabama of
21 1901, now appearing as Section 111.05 of the Official
22 Recompilation of the Constitution of Alabama of 1901, as
23 amended.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

5 "§10A-20-6.16.

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

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

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

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

1 coverage for chiropractic be offered, together with
2 identification of associated costs.

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

7 ~~"(12) The corporation shall be subject to Chapter~~
8 12A of Title 27.

9 "(13) Chapter 29 of Title 27.

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

15 "§27-21A-23.

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

1 "(b) Solicitation of enrollees by a health
 2 maintenance organization granted a certificate of authority
 3 shall not be construed to violate any provision of law
 4 relating to solicitation or advertising by health
 5 professionals.

6 "(c) Any health maintenance organization authorized
 7 under this chapter shall not be deemed to be practicing
 8 medicine and shall be exempt from the provisions of Section
 9 34-24-310, et seq., relating to the practice of medicine.

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

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

19 "(f) Notwithstanding the provisions of subsection
 20 (a), a health maintenance organization shall be subject to all
 21 of the following:

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

23 "~~(g) Notwithstanding the provisions of subsection~~
 24 ~~(a), a health maintenance organization shall be subject to the~~

1 ~~provisions of (2) Chapter 56 of this title,~~ regarding the
2 Access to Eye Care Act.

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

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

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

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

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

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

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

13 "(10) Chapter 29, regarding insurance holding
14 company systems.

15 "§27-29-1.

16 "For purposes of this chapter, unless otherwise
17 stated, the following terms shall have the meanings
18 respectively ascribed to them by this section:

19 "(1) AFFILIATE. The term shall include an
20 "affiliate" of, or person "affiliated" with, a specific
21 person, and shall mean a person that directly, or indirectly
22 through one or more intermediaries, controls, or is controlled
23 by, or is under common control with, the person specified.

1 "(2) COMMISSIONER. The Commissioner of Insurance,
2 his or her deputies, or the Insurance Department as
3 appropriate.

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

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

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

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

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

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

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

1 "~~c. Nonprofit medical and hospital service~~
 2 ~~associations.~~

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

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

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

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

1 "~~(9)~~ (10) VOTING SECURITY. The term shall include any
 2 security convertible into, or evidencing, a right to acquire a
 3 voting security.

4 "§27-29-2.

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

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

18 "(1) Invest, in common stock, preferred stock, debt
 19 obligations, and other securities of one or more subsidiaries
 20 ~~or affiliates, including, without limitation, domestic or~~
 21 ~~foreign insurance subsidiaries or affiliates,~~ amounts which do
 22 not exceed the lesser of 10 percent of such insurer's assets
 23 or 50 percent of the ~~total of the insurer's capital and~~
 24 ~~surplus as shown in the latest annual report of the insurer~~
 25 ~~filed pursuant to subsection (a) of Section 27-3-26, less the~~

1 ~~minimum capital and surplus required of said insurer for~~
2 ~~authority to transact insurance by Sections 27-3-7 and 27-3-8~~
3 as regards policyholders, provided that after such
4 investments, the insurer's surplus as regards policyholders
5 will be reasonable in relation to the insurer's outstanding
6 liabilities and adequate to its financial needs. In
7 calculating the amount of such investments, investments in
8 domestic and foreign insurance subsidiaries and health
9 maintenance organizations shall be excluded, and there shall
10 be included both of the following:

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

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

21 "(2) Invest any amount in common stock, preferred
22 stock, debt obligations, and other securities of one or more
23 subsidiaries engaged or organized to engage exclusively in the
24 ownership and management of assets authorized as investments
25 for the insurer provided that each such subsidiary agrees to

1 limit its investments in any asset so that such investments
2 will not cause the amount of the total investment of the
3 insurer to exceed any of the investment limitations specified
4 in subdivision (1) ~~of this subsection~~ or in Sections 27-41-15
5 through 27-41-18 and 27-41-35. For the purpose of this
6 subdivision, "the total investment of the insurer" shall
7 include both of the following:

8 "a. Any direct investment by the insurer in an
9 asset; ~~and.~~

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

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

22 "(c) Exemption from investment restrictions.
23 Investments in common stock, preferred stock, debt
24 obligations, or other securities of subsidiaries ~~or affiliates~~
25 made pursuant to subsection (b) ~~of this section~~ shall not be

1 subject to any of the otherwise applicable restrictions or
2 prohibitions contained in this title applicable to such
3 investments of insurers.

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

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

23 "§27-29-3.

24 "(a) (1) Filing and approval requirements. No person
25 other than the issuer shall make a tender offer for or a

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

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

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

24 ~~"An offer, request, invitation, agreement, or~~
25 ~~acquisition which contains such a condition and which is~~

1 ~~approved by the commissioner in the manner so prescribed shall~~
2 ~~be effective and binding according to its terms from the date~~
3 ~~on which it was made.~~

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

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

1 "(4) For purposes of this section:

2 "a. A domestic insurer includes any person
3 controlling a domestic insurer unless the person, as
4 determined by the commissioner, is either directly or through
5 its affiliates primarily engaged in business other than the
6 business of insurance.

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

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

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

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

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

24 "b.2. If ~~such~~ the person is not an individual, a
25 report of the nature of its business operations during the

1 past five years or for ~~such~~ the lesser period as such person
2 and any predecessors thereof shall have been in existence; an
3 informative description of the business intended to be done by
4 ~~such~~ the person and ~~such~~ the person's subsidiaries; and a list
5 of all individuals who are, or who have been selected to
6 become, directors or executive officers of ~~such~~ the person or
7 who perform, or will perform, functions appropriate to ~~such~~
8 the positions. ~~Such~~ The list shall include for each ~~such~~
9 individual the information required by paragraph ~~a.~~ of this
10 ~~subdivision;~~ subparagraph 1.

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

22 ~~"(3)~~c. Fully audited financial information as to the
23 earnings and financial condition of each acquiring party for
24 the preceding five fiscal years of each such acquiring party,
25 or for such lesser period as such acquiring party and any

1 predecessors thereof shall have been in existence, and similar
2 unaudited information as of a date not earlier than 90 days
3 prior to the filing of the statement; ~~provided, however, that~~
4 ~~in the case of an acquiring party which is an insurer actively~~
5 ~~engaged in the business of insurance, the financial statements~~
6 ~~of such insurer need not be audited, except such audit may be~~
7 ~~required if the need therefor is determined by the~~
8 ~~commissioner;.~~

9 "~~(4)~~d. Any plans or proposals which each acquiring
10 party may have to liquidate such insurer, to sell its assets,
11 or to merge or consolidate it with any person or to make any
12 other material change in its business or corporate structure
13 or management;.

14 "~~(5)~~e. The number of shares of any security referred
15 to in subsection (a) ~~of this section~~ which each acquiring
16 party proposes to acquire, the terms of the offer, request,
17 invitation, agreement, or acquisition referred to in
18 subsection (a) ~~of this section~~, and a statement as to the
19 method by which the fairness of the proposal was arrived at;.

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

24 "~~(7)~~g. A full description of any contracts,
25 arrangements, or understandings with respect to any security

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

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

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

22 ~~"(10)j.~~ "(10)j. Copies of all tender offers for, requests or
23 invitations for tenders of, exchange offers for and agreements
24 to acquire or exchange any securities referred to in

1 subsection (a) ~~of this section~~ and, if distributed, of
2 additional soliciting material relating thereto~~;~~.

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

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

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

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

23 "(2) If the person required to file the statement
24 referred to in subsection (a) ~~of this section~~ is a
25 partnership, limited partnership, syndicate, or other group,

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

24 "(c) ~~Alternative filing materials.~~ If any offer,
25 request, invitation, agreement, or acquisition referred to in

1 subsection (a) ~~of this section~~ is proposed to be made by means
2 of a registration statement under the Securities Act of 1933,
3 or in circumstances requiring the disclosure of similar
4 information under the Securities Exchange Act of 1934, or
5 under a state law requiring similar registration or
6 disclosure, the person required to file the statement referred
7 to in subsection (a) ~~of this section~~ may utilize such
8 documents in furnishing the information called for by that
9 statement.

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

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

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

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

24 "1. The informational requirements of subdivision
25 (1) of subsection (c) of Section 27-29-3.1 and the standards

1 of subdivision (2) of subsection (d) of Section 27-29-3.1
 2 shall apply.

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

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

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

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

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

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

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

23 "(3) If the proposed acquisition of control will
24 require the approval of more than one commissioner, the public
25 hearing referred to in subdivision (2) may be held on a

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

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

22 "(5) The commissioner may retain any attorneys,
23 actuaries, accountants, and other experts not otherwise a part
24 of the commissioner's staff as may be reasonably necessary to
25 assist the commissioner in reviewing the proposed acquisition

1 of control, the reasonable expenses of which shall be borne by
2 the acquiring person.

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

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

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

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

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

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

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

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

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

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

1 of all such lawful process shall be served on the commissioner
 2 and transmitted by registered or certified mail by the
 3 commissioner to such person at his or her last known address.

4 "§27-29-4.

5 "(a) ~~Registration.~~

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

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

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

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

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

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

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

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

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

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

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

2 "c. Transactions not in the ordinary course of
3 business~~7.~~

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

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

11 "f. Reinsurance agreements~~7.~~

12 "g. Dividends and other distributions to
13 shareholders~~7.~~~~and.~~

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

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

18 "(5) If requested by the commissioner, the insurer
19 shall include financial statements of or within an insurance
20 holding company system, including all affiliates. Financial
21 statements may include, but are not limited to, annual audited
22 financial statements filed with the U.S. Securities and
23 Exchange Commission pursuant to the Securities Act of 1933, as
24 amended, or the Securities Exchange Act of 1934, as amended.
25 An insurer required to file financial statements pursuant to

1 this subdivision may satisfy the request by providing the
2 commissioner with the most recently filed parent corporation
3 financial statements that have been filed with the Securities
4 Exchange Commission. Financial statements of insurer's
5 affiliates required to be filed with the commissioner may be
6 filed by the insurer in the accounting standard utilized by
7 the affiliate in its usual course of business at the time of
8 the filing.

9 "(5)(6) Other matters concerning transactions
10 between registered insurers and any affiliates as may be
11 included, from time to time, in any registration forms adopted
12 or approved by the commissioner.

13 "(7) Statements that the insurer's board of
14 directors or an appropriate committee of the board oversees
15 corporate governance and internal controls and that the
16 insurer's officers or senior management have approved,
17 implemented, and continue to maintain and monitor corporate
18 governance and internal control procedures.

19 "(8) Any other information required by the
20 commissioner by rule.

21 "(c) All registration statements shall contain a
22 summary outlining all items in the current registration
23 statement representing changes from the prior registration
24 statement.

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

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

21 "(f) Any person within an insurance holding company
22 system subject to registration shall be required to provide
23 complete and accurate information to an insurer, where the
24 information is reasonably necessary to enable the insurer to
25 comply with the provisions of this chapter.

1 "~~(e)(g)~~ Termination of registration. The
2 commissioner shall terminate the registration of any insurer
3 which demonstrated that it no longer is a member of an
4 insurance holding company system.

5 "~~(f)(h)~~ Consolidated filing. The commissioner may
6 require or allow two or more affiliated insurers subject to
7 registration under this section to file a consolidated
8 registration statement ~~or consolidated reports amending their~~
9 ~~consolidated registration statement or their individual~~
10 ~~registration statements~~.

11 "~~(g)(i)~~ Alternative registration. The commissioner
12 may allow an insurer which is authorized to do business in
13 this state and which is part of an insurance holding company
14 system to register on behalf of any affiliated insurer which
15 is required to register under subsection (a) ~~of this section~~
16 and to file all information and material required to be filed
17 under this section.

18 "~~(h)(j)~~ Exemptions. The provisions of this section
19 shall not apply to any insurer, information, or transaction
20 if, and to the extent that, the commissioner by rule,
21 regulation, or order shall exempt the same from the provisions
22 of this section.

23 "~~(i)(k)~~ Disclaimer. Any person may file with the
24 commissioner a disclaimer of affiliation with any authorized
25 insurer or ~~such~~ a disclaimer may be filed by ~~such~~ the insurer

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

22 "(1) (1) Except as provided in subdivisions (2) and
23 (4), the ultimate controlling person of every insurer subject
24 to registration shall also file an annual enterprise risk
25 report. The report shall, to the best of the ultimate

1 controlling person's knowledge and belief, identify the
2 material risks within the insurance holding company system
3 that could pose enterprise risk to the insurer. The report
4 shall be filed with the lead state commissioner of the
5 insurance holding company system as determined by the
6 procedures within the Financial Analysis Handbook adopted by
7 the National Association of Insurance Commissioners.

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

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

19 "(4) An insurer that in the preceding calendar year
20 had direct written and assumed premiums of more than three
21 hundred million dollars (\$300,000,000) but less than five
22 hundred million dollars (\$500,000,000) may request an
23 exemption from the reporting requirements of subdivision (1)
24 by filing with the commissioner a written statement describing
25 the undue financial or organizational hardship the insurer

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

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

10 "§27-29-5.

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

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

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

20 ~~"(2)(3) Charges or fees for services performed shall~~
 21 ~~be reasonable~~7.~~~~

22 ~~"(3)(4) Expenses incurred and payment received shall~~
 23 ~~be allocated to the insurer in conformity with customary~~
 24 ~~insurance accounting practices consistently applied~~7.~~~~

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

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

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

1 agreement, to the commissioner for determination of the type
 2 of filing required, if any.

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

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

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

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

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

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

4 "~~(3)~~c. Reinsurance agreements or modifications
 5 thereto, including:

6 "1. All reinsurance pooling agreements.

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

18 "~~(4)~~d. All management agreements, service contracts,
 19 tax allocation agreements, guarantees and all cost-sharing
 20 arrangements~~7; and.~~

21 "e. Guarantees when made by a domestic insurer;
 22 provided, however, that a guarantee which is quantifiable as
 23 to amount is not subject to the notice requirements of this
 24 paragraph unless it exceeds the lesser of one-half of one
 25 percent of the insurer's admitted assets or 10 percent of

1 surplus as regards policyholders as of the 31st day of
2 December next preceding. Further, all guarantees which are not
3 quantifiable as to amount are subject to the notice
4 requirements of this paragraph.

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

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

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

21 "(c) A domestic insurer may not enter into
22 transactions which are part of a plan or series of like
23 transactions with persons within the insurance holding company
24 system if the purpose of those separate transactions is to
25 avoid the statutory threshold amount and thus avoid the review

1 that would occur otherwise. If the commissioner determines
2 that such separate transactions were entered into over any
3 12-month period for that purpose, ~~he or she~~ the commissioner
4 may exercise his or her authority under Section 27-29-10.

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

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

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

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

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

1 "(3) The number and size of risks insured in each
2 line of business~~;~~.

3 "(4) The extent of the geographical dispersion of
4 the insurer's insured risks~~;~~.

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

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

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

12 "(8) The surplus as regards policyholders maintained
13 by other comparable insurers~~;~~.

14 "(9) The adequacy of the insurer's reserves~~;~~.

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

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

24 ~~"(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.~~

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

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

16 "~~(3)~~(4) Notwithstanding any other provision of law,
17 ~~a domestic~~ an insurer may declare an extraordinary dividend or
18 distribution which is conditional upon the commissioner's
19 approval of the dividend or distribution. ~~Such~~ The declaration
20 ~~does not shall~~ confer ~~any~~ no rights upon shareholders until
21 the commissioner has approved the payment of the dividend or
22 distribution or the commissioner has not disapproved the
23 payment within the 30-day period as provided in subdivision
24 (1).

1 "~~(4)~~ (5) The commissioner shall assess such
2 reasonable charges as he or she deems necessary for the review
3 conducted pursuant to this section. All funds received shall
4 be deposited in the State Treasury to the credit of the
5 Special Examination Revolving Fund, from which the expenses
6 incurred shall be paid.

7 "§27-29-6.

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

1 insurance holding company system, or by the insurance holding
2 company system on a consolidated basis.

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

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

14 "(2) To determine compliance with this title, the
15 commissioner may order any insurer registered under Section
16 27-29-4 to produce information not in the possession of the
17 insurer if the insurer can obtain access to such information
18 pursuant to contractual relationships, statutory obligations,
19 or other methods. In the event the insurer cannot obtain the
20 information requested by the commissioner, the insurer shall
21 provide the commissioner a detailed explanation of the reason
22 that the insurer cannot obtain the information and the
23 identity of the holder of information. Whenever it appears to
24 the commissioner that the detailed explanation is without
25 merit, the commissioner may require, after notice and hearing,

1 the insurer to pay a penalty of up to one thousand dollars
2 (\$1,000) for each day's delay, or may suspend or revoke the
3 insurer's license.

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

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

16 "(e) In the event the insurer fails to comply with
17 an order, the commissioner shall have the power to examine the
18 affiliates to obtain the information. In accordance with
19 Sections 27-2-26 and 27-2-27, the commissioner shall also have
20 the power to issue subpoenas, to administer oaths, and to
21 examine under oath any person for purposes of determining
22 compliance with this section. Upon the failure or refusal of
23 any person to obey a subpoena, the commissioner may petition a
24 court of competent jurisdiction, and upon proper showing, the
25 court may enter an order compelling the witness to appear and

1 testify or produce documentary evidence. Failure to obey the
2 court order shall be punishable as contempt of court. Every
3 person shall be obliged to attend as a witness at the place
4 specified in the subpoena, when subpoenaed, anywhere within
5 the state. He or she shall be entitled to the same fees and
6 mileage, if claimed, as a witness in circuit court, which
7 fees, mileage, and actual expense, if any, necessarily
8 incurred in securing the attendance of witnesses, and their
9 testimony, shall be itemized and charged against, and be paid
10 by, the company being examined.

11 "§27-29-7.

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

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

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

1 confidential documents, materials, or information subject to
 2 subsection (a).

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

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

16 "(2) Notwithstanding subdivision (1) above, may
 17 share confidential and privileged documents, material, or
 18 information reported pursuant to subsection (1) of Section
 19 27-29-4 only with commissioners of states having statutes or
 20 regulations substantially similar to subsection (a) and who
 21 have agreed in writing not to disclose such information.

22 "(3) May receive documents, materials, or
 23 information, including otherwise confidential and privileged
 24 documents, materials, or information from the National
 25 Association of Insurance Commissioners and its affiliates and

1 subsidiaries and from regulatory and law enforcement officials
2 of other foreign or domestic jurisdictions, and shall maintain
3 as confidential or privileged any document, material, or
4 information received with notice or the understanding that it
5 is confidential or privileged under the laws of the
6 jurisdiction that is the source of the document, material, or
7 information.

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

12 "a. Specify procedures and protocols regarding the
13 confidentiality and security of information shared with the
14 National Association of Insurance Commissioners and its
15 affiliates and subsidiaries pursuant to this chapter,
16 including procedures and protocols for sharing by the National
17 Association of Insurance Commissioners with other state,
18 federal, or international regulators.

19 "b. Specify that ownership of information shared
20 with the National Association of Insurance Commissioners and
21 its affiliates and subsidiaries pursuant to this chapter
22 remains with the commissioner and the use of the information
23 by the National Association of Insurance Commissioners is
24 subject to the direction of the commissioner.

1 "c. Require at least 10 days' notice to be given to
2 an insurer whose confidential information in the possession of
3 the National Association of Insurance Commissioners pursuant
4 to this chapter is subject to a request or subpoena to the
5 National Association of Insurance Commissioners for disclosure
6 or production.

7 "d. Require the National Association of Insurance
8 Commissioners and its affiliates and subsidiaries to consent
9 to intervention by an insurer in any judicial or
10 administrative action in which the National Association of
11 Insurance Commissioners and its affiliates and subsidiaries
12 may be required to disclose confidential information about the
13 insurer shared with the National Association of Insurance
14 Commissioners and its affiliates and subsidiaries pursuant to
15 this chapter.

16 "(d) The sharing of information by the commissioner
17 pursuant to this chapter shall not constitute a delegation of
18 regulatory authority or rulemaking, and the commissioner is
19 solely responsible for the administration, execution, and
20 enforcement of this chapter.

21 "(e) No waiver of any applicable privilege or claim
22 of confidentiality in the documents, materials, or information
23 shall occur as a result of disclosure to the commissioner
24 under this section or as a result of sharing as authorized in
25 subsection (c).

1 "(f) Documents, materials, or other information in
2 the possession or control of the National Association of
3 Insurance Commissioners pursuant to this chapter shall be
4 confidential by law and privileged, shall not be subject to
5 open records, freedom of information, sunshine or other public
6 records disclosure laws, shall not be subject to subpoena, and
7 shall not be subject to discovery or admissible in evidence in
8 any private civil action.

9 "\$27-29-10.

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

22 "(b) Every director or officer of an insurance
23 holding company system who knowingly violates, participates
24 in, or permits any of the officers or agents of the insurer to
25 engage in transactions or make investments that have not been

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

16 "(c) Whenever it appears to the commissioner that
17 any insurer subject to this chapter or any director, officer,
18 employee, or agent thereof has engaged in any transaction or
19 entered into a contract which is subject to Section 27-29-5
20 and which would not have been approved had the approval been
21 requested, the commissioner may order the insurer to cease and
22 desist immediately any further activity under that transaction
23 or contract. After notice and hearing, the commissioner may
24 also order the insurer to void any contracts and restore the

1 status quo if the action is in the best interest of the
2 policyholders, creditors, or the public.

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

19 "(e) Any officer, director, or employee of an
20 insurance holding company system who willfully and knowingly
21 subscribes to or makes or causes to be made any false
22 statements or false reports or false filings with the intent
23 to deceive the commissioner in the performance of his or her
24 duties under this chapter, upon conviction, shall be
25 imprisoned for not more than five years or fined not more than

1 fifty thousand dollars (\$50,000), or both. Any fines imposed
 2 shall be paid by the officer, director, or employee in his or
 3 her individual capacity.

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

12 "§27-34-54.

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

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

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

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

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

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

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

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

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

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

15 §27-29-3.1.

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

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

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

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

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

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

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

1 be excluded from this section by any other paragraph of
2 subdivision (2) of subsection (b).

3 c. The acquisition of already affiliated persons.

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

6 (i) The combined market share of the involved
7 insurers does not exceed five percent of the total market in
8 any market.

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

10 (iii) Both of the following do not occur in any
11 market:

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

14 B. The market share increases by more than two
15 percent of the total market.

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

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

24 f. An acquisition of an insurer whose domiciliary
25 commissioner affirmatively finds that the insurer is in

1 failing condition, there is a lack of feasible alternative to
2 improving such condition, the public benefits of improving the
3 insurer's condition through the acquisition exceed the public
4 benefits that would arise from not lessening competition, and
5 the findings are communicated by the domiciliary commissioner
6 to the commissioner of this state.

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

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

1 education and experience of such person indicating his or her
 2 ability to render an informed opinion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 c. For the purposes of this subdivision:

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

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

17 3. The burden of showing prima facie evidence of
18 violation of the competitive standard rests upon the
19 commissioner.

20 d. Even though an acquisition is not prima facie
21 violative of the competitive standard under paragraphs a. and
22 b., the commissioner may establish the requisite
23 anticompetitive effect based upon other substantial evidence.
24 Even though an acquisition is prima facie violative of the
25 competitive standard under paragraphs a. and b., a party may

1 establish the absence of the requisite anticompetitive effect
 2 based upon other substantial evidence. Relevant factors in
 3 making a determination under this paragraph include, but are
 4 not limited to, the following: Market shares, volatility of
 5 ranking of market leaders, number of competitors,
 6 concentration, trend of concentration in the industry, and
 7 ease of entry and exit into the market.

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

10 a. The acquisition will yield substantial economies
 11 of scale or economies in resource utilization that cannot be
 12 feasibly achieved in any other way, and the public benefits
 13 which would arise from such economies exceed the public
 14 benefits which would arise from not lessening competition.

15 b. The acquisition will substantially increase the
 16 availability of insurance, and the public benefits of the
 17 increase exceed the public benefits which would arise from not
 18 lessening competition.

19 (e)(1)a. If an acquisition which takes place after
 20 the effective date of this act violates the standards of this
 21 section, the commissioner may enter an order doing either of
 22 the following:

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

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

3 b. The order shall not be entered unless all of the
4 following occur:

5 1. There is a hearing conducted within six years of
6 the acquisition.

7 2. Notice of the hearing is issued prior to the end
8 of the waiting period and not less than 15 days prior to the
9 hearing.

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

13 c. Every order shall be accompanied by a written
14 decision of the commissioner setting forth findings of fact
15 and conclusions of law.

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

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

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

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

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

6 (f) Subsections (b) and (c) of Section 27-29-9 and
7 Section 27-29-11 do not apply to acquisitions covered under
8 subsection (b).

9 §27-29-6.1.

10 (a) With respect to any insurer registered under
11 Section 27-29-4, and in accordance with subsection (c), the
12 commissioner shall also have the power to participate in a
13 supervisory college for any domestic insurer that is part of
14 an insurance holding company system with international
15 operations in order to determine compliance by the insurer
16 with this title. The powers of the commissioner with respect
17 to supervisory colleges include, but are not limited to, the
18 following:

19 (1) Initiating the establishment of a supervisory
20 college.

21 (2) Clarifying the membership and participation of
22 other supervisors in the supervisory college.

23 (3) Clarifying the functions of the supervisory
24 college and the role of other regulators, including the
25 establishment of a group-wide supervisor.

1 (4) Coordinating the ongoing activities of the
 2 supervisory college, including planning meetings, supervisory
 3 activities, and processes for information sharing.

4 (5) Establishing a crisis management plan.

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

15 (c) In order to assess the business strategy,
 16 financial position, legal and regulatory position, risk
 17 exposure, risk management, and governance processes, and as
 18 part of the examination of individual insurers in accordance
 19 with Section 27-29-6, the commissioner may participate in a
 20 supervisory college with other regulators charged with
 21 supervision of the insurer or its affiliates, including other
 22 state, federal, and international regulatory agencies. The
 23 commissioner may enter into agreements in accordance with
 24 subsection (c) of Section 27-29-7 providing the basis for
 25 cooperation between the commissioner and the other regulatory

1 agencies, and the activities of the supervisory college.
2 Nothing in this section shall delegate to the supervisory
3 college the authority of the commissioner to regulate or
4 supervise the insurer or its affiliates within its
5 jurisdiction.

6 §27-29-11.1.

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

22 (b) No distribution shall be recoverable if the
23 parent or affiliate shows that when paid the distribution was
24 lawful and reasonable, and that the insurer did not know and
25 could not reasonably have known that the distribution might

1 adversely affect the ability of the insurer to fulfill its
2 contractual obligations.

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

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

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

1 parent corporation, holding company, or person who otherwise
2 controlled it.

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

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

