

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 253**

(By Senators Minard and Jenkins)

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[Originating in the Committee on Banking and Insurance;  
reported February 16, 2011.]

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A BILL to amend and reenact §33-27-2, §33-27-2a, §33-27-3, §33-27-4, §33-27-5, §33-27-6, §33-27-7, §33-27-9, §33-27-11 and §33-27-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §33-27-3a and §33-27-6a, all relating to insurance holding company systems; defining terms; excluding certain investments from determination of adequacy of surplus; requiring notice and other information with regard to divestiture or acquisition of a controlling interest; changing public hearing requirements; providing standards for review of acquisition request by commissioner; establishing process for

consolidated hearings; providing standards and procedures for certain acquisitions not otherwise covered; providing requirements for insurers; expanding examinations and types of information that may be demanded and reviewed by the commissioner, including compelling production; providing for management of domestic insurers subject to registration; providing for establishment of supervisory colleges; providing additional confidentiality measures; providing for payments of costs, expenses and mileage; providing for fines, orders and penalties; and authorizing emergency rules.

*Be it enacted by the Legislature of West Virginia:*

That §33-27-2, §33-27-2a, §33-27-3, §33-27-4, §33-27-5, §33-27-6, §33-27-7, §33-27-9, §33-27-11 and §33-27-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §33-27-3a and §33-27-6a, all to read as follows:

**ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.**

**§33-27-2. Definitions.**

- 1 As used in this article:
- 2 (a) An “affiliate” of or person “affiliated” with a specific
- 3 person is a person that, directly or indirectly through one or

4 more intermediaries, controls or is controlled by or is under  
5 common control with the person specified.

6 (b) “Commissioner” means the West Virginia Insurance  
7 Commissioner, his or her deputies or the ~~insurance depart-~~  
8 ~~ment~~ West Virginia offices of the Insurance Commissioner,  
9 as appropriate.

10 (c) “Control” (including the terms “controlling”, “con-  
11 trolled by” and “under common control with”) means the  
12 possession, direct or indirect, of the power to direct or cause  
13 the direction of the management and policies of a person,  
14 whether through the ownership of voting securities, by  
15 contract other than a commercial contract for goods or  
16 nonmanagement services or otherwise, unless the power is  
17 the result of an official position with or corporate office held  
18 by the person. Control shall be presumed to exist if any  
19 person, directly or indirectly, owns, controls, holds with the  
20 power to vote or holds proxies representing ten percent or  
21 more of the voting securities of any other person. ~~or controls~~  
22 ~~or appoints a majority of the board of directors, voting~~  
23 ~~members or similar governing body of any other person.~~ This  
24 presumption may be rebutted by a showing made in the

25 manner provided by subsection (h) (k), section four of this  
26 article that control does not exist in fact. The commissioner  
27 may determine after furnishing all persons in interest notice  
28 and opportunity to be heard and making specific findings of  
29 fact to support the determination that control exists in fact  
30 notwithstanding the absence of a presumption to that effect.

31 ~~(d) "Depository institution" means a bank or savings~~  
32 ~~association as those terms are defined in section three of the~~  
33 ~~federal deposit insurance act. The term "depository institu-~~  
34 ~~tion" does not include an insurance company.~~

35 (d) "Enterprise risk" means any activity, circumstance,  
36 event or series of events involving one or more affiliates of an  
37 insurer that, if not remedied promptly, is likely to have a  
38 material adverse effect upon the financial condition or  
39 liquidity of the insurer or its insurance holding company  
40 system as a whole, including, but not limited to, anything  
41 that would cause the insurer's risk-based capital to fall into  
42 company action level, as set forth in article forty of this  
43 chapter, or would cause the insurer to be in hazardous  
44 financial condition, as set forth in article thirty-four of this  
45 chapter.

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

48 (f) "Insurer" means any person or persons or corporation,  
49 partnership or company authorized by the laws of this state  
50 to transact the business of insurance in this state, except that  
51 it shall not include agencies, authorities or instrumentalities  
52 of the United States, its possessions and territories, the  
53 commonwealth of Puerto Rico, the District of Columbia or a  
54 state or political subdivision of a state.

55 (g) "Person" means an individual, a corporation, a limited  
56 liability company, a partnership, an association, a  
57 joint-stock company, a trust, an unincorporated organiza-  
58 tion, a depository institution or any ~~other legal~~ similar entity  
59 or any combination of the foregoing acting in concert, but  
60 ~~does not include any securities broker performing no more~~  
61 ~~than the usual and customary broker's function and holding~~  
62 ~~less than twenty percent of the voting securities of an~~  
63 ~~insurance company or of any person which controls an~~  
64 ~~insurance company~~ does not include any joint venture  
65 partnership exclusively engaged in owning, managing,  
66 leasing or developing real or tangible personal property.

67 (h) A “security holder” of a specified person is one who  
68 owns any security of such person, including common stock,  
69 preferred stock, debt obligations and any other security  
70 convertible into or evidencing the right to acquire any of the  
71 foregoing.

72 (i) A “subsidiary” of a specified person is an affiliate  
73 controlled by such person directly or indirectly through one  
74 or more intermediaries.

75 (j) “Voting security” includes any security convertible into  
76 or evidencing a right to acquire a voting security.

**§33-27-2a. Subsidiaries of insurers; authorization; investment  
authority; exemptions; qualifications; cessation of  
controls.**

1 (a) Authorization. – Any domestic insurer, either by itself  
2 or in cooperation with one or more persons, may organize or  
3 acquire one or more subsidiaries engaged in the following  
4 kinds of business with the commissioner’s prior approval:

5 (1) Any kind of insurance business authorized by the  
6 jurisdiction in which it is incorporated;

7 (2) Acting as an insurance agent for its parent or for any of  
8 its parent’s insurer subsidiaries;

9 (3) Investing, reinvesting or trading in securities for its  
10 own account, that of its parent, any subsidiary of its parent,  
11 or any affiliate or subsidiary;

12 (4) Management of any investment company subject to or  
13 registered pursuant to the Investment Company Act of 1940,  
14 as amended, including related sales and services;

15 (5) Acting as a broker-dealer subject to or registered  
16 pursuant to the Securities Exchange Act of 1934, as  
17 amended;

18 (6) Rendering investment advice to governments, govern-  
19 ment agencies, corporations or other organizations or groups;

20 (7) Rendering other services related to the operations of an  
21 insurance business, including, but not limited to, actuarial,  
22 loss prevention, safety engineering, data processing, account-  
23 ing, claims, appraisal and collection services;

24 (8) Ownership and management of assets which the parent  
25 corporation could itself own or manage;

26 (9) Acting as administrative agent for a governmental  
27 instrumentality which is performing an insurance function;

28 (10) Financing of insurance premiums, agents and other  
29 forms of consumer financing;

30 (11) Any other business activity determined by the commis-  
31 sioner to be reasonably ancillary to an insurance business;  
32 and

33 (12) Owning a corporation or corporations engaged or  
34 organized to engage exclusively in one or more of the  
35 businesses specified in this section; ~~and~~

36 ~~(13) Organizing or acquiring one or more subsidiaries that~~  
37 ~~are depository institutions.~~

38 (b) Additional investment authority. — In addition to  
39 investments in common stock, preferred stock, debt obliga-  
40 tions and other securities permitted under any other provi-  
41 sion of this chapter, a domestic insurer may also with the  
42 commissioner's prior approval:

43 (1) Invest in common stock, preferred stock, debt obliga-  
44 tions and other securities of one or more subsidiaries,  
45 amounts which do not exceed the lesser of ten percent of the  
46 insurer's assets or fifty percent of the insurer's surplus as  
47 regards policyholders: *Provided*, That after the investments,  
48 the insurer's surplus as regards policyholders will be reason-  
49 able in relation to the insurer's outstanding liabilities and  
50 adequate to its financial needs. In calculating the amount of  
51 the investments, investments in domestic or foreign insur-



52 ance subsidiaries shall be excluded and there shall be  
53 included:

54 (A) Total net moneys or other consideration expended and  
55 obligations assumed in the acquisition or formation of a  
56 subsidiary, including all organizational expenses and  
57 contributions to capital and surplus of the subsidiary  
58 whether or not represented by the purchase of capital stock  
59 or issuance of other securities; and

60 (B) All amounts expended in acquiring additional common  
61 stock, preferred stock, debt obligations and other securities,  
62 and all contributions to the capital or surplus, of a subsidiary  
63 subsequent to its acquisition or formation;

64 (2) Invest any amount in common stock, preferred stock,  
65 debt obligations and other securities of one or more subsid-  
66 iaries engaged or organized to engage exclusively in the  
67 ownership and management of assets authorized as invest-  
68 ments for the insurer: *Provided*, That each subsidiary agrees  
69 to limit its investments in any asset so that the investments  
70 will not cause the amount of the total investment of the  
71 insurer to exceed any of the investment limitations specified  
72 in subdivision (1) of this subsection or in article eight of this

73 chapter applicable to the insurer. For the purpose of this  
74 subdivision, “the total investment of the insurer” includes:

75 (A) Any direct investment by the insurer in an asset; and

76 (B) The insurer’s proportionate share of any investment in  
77 an asset by any subsidiary of the insurer, which shall be  
78 calculated by multiplying the amount of the subsidiary’s  
79 investment by the percentage of the ownership of the  
80 subsidiary.

81 (3) With the approval of the commissioner, invest any  
82 greater amount in common stock, preferred stock, debt  
83 obligations or other securities of one or more subsidiaries:  
84 *Provided*, That after investment the insurer’s surplus as  
85 regards policyholders will be reasonable in relation to the  
86 insurer’s outstanding liabilities and adequate to its financial  
87 needs.

88 (c) *Exemption from investment restrictions.* — Investments  
89 in common stock, preferred stock, debt obligations or other  
90 securities of subsidiaries made pursuant to subsection (b) of  
91 this section are not subject to any of the otherwise applicable  
92 restrictions or prohibitions contained in this chapter appli-  
93 cable to the investments of insurers.

94 (d) Qualification of investment; when determined. —  
95 Whether any investment made pursuant to subsection (a) ~~or~~  
96 (b) of this section meets the applicable requirements of ~~said~~  
97 ~~subsections~~ that subsection is to be determined before the  
98 investment is made, by calculating the applicable investment  
99 limitations as though the investment had already been made,  
100 taking into account the then outstanding principal balance  
101 on all previous investments in debt obligations, and the value  
102 of all previous investments in equity securities as of the day  
103 they were made, net of any return of capital invested, not  
104 including dividends.

105 (e) Cessation of control. — If an insurer ceases to control a  
106 subsidiary, it shall dispose of any investment in the subsid-  
107 iary made pursuant to this section within three years from  
108 the time of the cessation of control or within any further time  
109 prescribed by the commissioner, unless at any time after the  
110 investment was made, the investment meets the requirements  
111 for investment under any other provision of this chapter and  
112 the insurer has notified the commissioner of compliance with  
113 the provisions of this chapter.

**§33-27-3. Acquisition of control of or merger with domestic  
insurer; filing requirements; statements; alterna-**

**tive filing material; approval by the commissioner;  
hearings; notice; mailings to shareholders; ex-  
penses; exemptions; violations and jurisdiction.**

1 (a) Filing requirements. —

2 ~~(1) Any~~ No person other than the issuer ~~shall not~~ may make  
3 a tender offer for or a request or invitation for tenders of, or  
4 enter into any agreement to exchange securities for, seek to  
5 acquire or acquire, in the open market or otherwise, any  
6 voting security of a domestic insurer if, after the consumma-  
7 tion thereof, the person would, directly or indirectly (or by  
8 conversion or by exercise of any right to acquire) be in  
9 control of the insurer and a person shall not enter into an  
10 agreement to merge with or otherwise to acquire control of  
11 a domestic insurer or any person controlling a domestic  
12 insurer unless at the time ~~any such~~ the offer, request or  
13 invitation is made or ~~any such~~ the agreement is entered into,  
14 or prior to the acquisition of ~~such~~ the securities if no offer or  
15 agreement is involved, the person has filed with the commis-  
16 sioner and has sent to the insurer and, to the extent permit-  
17 ted by applicable federal laws, rules and regulations, the  
18 insurer has sent to its shareholders a statement containing  
19 the information required by this section and the offer,

20 request, invitation, agreement or acquisition has been  
21 approved by the commissioner in the manner hereinafter  
22 prescribed.

23 (2) For purposes of this section, any controlling person of  
24 a domestic insurer seeking to divest its controlling interest  
25 in the domestic insurer, in any manner, shall file with the  
26 commissioner, with a copy to the insurer, confidential notice  
27 of its proposed divestiture at least thirty days prior to the  
28 cessation of control. The commissioner shall determine those  
29 instances in which the party or parties seeking to divest or to  
30 acquire a controlling interest in an insurer will be required  
31 to file for and obtain approval of the transaction. The  
32 information shall remain confidential until the conclusion of  
33 the transaction unless the commissioner, in his or her  
34 discretion, determines that confidential treatment will  
35 interfere with enforcement of this section. If the statement  
36 referred to in subsection (a) of this section is otherwise filed,  
37 this subdivision does not apply.

38 (3) With respect to a transaction subject to this section, the  
39 acquiring person must also file a preacquisition notification  
40 with the commissioner, which shall contain the information  
41 set forth in subdivision (1), subsection (c), section three-a of

42 this article. A failure to file the notification may subject the  
43 person to penalties specified in subdivision (3), subsection  
44 (e), section three-a of this article.

45 ~~(b)~~ (4) For purposes of this section, a “domestic insurer”  
46 includes any ~~other~~ person controlling a domestic insurer  
47 unless the ~~other~~ person as determined by the commissioner  
48 is either directly or through its affiliates primarily engaged  
49 in business other than the business of insurance. For pur-  
50 poses of this section, “person” does not include any securities  
51 broker holding, in the usual and customary broker’s func-  
52 tion, less than twenty percent of the voting securities of an  
53 insurance company or of any person that controls an insur-  
54 ance company.

55 ~~(e)~~ (b) Content of statement. – The statement to be filed  
56 with the commissioner hereunder shall be made under oath  
57 or affirmation and shall contain the following information:

58 (1) The name and address of each person by whom or on  
59 whose behalf the merger or other acquisition of control  
60 referred to in subsection (a) of this section is to be effected  
61 (hereinafter called “acquiring party”); and

62 ~~(2)~~ (A) If such person is an individual, his or her principal  
63 occupation and all offices and positions held during the past

64 five years and any conviction of crimes other than minor  
65 traffic violations during the past ten years; or

66 ~~(3)~~ (B) If ~~such~~ the person is not an individual, a report of  
67 the nature of its business operations during the past five  
68 years or for such lesser period as the person and any prede-  
69 cessors thereof shall have been in existence; an informative  
70 description of the business intended to be done by the person  
71 and the person's subsidiaries; and a list of all individuals  
72 who are or who have been selected to become directors or  
73 executive officers of the person, or who perform or will  
74 perform functions appropriate to those positions. The list  
75 shall include for each individual the information required by  
76 ~~subdivision~~ paragraph (2) of this ~~subsection~~ subdivision;

77 ~~(4)~~ (2) The source, nature and amount of the consideration  
78 used or to be used in effecting the merger or other acqui-  
79 sition of control, a description of any transaction wherein  
80 funds were or are to be obtained for any such purpose,  
81 including any pledge of the insurer's stock or the stock of  
82 any of its subsidiaries or controlling affiliates, and the  
83 identity of persons furnishing such consideration: *Provided,*  
84 That where a source of the consideration is a loan made in  
85 the lender's ordinary course of business, the identity of the

86 lender shall remain confidential if the person filing the  
87 statement so requests;

88 ~~(5)~~ (3) Fully audited financial information as to the earn-  
89 ings and financial condition of each acquiring party for the  
90 preceding five fiscal years of each acquiring party (or for  
91 such lesser period as each acquiring party and any predeces-  
92 sors thereof shall have been in existence) and similar  
93 unaudited information as of a date not earlier than ninety  
94 days prior to the filing of the statement;

95 ~~(6)~~ (4) Any plans or proposals which each acquiring party  
96 may have to liquidate the insurer, to sell its assets or merge  
97 or consolidate it with any person or to make any other  
98 material change in its business or corporate structure or  
99 management;

100 ~~(7)~~ (5) The number of shares of any security referred to in  
101 subsection (a) of this section which each acquiring party  
102 proposes to acquire and the terms of the offer, request,  
103 invitation, agreement or acquisition referred to in ~~said~~ that  
104 subsection and a statement as to the method by which the  
105 fairness of the proposal was arrived at;

106 ~~(8)~~ (6) The amount of each class of any security referred to  
107 in subsection (a) of this section which is beneficially owned



108 or concerning which there is a right to acquire beneficial  
109 ownership by each acquiring party;

110 ~~(9)~~ (7) A full description of any contracts, arrangements or  
111 understanding with respect to any security referred to in  
112 subsection (a) of this section in which any acquiring party is  
113 involved, including, but not limited to, transfer of any of the  
114 securities, joint ventures, loan or option arrangements, puts  
115 or calls, guarantees of loans, guarantees against loss or  
116 guarantees of profits, division of losses or profits or the  
117 giving or withholding of proxies. The description shall  
118 identify the persons with whom such contracts, arrange-  
119 ments or understandings have been entered into;

120 ~~(10)~~ (8) A description of the purchase of any security  
121 referred to in subsection (a) of this section during the twelve  
122 calendar months preceding the filing of the statement by any  
123 acquiring party, including the dates of purchase, names of  
124 the purchasers and consideration paid or agreed to be paid  
125 therefor;

126 ~~(11)~~ (9) A description of any recommendations to purchase  
127 any security referred to in subsection (a) of this section made  
128 during the twelve calendar months preceding the filing of the  
129 statement by an acquiring party or by anyone based upon

130 interviews or at the suggestion of the acquiring party;

131 ~~(12)~~ (10) Copies of all tender offers for, requests or invita-  
132 tions for tenders of, exchange offers for and agreements to  
133 acquire or exchange any securities referred to in subsection  
134 (a) of this section and, if distributed, of additional soliciting  
135 material relating thereto;

136 ~~(13)~~ (11) The terms of any agreement, contract or under-  
137 standing made with any broker-dealer as to solicitation of  
138 securities referred to in subsection (a) of this section for  
139 tender and the amount of any fees, commissions or other  
140 compensation to be paid to broker-dealers with regard  
141 thereto; ~~and~~

142 (12) An agreement by the person required to file the  
143 statement referred to in subsection (a) of this section that it  
144 will provide the annual report, specified in subsection (l),  
145 section four of this article, for so long as control exists;

146 (13) An acknowledgment by the person required to file the  
147 statement referred to in subsection (a) of this section that the  
148 person and all subsidiaries within its control in the insur-  
149 ance holding company system will provide information to the  
150 commissioner upon request as necessary to evaluate enter-  
151 prise risk to the insurer; and

152 (14) Any additional information as the commissioner may  
153 by rule prescribe as necessary or appropriate for the protec-  
154 tion of policyholders and security holders of the insurer or in  
155 the public interest.

156 ~~(d)~~ (c) If the person required to file the statement referred  
157 to in subsection (a) of this section is a partnership, limited  
158 partnership, syndicate or other group, the commissioner may  
159 require that the information called for by subdivisions (1)  
160 through (14), inclusive, ~~of this subsection~~ (b) of this section  
161 shall be given with respect to each partner of the partnership  
162 or limited partnership, each member of the syndicate or  
163 group and each person who controls the partner or member.  
164 If any partner, member or person is a corporation or the  
165 person required to file the statement referred to in subsec-  
166 tion (a) of this section is a corporation, the commissioner  
167 may require that the information called for by subdivisions  
168 (1) through (14), inclusive, subsection (b) of this section shall  
169 be given with respect to the corporation and each person  
170 who is directly or indirectly the beneficial owner of more  
171 than ten percent of the outstanding voting securities of the  
172 corporation.

173     ~~(e)~~ (d) If any material change occurs in the facts set forth in  
174 the statement filed with the commissioner and sent to the  
175 insurer pursuant to this section, an amendment setting forth  
176 such change, together with copies of all documents and other  
177 material relevant to such change, shall be filed with the  
178 commissioner and sent to the insurer within two business  
179 days after the person learns of the change. The insurer shall  
180 send the amendment to its shareholders.

181     ~~(f)~~ (e) *Alternative filing materials.* — If any offer, request,  
182 invitation, agreement or acquisition referred to in subsection  
183 (a) of this section is proposed to be made by means of a  
184 registration statement under the Securities Act of 1933 or in  
185 circumstances requiring the disclosure of similar information  
186 under the Securities Exchange Act of 1934 or under a state  
187 law requiring similar registration or disclosure, the person  
188 required to file the statement referred to in ~~said~~ that subsec-  
189 tion may utilize such documents in furnishing the informa-  
190 tion called for by that statement.

191     ~~(g)~~ (f) (1) *Approval by commissioner; hearings.* — The  
192 commissioner shall approve any merger or other acquisition  
193 of control referred to in subsection (a) of this section unless,

194 after a public hearing thereon, he or she finds that: ~~any of~~  
195 ~~the following conditions exists:~~

196 (1) (A) After the change of control the domestic insurer  
197 referred to in subsection (a) of this section would not be able  
198 to satisfy the requirements for the issuance of a license to  
199 write the line or lines of insurance for which it is presently  
200 authorized;

201 (2) (B) The effect of the merger or other acquisition of  
202 control would be substantially to lessen competition in  
203 insurance in this state or tend to create a monopoly therein.

204 In applying the competitive standard in this subdivision:

205 (i) The informational requirements of subdivision (1),  
206 subsection (c), section three-a of this article and the stan-  
207 dards of subdivision (2), subsection (d), section three-a of  
208 this article apply;

209 (ii) The merger or other acquisition may not be disap-  
210 proved if the commissioner finds that any of the situations  
211 meeting the criteria provided by subdivision (3), subsection  
212 (d), section three-a of this article exist; and

213 (iii) The commissioner may condition the approval of the  
214 merger or other acquisition on the removal of the basis of  
215 disapproval within a specified period of time.

216 ~~(3)~~ (C) The financial condition of any acquiring party is  
217 such as might jeopardize the financial stability of the insurer  
218 or prejudice the interest of its policyholders or the interests  
219 of any remaining security holders who are unaffiliated with  
220 the acquiring party;

221 ~~(4)~~ ~~The terms of the offer, request, invitation, agreement or~~  
222 ~~acquisition referred to in subsection (a) of this section are~~  
223 ~~unfair and unreasonable to the security holders of the~~  
224 ~~insurer;~~

225 ~~(5)~~ (D) The plans or proposals which the acquiring party  
226 has to liquidate the insurer, sell its assets or consolidate or  
227 merge it with any person or to make any other material  
228 change in its business or corporate structure or management  
229 are unfair and unreasonable to policyholders of the insurer  
230 and not in the public interest;

231 ~~(6)~~ (E) The competence, experience and integrity of those  
232 persons who would control the operation of the insurer are  
233 such that it would not be in the interest of policyholders of  
234 the insurer and of the public to permit the merger or other  
235 acquisition of control; or

236 ~~(7)~~ (F) The acquisition is likely to be hazardous or prejudi-  
237 cial to the insurance-buying public.

238 ~~(h)~~ (2) The public hearing required by this section shall be  
239 held within ~~forty~~ thirty days after the statement required by  
240 subsection (a) of this section is filed, and at least ~~fifteen~~  
241 twenty days' notice thereof shall be given by the commis-  
242 sioner to the person filing the statement. Not less than seven  
243 days' notice of the public hearing shall be given by the  
244 person filing the statement to the insurer and to any other  
245 persons as may be designated by the commissioner. ~~The~~  
246 ~~insurer shall give notice of the public hearing to its security~~  
247 ~~holders.~~ The commissioner shall make a determination  
248 ~~within twenty days after the conclusion of the hearing the~~  
249 sixty-day period preceding the effective date of the proposed  
250 transaction. At the hearing, the person filing the statement,  
251 the insurer, any person to whom notice of hearing was sent,  
252 and any other person whose interest may be affected has the  
253 right to present evidence, examine and cross-examine  
254 witnesses, and offer oral and written arguments and in  
255 connection therewith shall be entitled to conduct discovery  
256 proceedings in the same manner as is presently allowed in  
257 the circuit courts of this state: *Provided*, That all discovery  
258 proceedings shall be concluded not later than three days  
259 prior to the commencement of the public hearing.

260 (3) If the proposed acquisition of control will require the  
261 approval of more than one commissioner, a public hearing  
262 pursuant to this subsection may be held on a consolidated  
263 basis upon request of the person filing the statement referred  
264 to in subsection (a) of this section. That person shall file the  
265 statement referred to in subsection (a) of this section with  
266 the National Association of Insurance Commissioners within  
267 five days of making the request for a public hearing. A  
268 commissioner may opt out of a consolidated hearing, and  
269 shall provide notice to the applicant of the opt-out within ten  
270 days of the receipt of the statement referred to in subsection  
271 (a) of this section. A hearing conducted on a consolidated  
272 basis shall be public and shall be held within the United  
273 States before the commissioners of the states in which the  
274 insurers are domiciled. Such commissioners shall hear and  
275 receive evidence. A commissioner may attend the hearing, in  
276 person or by telecommunication.

277 (4) In connection with a change of control of a domestic  
278 insurer, any determination by the commissioner that the  
279 person acquiring control of the insurer is required to main-  
280 tain or restore the capital of the insurer to the level required  
281 by the laws of this state shall be made not later than sixty



282 days after the date of filing the change in control submitted  
283 pursuant to subdivision (1), subsection (a) of this section.

284 (i) (5) The commissioner may retain at the acquiring  
285 person's expense any attorneys, actuaries, accountants and  
286 other experts not otherwise a part of the commissioner's staff  
287 as may be reasonably necessary to assist the commissioner in  
288 reviewing the proposed acquisition of control.

289 ~~(j) To the extent permitted by applicable federal laws, rules~~  
290 ~~and regulations, all statements, amendments or other~~  
291 ~~material filed pursuant to the provisions of this section and~~  
292 ~~all notices of public hearings held pursuant to the provisions~~  
293 ~~of this section shall be mailed by the insurer to its sharehold-~~  
294 ~~ers within five business days after the insurer has received~~  
295 ~~such statements, amendments, other material or notices. The~~  
296 ~~expenses of mailing shall be borne by the person making the~~  
297 ~~filing. As security for the payment of such expenses, such~~  
298 ~~person shall file with the commissioner an acceptable bond~~  
299 ~~or other deposit in an amount to be determined by the~~  
300 ~~commissioner.~~

301 ~~(k)~~ (g) Exemptions. — The provisions of this section shall  
302 not apply to any offer, request, invitation, agreement or  
303 acquisition which the commissioner by order shall exempt

304 therefrom as: (1) Not having been made or entered into for  
305 the purpose of, and not having the effect of, changing or  
306 influencing the control of a domestic insurer; or (2) as  
307 otherwise not comprehended within the purposes of this  
308 section.

309 (†) (h) The following are violations of this section:

310 (1) The failure to file any statement, amendment or other  
311 material required to be filed pursuant to subsection (a) or (b)  
312 of this section; or

313 (2) The effectuation or any attempt to effectuate an  
314 acquisition of control of, divestiture of, or merger with, a  
315 domestic insurer unless the commissioner has given his or  
316 her approval thereto.

317 ~~(m)~~ (i) Jurisdiction; consent to service of process. — The  
318 courts of this state are hereby vested with jurisdiction over  
319 every person not resident, domiciled or authorized to do  
320 business in this state who files a statement with the commis-  
321 sioner under this section and over all actions involving such  
322 person arising out of violations of this section and each such  
323 person shall be deemed to have performed acts equivalent to  
324 and constituting an appointment by the person of the  
325 Secretary of State to be his or her true and lawful attorney

326 upon whom may be served all lawful process in any action,  
 327 suit or proceeding arising out of violations of this section.  
 328 Copies of all such lawful process shall be served on the  
 329 Secretary of State and transmitted by registered or certified  
 330 mail by the Secretary of State to such person at his or her  
 331 last known address.

**§33-27-3a. Acquisitions Involving Insurers Not Otherwise Covered; definitions; scope; pre-acquisition notification and waiting period; competitive standard; orders and penalties.**

1 (a) *Definitions.* — The following definitions apply to only  
 2 this section:

3 (1) “Acquisition” means any agreement, arrangement or  
 4 activity the consummation of which results in a person  
 5 acquiring directly or indirectly the control of another person,  
 6 and includes, but is not limited to, the acquisition of voting  
 7 securities, the acquisition of assets, bulk reinsurance and  
 8 mergers.

9 (2) An “involved insurer” includes an insurer which either  
 10 acquires or is acquired, is affiliated with an acquirer or  
 11 acquired, or is the result of a merger.

12 (b) *Scope.* – (1) Except as exempted in subdivision (2) of  
13 this subsection, this section applies to any acquisition in  
14 which there is a change in control of an insurer authorized  
15 to do business in this state.

16 (2) This section does not apply to the following:

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

29 (B) The acquisition of a person by another person when  
30 both persons are neither directly nor through affiliates  
31 primarily engaged in the business of insurance, if  
32 pre-acquisition notification is filed with the commissioner  
33 pursuant to subdivision (1), subsection (c) of this section

34 thirty days prior to the proposed effective date of the  
35 acquisition. However, such pre-acquisition notification is not  
36 required for exclusion from this section if the acquisition  
37 would otherwise be excluded from this section by any other  
38 paragraph of this subdivision;

39 (C) The acquisition of already affiliated persons;

40 (D) An acquisition if, as an immediate result of the acquisi-  
41 tion:

42 (i) In no market would the combined market share of the  
43 involved insurers exceed five percent of the total market;

44 (ii) There would be no increase in any market share; or

45 (iii) In no market would:

46 (I) The combined market share of the involved insurers  
47 exceed twelve percent of the total market; and

48 (II) The market share increase by more than two percent of  
49 the total market.

50 For the purpose of this paragraph, a “market” means direct  
51 written insurance premium in this state for a line of business  
52 as contained in the annual statement required to be filed by  
53 insurers licensed to do business in this state; and

54 (E) An acquisition for which a pre-acquisition notification  
55 would be required pursuant to this section due solely to the

56 resulting effect on the ocean marine insurance line of  
57 business;

58 (F) An acquisition of an insurer whose domiciliary commis-  
59 sioner affirmatively finds that the insurer is in failing  
60 condition; there is a lack of feasible alternative to improving  
61 such condition; the public benefits of improving the insurers  
62 condition through the acquisition exceed the public benefits  
63 that would arise from not lessening competition; and the  
64 findings are communicated by the domiciliary commissioner  
65 to the commissioner of this state.

66 (c) *Pre-acquisition notification and waiting period.* — An  
67 acquisition covered by subsection (b) of this section may be  
68 subject to an order pursuant to subsection (e) of this section  
69 unless the acquiring person files a pre-acquisition notifica-  
70 tion and the waiting period has expired. The acquired person  
71 may file a pre-acquisition notification. The commissioner  
72 shall give confidential treatment to information submitted  
73 under this subsection in the same manner as provided in  
74 section seven of this article.

75 (1) The pre-acquisition notification shall be in such form  
76 and contain such information as prescribed by the National  
77 Association of Insurance Commissioners relating to those

78 markets that, under paragraph (D), subdivision (2), subsec-  
79 tion (b) of this section, cause the acquisition not to be  
80 exempted from the provisions of this section. The commis-  
81 sioner may require such additional material and information  
82 as deemed necessary to determine whether the proposed  
83 acquisition, if consummated, would violate the competitive  
84 standard of subsection (d) of this section. The required  
85 information may include an opinion of an economist as to the  
86 competitive impact of the acquisition in this state accompa-  
87 nied by a summary of the education and experience of such  
88 person indicating his or her ability to render an informed  
89 opinion.

90 (2) The waiting period required shall begin on the date of  
91 receipt of the commissioner of a pre-acquisition notification  
92 and shall end on the earlier of the thirtieth day after the date  
93 of receipt, or termination of the waiting period by the  
94 commissioner. Prior to the end of the waiting period, the  
95 commissioner on a one-time basis may require the submis-  
96 sion of additional needed information relevant to the  
97 proposed acquisition, in which event the waiting period shall  
98 end on the earlier of the thirtieth day after receipt of the

99 additional information by the commissioner or termination  
100 of the waiting period by the commissioner.

101 (d) Competitive Standard. — (1) The commissioner may  
102 enter an order under subdivision (1), subsection (e) of this  
103 section, with respect to an acquisition if there is substantial  
104 evidence that the effect of the acquisition may be substan-  
105 tially to lessen competition in any line of insurance in this  
106 state or tend to create a monopoly or if the insurer fails to  
107 file adequate information in compliance with subsection (c)  
108 of this section.

109 (2) In determining whether a proposed acquisition would  
110 violate the competitive standard of subdivision (1) of this  
111 subsection, the commissioner shall consider the following:

112 (A) Any acquisition covered under subsection (b) of this  
113 section involving two or more insurers competing in the same  
114 market is *prima facie* evidence of violation of the competitive  
115 standards.

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

118	<b>Insurer A</b>	<b>Insurer B</b>
119	4%	4% or more
120	10%	10%



121 15% 1% or more

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

124	<b>Insurer A</b>	<b>Insurer B</b>
125	5%	5% or more
126	10%	4% or more
127	15%	3% or more
128	19%	1% or more

129 A highly concentrated market is one in which the share of  
130 the four largest insurers is seventy-five percent or more of  
131 the market. Percentages not shown in the tables are interpo-  
132 lated proportionately to the percentages that are shown. If  
133 more than two insurers are involved, exceeding the total of  
134 the two columns in the table is *prima facie* evidence of  
135 violation of the competitive standard in subdivision one of  
136 this subsection. For the purpose of this item, the insurer with  
137 the largest share of the market shall be deemed to be Insurer  
138 A;

139 (B) There is a significant trend toward increased concen-  
140 tration when the aggregate market share of any grouping of  
141 the largest insurers in the market, from the two largest to the  
142 eight largest, has increased by seven percent or more of the

143 market over a period of time extending from any base year  
144 five to ten years prior to the acquisition up to the time of the  
145 acquisition. Any acquisition or merger covered under  
146 subsection (b) of this section involving two (2) or more  
147 insurers competing in the same market is *prima facie*  
148 evidence of violation of the competitive standard in subdivi-  
149 sion (1) of this subsection if:

150 (i) There is a significant trend toward increased concentra-  
151 tion in the market;

152 (ii) One of the insurers involved is one of the insurers in a  
153 grouping of large insurers showing the requisite increase in  
154 the market share; and

155 (iii) Another involved insurer's market is two percent or  
156 more;

157 (C) For the purposes of subdivision (2), subsection (d) of  
158 this section:

159 (i) The term "insurer" includes any company or group of  
160 companies under common management, ownership or  
161 control;

162 (ii) The term "market" means the relevant product and  
163 geographical markets. In determining the relevant product  
164 and geographical markets, the commissioner shall give due

165 consideration to, among other things, the definitions or  
166 guidelines, if any, promulgated by the National Association  
167 of Insurance Commissioners and to information, if any,  
168 submitted by parties to the acquisition. In the absence of  
169 sufficient information to the contrary, the relevant product  
170 market is assumed to be the direct written insurance pre-  
171 mium for a line of business, such line being that used in the  
172 annual statement required to be filed by insurers doing  
173 business in this state, and the relevant geographical market  
174 is assumed to be this state;

175 (iii) The burden of showing *prima facie* evidence of viola-  
176 tion of the competitive standard rests upon the commis-  
177 sioner.

178 (D) Even though an acquisition is not *prima facie* violative  
179 of the competitive standard under paragraphs (A) and (B),  
180 subdivision (2) of this subsection, the commissioner may  
181 establish the requisite anticompetitive effect based upon  
182 other substantial evidence. Even though an acquisition is  
183 *prima facie* violative of the competitive standard under  
184 paragraphs (A) and (B), subdivision (2) of this subsection, a  
185 party may establish the absence of the requisite

186 anticompetitive effect based upon other substantial evidence.  
187 Relevant factors in making a determination under this  
188 paragraph include, but are not limited to, the following:  
189 market shares, volatility of ranking of market leaders,  
190 number of competitors, concentration, trend of concentration  
191 in the industry, and ease of entry and exit into the market.

192 (3) An order may not be entered under subdivision (1).  
193 subsection (e) of this section if:

194 (A) The acquisition will yield substantial economies of  
195 scale or economies in resource utilization that cannot be  
196 feasibly achieved in any other way, and the public benefits  
197 which would arise from such economies exceed the public  
198 benefits which would arise from not lessening competition;  
199 or

200 (B) The acquisition will substantially increase the avail-  
201 ability of insurance, and the public benefits of the increase  
202 exceed the public benefits which would arise from not  
203 lessening competition.

204 (e) *Orders and Penalties*. — (1)(A) If an acquisition violates  
205 the standards of this section, the commissioner may enter an  
206 order:

207 (i) Requiring an involved insurer to cease and desist from  
208 doing business in this state with respect to the line or lines  
209 of insurance involved in the violation; or

210 (ii) Denying the application of an acquired or acquiring  
211 insurer for a license to do business in this state.

212 (B) Such an order shall not be entered unless:

213 (i) There is a hearing;

214 (ii) Notice of the hearing is issued prior to the end of the  
215 waiting period and not less than fifteen days prior to the  
216 hearing; and

217 (iii) The hearing is concluded and the order is issued no  
218 later than sixty days after the date of the filing of the  
219 preacquisition notification with the commissioner.

220 (C) Every order issued pursuant to this subsection shall be  
221 accompanied by a written decision of the commissioner  
222 setting forth findings of fact and conclusions of law.

223 (D) An order pursuant to this subsection does not apply if  
224 the acquisition is not consummated.

225 (2) Any person who violates a cease and desist order of the  
226 commissioner under subdivision one of this subsection and  
227 while the order is in effect may, after notice and hearing and

228 upon order of the commissioner, be subject at the discretion  
229 of the commissioner to one or more of the following:

230 (A) A monetary penalty of not more than \$10,000 for every  
231 day of violation; or

232 (B) Suspension or revocation of the person's license.

233 (3) Any insurer or other person who fails to make any filing  
234 required by this section, and who also fails to demonstrate a  
235 good faith effort to comply with any filing requirement, shall  
236 be subject to a fine of not more than \$50,000.

237 (f) Inapplicable Provisions. Subsections (b) and (c), section  
238 eight of this article and section ten of this article do not  
239 apply to acquisitions covered under subsection (b) of this  
240 section.

**§33-27-4. Registration of insurers ; information and form re-  
quired; summary of changes to registration state-  
ment; materiality; reporting of dividends to share-  
holders; information to insurers; termination of  
registration; consolidated filing; alternative regis-  
tration; exemptions; disclaimer; enterprise risk  
filing; violations.**

1 (a) Registration. — (1) Every insurer which is authorized to  
2 do business in this state and which is a member of an

3 insurance holding company system shall register with the  
4 commissioner, except a foreign insurer subject to disclosure  
5 requirements and standards adopted by statute or regulation  
6 in the jurisdiction of its domicile which are substantially  
7 similar to those contained in this section, subsections (a), (b)  
8 and (c), section five of this article, and either subsection (d),  
9 section five of this article or has a provision such as the  
10 following: "Each registered insurer shall keep current the  
11 information required to be disclosed in its registration  
12 statement by reporting all material changes or additions  
13 within fifteen days after the end of the month in which it  
14 learns of each change or addition."

15 (2) Any insurer which is subject to registration under this  
16 section shall register within ~~sixty days after the effective~~  
17 ~~date of this article or~~ fifteen days after it becomes subject to  
18 registration, ~~whichever is later,~~ and annually thereafter by  
19 June 1 of each year for the previous calendar year, unless the  
20 commissioner for good cause shown extends the time for  
21 registration. ~~and then within such extended time.~~ The  
22 commissioner may require any authorized insurer which is  
23 a member of a holding company system which is not subject  
24 to registration under this section to furnish a copy of the

25 registration statement, the summary described in subsection  
26 (c) of this section, or other information filed by such insur-  
27 ance company with the insurance regulatory authority of  
28 domiciliary jurisdiction.

29 (b) Information and form required. — Every insurer subject  
30 to registration shall file a registration statement with the  
31 commissioner and the national association of insurance  
32 commissioners on a form and in a format prescribed by the  
33 National Association of Insurance Commissioners, which  
34 shall contain the following current information: ~~about:~~

35 (1) The capital structure, general financial condition,  
36 ownership and management of the insurer and any person  
37 controlling the insurer.

38 (2) The identity and relationship of every member of the  
39 insurance holding company system.

40 (3) The following agreements in force, relationships  
41 subsisting, and transactions currently outstanding or which  
42 have occurred during the last calendar year between such  
43 insurer and its affiliates:

44 (A) Loans, other investments, or purchases, sales or  
45 exchanges of securities of the affiliates by the insurer or of  
46 the insurer by its affiliates;



- 47 (B) Purchases, sales or exchanges of assets;
- 48 (C) Transactions not in the ordinary course of business;
- 49 (D) Guarantees or undertakings for the benefit of an  
50 affiliate which result in an actual contingent exposure of the  
51 insurer's assets to liability, other than insurance contracts  
52 entered into in the ordinary course of the insurer's business;
- 53 (E) All management and service contracts and all  
54 cost-sharing arrangements;
- 55 (F) All reinsurance agreements;
- 56 (G) Dividends and other distributions to shareholders; and
- 57 (H) Consolidated tax allocation statements.
- 58 ~~(H)~~ (4) Any pledge of the insurer's stock, including stock of  
59 any subsidiary or controlling affiliate, for a loan made to any  
60 member of the insurance holding company system.
- 61 (5) If requested by the commissioner, the insurer shall  
62 include financial statements of or within an insurance  
63 holding company system, including all affiliates. Financial  
64 statements may include, but are not limited to, annual  
65 audited financial statements filed with the U.S. Securities  
66 and Exchange Commission (SEC) pursuant to the Securities  
67 Act of 1933, as amended, or the Securities Exchange Act of  
68 1934, as amended. An insurer required to file financial

69 statements pursuant to this subdivision may satisfy the  
70 request by providing the commissioner with the most  
71 recently filed parent corporation financial statements that  
72 have been filed with the SEC.

73 (4) (6) Other matters concerning transactions between  
74 registered insurers and any affiliates as may be included  
75 from time to time in any registration forms adopted or  
76 approved by the commissioner.

77 (7) Statements that the insurer's board of directors over-  
78 sees corporate governance and internal controls and that the  
79 insurer's officers or senior management have approved,  
80 implemented, and continue to maintain and monitor corpo-  
81 rate governance and internal control procedures.

82 (8) Any other information required by the commissioner by  
83 rule.

84 (c) Summary of changes to registration statement. — All  
85 registration statements shall contain a summary outlining all  
86 items in the current registration statement representing  
87 changes from the prior registration statement.

88 (d) Materiality. — Information need not be disclosed on the  
89 registration statement filed pursuant to subsection (b) of this  
90 section if such information is not material for the purpose of

91 this section. Unless the commissioner by rule or order  
92 provides otherwise, sales, purchases, exchanges, loans or  
93 extensions of credit, or investments, involving one half of one  
94 percent or less of an insurer's admitted assets as of December  
95 31, next preceding shall not be deemed material for purposes  
96 of this section.

97 ~~(e) Each registered insurer shall keep current the informa-~~  
98 ~~tion required to be disclosed in its registration statement by~~  
99 ~~reporting all material changes or additions on amendment~~  
100 ~~forms provided by the commissioner within fifteen days after~~  
101 ~~the end of the month in which it learns of each such change~~  
102 ~~or addition.~~

103 ~~(f)~~ (e) Reporting of dividends to shareholders. — Subject to  
104 subsection (c), section five of this article, each registered  
105 insurer shall report to the commissioner all dividends and  
106 other distributions to shareholders within fifteen business  
107 days following the declaration thereof.

108 ~~(g)~~ (f) Information to insurers. — Any person within an  
109 insurance holding company system subject to registration  
110 shall be required to provide complete and accurate informa-  
111 tion to an insurer, when such information is reasonably

112 necessary to enable the insurer to comply with the provisions  
113 of this article.

114 ~~(h)~~ (g) Termination of registration. — The commissioner  
115 shall terminate the registration of any insurer which demon-  
116 strates that it no longer is a member of an insurance holding  
117 company system.

118 ~~(i)~~ (h) Consolidated filing. — The commissioner may  
119 require or allow two or more affiliated insurers subject to  
120 registration hereunder to file a consolidated registration  
121 statement or consolidated reports amending their consoli-  
122 dated registration statement or their individual registration  
123 statements.

124 ~~(j)~~ (i) Alternative registration. — The commissioner may  
125 allow an insurer which is authorized to do business in this  
126 state and which is a part of an insurance holding company  
127 system to register on behalf of any affiliated insurer which  
128 is required to register under subsection (a) of this section and  
129 to file all information and material required to be filed under  
130 this section.

131 ~~(k)~~ (j) Exemptions. — The provisions of this section shall  
132 not apply to any insurer, information or transaction if and to

133 the extent that the commissioner by rule or order shall  
134 exempt the same from the provisions of this section.

135 ~~(†)~~ (k) Disclaimer. — Any person may file with the commis-  
136 sioner a disclaimer of affiliation with any authorized insurer  
137 or ~~such~~ a disclaimer may be filed by ~~such~~ the insurer or any  
138 member of an insurance holding company system. The  
139 disclaimer shall fully disclose all material relationships and  
140 bases for affiliation between ~~such~~ the person and ~~such~~ the  
141 insurer as well as the basis for disclaiming such affiliation.  
142 ~~After a disclaimer has been filed, the insurer shall be~~  
143 ~~relieved of any duty to register or report under this section~~  
144 ~~which may arise out of the insurer's relationship with such~~  
145 ~~person unless and until the commissioner disallows such a~~  
146 ~~disclaimer.~~ A disclaimer of affiliation shall be deemed to  
147 have been granted unless the commissioner, within thirty  
148 days following receipt of a complete disclaimer, notifies the  
149 filing party the disclaimer is disallowed. In the event of  
150 disallowance, the disclaiming party may request an adminis-  
151 trative hearing, which shall be granted, and ~~The~~ the commis-  
152 sioner shall disallow such a disclaimer only after furnishing  
153 all parties in interest with notice and opportunity to be  
154 heard and after making specific findings of fact to support

155 such disallowance. The disclaiming party shall be relieved of  
156 its duty to register under this section if approval of the  
157 disclaimer has been granted by the commissioner, or if the  
158 disclaimer is deemed to have been approved.

159 (l) Enterprise Risk Filing. — The ultimate controlling  
160 person of every insurer subject to registration shall also file  
161 an annual enterprise risk report. The report shall, to the best  
162 of the ultimate controlling person's knowledge and belief,  
163 identify the material risks within the insurance holding  
164 company system that could pose enterprise risk to the  
165 insurer. The report shall be filed with the lead state commis-  
166 sioner of the insurance holding company system as deter-  
167 mined by the procedures within the Financial Analysis  
168 Handbook adopted by the National Association of Insurance  
169 Commissioners.

170 (m) Violations. — The failure to file a registration state-  
171 ment or ~~any amendment~~ enterprise risk filing thereto  
172 required by this section within the time specified for such  
173 filing shall be a violation of this section.

**§33-27-5. Standards; adequacy of surplus; dividends and other  
distributions; notice of amendments or modifica-**

**tions; management of domestic insurers subject to registration.**

1 (a) Transactions ~~by registered insurers with their affiliates~~  
2 within an insurance holding company system to which an  
3 insurer subject to registration is a party shall be subject to  
4 the following standards:

5 (1) The terms shall be fair and reasonable;

6 (2) Agreements for cost-sharing services and management  
7 shall include such provisions as required by rule;

8 ~~(2)~~ (3) Charges or fees for services performed shall be  
9 reasonable;

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

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

19 ~~(5)~~ (6) The insurer's surplus as regards policyholders  
20 following any dividends or distributions to shareholder

21 affiliates shall be reasonable in relation to the insurer's  
22 outstanding liabilities and adequate to its financial needs.

23 (b) Adequacy of surplus. — For purposes of this article, in  
24 determining whether an insurer's surplus as regards policy-  
25 holders is reasonable in relation to the insurer's outstanding  
26 liabilities and adequate to meet its financial needs, the  
27 following factors, among others, shall be considered:

28 (1) The size of the insurer as measured by its assets, capital  
29 and surplus, reserves, premium writings, insurance in force  
30 and other appropriate criteria;

31 (2) The extent to which the insurer's business is diversified  
32 among the several lines of insurance;

33 (3) The number and size of risks insured in each line of  
34 business;

35 (4) The extent of the geographical dispersion of the  
36 insurer's insured risks;

37 (5) The nature and extent of the insurer's reinsurance  
38 program;

39 (6) The quality, diversification and liquidity of the in-  
40 surer's investment portfolio;

41 (7) The recent past and projected future trend in the size of  
42 the insurer's surplus as regards policyholders;



43 (8) The surplus as regards policyholders maintained by  
44 other comparable insurers;

45 (9) The adequacy of the insurer's reserves; and

46 (10) The quality and liquidity of investments in affiliates.  
47 The commissioner may treat any such investment as a  
48 disallowed asset for purposes of determining the adequacy of  
49 surplus as regards policyholders whenever in his or her  
50 judgment such investment so warrants.

51 (c) Dividends and other distributions. – (1) ~~An insurer~~  
52 ~~subject to registration under section four of this article shall~~  
53 ~~not~~ No domestic insurer may pay any extraordinary dividend  
54 or make any other extraordinary distribution to its share-  
55 holders until:

56 (1) ~~(A)~~ (A) Thirty days after the commissioner has received  
57 notice of the declaration thereof and has not within ~~such~~ that  
58 period disapproved such payment; or

59 ~~(2) the~~ (B) The commissioner ~~shall have~~ has approved ~~such~~  
60 that payment within ~~such~~ the thirty-day period.

61 ~~(d)~~ (2) For purposes of this section, an extraordinary  
62 dividend or distribution includes any dividend or distribu-  
63 tion of cash or other property, whose fair market value  
64 together with that of other dividends or distributions made

65 within the preceding twelve months exceeds the lesser of:

66 (1) (A) Ten percent of such insurer's surplus as regards  
67 policyholders as of December 31, next preceding; or

68 (2) (B) ~~the~~ The net gain from operations of such insurer, if  
69 such insurer is a life insurer, or the net income, if ~~such~~ the  
70 insurer is not a life insurer, not including realized capital  
71 gains, for the twelve-month period ending December 31, next  
72 preceding, but shall not include pro rata distributions of any  
73 class of the insurer's own securities. In determining whether  
74 a dividend or distribution is extraordinary, an insurer other  
75 than a life insurer may carry forward net income from the  
76 previous two calendar years that has not already been paid  
77 out as dividends. This carry-forward shall be computed by  
78 taking the net income from the second and third preceding  
79 calendar years, not including realized capital gains, less  
80 dividends paid in the second and immediate preceding  
81 calendar years.

82 (e) (3) Notwithstanding any other provision of law, an  
83 insurer may declare an extraordinary dividend or distribu-  
84 tion which is conditional upon the commissioner's approval  
85 ~~thereof~~, and ~~such a~~ the declaration shall confer no rights  
86 upon shareholders until:

87    ~~(1)~~ (A) The commissioner has approved the payment of  
88 such dividend or distribution; or

89    ~~(2)~~ the (B) The commissioner has not disapproved such  
90 payment within the thirty-day period referred to above.

91    ~~(f)~~ (d) The following transactions involving a domestic  
92 insurer and any person in its insurance holding company  
93 system, including amendments or modifications of affiliate  
94 agreements previously filed pursuant to this section, that are  
95 subject to any materiality standards contained in subdivi-  
96 sions (1) through (5) of this subsection, may not be entered  
97 into unless the insurer has notified the commissioner in  
98 writing of its intention to enter into ~~such~~ the transaction at  
99 least thirty days prior thereto, or such shorter period as the  
100 commissioner may permit, and the commissioner has not  
101 disapproved it within ~~such~~ that period: Provided, That  
102 nothing contained in this subsection shall be deemed to  
103 authorize or permit any transactions which, in the case of an  
104 insurer not a member of the same holding company system,  
105 would be otherwise contrary to law. The notice for amend-  
106 ments or modifications shall include the reasons for the  
107 change and the financial impact on the domestic insurer.  
108 Informal notice shall be reported, within thirty days after a

109 termination of a previously filed agreement, to the commis-  
110 sioner for determination of the type of filing required, if any.

111 (1) Sales, purchases, exchanges, loans or extensions of  
112 credit, guarantees or investments provided such transactions  
113 are equal to or exceed:

114 (A) With respect to nonlife insurers, the lesser of ~~one~~ three  
115 percent of the insurer's admitted assets or ~~ten~~ twenty-five  
116 percent of surplus as regards policyholders; and

117 (B) ~~each~~ With respect to life insurers, three percent of the  
118 insurer's admitted assets as of December 31, next preceding;

119 (2) Loans or extensions of credit to any person who is not  
120 an affiliate, where the insurer makes ~~such~~ the loans or  
121 extensions of credit with the agreement or understanding  
122 that the proceeds of such transactions, in whole or in  
123 substantial part, are to be used to make loans or extensions  
124 of credit to, purchase assets of, or to make investments in,  
125 any affiliate of the insurer making such loans or extensions  
126 of credit provided ~~such~~ the transactions are equal to or  
127 exceed:

128 (A) With respect to nonlife insurers, the lesser of ~~one~~ three  
129 percent of the insurer's admitted assets or ~~ten~~ twenty-five

130 percent of surplus as regards policyholders; each as of  
131 December 31, next preceding;

132 (B) With respect to life insurers, three percent of the  
133 insurer's admitted assets as of December 31, next preceding;

134 (3) Reinsurance agreements or modifications thereto,  
135 including:

136 (A) All reinsurance pooling agreements; and

137 (B) Agreements in which the reinsurance premium or a  
138 change in the insurer's liabilities, or the projected reinsur-  
139 ance premium or a change in the insurer's liabilities in any

140 of the next three years, equals or exceeds five percent of the  
141 insurer's surplus as regards policyholders, as of December  
142 31, next preceding, including those agreements which may  
143 require as consideration the transfer of assets from an  
144 insurer to a nonaffiliate, if an agreement or understanding  
145 exists between the insurer and nonaffiliate that any portion  
146 of ~~such the~~ assets will be transferred to one or more affiliates  
147 of the insurer;

148 (4) All management agreements, service contracts, tax  
149 allocation agreements, guarantees and all cost-sharing  
150 arrangements; ~~and~~

151 (5) Guarantees when made by a domestic insurer; Pro-  
152 vided, That a guarantee that is quantifiable as to amount is  
153 not subject to the notice requirements of this subdivision  
154 unless it exceeds the lesser of one half of one percent of the  
155 insurer's admitted assets or ten percent of surplus as regards  
156 policyholders as of December 31, next preceding: Provided,  
157 however, That all guarantees that are not quantifiable as to  
158 amount are subject to the notice requirements of this  
159 subdivision.

160 (6) Direct or indirect acquisitions or investments in a  
161 person that controls the insurer or in an affiliate of the  
162 insurer in an amount which, together with its present  
163 holdings in such investments, exceeds two and one-half  
164 percent of the insurer's surplus to policyholders. Direct or  
165 indirect acquisitions or investments in subsidiaries acquired  
166 pursuant to section two-a of this article or authorized under  
167 any other section of this chapter, or in nonsubsidiary  
168 insurance affiliates that are subject to the provisions of this  
169 article, are exempt from this requirement; and

170 ~~(5)~~ (7) Any material transactions, specified by rule, which  
171 the commissioner determines may adversely affect the  
172 interests of the insurer's policyholders.

173 ~~(g) Nothing contained in subsection (h) herein shall be~~  
174 ~~deemed to authorize or permit any transactions which, in the~~  
175 ~~case of an insurer not a member of the same holding com-~~  
176 ~~pany system, would be otherwise contrary to law.~~

177 ~~(h)~~ (e) A domestic insurer ~~shall~~ may not enter into transac-  
178 tions which are part of a plan or series of like transactions  
179 with persons within the insurance holding company system  
180 if the purpose of those separate transactions is to avoid the  
181 statutory threshold amount and thus avoid the review that  
182 would occur otherwise. If the commissioner determines that  
183 ~~such~~ separate transactions were entered into over any  
184 twelve-month period for ~~such~~ that purpose, he or she may  
185 exercise his or her authority under section nine of this  
186 article.

187 ~~(i)~~ (f) The commissioner, in reviewing transactions pursu-  
188 ant to subsection ~~(f)~~(d) of this section, shall consider whether  
189 the transactions comply with the standards set forth in  
190 subsection (a) of this section and whether they may adversely  
191 affect the interests of policyholders.

192 ~~(j)~~ (g) The commissioner shall be notified within thirty days  
193 of any investment of the domestic insurer in any one corpo-  
194 ration if the total investment in ~~such~~ that corporation by the

195 insurance holding company system exceeds ten percent of  
196 such corporation's voting securities.

197 ~~(k) (h) With regard to domestic insurers, the following~~  
198 ~~requirements apply: Management of domestic insurers~~

199 subject to registration. — (1) Notwithstanding the control of  
200 a domestic insurer by any person, the officers and directors  
201 of the insurer shall not thereby be relieved of any obligation  
202 or liability to which they would otherwise be subject by law,  
203 and the insurer shall be managed so as to assure its separate  
204 operating identity consistent with the provisions of this  
205 ~~chapter~~ article.

206 (2) ~~Nothing herein shall preclude~~ in this section precludes  
207 a domestic insurer from having or sharing a common man-  
208 agement or cooperatively, or jointly using personnel, prop-  
209 erty or services with one or more other persons under  
210 arrangements meeting the standards of subsection (a) of this  
211 section.

212 (3) Not less than one third of the directors of a domestic  
213 insurer, and not less than one third of the members of each  
214 committee of the board of directors of any domestic insurer,  
215 shall be persons who are not officers or employees of the  
216 insurer or of any entity controlling, controlled by, or under



217 common control with the insurer and who are not beneficial  
218 owners of a controlling interest in the voting stock of the  
219 insurer or entity. At least one such person must be included  
220 in any quorum for the transaction of business at any meeting  
221 of the board of directors or any committee thereof.

222 (4) The board of directors of a domestic insurer shall  
223 establish one or more committees comprised solely of  
224 directors who are not officers or employees of the insurer or  
225 of any entity controlling, controlled by, or under common  
226 control with the insurer and who are not beneficial owners  
227 of a controlling interest in the voting stock of the insurer or  
228 any such entity. The committee or committees have responsi-  
229 bility for nominating candidates for director for election by  
230 shareholders or policyholders, evaluating the performance of  
231 officers deemed to be principal officers of the insurer and  
232 recommending to the board of directors the selection and  
233 compensation of the principal officers.

234 (5) The provisions of subdivisions three and four of this  
235 subsection do not apply to a domestic insurer if the person  
236 controlling the insurer, such as an insurer, a mutual insur-  
237 ance holding company, or a publicly held corporation, has a  
238 board of directors and committees thereof that meet the

239 requirements of such subdivisions with respect to such  
240 controlling entity.

241 (6) An insurer may make application to the commissioner  
242 for a waiver from the requirements of this subsection, if the  
243 insurer's annual direct written and assumed premium,  
244 excluding premiums reinsured with the Federal Crop  
245 Insurance Corporation and Federal Flood Program, is less  
246 than \$300 million. An insurer may also make application to  
247 the commissioner for a waiver from the requirements of this  
248 subsection based upon unique circumstances. The commis-  
249 sioner may consider various factors including, but not  
250 limited to, the type of business entity, volume of business  
251 written, availability of qualified board members, or the  
252 ownership or organizational structure of the entity.

**§33-27-6. Examination; power of commissioner; access to books  
and records; use of consultants; expenses; compelling  
production, contempt and payment of fees,  
mileage and actual expenses.**

1 (a) *Power of commissioner.* — Subject to the limitation  
2 contained in this section and in addition to the powers which  
3 the commissioner has under other ~~articles~~ provisions of this  
4 chapter relating to the examination of insurers, the commis-

5 sioner ~~shall also have~~ has the power to examine any insurer  
 6 registered under section four of this article and its affiliates  
 7 to ascertain the financial condition of the insurer, including  
 8 the enterprise risk to the insurer by the ultimate controlling  
 9 party, or by any entity or combination of entities within the  
 10 insurance holding company system, or by the insurance  
 11 holding company system on a consolidated basis.

12 (b) Access to books and records. –

13 (1) The commissioner may order any insurer registered  
 14 under section four of this article to produce such records,  
 15 books or other information papers in the possession of the  
 16 insurer or its affiliates as ~~shall be~~ are reasonably necessary  
 17 to ascertain the financial condition or legality of conduct of  
 18 such insurer. In the event that such insurer fails to comply  
 19 with such order, the commissioner shall have the power to  
 20 examine such affiliates to obtain such information determine  
 21 compliance with this chapter.

22 (b) Purpose and limitation of examination. — The commis-  
 23 sioner shall exercise his power under subsection (a) above  
 24 only if the examination of the insurer under other articles of  
 25 this chapter is inadequate or the interests of the policyhold-  
 26 ers of such insurer may be adversely affected.

27 (2) To determine compliance with this chapter, the com-  
28 missioner may order any insurer registered under section  
29 four of this article to produce information not in the posses-  
30 sion of the insurer if the insurer can obtain access to such  
31 information pursuant to contractual relationships, statutory  
32 obligations, or other method. In the event the insurer cannot  
33 obtain the information requested by the commissioner, the  
34 insurer shall provide the commissioner a detailed explana-  
35 tion of the reason that the insurer cannot obtain the informa-  
36 tion and the identity of the holder of information. Whenever  
37 it appears to the commissioner that the detailed explanation  
38 is without merit, the commissioner may, after notice and  
39 hearing, require the insurer to pay a penalty of up to \$10,000  
40 for each day's delay, may suspend or revoke the insurer's  
41 license, or both impose a penalty and revoke or suspend the  
42 insurer's license.

43 (c) *Use of consultants.* — The commissioner may retain at  
44 the registered insurer's expense such attorneys, actuaries,  
45 accountants and other experts not otherwise a part of the  
46 commissioner's staff as shall be reasonably necessary to  
47 assist in the conduct of the examination under subsection (a)  
48 ~~above~~ of this section. Any person so retained shall be under

49 the direction and control of the commissioner and shall act  
50 in a purely advisory capacity.

51 (d) *Expenses.* — Each registered insurer producing for  
52 examination records, books and papers pursuant to subsec-  
53 tion (a) ~~above shall be~~ of this section is liable for and shall  
54 pay the expense of such examination in accordance with  
55 applicable laws of this state.

56 (e) *Compelling Production.* — In the event the insurer fails  
57 to comply with an order, the commissioner may examine the  
58 affiliates to obtain the information. The commissioner may  
59 also issue subpoenas, to administer oaths, and examine under  
60 oath any person for purposes of determining compliance with  
61 this section. Upon the failure or refusal of any person to obey  
62 a subpoena, the commissioner may petition any circuit court  
63 and, upon proper showing, the court may enter an order  
64 compelling the witness to appear and testify or produce  
65 documentary evidence. Failure to obey the court order is  
66 punishable as contempt of court. Every person is obliged to  
67 attend as a witness at the place specified in the subpoena,  
68 when subpoenaed, anywhere within the state. He or she is  
69 entitled to the same fees and mileage, if claimed, as a witness  
70 in the circuit court of the county in which attendance is

71 required, which fees, mileage, and actual expense, if any,  
72 necessarily incurred in securing the attendance of witnesses,  
73 and their testimony, shall be itemized and charged against,  
74 and be paid by, the company being examined.

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

1 (a) *Power of Commissioner.* — With respect to any insurer  
2 registered under section four of this article, and in accor-  
3 dance with subsection (c) of this section, the commissioner  
4 may participate in a supervisory college for any domestic  
5 insurer that is part of an insurance holding company system  
6 with international operations in order to determine compli-  
7 ance by the insurer with this chapter. The powers of the  
8 commissioner with respect to supervisory colleges include,  
9 but are not limited to, the following:

10 (1) Initiating the establishment of a supervisory college;

11 (2) Clarifying the membership and participation of other  
12 supervisors in the supervisory college;

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

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

19 (5) Establishing a crisis management plan.

20 (b) *Expenses.* – Each registered insurer subject to this  
21 section is liable for and shall pay the reasonable expenses of  
22 the commissioner’s participation in a supervisory college in  
23 accordance with subsection (c) of this section, including  
24 reasonable travel expenses. For purposes of this section, a  
25 supervisory college may be convened as either a temporary  
26 or permanent forum for communication and cooperation  
27 between the regulators charged with the supervision of the  
28 insurer or its affiliates, and the commissioner may establish  
29 a regular assessment to the insurer for the payment of these  
30 expenses.

31 (c) *Supervisory College.* – In order to assess the business  
32 strategy, financial position, legal and regulatory position,  
33 risk exposure, risk management and governance processes,  
34 and as part of the examination of individual insurers in  
35 accordance with section six of this article, the commissioner  
36 may participate in a supervisory college with other regula-  
37 tors charged with supervision of the insurer or its affiliates,

38 including other state, federal and international regulatory  
39 agencies. The commissioner may enter into agreements in  
40 accordance with subsection (c), section seven of this article  
41 providing the basis for cooperation between the commis-  
42 sioner and the other regulatory agencies, and the activities  
43 of the supervisory college: *Provided*, That this section may  
44 not be construed as delegating to the supervisory college the  
45 authority of the commissioner to regulate or supervise the  
46 insurer or its affiliates within its jurisdiction.

**§33-27-7. Confidential treatment.**

1 (a) ~~All information, documents and copies thereof~~ Docu-  
2 ments, materials or other information in the possession or  
3 control of the commissioner that are obtained by or disclosed  
4 to the commissioner or any other person in the course of an  
5 examination or investigation made pursuant to section six of  
6 this article and all information reported pursuant to subdivi-  
7 sion thirteen or fourteen, subsection (b), section three of this  
8 article, sections section four and or section five of this article  
9 ~~shall be given~~ is confidential treatment and are not subject  
10 to subpoena and may not be made public by the commis-  
11 sioner or any other person, except to insurance departments  
12 of other states and to the board of Governors of the federal



13 ~~reserve system or other appropriate federal banking agency~~  
14 ~~in accordance with section nineteen, article two of this~~  
15 ~~chapter, by law and privileged, is exempt from disclosure~~  
16 pursuant to chapter twenty-nine-b of this code, is not open  
17 to public inspection, is not subject to subpoena, is not subject  
18 to discovery or admissible in evidence in any criminal,  
19 private civil or administrative action and is not subject to  
20 production pursuant to court order: *Provided, That the*  
21 commissioner is authorized to use the documents, materials  
22 or other information in the furtherance of any regulatory or  
23 legal action brought as part of the commissioner's official  
24 duties. The commissioner may not otherwise make the  
25 documents, materials or other information public without  
26 the prior written consent of the insurer to which it pertains  
27 unless the commissioner, after giving the insurer and its  
28 affiliates who would be affected thereby notice and opportu-  
29 nity to be heard, determines that the interests of policyhold-  
30 ers, shareholders or the public will be served by the publica-  
31 tion thereof, in which event he or she may publish all or any  
32 part thereof in any manner as he or she may consider  
33 appropriate.

34 (b) Neither the commissioner nor any person who received  
35 documents, materials or other information while acting  
36 under the authority of the commissioner or with whom such  
37 documents, materials or other information are shared  
38 pursuant to this article may be permitted or required to  
39 testify in any private civil action concerning any confidential  
40 documents, materials, or information subject to subsection  
41 (a) of this section.

42 (c) In order to assist in the performance of the commis-  
43 sioner's duties, the commissioner:

44 (1) May share documents, materials or other information,  
45 including the confidential and privileged documents,  
46 materials or information subject to subsection (a) of this  
47 section, with other state, federal and international regulatory  
48 agencies, with the National Association of Insurance Com-  
49 missioners and its affiliates and subsidiaries, and with state,  
50 federal, and international law enforcement authorities,  
51 including members of any supervisory college described in  
52 section six-a of this article, if the recipient agrees in writing  
53 to maintain the confidentiality and privileged status of the  
54 document, material or other information, and has verified in  
55 writing the legal authority to maintain confidentiality;

56 (2) Notwithstanding subdivision (1) of this subsection, the  
57 commissioner may only share confidential and privileged  
58 documents, material, or information reported pursuant to  
59 subsection (l), section four of this article, with commissioners  
60 of states having statutes or regulations substantially similar  
61 to subdivision (1) of this subsection and who have agreed in  
62 writing not to disclose such information;

63 (3) May receive documents, materials or information,  
64 including otherwise confidential and privileged documents,  
65 materials or information from the National Association of  
66 Insurance Commissioners and its affiliates and subsidiaries  
67 and from regulatory and law-enforcement officials of other  
68 foreign or domestic jurisdictions, and shall maintain as  
69 confidential or privileged any document, material or infor-  
70 mation received with notice or the understanding that it is  
71 confidential or privileged under the laws of the jurisdiction  
72 that is the source of the document, material or information;  
73 and

74 (4) Shall enter into written agreements with the National  
75 Association of Insurance Commissioners governing sharing  
76 and use of information provided pursuant to this article  
77 consistent with this subsection that:

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

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

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

97 (D) Require the National Association of Insurance Com-  
98 missioners and its affiliates and subsidiaries to consent to  
99 intervention by an insurer in any judicial or administrative

100 action in which the National Association of Insurance  
101 Commissioners and its affiliates and subsidiaries may be  
102 required to disclose confidential information about the  
103 insurer shared with the National Association of Insurance  
104 Commissioners and its affiliates and subsidiaries pursuant to  
105 this article.

106 (d) The sharing of information by the commissioner  
107 pursuant to this article does not constitute a delegation of  
108 regulatory authority, and the commissioner is solely respon-  
109 sible for the administration, execution and enforcement of  
110 the provisions of this article.

111 (e) No waiver of any applicable privilege or claim of  
112 confidentiality in the documents, materials or information  
113 occurs as a result of disclosure to the commissioner under  
114 this section or as a result of sharing as authorized in subsec-  
115 tion (c) of this section.

116 (f) Documents, materials or other information in the  
117 possession or control of the National Association of Insur-  
118 ance Commissioners pursuant to this article is confidential  
119 by law and privileged, is exempt from disclosure pursuant to  
120 chapter twenty-nine-b of this code, is not subject to sub-

121 poena, and is not subject to discovery or admissible in  
122 evidence in any private civil action.

**§33-27-9. Criminal proceedings; penalties; orders; fines; disap-  
proval of dividends and distributions.**

1 (a) Any insurer failing, without just cause, to file any  
2 registration statement as required by this article shall be  
3 required, after notice and hearing, to pay a penalty of up to  
4 one thousand dollars for each day's delay, to be recovered by  
5 the commissioner. Any penalty so recovered shall be paid  
6 into the General Revenue Fund of this state. The commis-  
7 sioner may reduce the penalty if the insurer demonstrates to  
8 the commissioner that the imposition of the penalty would  
9 constitute a financial hardship to the insurer.

10 (b) Every director or officer of an insurance holding  
11 company system who knowingly violates, participates in, or  
12 assents to, or who knowingly permits any of the officers or  
13 agents of the insurer to engage in transactions or make  
14 investments which have not been properly reported or  
15 submitted pursuant to subsection (a), section four of this  
16 article and subsections (c) and (d), ~~of~~ section five of this  
17 article, or which violate any other provision of this article,  
18 shall pay, in his or her individual capacity, a civil forfeiture

19 of not more than \$5,000 per violation, after notice and  
20 hearing before the commissioner. In determining the amount  
21 of the civil forfeiture, the commissioner shall take into  
22 account the appropriateness of the forfeiture with respect to  
23 the gravity of the violation, the history of previous violations,  
24 and such other matters as justice may require.

25 (c) Whenever it appears to the commissioner that any  
26 insurer subject to this article or any director, officer, em-  
27 ployee or agent thereof has engaged in any transaction or  
28 entered into a contract which is subject to section five of this  
29 article and which would not have been approved had such  
30 approval been requested, the commissioner may order the  
31 insurer to cease and desist immediately any further activity  
32 under that transaction or contract. After notice and hearing  
33 the commissioner may also order the insurer to void any such  
34 contracts and restore the status quo if ~~such~~ the action is in  
35 the best interest of the policyholders, creditors or the public.

36 (d) Whenever it appears to the commissioner that any  
37 person or any director, officer, employee or agent thereof has  
38 committed a willful violation of this article, the commis-  
39 sioner may cause criminal proceedings to be instituted  
40 against such person or the responsible director, officer,

41 employee or agent thereof. Any insurer who willfully violates  
42 this article is guilty of a misdemeanor and, upon conviction  
43 thereof, shall be fined not more than ten thousand dollars.

44 Any individual who willfully violates this article is guilty of  
45 a misdemeanor and, upon conviction thereof, shall be fined  
46 in his or her individual capacity not more than ten thousand  
47 dollars or, if such willful violation involves the deliberate  
48 perpetration of a fraud upon the commissioner, is guilty of a  
49 felony and, upon conviction thereof, shall be imprisoned not  
50 less than one year nor more than three years, or both fined  
51 and imprisoned.

52 (e) Any officer, director or employee of an insurance  
53 holding company system who willfully and knowingly  
54 subscribes to or makes or causes to be made any false  
55 statements or false reports or false filings with the intent to  
56 deceive the commissioner in the performance of his or her  
57 duties under this article, is guilty of a felony and, upon  
58 conviction thereof, shall be fined not more than ten thousand  
59 dollars, or imprisoned not less than one year nor more than  
60 three years, or both fined and imprisoned. Any fines imposed  
61 pursuant to this subsection shall be paid by the officer,  
62 director or employee in his or her individual capacity.



63 (f) Whenever it appears to the commissioner that any  
 64 person has committed a violation of section three of this  
 65 article which prevents the full understanding of the enter-  
 66 prise risk to the insurer by affiliates or by the insurance  
 67 holding company system, the violation may serve as an  
 68 independent basis for disapproving dividends or distribu-  
 69 tions and for placing the insurer under an order of supervi-  
 70 sion in accordance with article thirty-four of this chapter.

**§33-27-11. Revocation, suspension or nonrenewal of insurer's  
 license.**

1 Whenever it appears to the commissioner that any person  
 2 has committed a violation of this article which makes the  
 3 continued operation of an insurer contrary to the interests of  
 4 policyholders or the public, the commissioner may, after  
 5 giving notice and an opportunity to be heard, determine to  
 6 suspend, revoke or refuse to renew such insurer's license or  
 7 authority to do business in this state for such period as he or  
 8 she finds is required for the protection of policyholders or  
 9 the public: Provided, That any such determination shall be  
 10 accompanied by specific findings of fact and conclusions of  
 11 law.

**§33-27-14. Regulatory authority.**

15 The Insurance Commissioner ~~shall promulgate~~ may  
16 propose rules pursuant to for legislative approval in accor-  
17 dance with the provisions of article three, chapter  
18 twenty-nine-a of this code ~~setting forth procedural require-~~  
19 ~~ments~~ and may promulgate emergency rules pursuant to the  
20 provisions of section fifteen, article three, chapter  
21 twenty-nine-a of this code, as are necessary to implement the  
22 provisions of this article. and specifying the reporting forms  
23 ~~required by this article prior to August 1, 1993.~~

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(NOTE: The purpose of this bill is to amend the insurance code to adopt recent changes to the model act adopted by the National Association of Insurance Commissioners with respect to holding companies and systemic risks arising from acquisitions and divestitures of affiliates. The bill defines terms. The bill excludes certain investments from determination of adequacy of surplus. The bill requires notice and other information with regard to divestiture or acquisition of a controlling interest. The bill also changes public hearing requirements. The bill provides standards for review of acquisition request by commissioner and establishes a process for consolidated hearings. The bill additionally sets forth standards and procedures for certain acquisitions not otherwise covered. The bill expands the types of information that may be demanded and reviewed by the commissioner. Further, the bill provides for establishment of supervisory colleges. The bill provides for additional confidentiality measures. The bill also authorizes emergency rules.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§33-27-3A and §33-27-6A are new; therefore, strike-throughs and underscoring have been omitted.)