

1 HB614
2 150676-2
3 By Representative Hill
4 RFD: Insurance
5 First Read: 11-APR-13

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8 SYNOPSIS: Under existing law, members of an insurance
9 holding company system are required to meet certain
10 requirements deemed appropriate to protect the
11 solvency of the insurers within the system.

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

16 Under existing law, domestic insurers are
17 required to give 30 days' notice to the
18 commissioner prior to paying any extraordinary
19 dividend, defined as a distribution in an amount
20 exceeding the greater of 10 percent of the
21 insurer's surplus or the net gain from operations
22 for the calendar year preceding the payment.

23 Under existing law, insurers or officers,
24 directors, employees, or agents thereof willfully
25 violating the holding company act can be criminally
26 prosecuted and, upon conviction, fined up to ten
27 thousand dollars (\$10,000) for an insurer and up to

1 one thousand dollars (\$1,000) for an individual, or
2 up to two years in prison, or both.

3 This bill, which would state the purpose of
4 the bill is to make Alabama's law substantially
5 similar to the current version of the model
6 Insurance Holding Company System Regulatory Act
7 developed by the National Association of
8 Commissioners, would add requirements to the
9 insurance holding company system law for assessing
10 the "enterprise risk" within the entire holding
11 company system, including the risk caused by
12 non-insurance affiliates.

13 The bill would permit the commissioner to
14 hold the public hearing required to consider a
15 proposed acquisition of control of an
16 Alabama-domiciled insurer on a consolidated basis
17 with other commissioners if the approval of
18 commissioner from other states is also required.

19 The bill would require, in certain
20 circumstances, a pre-acquisition notification to
21 the commissioner, and give the commissioner
22 authority to order the acquisition not occur under
23 certain circumstances and according to certain
24 requirements.

25 The bill would define extraordinary dividend
26 to be a distribution in an amount exceeding the
27 lesser of 10 percent of the insurer's surplus or

1 the net gain from operations for the calendar year
2 preceding the payment.

3 The bill would authorize the commissioner to
4 participate in a supervisory college with other
5 regulators for any domestic insurer that is part of
6 a holding company with international operations in
7 order to determine compliance by the insurer with
8 this law.

9 The bill would add additional penalties for
10 certain violations of the act, including a daily
11 fine of up to (\$1,000) for failure to file any
12 registration required to be filed under the act, up
13 to a maximum of (\$50,000); a civil forfeiture of up
14 to (\$10,000) per violation for any officers or
15 directors of an insurance holding company system
16 who knowingly violate, participate in, or assent
17 to, or who knowingly permit the officers or agents
18 of the insurer to engage in transactions or
19 investments not properly reported or submitted
20 pursuant to the act; and a criminal penalty of up
21 to five years in prison or a fine of up to
22 (\$50,000), or both, for any officer, director, or
23 employee of an insurance holding company system who
24 willfully and knowingly subscribes to or makes or
25 causes to be made any false statement or false
26 reports or false filings with the intent to deceive

1 the commissioner in the performance of the
2 commissioner's duties under this act.

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

16 Amendment 621 of the Constitution of Alabama
17 of 1901, now appearing as Section 111.05 of the
18 Official Recompilation of the Constitution of
19 Alabama of 1901, as amended, prohibits a general
20 law whose purpose or effect would be to require a
21 new or increased expenditure of local funds from
22 becoming effective with regard to a local
23 governmental entity without enactment by a 2/3 vote
24 unless: it comes within one of a number of
25 specified exceptions; it is approved by the
26 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

3 The purpose or effect of this bill would be
4 to require a new or increased expenditure of local
5 funds within the meaning of the amendment. However,
6 the bill does not require approval of a local
7 governmental entity or enactment by a 2/3 vote to
8 become effective because it comes within one of the
9 specified exceptions contained in the amendment.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT

14
15 Relating to insurance; to revise the Alabama
16 Insurance Holding Company System Regulatory Act; to require
17 assessment of enterprise risk within the insurance holding
18 company system; to provide for public hearings; to require
19 pre-acquisition notice to the Commissioner of Insurance and
20 give the commissioner the power to disapprove acquisitions; to
21 further limit extraordinary dividends to all the commissioners
22 to enter into supervisory colleges with other regulators for a
23 domestic insurer that is part of an international holding
24 company; to add additional penalties; and to grant additional
25 recovery rights to receivers for a domestic insurer and in
26 connection, would amend Sections 10A-20-6.16 and 27-21A-23, as
27 amended by Act 2012-429, 2012 Regular Session, Code of Alabama

1 1975, and Sections 27-29-1, 27-29-2, 27-29-3, 27-29-4,
2 27-29-5, 27-29-6, 27-29-7, 27-29-10, and 27-34-54, Code of
3 Alabama 1975, and to add Sections 27-29-3.1, 27-29-6.1, and
4 27-29-11.1 to the Code of Alabama 1975; and in connection
5 therewith would have as its purpose or effect the requirement
6 of a new or increased expenditure of local funds within the
7 meaning of Amendment 621 of the Constitution of Alabama of
8 1901, now appearing as Section 111.05 of the Official
9 Recompilation of the Constitution of Alabama of 1901, as
10 amended.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. The purpose of this act is to revise the
13 Alabama Insurance Holding Company System Regulatory Act to be
14 substantially similar as the most recent version of the Model
15 Insurance Holding Company System Regulatory Act developed by
16 the National Association of Insurance Commissioners.

17 Section 2. Sections 10A-20-6.16 and 27-21A-23, as
18 amended by Act 2012-429, 2012 Regular Session, Code of Alabama
19 1975, and Sections 27-29-1, 27-29-2, 27-29-3, 27-29-4,
20 27-29-5, 27-29-6, 27-29-7, 27-29-10, and 27-34-54, Code of
21 Alabama 1975, are amended to read as follows:

22 "§10A-20-6.16.

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

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

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

6 ~~"(2) The corporation shall be subject to the~~
7 ~~provisions of Chapter 55, Chapters 12A, 29, 54, 54A, 55, 56,~~
8 ~~57, 58, and 59, Section 27-1-17, and Articles 2 and 3 of~~
9 ~~Chapter 19 Title 27, regarding the prohibition of unfair~~
10 ~~discriminatory acts by insurers on the basis of an applicant's~~
11 ~~or insured's abuse status.~~

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

17 ~~"(4) The corporation shall be subject to Section~~
18 ~~27-1-17, requiring insurers and health plans to pay health~~
19 ~~care providers in a timely manner.~~

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

23 ~~"(6)(3) The corporation shall be subject to the~~
24 ~~regulations rules promulgated by the Commissioner of Insurance~~
25 ~~pursuant to Sections 27-7-43 and 27-7-44.~~

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

1 ~~"(8) The corporation shall be subject to the~~
2 ~~provisions of Chapter 57 of Title 27, requiring coverage to be~~
3 ~~offered for the payment of colorectal cancer examinations for~~
4 ~~covered persons who are 50 years of age or older, or for~~
5 ~~covered persons who are less than 50 years of age and at high~~
6 ~~risk for colorectal cancer according to current American~~
7 ~~Cancer Society colorectal cancer screening guidelines.~~

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

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

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

20 ~~"(12) The corporation shall be subject to Chapter~~
21 ~~12A of Title 27.~~

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

27 ~~"§27-21A-23.~~

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

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

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

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

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

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

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

8 "~~(g) (2) Notwithstanding the provisions of subsection~~
9 ~~(a), a health maintenance organization shall be subject to the~~
10 ~~provisions of Chapter 56 of this title, regarding the Access~~
11 ~~to Eye Care Act Chapters 12A, 29, 54, 54A, 55, 56, 57, 58, and~~
12 ~~59.~~

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

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

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

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

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

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

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

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

20 "§27-29-1.

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

24 "(1) AFFILIATE. The term shall include an
25 "affiliate" of, or person "affiliated" with, a specific
26 person, and shall mean a person that directly, or indirectly

1 through one or more intermediaries, controls, or is controlled
2 by, or is under common control with, the person specified.

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

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

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

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

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

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

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

25 "b. Fraternal benefit societies; or

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

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

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

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

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

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

25 "§27-29-2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 "§27-29-3.

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

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

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

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

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

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

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

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

11 "(4) For purposes of this section:

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

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

21 "(b) Content of statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~person shall file with the commissioner an acceptable bond or~~
2 ~~other deposit in an amount to be determined by the~~
3 ~~commissioner.~~

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

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

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

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

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

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

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

24 "(2) The effectuation, or any attempt to effectuate,
25 an acquisition of control of, or merger with, a domestic
26 insurer unless the commissioner has given his or her approval
27 thereto.

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

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

15 "~~§27-29-4.~~

16 "~~(a) Registration.~~

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

25 "a. Subdivision (1) of subsection (a) of Section
26 27-29-5, and subsections (b) and (d) of Section 27-29-5.

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

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

20 "(b) Information and form required. Every insurer
21 subject to registration shall file a registration statement on
22 a form provided by the commissioner and in a format prescribed
23 by the National Association of Insurance Commissioners, which
24 shall contain the following current information about:

25 "(1) The capital structure, general financial
26 condition, ownership, and management of the insurer and any
27 person controlling the insurer.

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

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

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

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

11 "c. Transactions not in the ordinary course of
12 business~~7.~~

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

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

20 "f. Reinsurance agreements~~7.~~

21 "g. Dividends and other distributions to
22 shareholders~~7.~~~~and.~~

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

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

1 "(5) If requested by the commissioner, the insurer
2 shall include financial statements of or within an insurance
3 holding company system, including all affiliates. Financial
4 statements may include, but are not limited to, annual audited
5 financial statements filed with the U.S. Securities and
6 Exchange Commission pursuant to the Securities Act of 1933, as
7 amended, or the Securities Exchange Act of 1934, as amended.
8 An insurer required to file financial statements pursuant to
9 this subdivision may satisfy the request by providing the
10 commissioner with the most recently filed parent corporation
11 financial statements that have been filed with the Securities
12 Exchange Commission.

13 ~~"(5)(6)~~ Other matters concerning transactions
14 between registered insurers and any affiliates as may be
15 included, from time to time, in any registration forms adopted
16 or approved by the commissioner.

17 "(7) Statements that the insurer's board of
18 directors oversees corporate governance and internal controls
19 and that the insurer's officers or senior management have
20 approved, implemented, and continue to maintain and monitor
21 corporate governance and internal control procedures.

22 "(8) Any other information required by the
23 commissioner by rule.

24 "(c) All registration statements shall contain a
25 summary outlining all items in the current registration
26 statement representing changes from the prior registration
27 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.

26 "~~(e)~~(g) Termination of registration. The
27 commissioner shall terminate the registration of any insurer

1 which demonstrated that it no longer is a member of an
2 insurance holding company system.

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

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

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

21 ~~"(i)(k) Disclaimer.~~ Any person may file with the
22 commissioner a disclaimer of affiliation with any authorized
23 insurer or ~~such~~ a disclaimer may be filed by ~~such~~ the insurer
24 or any member of an insurance holding company system. The
25 disclaimer shall fully disclose all material relationships and
26 bases for affiliation between ~~such~~ the person and ~~such~~ the
27 insurer as well as the basis for disclaiming such affiliation.

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

18 "(1) The ultimate controlling person of every
19 insurer subject to registration shall also file an annual
20 enterprise risk report. The report shall, to the best of the
21 ultimate controlling person's knowledge and belief, identify
22 the material risks within the insurance holding company system
23 that could pose enterprise risk to the insurer. The report
24 shall be filed with the lead state commissioner of the
25 insurance holding company system as determined by the
26 procedures within the Financial Analysis Handbook adopted by
27 the National Association of Insurance Commissioners.

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

6 "§27-29-5.

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

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

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

16 "~~(2)~~(3) Charges or fees for services performed shall
17 be reasonable~~7.~~

18 "~~(3)~~(4) Expenses incurred and payment received shall
19 be allocated to the insurer in conformity with customary
20 insurance accounting practices consistently applied~~7.~~

21 "~~(4)~~(5) The books, accounts, and records of each
22 party ~~will~~ to all such transactions shall be so maintained as
23 to clearly and accurately disclose the ~~precise~~ nature and
24 details of the transactions~~7~~ and including such accounting
25 information as is necessary to support the reasonableness of
26 the charges or fees to the respective parties.

1 "~~(5)~~(6) The insurer's surplus as regards
2 policyholders following any dividends or distributions to
3 shareholder affiliates shall be reasonable in relation to the
4 insurer's outstanding liabilities and adequate to its
5 financial needs.

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

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

25 "a.1. With respect to nonlife insurers, the lesser
26 of three percent of the insurer's admitted assets or 25

1 percent of surplus as regards policyholders as of the 31st day
2 of December next preceding~~7.~~

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

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

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

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

22 "~~(3)~~c. Reinsurance agreements or modifications
23 thereto, including:

24 "1. All reinsurance pooling agreements.

25 "2. Agreements in which the reinsurance premium or a
26 change in the insurer's liabilities, or the projected
27 reinsurance premium or a change in the insurer's liabilities

1 in any of the next three years, equals or exceeds five percent
2 of the insurer's surplus as regards policyholders, as of the
3 31st day of December next preceding, including those
4 agreements which may require as consideration the transfer of
5 assets from an insurer to a nonaffiliate, if an agreement or
6 understanding exists between the insurer and nonaffiliate that
7 any portion of ~~such~~ the assets will be transferred to one or
8 more affiliates of the insurer~~;~~.

9 ~~"(4)~~d. All management agreements, service contracts,
10 tax allocation agreements, guarantees and all cost-sharing
11 arrangements;~~and.~~

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

21 "f. Direct or indirect acquisitions or investments
22 in a person that controls the insurer or in an affiliate of
23 the insurer in an amount which, together with its present
24 holdings in such investments, exceeds two and one-half percent
25 of the insurer's surplus to policyholders. Direct or indirect
26 acquisitions or investments in subsidiaries acquired pursuant
27 to Section 27-29-2, or authorized under any other section of

1 this title, or in non-sub subsidiary insurance affiliates that are
2 subject to this chapter, are exempt from this requirement.

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

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

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

19 "(d) The commissioner, in reviewing transactions
20 pursuant to subsection (b), shall consider whether the
21 transactions comply with the standards set forth in subsection
22 (a) and whether they may adversely affect the interests of
23 policyholders.

24 "(e) The commissioner shall be notified within 30
25 days of any investment of the domestic insurer in any one
26 corporation if the total investment in ~~such~~ the corporation by

1 the insurance holding company system exceeds 10 percent of the
2 corporation's voting securities.

3 "(f) ~~Adequacy of surplus.~~ For purposes of this
4 chapter in determining whether an insurer's surplus as regards
5 policyholders is reasonable in relation to the insurer's
6 outstanding liabilities and adequate to meet its financial
7 needs, the following factors, among others, shall be
8 considered:

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

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

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

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

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

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

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

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

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

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

7 "~~(11) The quality of the company's earnings and the~~
8 ~~extent to which the reported earnings include extraordinary~~
9 ~~items.~~

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

11 "(1) a. A domestic insurer shall not pay any
12 extraordinary dividend or make any other extraordinary
13 distribution to its shareholders until 30 days after the
14 commissioner has received notice of the declaration ~~of the~~
15 ~~dividend or distribution~~ thereof and has not disapproved such
16 payment within the period, or until the time the commissioner
17 has approved the payment within the 30-day period.

18 "b. For purposes of this ~~paragraph~~ section, an
19 "extraordinary dividend or distribution" includes any dividend
20 or distribution of cash or other property, whose fair market
21 value together with that of other dividends or distributions
22 made within the preceding 12 months exceeds the ~~greater~~ lesser
23 of the following:

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

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

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

16 "(3) In determining whether a dividend or
17 distribution is extraordinary, an insurer other than a life
18 insurer may carry forward net income from the previous two
19 calendar years that has not already been paid out as
20 dividends. This carryforward shall be computed by taking the
21 net income from the second and third preceding calendar years,
22 not including realized capital gains, less dividends paid in
23 the second and immediate preceding calendar years.

24 ~~"(3)~~(4) Notwithstanding any other provision of law,
25 ~~a domestic~~ an insurer may declare an extraordinary dividend or
26 distribution which is conditional upon the commissioner's
27 approval of the dividend or distribution. ~~Such~~ The declaration

1 ~~does not~~ shall confer ~~any~~ no rights upon shareholders until
2 the commissioner has approved the payment of the dividend or
3 distribution or the commissioner has not disapproved the
4 payment within the 30-day period as provided in subdivision
5 (1).

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

12 "(h) (1) Notwithstanding the control of a domestic
13 insurer by any person, the officers and directors of the
14 insurer shall not thereby be relieved of any obligation or
15 liability to which they would otherwise be subject by law, and
16 the insurer shall be managed so as to assure its separate
17 operating identity consistent with this chapter.

18 "(2) Nothing in this section shall preclude a
19 domestic insurer from having or sharing a common management or
20 cooperative or joint use of personnel, property, or services
21 with one or more other persons under arrangements meeting the
22 standards set forth in subsection (a).

23 "(3) Not less than one-third of the directors of a
24 domestic insurer, and not less than one-third of the members
25 of each committee of the board of directors of any domestic
26 insurer shall be persons who are not officers or employees of
27 the insurer or of any entity controlling, controlled by, or

1 under common control with the insurer and who are not
2 beneficial owners of a controlling interest in the voting
3 stock of the insurer or entity. At least one such person must
4 be included in any quorum for the transaction of business at
5 any meeting of the board of directors or any committee
6 thereof.

7 "(4) The board of directors of a domestic insurer
8 shall establish one or more committees comprised solely of
9 directors who are not officers or employees of the insurer or
10 of any entity controlling, controlled by, or under common
11 control with the insurer and who are not beneficial owners of
12 a controlling interest in the voting stock of the insurer or
13 any such entity. The committee or committees shall have
14 responsibility for nominating candidates for director for
15 election by shareholders or policyholders, evaluating the
16 performance of officers deemed to be principal officers of the
17 insurer and recommending to the board of directors the
18 selection and compensation of the principal officers.

19 "(5) The provisions of subdivisions (3) and (4)
20 shall not apply to a domestic insurer if the person
21 controlling the insurer, such as an insurer, a mutual
22 insurance holding company, or a publicly held corporation, has
23 a board of directors and committees thereof that meet the
24 requirements of subdivisions (3) and (4) with respect to the
25 controlling entity.

26 "(6) An insurer may make application to the
27 commissioner for a waiver from the requirements of this

1 subsection, if the insurer's annual direct written and assumed
2 premium, excluding premiums reinsured with the Federal Crop
3 Insurance Corporation and Federal Flood Program, is less than
4 three hundred million dollars (\$300,000,000). An insurer may
5 also make application to the commissioner for a waiver from
6 the requirements of this subsection based upon unique
7 circumstances. The commissioner may consider various factors
8 including, but not limited to, the type of business entity,
9 volume of business written, availability of qualified board
10 members, or the ownership or organizational structure of the
11 entity.

12 "§27-29-6.

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

1 such affiliates to obtain such information including the
2 enterprise risk to the insurer by the ultimate controlling
3 party, by any entity or combination of entities within the
4 insurance holding company system, or by the insurance holding
5 company system on a consolidated basis.

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

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

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

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

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

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

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

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

9 "§27-29-7.

10 "(a) All information, documents, materials or other
11 information, and copies thereof, in the possession or control
12 of the Department of Insurance that are obtained by or
13 disclosed to the commissioner or any other person in the
14 course of an examination or investigation made pursuant to
15 Section 27-29-6 and all information reported pursuant to
16 subdivisions (12) and (13) of subsection (b) of Section
17 27-29-3, Section 27-29-4, and Section 27-29-5 shall be given
18 confidential treatment by law and privileged, shall not be
19 subject to any open records, freedom of information, sunshine
20 or other public record disclosure laws, shall not be subject
21 to subpoena, shall not be subject to discovery or admissible
22 in evidence in any private civil action, and shall not be made
23 public by the commissioner or any other person, except to
24 insurance departments of other states, without the prior
25 written consent of the insurer to which it pertains unless the
26 commissioner, after giving the insurer and its affiliates who
27 would be affected thereby not less than five days' written

1 notice and opportunity to be heard, determines that the
2 interests of policyholders, shareholders, or the public will
3 be served by the publication thereof, in which event he may
4 publish all, or any part thereof, in such manner as he may
5 deem appropriate.

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

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

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

1 verified in writing the legal authority to maintain
2 confidentiality.

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

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

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

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

1 including procedures and protocols for sharing by the National
2 Association of Insurance Commissioners with other state,
3 federal, or international regulators.

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

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

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

26 "(d) The sharing of information by the commissioner
27 pursuant to this chapter shall not constitute a delegation of

1 regulatory authority or rulemaking, and the commissioner is
2 solely responsible for the administration, execution, and
3 enforcement of this chapter.

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

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

17 "§27-29-10.

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

1 of the penalty would constitute a financial hardship to the
2 insurer.

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

19 "(c) Whenever it appears to the commissioner that
20 any insurer subject to this chapter or any director, officer,
21 employee, or agent thereof has engaged in any transaction or
22 entered into a contract which is subject to Section 27-29-5
23 and which would not have been approved had the approval been
24 requested, the commissioner may order the insurer to cease and
25 desist immediately any further activity under that transaction
26 or contract. After notice and hearing, the commissioner may
27 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 fifty
26 thousand dollars (\$50,000), or both. Any fines imposed shall

1 be paid by the officer, director, or employee in his or her
2 individual capacity.

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

11 "§27-34-54.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 "c. Section 27-27-29; ~~and.~~

6 "d. Section 27-27-50; ~~and.~~

7 "(8) Chapter 32.

8 "(9) Chapter 29."

9 Section 3. Sections 27-29-3.1, 27-29-6.1, and
10 27-29-11.1 are added to the Code of Alabama 1975, to read as
11 follows:

12 §27-29-3.1.

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

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

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

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

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

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

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

24 c. The acquisition of already affiliated persons.

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

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

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

5 (iii) Both of the following do not occur in any
6 market:

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

9 B. The market share increases by more than two
10 percent of the total market.

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

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

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

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

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

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

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

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

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

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

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

22 Insurer A	Insurer B
23 4%	4% or more
24 10%	2% or more
25 15%	1% or more

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

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

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

18 b. There is a significant trend toward increased
19 concentration when the aggregate market share of any grouping
20 of the largest insurers in the market, from the two largest to
21 the eight largest, has increased by seven percent or more of
22 the market over a period of time extending from any base year

1 five to 10 years prior to the acquisition up to the time of
2 the acquisition. Any acquisition or merger covered under
3 subsection (b) involving two or more insurers competing in the
4 same market is prima facie evidence of violation of the
5 competitive standard in subdivision (1) if all of the
6 following occur:

7 1. There is a significant trend toward increased
8 concentration in the market.

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

12 3. Another involved insurer's market is two percent
13 or more.

14 c. For the purposes of this subdivision:

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

17 2. "Market" means the relevant product and
18 geographical markets. In determining the relevant product and
19 geographical markets, the commissioner shall give due
20 consideration to, among other things, the definitions or
21 guidelines, if any, promulgated by the National Association of
22 Insurance Commissioners and to information, if any, submitted
23 by parties to the acquisition. In the absence of sufficient
24 information to the contrary, the relevant product market is
25 assumed to be the direct written insurance premium for a line
26 of business, such line being that used in the annual statement
27 required to be filed by insurers doing business in this state,

1 and the relevant geographical market is assumed to be this
2 state.

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

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

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

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

26 b. The acquisition will substantially increase the
27 availability of insurance, and the public benefits of the

1 increase exceed the public benefits which would arise from not
2 lessening competition.

3 (e) (1)a. If an acquisition violates the standards of
4 this section, the commissioner may enter an order doing either
5 of the following:

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

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

11 b. The order shall not be entered unless all of the
12 following occur:

13 1. There is a hearing.

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

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

20 c. Every order shall be accompanied by a written
21 decision of the commissioner setting forth findings of fact
22 and conclusions of law.

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

25 (2) Any person who violates a cease and desist order
26 of the commissioner under subdivision (1) while the order is

1 in effect, after notice and hearing and upon order of the
2 commissioner, is subject to one or more of the following:

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

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

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

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

14 §27-29-6.1.

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

24 (1) Initiating the establishment of a supervisory
25 college.

26 (2) Clarifying the membership and participation of
27 other supervisors in the supervisory college.

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

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

7 (5) Establishing a crisis management plan.

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

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

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

7 §27-29-11.1.

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

23 (b) No distribution shall be recoverable if the
24 parent or affiliate shows that when paid the distribution was
25 lawful and reasonable, and that the insurer did not know and
26 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 or
4 holding company or a person who otherwise controlled the
5 insurer or affiliate at the time the distributions were paid
6 shall be liable up to the amount of distributions or payments
7 under 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 or 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
25 parent corporation or holding company or person who otherwise
26 controlled it.

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

9 Section 5. This act shall become effective on the
10 first day of January next following its passage and approval
11 by the Governor, or its otherwise becoming law.