

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

ENGROSSED

This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction

LLS NO. 14-0751.01 Thomas Morris x4218

SENATE BILL 14-152

SENATE SPONSORSHIP

Jahn,

HOUSE SPONSORSHIP

Melton,

Senate Committees
Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE STANDARDIZATION OF FINANCIAL TRANSACTION**
102 **REQUIREMENTS APPLICABLE TO INSURERS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Section 1 of the bill modifies the requirements applicable to insurance companies' investments in derivative transactions by expanding the definitions of "derivative instrument" and "income generation" and by imposing caps on the percentage of an insurance company's admitted assets that an insurance company may commit to various types of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
2nd Reading Unamended
April 10, 2014

derivative instruments.

Section 2 updates existing law relating to insurance company holding systems by enacting a model act adopted by the national association of insurance commissioners. The model act:

- ! Authorizes the commissioner of insurance to participate in one or more supervisory colleges with other state, federal, and international insurance regulatory agencies for the purpose of reviewing insurance company holding systems' enterprise risk and compliance with the financial transaction requirements in the model act; and
- ! Uses an expansive definition of "control" to require the commissioner's review and approval of a wide variety of financial transactions that affect control over an insurance company or market competitiveness standards.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 10-3-243, **amend** (1)
3 (b) (II) (A), (1) (d), (2) (a), and (2) (e); and **add** (3) as follows:

4 **10-3-243. Derivative transactions - definitions - restrictions -**
5 **rules.** (1) For the purposes of this section, unless the context otherwise
6 requires:

7 (b) (II) (A) "Derivative instrument" includes options, warrants
8 used in a hedging transaction and not attached to another financial
9 instrument, caps, floors, collars, swaps, forwards, ~~and~~ futures, AND ANY
10 OTHER AGREEMENTS, OPTIONS, OR INVESTMENTS THAT ARE
11 SUBSTANTIALLY SIMILAR AND ANY AGREEMENTS, OPTIONS, AND
12 INSTRUMENTS PERMITTED UNDER RULES ADOPTED BY THE COMMISSIONER.

13 (d) ~~"Income-generation transaction"~~ "INCOME GENERATION"
14 means a derivative transaction INVOLVING THE WRITING OF COVERED CALL
15 OPTIONS, COVERED PUT OPTIONS, COVERED CAPS, OR COVERED FLOORS
16 that is intended to generate income or enhance return.

17 (2) A domestic insurer may, directly or indirectly through an

1 investment subsidiary, engage in derivative transactions under this section
2 by:

3 (a) Using derivative instruments to engage in hedging transactions
4 IF, AS A RESULT OF AND AFTER GIVING EFFECT TO THE TRANSACTIONS:

5 (I) THE AGGREGATE STATEMENT VALUE OF OPTIONS, CAPS,
6 FLOORS, AND WARRANTS NOT ATTACHED TO ANOTHER FINANCIAL
7 INSTRUMENT PURCHASED AND USED IN HEDGING TRANSACTIONS DOES NOT
8 EXCEED SEVEN AND ONE-HALF PERCENT OF ITS ADMITTED ASSETS;

9 (II) THE AGGREGATE STATEMENT VALUE OF OPTIONS, CAPS, AND
10 FLOORS WRITTEN IN HEDGING TRANSACTIONS DOES NOT EXCEED THREE
11 PERCENT OF ITS ADMITTED ASSETS; AND

12 (III) THE AGGREGATE POTENTIAL EXPOSURE OF COLLARS, SWAPS,
13 FORWARDS, AND FUTURES USED IN HEDGING TRANSACTIONS DOES NOT
14 EXCEED SIX AND ONE-HALF PERCENT OF ITS ADMITTED ASSETS.

15 (e) Any investments in derivative investments shall be made in
16 accordance with a written derivative use plan approved by the company's
17 board of directors. The derivative use plan ~~shall~~ MUST be available for
18 review by the commissioner upon request. AN INSURER MUST BE ABLE TO
19 DEMONSTRATE TO THE COMMISSIONER THE INTENDED HEDGING
20 CHARACTERISTICS AND ONGOING EFFECTIVENESS OF THE DERIVATIVE
21 TRANSACTIONS THROUGH CASH FLOW TESTING OR OTHER APPROPRIATE
22 ANALYSIS.

23 (3) THE COMMISSION MAY PROMULGATE RULES AS NECESSARY TO
24 IMPLEMENT THIS SECTION.

25 **SECTION 2.** In Colorado Revised Statutes, **repeal and reenact,**
26 **with amendments,** part 8 of article 3 of title 10 as follows:

27 PART 8

1 INSURANCE HOLDING COMPANY SYSTEMS

2 **10-3-801. Definitions.** AS USED IN THIS PART 8, UNLESS THE
3 CONTEXT OTHERWISE REQUIRES:

4 (1) AN "AFFILIATE" OF, OR PERSON "AFFILIATED" WITH, A SPECIFIC
5 PERSON IS A PERSON THAT DIRECTLY, OR INDIRECTLY THROUGH ONE OR
6 MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY, OR IS UNDER
7 COMMON CONTROL WITH, THE PERSON SPECIFIED.

8 (2) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE,
9 THE COMMISSIONER'S DEPUTIES, OR THE DIVISION OF INSURANCE, AS
10 APPROPRIATE.

11 (3) "CONTROL", INCLUDING THE TERMS "CONTROLLING",
12 "CONTROLLED BY", AND "UNDER COMMON CONTROL WITH", MEANS THE
13 POSSESSION, DIRECT OR INDIRECT, OF THE POWER TO DIRECT OR CAUSE THE
14 DIRECTION OF THE MANAGEMENT AND POLICIES OF A PERSON, WHETHER
15 THROUGH THE OWNERSHIP OF VOTING SECURITIES, BY CONTRACT OTHER
16 THAN A COMMERCIAL CONTRACT FOR GOODS OR NONMANAGEMENT
17 SERVICES, OR OTHERWISE, UNLESS THE POWER IS THE RESULT OF AN
18 OFFICIAL POSITION WITH OR CORPORATE OFFICE HELD BY THE PERSON.
19 CONTROL IS PRESUMED TO EXIST IF ANY PERSON, DIRECTLY OR
20 INDIRECTLY, OWNS, CONTROLS, HOLDS WITH THE POWER TO VOTE, OR
21 HOLDS PROXIES REPRESENTING, TEN PERCENT OR MORE OF THE VOTING
22 SECURITIES OF ANY OTHER PERSON. A PERSON MAY REBUT THIS
23 PRESUMPTION BY A SHOWING MADE IN THE MANNER PROVIDED BY SECTION
24 10-3-804 (9) THAT CONTROL DOES NOT EXIST IN FACT. THE COMMISSIONER
25 MAY DETERMINE, AFTER FURNISHING ALL PERSONS IN INTEREST NOTICE
26 AND OPPORTUNITY TO BE HEARD AND MAKING SPECIFIC FINDINGS OF FACT
27 TO SUPPORT THE DETERMINATION, THAT CONTROL EXISTS IN FACT,

1 NOTWITHSTANDING THE ABSENCE OF A PRESUMPTION TO THAT EFFECT.

2 (4) "ENTERPRISE RISK" MEANS ANY ACTIVITY, CIRCUMSTANCE,
3 EVENT, OR SERIES OF EVENTS INVOLVING ONE OR MORE AFFILIATES OF AN
4 INSURER THAT, IF NOT REMEDIED PROMPTLY, IS LIKELY TO HAVE A
5 MATERIAL ADVERSE EFFECT UPON THE FINANCIAL CONDITION OR
6 LIQUIDITY OF THE INSURER OR ITS INSURANCE HOLDING COMPANY SYSTEM
7 AS A WHOLE, INCLUDING ANYTHING THAT WOULD CAUSE THE INSURER'S
8 RISK-BASED CAPITAL TO FALL INTO COMPANY ACTION LEVEL AS SET FORTH
9 IN RULES PROMULGATED BY THE COMMISSIONER OR WOULD CAUSE THE
10 INSURER TO BE IN HAZARDOUS FINANCIAL CONDITION AS SET FORTH IN
11 RULES PROMULGATED BY THE COMMISSIONER.

12 (5) "INSURANCE HOLDING COMPANY SYSTEM" MEANS TWO OR
13 MORE AFFILIATED PERSONS, ONE OR MORE OF WHICH IS AN INSURER.

14 (6) "INSURER" HAS THE MEANING SET FORTH IN SECTION 10-3-502
15 (12); EXCEPT THAT "INSURER" INCLUDES FRATERNAL BENEFIT SOCIETIES
16 AND HEALTH MAINTENANCE ORGANIZATIONS AND DOES NOT INCLUDE
17 AGENCIES, AUTHORITIES, OR INSTRUMENTALITIES OF THE UNITED STATES,
18 ITS POSSESSIONS AND TERRITORIES, THE COMMONWEALTH OF PUERTO
19 RICO, THE DISTRICT OF COLUMBIA, OR A STATE OR POLITICAL SUBDIVISION
20 OF A STATE.

21 (7) "NAIC" OR "NATIONAL ASSOCIATION OF INSURANCE
22 COMMISSIONERS" MEANS THE ORGANIZATION OF INSURANCE REGULATORS
23 FROM THE FIFTY STATES, THE DISTRICT OF COLUMBIA, AND THE FOUR
24 UNITED STATES TERRITORIES.

25 (8) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, LIMITED
26 LIABILITY COMPANY, PARTNERSHIP, ASSOCIATION, JOINT STOCK COMPANY,
27 TRUST, UNINCORPORATED ORGANIZATION, ANY SIMILAR ENTITY, OR ANY

1 COMBINATION OF THE FOREGOING ACTING IN CONCERT BUT DOES NOT
2 INCLUDE A JOINT VENTURE PARTNERSHIP EXCLUSIVELY ENGAGED IN
3 OWNING, MANAGING, LEASING, OR DEVELOPING REAL OR TANGIBLE
4 PERSONAL PROPERTY.

5 (9) "SECURITY HOLDER" OF A SPECIFIED PERSON MEANS ONE WHO
6 OWNS ANY SECURITY OF THE PERSON, INCLUDING COMMON STOCK,
7 PREFERRED STOCK, DEBT OBLIGATIONS, AND ANY OTHER SECURITY
8 CONVERTIBLE INTO OR EVIDENCING THE RIGHT TO ACQUIRE ANY OF THE
9 FOREGOING.

10 (10) "SUBSIDIARY" OF A SPECIFIED PERSON MEANS AN AFFILIATE
11 CONTROLLED BY THE PERSON, EITHER DIRECTLY OR INDIRECTLY THROUGH
12 ONE OR MORE INTERMEDIARIES.

13 (11) "VOTING SECURITY" MEANS A SECURITY CONVERTIBLE INTO
14 OR EVIDENCING A RIGHT TO ACQUIRE A VOTING SECURITY.

15 (12) "WHOLLY-OWNED SUBSIDIARY" MEANS A SUBSIDIARY OWNED
16 BY AN INSURER THAT OWNS SHARES OF THE ISSUED AND OUTSTANDING
17 VOTING STOCK OF THE SUBSIDIARY HAVING AT LEAST NINETY-FIVE
18 PERCENT OF THE TOTAL VOTING POWER OF THE STOCK FOR THE ELECTION
19 OF DIRECTORS.

20 **10-3-802. Subsidiaries of insurers.** (1) A DOMESTIC INSURER,
21 EITHER BY ITSELF OR IN COOPERATION WITH ONE OR MORE PERSONS, MAY
22 ORGANIZE OR ACQUIRE ONE OR MORE SUBSIDIARIES ENGAGED IN THE
23 FOLLOWING KINDS OF BUSINESS:

24 (a) ANY KIND OF INSURANCE BUSINESS AUTHORIZED BY THE
25 JURISDICTION IN WHICH IT IS INCORPORATED;

26 (b) ACTING AS AN INSURANCE BROKER OR INSURANCE AGENT FOR
27 ITS PARENT OR FOR ANY OF ITS PARENT'S INSURER SUBSIDIARIES;

1 (c) INVESTING, REINVESTING, OR TRADING IN SECURITIES FOR ITS
2 OWN ACCOUNT OR THAT OF ITS PARENT, A SUBSIDIARY OF ITS PARENT, OR
3 AN AFFILIATE OR SUBSIDIARY;

4 (d) MANAGEMENT OF AN INVESTMENT COMPANY SUBJECT TO OR
5 REGISTERED PURSUANT TO THE FEDERAL "INVESTMENT COMPANY ACT OF
6 1940", 15 U.S.C. SEC. 80a-1 ET SEQ., AS AMENDED, INCLUDING RELATED
7 SALES AND SERVICES;

8 (e) ACTING AS A BROKER-DEALER SUBJECT TO OR REGISTERED
9 PURSUANT TO THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15
10 U.S.C. SEC. 78a ET SEQ., AS AMENDED;

11 (f) RENDERING INVESTMENT ADVICE TO GOVERNMENTS,
12 GOVERNMENT AGENCIES, CORPORATIONS, OR OTHER ORGANIZATIONS OR
13 GROUPS;

14 (g) RENDERING OTHER SERVICES RELATED TO THE OPERATIONS OF
15 AN INSURANCE BUSINESS, SUCH AS ACTUARIAL, LOSS PREVENTION, SAFETY
16 ENGINEERING, DATA PROCESSING, ACCOUNTING, CLAIMS, APPRAISAL, AND
17 COLLECTION SERVICES;

18 (h) OWNERSHIP AND MANAGEMENT OF ASSETS THAT THE PARENT
19 CORPORATION COULD ITSELF OWN OR MANAGE;

20 (i) ACTING AS ADMINISTRATIVE AGENT FOR A GOVERNMENTAL
21 INSTRUMENTALITY THAT IS PERFORMING AN INSURANCE FUNCTION;

22 (j) FINANCING OF INSURANCE PREMIUMS, AGENTS, AND OTHER
23 FORMS OF CONSUMER FINANCING;

24 (k) ANY OTHER BUSINESS ACTIVITY DETERMINED BY THE
25 COMMISSIONER TO BE REASONABLY ANCILLARY TO AN INSURANCE
26 BUSINESS;

27 (l) OWNING A CORPORATION OR CORPORATIONS ENGAGED OR

1 ORGANIZED TO ENGAGE EXCLUSIVELY IN ONE OR MORE OF THE BUSINESSES
2 SPECIFIED IN THIS SECTION; AND

3 (m) ANY OTHER KIND OF BUSINESS THAT, IN THE OPINION OF THE
4 COMMISSIONER, WOULD BE IN THE BEST INTEREST OF THE INSURER AND
5 WOULD NOT BE DETRIMENTAL TO THE POLICYHOLDERS OR THE PUBLIC.

6 (2) IN ADDITION TO INVESTMENTS IN COMMON STOCK, PREFERRED
7 STOCK, DEBT OBLIGATIONS, AND OTHER SECURITIES PERMITTED UNDER
8 OTHER PROVISIONS OF THIS TITLE, A DOMESTIC INSURER MAY ALSO:

9 (a) INVEST, IN COMMON STOCK, PREFERRED STOCK, DEBT
10 OBLIGATIONS, AND OTHER SECURITIES OF ONE OR MORE SUBSIDIARIES,
11 AMOUNTS THAT DO NOT EXCEED THE LESSER OF TEN PERCENT OF THE
12 INSURER'S ASSETS OR FIFTY PERCENT OF THE INSURER'S SURPLUS AS
13 REGARDS POLICYHOLDERS IF, AFTER SUCH INVESTMENTS, THE INSURER'S
14 SURPLUS AS REGARDS POLICYHOLDERS, WILL BE REASONABLE IN RELATION
15 TO THE INSURER'S OUTSTANDING LIABILITIES AND ADEQUATE TO MEET ITS
16 FINANCIAL NEEDS. IN CALCULATING THE AMOUNT OF THE INVESTMENTS,
17 THE COMMISSIONER SHALL EXCLUDE INVESTMENTS IN DOMESTIC OR
18 FOREIGN INSURANCE SUBSIDIARIES AND SHALL INCLUDE:

19 (I) TOTAL NET MONEYS OR OTHER CONSIDERATION EXPENDED AND
20 OBLIGATIONS ASSUMED IN THE ACQUISITION OR FORMATION OF A
21 SUBSIDIARY, INCLUDING ALL ORGANIZATIONAL EXPENSES AND
22 CONTRIBUTIONS TO CAPITAL AND SURPLUS OF THE SUBSIDIARY WHETHER
23 OR NOT REPRESENTED BY THE PURCHASE OF CAPITAL STOCK OR ISSUANCE
24 OF OTHER SECURITIES;

25 (II) ALL AMOUNTS EXPENDED IN ACQUIRING ADDITIONAL COMMON
26 STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, AND OTHER SECURITIES;
27 AND

1 (III) ALL CONTRIBUTIONS TO THE CAPITAL OR SURPLUS OF A
2 SUBSIDIARY AFTER ITS ACQUISITION OR FORMATION;

3 (b) INVEST ANY AMOUNT IN COMMON STOCK, PREFERRED STOCK,
4 DEBT OBLIGATIONS, AND OTHER SECURITIES OF ONE OR MORE
5 SUBSIDIARIES ENGAGED OR ORGANIZED TO ENGAGE EXCLUSIVELY IN THE
6 OWNERSHIP AND MANAGEMENT OF ASSETS AUTHORIZED AS INVESTMENTS
7 FOR THE INSURER IF EACH SUBSIDIARY AGREES TO LIMIT ITS INVESTMENTS
8 IN ANY ASSET SO THAT THE INVESTMENTS WILL NOT CAUSE THE AMOUNT
9 OF THE TOTAL INVESTMENT OF THE INSURER TO EXCEED ANY OF THE
10 INVESTMENT LIMITATIONS SPECIFIED IN PARAGRAPH (a) OF THIS
11 SUBSECTION (2) OR IN SECTIONS 10-3-213 TO 10-3-242 APPLICABLE TO THE
12 INSURER. FOR THE PURPOSE OF THIS PARAGRAPH (b), "THE TOTAL
13 INVESTMENT OF THE INSURER" INCLUDES:

- 14 (I) ANY DIRECT INVESTMENT BY THE INSURER IN AN ASSET; AND
- 15 (II) THE INSURER'S PROPORTIONATE SHARE OF ANY INVESTMENT
16 IN AN ASSET BY A SUBSIDIARY OF THE INSURER, WHICH SHALL BE
17 CALCULATED BY MULTIPLYING THE AMOUNT OF THE SUBSIDIARY'S
18 INVESTMENT BY THE PERCENTAGE OF THE OWNERSHIP OF THE SUBSIDIARY;
19 AND

20 (c) WITH THE APPROVAL OF THE COMMISSIONER, INVEST ANY
21 GREATER AMOUNT IN COMMON STOCK, PREFERRED STOCK, DEBT
22 OBLIGATIONS, OR OTHER SECURITIES OF ONE OR MORE SUBSIDIARIES IF,
23 AFTER THE INVESTMENT, THE INSURER'S SURPLUS AS REGARDS
24 POLICYHOLDERS WILL BE REASONABLE IN RELATION TO THE INSURER'S
25 OUTSTANDING LIABILITIES AND ADEQUATE TO ITS FINANCIAL NEEDS.

26 (3) INVESTMENTS IN COMMON STOCK, PREFERRED STOCK, DEBT
27 OBLIGATIONS, OR OTHER SECURITIES OF SUBSIDIARIES MADE IN

1 ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION ARE ADMITTED
2 ASSETS OF A DOMESTIC INSURER, AND SUCH INVESTMENTS ARE NOT
3 SUBJECT TO ANY OF THE OTHERWISE-APPLICABLE RESTRICTIONS OR
4 LIMITATIONS APPLICABLE TO THE INVESTMENTS OF INSURERS.

5 (4) ANY PROVISION OF THIS TITLE TO THE CONTRARY
6 NOTWITHSTANDING, ANY INVESTMENT BY A DOMESTIC INSURER IN THE
7 COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, OR OTHER
8 SECURITIES OF ONE OR MORE INSURANCE COMPANIES THAT ARE
9 WHOLLY-OWNED SUBSIDIARIES OF THE DOMESTIC INSURER ARE ADMITTED
10 ASSETS OF THE DOMESTIC INSURER, SUBJECT TO THE FOLLOWING
11 PROVISIONS:

12 (a) IF THE AUTHORIZED LINES OF BUSINESS OF THE INVESTING
13 COMPANY AND ANY SUCH WHOLLY-OWNED SUBSIDIARY CORPORATION
14 TOGETHER DO NOT CONSTITUTE THE LINES OF BUSINESS OF A
15 MULTIPLE-LINE COMPANY, THE COMMON STOCK, PREFERRED STOCK, DEBT
16 OBLIGATIONS, AND OTHER SECURITIES OF THE SUBSIDIARY CORPORATION
17 ARE NOT AT ANY TIME AN ADMITTED ASSET OF THE INVESTING COMPANY
18 UNLESS AT SUCH TIME THE TWO COMPANIES HAVE, WITHOUT TAKING THE
19 COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS, AND OTHER
20 SECURITIES INTO ACCOUNT AS AN ASSET OF THE INVESTING COMPANY, A
21 COMBINED CAPITAL OR GUARANTY FUND AND A COMBINED SURPLUS THAT
22 ARE AT LEAST EQUAL, RESPECTIVELY, TO THE SUM OF THE MINIMUM
23 CAPITAL OR MINIMUM GUARANTY FUND REQUIRED BY LAW FOR THE
24 AUTHORIZED LINE OF BUSINESS OF EACH OF THE TWO COMPANIES AND THE
25 SUM OF THE MINIMUM SURPLUS REQUIRED BY LAW FOR THE AUTHORIZED
26 LINE OF BUSINESS OF EACH OF THE TWO COMPANIES; EXCEPT THAT THIS
27 PARAGRAPH (a) DOES NOT APPLY TO AN INVESTING COMPANY THAT IS A

1 FRATERNAL BENEFIT SOCIETY.

2 (b) IF THE AUTHORIZED LINES OF BUSINESS OF THE INVESTING
3 COMPANY AND ANY SUCH WHOLLY-OWNED SUBSIDIARY CORPORATION
4 TOGETHER CONSTITUTE THE LINES OF BUSINESS OF A MULTIPLE-LINE
5 COMPANY, THE COMMON STOCK, PREFERRED STOCK, DEBT OBLIGATIONS,
6 AND OTHER SECURITIES OF THE WHOLLY-OWNED SUBSIDIARY
7 CORPORATION ARE NOT AT ANY TIME AN ADMITTED ASSET OF THE
8 INVESTING COMPANY UNLESS AT SUCH TIME THE TWO COMPANIES HAVE,
9 WITHOUT TAKING THE STOCK INTO ACCOUNT AS AN ASSET OF THE
10 INVESTING COMPANY, A COMBINED CAPITAL OR GUARANTY FUND AND A
11 COMBINED SURPLUS THAT ARE AT LEAST EQUAL, RESPECTIVELY, TO THE
12 MINIMUM CAPITAL OR GUARANTY FUND AND THE MINIMUM SURPLUS
13 REQUIRED BY LAW FOR THE MULTIPLE-LINE COMPANY.

14 (c) IF THE AUTHORIZED LINES OF BUSINESS OF ANY TWO
15 INSURANCE COMPANIES THAT ARE MEMBERS OF A CHAIN OF
16 CORPORATIONS DIRECTLY OR INDIRECTLY OWNED BY A COMMON PARENT
17 CORPORATION TOGETHER CONSTITUTE THE LINES OF BUSINESS OF A
18 MULTIPLE-LINE COMPANY, THE COMMON STOCK, PREFERRED STOCK, DEBT
19 OBLIGATIONS, AND OTHER SECURITIES OF EITHER OF THE TWO INSURANCE
20 COMPANIES ARE AT ANY TIME AN ADMITTED ASSET OF ANY INSURANCE
21 COMPANY, INCLUDING THE COMMON PARENT CORPORATION, THAT IS A
22 MEMBER OF SUCH CHAIN OF CORPORATIONS, UNLESS AT SUCH TIME THE
23 TWO INSURANCE COMPANIES HAVE A COMBINED CAPITAL OR GUARANTY
24 FUND AND A COMBINED SURPLUS THAT ARE AT LEAST EQUAL,
25 RESPECTIVELY, TO THE MINIMUM CAPITAL OR GUARANTY FUND AND THE
26 MINIMUM SURPLUS REQUIRED BY LAW FOR SUCH A MULTIPLE-LINE
27 COMPANY.

1 (5) WHETHER ANY INVESTMENT MADE PURSUANT TO SUBSECTION
2 (2) OF THIS SECTION MEETS THE APPLICABLE REQUIREMENTS OF THAT
3 SUBSECTION IS TO BE DETERMINED BEFORE THE INVESTMENT IS MADE, BY
4 CALCULATING THE APPLICABLE INVESTMENT LIMITATIONS AS THOUGH THE
5 INVESTMENT HAD ALREADY BEEN MADE, TAKING INTO ACCOUNT THE
6 THEN-OUTSTANDING PRINCIPAL BALANCE ON ALL PREVIOUS INVESTMENTS
7 IN DEBT OBLIGATIONS, AND THE VALUE OF ALL PREVIOUS INVESTMENTS IN
8 EQUITY SECURITIES AS OF THE DAY THEY WERE MADE, NET OF ANY RETURN
9 OF CAPITAL INVESTED, NOT INCLUDING DIVIDENDS.

10 (6) IF AN INSURER CEASES TO CONTROL A SUBSIDIARY, IT SHALL
11 DISPOSE OF ANY INVESTMENT MADE IN THE SUBSIDIARY PURSUANT TO THIS
12 SECTION WITHIN THREE YEARS AFTER THE TIME OF THE CESSATION OF
13 CONTROL OR WITHIN SUCH FURTHER TIME AS THE COMMISSIONER MAY
14 PRESCRIBE, UNLESS AT ANY TIME AFTER THE INVESTMENT HAS BEEN MADE,
15 THE INVESTMENT MEETS THE REQUIREMENTS FOR INVESTMENT UNDER ANY
16 OTHER SECTION OF THIS TITLE AND THE INSURER HAS SO NOTIFIED THE
17 COMMISSIONER.

18 (7) NOTHING IN THIS PART 8 PROHIBITS A DOMESTIC INSURER THAT,
19 WITH THE PRIOR APPROVAL OF THE COMMISSIONER, ORGANIZED OR
20 ACQUIRED A SUBSIDIARY FROM CONTINUING TO HOLD THE INSURER'S
21 INVESTMENTS IN THE SUBSIDIARY OR FROM MAKING FURTHER
22 INVESTMENTS IN THE SUBSIDIARY CONSISTENT WITH SUBSECTION (2) OF
23 THIS SECTION, IF THE SUBSIDIARY ENGAGES ONLY IN THE KIND OF BUSINESS
24 THAT WAS REPRESENTED TO THE COMMISSIONER AS A BASIS FOR SUCH
25 APPROVAL.

26 **10-3-803. Acquisition of control of or merger with domestic**
27 **insurer - definitions.** (1) (a) NO PERSON OTHER THAN THE ISSUER SHALL

1 MAKE A TENDER OFFER FOR OR A REQUEST OR INVITATION FOR TENDERS
2 OF, OR ENTER INTO ANY AGREEMENT TO EXCHANGE SECURITIES FOR, SEEK
3 TO ACQUIRE, OR ACQUIRE, IN THE OPEN MARKET OR OTHERWISE, ANY
4 VOTING SECURITY OF A DOMESTIC INSURER IF, AFTER THE CONSUMMATION
5 OF THE EXCHANGE OR ACQUISITION, THE PERSON WOULD, DIRECTLY,
6 INDIRECTLY, BY CONVERSION, OR BY EXERCISE OF ANY RIGHT TO ACQUIRE,
7 BE IN CONTROL OF THE INSURER, AND NO PERSON SHALL ENTER INTO AN
8 AGREEMENT TO MERGE WITH OR OTHERWISE TO ACQUIRE CONTROL OF A
9 DOMESTIC INSURER OR ANY PERSON CONTROLLING A DOMESTIC INSURER
10 UNLESS, AT THE TIME THE OFFER, REQUEST, OR INVITATION IS MADE OR
11 THE AGREEMENT IS ENTERED INTO, OR BEFORE THE ACQUISITION OF THE
12 SECURITIES IF NO OFFER OR AGREEMENT IS INVOLVED, THE PERSON HAS
13 FILED WITH THE COMMISSIONER AND HAS SENT TO THE INSURER A
14 STATEMENT CONTAINING THE INFORMATION REQUIRED BY THIS SECTION
15 AND THE COMMISSIONER HAS APPROVED THE OFFER, REQUEST,
16 INVITATION, AGREEMENT, OR ACQUISITION IN THE MANNER PRESCRIBED IN
17 THIS PART 8.

18 (b) IN ADDITION, IF THE PERSON ACTING PURSUANT TO THIS
19 SUBSECTION (1) IS:

20 (I) AN INDIVIDUAL, THE PERSON SHALL SUBMIT A SET OF
21 FINGERPRINTS TO THE COMMISSIONER PURSUANT TO SUBSECTION (3) OF
22 THIS SECTION;

23 (II) A CORPORATION, EACH EXECUTIVE OFFICER AND DIRECTOR OF
24 THE CORPORATION SHALL SUBMIT A SET OF FINGERPRINTS TO THE
25 COMMISSIONER PURSUANT TO SUBSECTION (3) OF THIS SECTION.

26 (c) FOR PURPOSES OF THIS SECTION:

27 (I) "DOMESTIC INSURER" INCLUDES ANY PERSON CONTROLLING A

1 DOMESTIC INSURER UNLESS THE PERSON, AS DETERMINED BY THE
2 COMMISSIONER, IS EITHER DIRECTLY OR THROUGH ITS AFFILIATES
3 PRIMARILY ENGAGED IN BUSINESS OTHER THAN THE BUSINESS OF
4 INSURANCE.

5 (II) "PERSON" DOES NOT INCLUDE ANY SECURITIES BROKER
6 HOLDING, IN THE USUAL AND CUSTOMARY BROKER'S FUNCTION, LESS THAN
7 TWENTY PERCENT OF THE VOTING SECURITIES OF AN INSURANCE COMPANY
8 OR OF ANY PERSON THAT CONTROLS AN INSURANCE COMPANY.

9 (d) A CONTROLLING PERSON OF A DOMESTIC INSURER SEEKING TO
10 DIVEST ITS CONTROLLING INTEREST IN THE DOMESTIC INSURER, IN ANY
11 MANNER, SHALL FILE WITH THE COMMISSIONER, WITH A COPY TO THE
12 INSURER, CONFIDENTIAL NOTICE OF ITS PROPOSED DIVESTITURE AT LEAST
13 THIRTY DAYS BEFORE THE CESSATION OF CONTROL. THE COMMISSIONER
14 SHALL DETERMINE THOSE INSTANCES IN WHICH THE PARTY SEEKING TO
15 DIVEST OR TO ACQUIRE A CONTROLLING INTEREST IN AN INSURER WILL BE
16 REQUIRED TO FILE FOR AND OBTAIN APPROVAL OF THE TRANSACTION. THE
17 INFORMATION MUST REMAIN CONFIDENTIAL UNTIL THE CONCLUSION OF
18 THE TRANSACTION UNLESS THE COMMISSIONER, IN HIS OR HER DISCRETION,
19 DETERMINES THAT CONFIDENTIAL TREATMENT WILL INTERFERE WITH
20 ENFORCEMENT OF THIS SECTION. IF THE STATEMENT REFERRED TO IN
21 PARAGRAPH (a) OF THIS SUBSECTION (1) HAS BEEN FILED, THIS PARAGRAPH
22 (d) DOES NOT APPLY.

23 (e) WITH RESPECT TO A TRANSACTION SUBJECT TO THIS SECTION,
24 THE ACQUIRING PERSON SHALL ALSO FILE A PREACQUISITION NOTIFICATION
25 WITH THE COMMISSIONER, WHICH MUST CONTAIN THE INFORMATION SET
26 FORTH IN SECTION 10-3-803.5 (3) (a). A FAILURE TO FILE THE
27 NOTIFICATION SUBJECTS THE PERSON TO PENALTIES SPECIFIED IN SECTION

1 10-3-803.5 (5) (c).

2 (2) THE STATEMENT FILED PURSUANT TO PARAGRAPH (a) OF
3 SUBSECTION (1) OF THIS SECTION SHALL BE MADE UNDER OATH OR
4 AFFIRMATION AND MUST CONTAIN THE FOLLOWING:

5 (a) (I) THE NAME AND ADDRESS OF EACH PERSON BY WHOM OR ON
6 WHOSE BEHALF THE MERGER OR OTHER ACQUISITION OF CONTROL
7 REFERRED TO IN SUBSECTION (1) OF THIS SECTION IS TO BE EFFECTED,
8 REFERRED TO IN THIS SECTION AS THE ACQUIRING PARTY;

9 (II) IF THE PERSON IS AN INDIVIDUAL, HIS OR HER PRINCIPAL
10 OCCUPATION, ALL OFFICES AND POSITIONS HELD DURING THE PAST FIVE
11 YEARS, AND ANY CONVICTION OF CRIMES OTHER THAN MINOR TRAFFIC
12 VIOLATIONS DURING THE PAST TEN YEARS;

13 (III) IF THE PERSON IS NOT AN INDIVIDUAL, A REPORT OF THE
14 NATURE OF ITS BUSINESS OPERATIONS DURING THE PAST FIVE YEARS OR
15 FOR THE LESSER PERIOD AS THE PERSON AND ANY PREDECESSORS HAS
16 BEEN IN EXISTENCE; AN INFORMATIVE DESCRIPTION OF THE BUSINESS
17 INTENDED TO BE DONE BY THE PERSON AND THE PERSON'S SUBSIDIARIES;
18 AND A LIST OF ALL INDIVIDUALS WHO ARE OR WHO HAVE BEEN SELECTED
19 TO BECOME DIRECTORS OR EXECUTIVE OFFICERS OF THE PERSON OR WHO
20 PERFORM OR WILL PERFORM FUNCTIONS APPROPRIATE TO SUCH POSITIONS.
21 THE LIST MUST INCLUDE FOR EACH INDIVIDUAL THE INFORMATION
22 REQUIRED BY SUBPARAGRAPH (II) OF THIS PARAGRAPH (a).

23 (b) THE SOURCE, NATURE, AND AMOUNT OF THE CONSIDERATION
24 USED OR TO BE USED IN EFFECTING THE MERGER OR OTHER ACQUISITION
25 OF CONTROL, A DESCRIPTION OF ANY TRANSACTION WHERE FUNDS WERE
26 OR ARE TO BE OBTAINED FOR ANY SUCH PURPOSE, INCLUDING ANY PLEDGE
27 OF THE INSURER'S STOCK OR THE STOCK OF ANY OF ITS SUBSIDIARIES OR

1 CONTROLLING AFFILIATES, AND THE IDENTITY OF PERSONS FURNISHING
2 CONSIDERATION; EXCEPT THAT, WHERE A SOURCE OF CONSIDERATION IS
3 A LOAN MADE IN THE LENDER'S ORDINARY COURSE OF BUSINESS, THE
4 IDENTITY OF THE LENDER MUST REMAIN CONFIDENTIAL IF THE PERSON
5 FILING SUCH STATEMENT SO REQUESTS;

6 (c) FULLY AUDITED FINANCIAL INFORMATION AS TO THE EARNINGS
7 AND FINANCIAL CONDITION OF EACH ACQUIRING PARTY FOR THE
8 PRECEDING FIVE FISCAL YEARS OF EACH ACQUIRING PARTY, OR FOR THE
9 LESSER PERIOD AS THE ACQUIRING PARTY AND ANY PREDECESSORS HAVE
10 BEEN IN EXISTENCE, AND SIMILAR UNAUDITED INFORMATION AS OF A DATE
11 NOT EARLIER THAN NINETY DAYS BEFORE THE FILING OF THE STATEMENT;

12 (d) ANY PLANS OR PROPOSALS THAT EACH ACQUIRING PARTY MAY
13 HAVE TO LIQUIDATE THE INSURER, TO SELL ITS ASSETS OR MERGE OR
14 CONSOLIDATE IT WITH ANY PERSON, OR TO MAKE ANY OTHER MATERIAL
15 CHANGE IN ITS BUSINESS OR CORPORATE STRUCTURE OR MANAGEMENT;

16 (e) THE NUMBER OF SHARES OF ANY SECURITY REFERRED TO IN
17 SUBSECTION (1) OF THIS SECTION THAT EACH ACQUIRING PARTY PROPOSES
18 TO ACQUIRE; THE TERMS OF THE OFFER, REQUEST, INVITATION,
19 AGREEMENT, OR ACQUISITION REFERRED TO IN SUBSECTION (1) OF THIS
20 SECTION; AND A STATEMENT AS TO THE METHOD BY WHICH THE FAIRNESS
21 OF THE PROPOSAL WAS ARRIVED AT;

22 (f) THE AMOUNT OF EACH CLASS OF ANY SECURITY REFERRED TO
23 IN SUBSECTION (1) OF THIS SECTION THAT IS BENEFICIALLY OWNED OR
24 CONCERNING WHICH THERE IS A RIGHT TO ACQUIRE BENEFICIAL
25 OWNERSHIP BY EACH ACQUIRING PARTY;

26 (g) A FULL DESCRIPTION OF ANY CONTRACTS, ARRANGEMENTS, OR
27 UNDERSTANDINGS WITH RESPECT TO ANY SECURITY REFERRED TO IN

1 SUBSECTION (1) OF THIS SECTION IN WHICH ANY ACQUIRING PARTY IS
2 INVOLVED, INCLUDING THE TRANSFER OF ANY OF THE SECURITIES, JOINT
3 VENTURES, LOAN OR OPTION ARRANGEMENTS, PUTS OR CALLS,
4 GUARANTEES OF LOANS, GUARANTEES AGAINST LOSS OR GUARANTEES OF
5 PROFITS, DIVISION OF LOSSES OR PROFITS, OR THE GIVING OR WITHHOLDING
6 OF PROXIES. THE DESCRIPTION MUST IDENTIFY THE PERSONS WITH WHOM
7 THE CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS HAVE BEEN
8 ENTERED INTO.

9 (h) A DESCRIPTION OF THE PURCHASE OF ANY SECURITY REFERRED
10 TO IN SUBSECTION (1) OF THIS SECTION DURING THE TWELVE CALENDAR
11 MONTHS PRECEDING THE FILING OF THE STATEMENT BY ANY ACQUIRING
12 PARTY, INCLUDING THE DATES OF PURCHASE, NAMES OF THE PURCHASERS,
13 AND CONSIDERATION PAID OR AGREED TO BE PAID;

14 (i) A DESCRIPTION OF ANY RECOMMENDATIONS TO PURCHASE ANY
15 SECURITY REFERRED TO IN SUBSECTION (1) OF THIS SECTION MADE DURING
16 THE TWELVE CALENDAR MONTHS PRECEDING THE FILING OF THE
17 STATEMENT BY ANY ACQUIRING PARTY, OR BY ANYONE BASED UPON
18 INTERVIEWS OR AT THE SUGGESTION OF THE ACQUIRING PARTY;

19 (j) COPIES OF ALL TENDER OFFERS FOR, REQUESTS, OR INVITATIONS
20 FOR TENDERS OF, EXCHANGE OFFERS FOR, AND AGREEMENTS TO ACQUIRE
21 OR EXCHANGE ANY SECURITIES REFERRED TO IN SUBSECTION (1) OF THIS
22 SECTION, AND, IF DISTRIBUTED, OF ADDITIONAL SOLICITING MATERIAL
23 RELATING TO THEM;

24 (k) THE TERM OF ANY AGREEMENT, CONTRACT, OR
25 UNDERSTANDING MADE WITH OR PROPOSED TO BE MADE WITH ANY
26 BROKER-DEALER AS TO SOLICITATION OF SECURITIES REFERRED TO IN
27 SUBSECTION (1) OF THIS SECTION FOR TENDER, AND THE AMOUNT OF ANY

1 FEES, COMMISSIONS, OR OTHER COMPENSATION TO BE PAID TO
2 BROKER-DEALERS WITH REGARD TO THE SOLICITATION;

3 (l) AN AGREEMENT BY THE PERSON REQUIRED TO FILE THE
4 STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION THAT THE
5 PERSON WILL PROVIDE THE ANNUAL REPORT, SPECIFIED IN SECTION
6 10-3-804 (12), FOR SO LONG AS CONTROL EXISTS;

7 (m) AN ACKNOWLEDGMENT BY THE PERSON REQUIRED TO FILE THE
8 STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION THAT THE
9 PERSON AND ALL SUBSIDIARIES WITHIN ITS CONTROL IN THE INSURANCE
10 HOLDING COMPANY SYSTEM WILL PROVIDE INFORMATION TO THE
11 COMMISSIONER UPON REQUEST AS NECESSARY TO EVALUATE ENTERPRISE
12 RISK TO THE INSURER; AND

13 (n) SUCH ADDITIONAL INFORMATION AS THE COMMISSIONER MAY
14 BY RULE PRESCRIBE AS NECESSARY OR APPROPRIATE FOR THE PROTECTION
15 OF POLICYHOLDERS OF THE INSURER OR IN THE PUBLIC INTEREST.

16 (3) EACH PERSON DESCRIBED IN PARAGRAPH (b) OF SUBSECTION
17 (1) OF THIS SECTION SHALL SUBMIT A SET OF FINGERPRINTS TO THE
18 COMMISSIONER AT THE TIME OF FILING THE STATEMENT DESCRIBED IN
19 PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION. THE COMMISSIONER
20 SHALL FORWARD THE FINGERPRINTS TO THE COLORADO BUREAU OF
21 INVESTIGATION FOR THE PURPOSE OF CONDUCTING A STATE AND NATIONAL
22 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK UTILIZING
23 RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE
24 FEDERAL BUREAU OF INVESTIGATION. THE EMPLOYER BEARS ONLY THE
25 ACTUAL COSTS OF THE RECORD CHECK.

26 (4) IF THE PERSON REQUIRED TO FILE THE STATEMENT REFERRED
27 TO IN SUBSECTION (1) OF THIS SECTION IS A PARTNERSHIP, LIMITED

1 PARTNERSHIP, SYNDICATE, OR OTHER GROUP, THE COMMISSIONER MAY
2 REQUIRE THE PERSON TO GIVE THE INFORMATION CALLED FOR BY
3 PARAGRAPHS (a) TO (n) OF SUBSECTION (2) OF THIS SECTION WITH
4 RESPECT TO EACH PARTNER OF THE PARTNERSHIP OR LIMITED
5 PARTNERSHIP, EACH MEMBER OF THE SYNDICATE OR GROUP, AND EACH
6 PERSON WHO CONTROLS THE PARTNER OR MEMBER. IF ANY PARTNER,
7 MEMBER, OR PERSON IS A CORPORATION OR THE PERSON REQUIRED TO FILE
8 THE STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION IS A
9 CORPORATION, THE COMMISSIONER MAY REQUIRE THE CORPORATION TO
10 GIVE THE INFORMATION CALLED FOR BY PARAGRAPHS (a) TO (n) OF
11 SUBSECTION (2) OF THIS SECTION WITH RESPECT TO THE CORPORATION,
12 EACH OFFICER AND DIRECTOR OF THE CORPORATION, AND EACH PERSON
13 WHO IS DIRECTLY OR INDIRECTLY THE BENEFICIAL OWNER OF MORE THAN
14 TEN PERCENT OF THE OUTSTANDING VOTING SECURITIES OF THE
15 CORPORATION. IF ANY MATERIAL CHANGE OCCURS IN THE FACTS SET
16 FORTH IN THE STATEMENT FILED WITH THE COMMISSIONER AND SENT TO
17 THE INSURER PURSUANT TO THIS SECTION, AN AMENDMENT SETTING FORTH
18 THE CHANGE, TOGETHER WITH COPIES OF ALL DOCUMENTS AND OTHER
19 MATERIAL RELEVANT TO THE CHANGE, SHALL BE FILED WITH THE
20 COMMISSIONER AND SENT TO THE INSURER WITHIN TWO BUSINESS DAYS
21 AFTER THE PERSON LEARNS OF THE CHANGE.

22 (5) IF ANY OFFER, REQUEST, INVITATION, AGREEMENT, OR
23 ACQUISITION REFERRED TO IN SUBSECTION (1) OF THIS SECTION IS
24 PROPOSED TO BE MADE BY MEANS OF A REGISTRATION STATEMENT UNDER
25 THE FEDERAL "SECURITIES ACT OF 1933", 15 U.S.C. SEC. 77a ET SEQ., AS
26 AMENDED, OR IN CIRCUMSTANCES REQUIRING THE DISCLOSURE OF SIMILAR
27 INFORMATION UNDER THE FEDERAL "SECURITIES EXCHANGE ACT OF

1 1934", 15 U.S.C. SEC. 78a ET SEQ., AS AMENDED, OR UNDER A STATE LAW
2 REQUIRING SIMILAR REGISTRATION OR DISCLOSURE, THE PERSON REQUIRED
3 TO FILE THE STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION
4 MAY UTILIZE SUCH DOCUMENTS IN FURNISHING THE INFORMATION CALLED
5 FOR BY THAT STATEMENT.

6 (6) (a) THE COMMISSIONER SHALL CONDUCT AN INDEPENDENT
7 INVESTIGATION TO DETERMINE THE IMPACT OF A PROPOSED MERGER ON
8 COMPETITION:

9 (I) WHEN THE PROPOSED MERGER INVOLVES A TRANSACTION THAT
10 THE COMMISSIONER DETERMINES, UNDER SECTION 10-3-803.5 (4) (b),
11 WOULD PRESENT PRIMA FACIE EVIDENCE OF A VIOLATION OF THE
12 COMPETITIVE STANDARD; AND

13 (II) IF THE MERGER OR ACQUISITION INVOLVES A DOMESTIC ENTITY
14 AUTHORIZED UNDER ARTICLE 16 OF THIS TITLE OR REFERENCED IN SECTION
15 6-18-302 (1) (b) (IV), C.R.S., OR A DOMESTIC INSURER AUTHORIZED
16 UNDER SECTION 10-3-102 THAT WRITES MORE THAN FIFTY PERCENT OF ITS
17 BUSINESS AS HEALTH INSURANCE COVERAGE.

18 (b) THE INVESTIGATION MUST INCLUDE AN ANALYSIS OF THE
19 PROBABLE EFFECTS OF THE MERGER ON CONSUMERS AND ON SUPPLIERS OF
20 SERVICES. THE COMMISSIONER SHALL NOT RELY SOLELY ON
21 REPRESENTATIONS OF INSURERS TO DETERMINE WHETHER THE MERGER
22 WILL PRODUCE ECONOMIES OF SCALE OR ECONOMIES IN RESOURCE
23 UTILIZATION THAT CANNOT BE ACHIEVED FEASIBLY IN ANY OTHER WAY.
24 THE INVESTIGATION MUST ALSO INCLUDE REVIEWING THE MARKET
25 CONDUCT EXAMINATION AND FINANCIAL EXAMINATION REPORTS FOR THIS
26 STATE OR ANY OTHER STATE, CONSUMER COMPLAINT INFORMATION FROM
27 RECORDS MAINTAINED BY THE DIVISION OR ANY OTHER STATE

1 REGULATORY AGENCY, AND ANY INFORMATION FROM ANY STATE OR
2 FEDERAL AGENCY RELATED TO THE APPLICANT. THE INVESTIGATION MUST
3 COMMENCE NO LATER THAN FIFTEEN DAYS AFTER THE APPLICANT FILES
4 THE NOTIFICATION REFERRED TO IN PARAGRAPH (e) OF SUBSECTION (1) OF
5 THIS SECTION.

6 (c) THE COMMISSIONER SHALL MAKE PUBLIC THE REPORT OF THE
7 INDEPENDENT INVESTIGATION CONDUCTED PURSUANT TO THIS
8 SUBSECTION (6) NO LATER THAN FIVE BUSINESS DAYS AFTER THE
9 SUBMISSION OF THE REPORT TO THE COMMISSIONER, SUBJECT TO THE
10 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24,
11 C.R.S.

12 (d) THE COMMISSIONER SHALL ISSUE AN EXECUTIVE SUMMARY,
13 SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72
14 OF TITLE 24, C.R.S., OF THE COMPETITIVE IMPACT ANALYSIS FILED BY THE
15 APPLICANT TO THE TRANSACTION NO LATER THAN FIFTEEN BUSINESS DAYS
16 AFTER THE ANALYSIS IS FILED WITH THE DIVISION. THE APPLICANT SHALL
17 FILE THE COMPETITIVE IMPACT ANALYSIS AT THE SAME TIME THE
18 APPLICANT FILES THE NOTIFICATION REFERRED TO IN PARAGRAPH (e) OF
19 SUBSECTION (1) OF THIS SECTION WITH THE DIVISION.

20 (e) THE COMMISSIONER SHALL MAKE ALL DATA AND REPORTS
21 PERTAINING TO THE PROPOSED MERGER AND COLLECTED OR USED BY THE
22 COMMISSIONER IN HIS OR HER INVESTIGATION AND ANALYSIS AVAILABLE
23 TO THE PUBLIC; EXCEPT THAT, IN THE COMMISSIONER'S DISCRETION, THE
24 COMMISSIONER MAY REDACT SPECIFIC ITEMS OF PROPRIETARY
25 INFORMATION. IF THE INSURER CLAIMS THAT INFORMATION PROVIDED IS
26 PROPRIETARY, THE INSURER HAS THE BURDEN OF PROOF ON THAT ISSUE.

27 (f) THE COMMISSIONER SHALL COMPLETE THE INDEPENDENT

1 INVESTIGATION PURSUANT TO THIS SUBSECTION (6) NO LATER THAN THE
2 DAY ON WHICH THE APPLICATION IS DEEMED COMPLETE BY THE DIVISION.
3 THE COMMISSIONER SHALL COORDINATE THE COMPLETION OF THE
4 INDEPENDENT INVESTIGATION WITH THE EXPERTS RETAINED PURSUANT TO
5 PARAGRAPH (g) OF SUBSECTION (8) OF THIS SECTION. THE APPLICANT
6 SHALL BEAR ANY EXPENSES ASSOCIATED WITH THE INDEPENDENT
7 INVESTIGATION PURSUANT TO SUBSECTION (8) OF THIS SECTION.

8 (7) THE COMMISSIONER SHALL APPROVE ANY MERGER OR OTHER
9 ACQUISITION OF CONTROL REFERRED TO IN SUBSECTION (1) OF THIS
10 SECTION UNLESS, AFTER AN INDEPENDENT INVESTIGATION PURSUANT TO
11 SUBSECTION (6) OF THIS SECTION, AND A PUBLIC HEARING ON THE
12 ACQUISITION, THE COMMISSIONER FINDS THAT:

13 (a) AFTER THE CHANGE OF CONTROL, THE DOMESTIC INSURER
14 REFERRED TO IN SUBSECTION (1) OF THIS SECTION WOULD NOT BE ABLE TO
15 SATISFY THE REQUIREMENTS FOR THE ISSUANCE OF A LICENSE TO WRITE
16 THE LINE OR LINES OF INSURANCE FOR WHICH IT IS PRESENTLY LICENSED;

17 (b) THE EFFECT OF THE MERGER OR OTHER ACQUISITION OF
18 CONTROL WOULD BE SUBSTANTIALLY TO LESSEN COMPETITION IN
19 INSURANCE IN THIS STATE OR TEND TO CREATE A MONOPOLY. IN APPLYING
20 THE COMPETITIVE STANDARD IN THIS PARAGRAPH (b):

21 (I) THE INFORMATIONAL REQUIREMENTS OF SECTION 10-3-803.5
22 (3) (a) AND THE STANDARDS OF SECTION 10-3-803.5 (4) (b) APPLY;

23 (II) THE COMMISSIONER SHALL NOT DISAPPROVE THE MERGER OR
24 OTHER ACQUISITION IF THE COMMISSIONER FINDS THAT ANY OF THE
25 SITUATIONS MEETING THE CRITERIA PROVIDED BY SECTION 10-3-803.5 (4)
26 (c) EXIST; AND

27 (III) THE COMMISSIONER MAY CONDITION THE APPROVAL OF THE

1 MERGER OR OTHER ACQUISITION ON THE REMOVAL OF THE BASIS OF
2 DISAPPROVAL WITHIN A SPECIFIED PERIOD OF TIME.

3 (c) THE FINANCIAL CONDITION OF ANY ACQUIRING PARTY IS SUCH
4 AS MIGHT JEOPARDIZE THE FINANCIAL STABILITY OF THE INSURER OR
5 PREJUDICE THE INTEREST OF ITS POLICYHOLDERS;

6 (d) THE PLANS OR PROPOSALS THAT THE ACQUIRING PARTY HAS TO
7 LIQUIDATE THE INSURER, SELL ITS ASSETS OR CONSOLIDATE OR MERGE IT
8 WITH ANY PERSON, OR MAKE ANY OTHER MATERIAL CHANGE IN ITS
9 BUSINESS OR CORPORATE STRUCTURE OR MANAGEMENT ARE UNFAIR AND
10 UNREASONABLE TO POLICYHOLDERS OF THE INSURER AND NOT IN THE
11 PUBLIC INTEREST;

12 (e) THE COMPETENCE, EXPERIENCE, AND INTEGRITY OF THOSE
13 PERSONS WHO WOULD CONTROL THE OPERATION OF THE INSURER ARE
14 SUCH THAT IT WOULD NOT BE IN THE INTEREST OF POLICYHOLDERS OF THE
15 INSURER AND OF THE PUBLIC TO PERMIT THE MERGER OR OTHER
16 ACQUISITION OF CONTROL; OR

17 (f) THE ACQUISITION IS LIKELY TO BE HAZARDOUS OR PREJUDICIAL
18 TO THE INSURANCE-BUYING PUBLIC.

19 (8) (a) THE COMMISSIONER SHALL PROVIDE PUBLIC NOTICE OF THE
20 FILING OF AN APPLICATION FOR A MERGER OR ACQUISITION NO LATER THAN
21 FIVE BUSINESS DAYS AFTER THE RECEIPT OF THE INITIAL APPLICATION. THE
22 COMMISSIONER SHALL ALSO PROVIDE A GENERAL STATEMENT TO THE
23 PUBLIC OF THE PROCESS AND PROCEDURES CONCERNING A MERGER OR
24 ACQUISITION OF A DOMESTIC INSURER. THE STATEMENT MUST BE A CLEAR
25 AND CONCISE STATEMENT OF HOW THE PUBLIC MAY PARTICIPATE IN THE
26 REVIEW OF A MERGER OR ACQUISITION TRANSACTION, INCLUDING A PUBLIC
27 HEARING OR PROVIDING WRITTEN COMMENTS TO THE COMMISSIONER.

1 (b) NO LATER THAN FIFTEEN BUSINESS DAYS AFTER THE INITIAL
2 APPLICATION FOR A MERGER PURSUANT TO THIS SECTION, THE
3 COMMISSIONER AND THE APPLICANT SHALL ESTABLISH THE ELEMENTS OF
4 A PUBLIC NOTICE OF THE TRANSACTION. THE COMMISSIONER SHALL
5 PUBLISH THE NOTICE NO LATER THAN SEVEN DAYS AFTER THE DIVISION
6 DEEMS THE APPLICATION TO BE COMPLETE.

7 (c) THE COMMISSIONER SHALL HOLD THE PUBLIC HEARING
8 REFERRED TO IN SUBSECTION (7) OF THIS SECTION WITHIN THIRTY DAYS
9 AFTER THE STATEMENT REQUIRED BY SUBSECTION (1) OF THIS SECTION IS
10 FILED, AND THE COMMISSIONER SHALL GIVE AT LEAST TWENTY DAYS'
11 NOTICE OF THE HEARING TO THE PERSON FILING THE STATEMENT. THE
12 COMMISSIONER SHALL GIVE NOT LESS THAN SEVEN DAYS' NOTICE OF THE
13 PUBLIC HEARING PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (8) TO
14 THE INSURER AND TO THE PUBLIC. THE INSURER SHALL GIVE THE NOTICE
15 TO ITS SECURITY HOLDERS. THE COMMISSIONER SHALL MAKE A
16 DETERMINATION WITHIN THIRTY DAYS AFTER THE CONCLUSION OF THE
17 HEARING. AT THE HEARING, THE PERSON FILING THE STATEMENT, THE
18 INSURER, ANY PERSON TO WHOM NOTICE OF HEARING WAS SENT, AND ANY
19 OTHER PERSON WHOSE INTERESTS MAY BE AFFECTED HAVE THE RIGHT TO
20 PRESENT EVIDENCE, EXAMINE AND CROSS-EXAMINE WITNESSES, AND
21 OFFER ORAL AND WRITTEN ARGUMENTS AND, IN CONNECTION THEREWITH,
22 ARE ENTITLED TO CONDUCT DISCOVERY PROCEEDINGS IN THE SAME
23 MANNER AS IS PRESENTLY ALLOWED IN THE DISTRICT COURTS OF THIS
24 STATE. ALL DISCOVERY PROCEEDINGS MUST BE CONCLUDED NO LATER
25 THAN THREE DAYS BEFORE THE COMMENCEMENT OF THE PUBLIC HEARING.

26 (d) THE DEADLINE FOR SUBMISSION OF WRITTEN PUBLIC COMMENT
27 TO RESPOND TO TESTIMONY FROM THE APPLICANT IS TEN BUSINESS DAYS

1 AFTER THE HEARING. THE COMMISSIONER SHALL REVIEW ALL RESPONSES
2 AND PROVIDE A REPORT SUMMARIZING ALL PUBLIC TESTIMONY.

3 (e) IF THE PROPOSED ACQUISITION OF CONTROL WILL REQUIRE THE
4 APPROVAL OF A STATE OTHER THAN COLORADO IN ADDITION TO THE
5 APPROVAL OF THE COMMISSIONER, THE PUBLIC HEARING REFERRED TO IN
6 SUBSECTION (7) OF THIS SECTION MAY BE HELD ON A CONSOLIDATED BASIS
7 UPON REQUEST OF THE PERSON FILING THE STATEMENT REFERRED TO IN
8 SUBSECTION (1) OF THIS SECTION. THE PERSON SHALL FILE THE
9 STATEMENT REFERRED TO IN SUBSECTION (1) OF THIS SECTION WITH THE
10 NAIC WITHIN FIVE DAYS AFTER MAKING THE REQUEST FOR A PUBLIC
11 HEARING. A COMMISSIONER MAY OPT OUT OF A CONSOLIDATED HEARING
12 AND SHALL PROVIDE NOTICE TO THE APPLICANT OF THE OPT-OUT WITHIN
13 TEN DAYS AFTER THE RECEIPT OF THE STATEMENT REFERRED TO IN
14 SUBSECTION (1) OF THIS SECTION. A HEARING CONDUCTED ON A
15 CONSOLIDATED BASIS MUST BE PUBLIC AND SHALL BE HELD WITHIN THE
16 UNITED STATES BEFORE THE COMMISSIONERS OF THE STATES IN WHICH
17 THE INSURERS ARE DOMICILED. THE COMMISSIONERS SHALL HEAR AND
18 RECEIVE EVIDENCE. A COMMISSIONER MAY ATTEND THE HEARING IN
19 PERSON OR BY TELECOMMUNICATION.

20 (f) IN CONNECTION WITH A CHANGE OF CONTROL OF A DOMESTIC
21 INSURER, THE COMMISSIONER SHALL MAKE ANY DETERMINATION THAT
22 THE PERSON ACQUIRING CONTROL OF THE INSURER IS REQUIRED TO
23 MAINTAIN OR RESTORE THE CAPITAL OF THE INSURER TO THE LEVEL
24 REQUIRED BY THE LAWS AND RULES OF THIS STATE NOT LATER THAN SIXTY
25 DAYS AFTER THE DATE OF NOTIFICATION OF THE CHANGE IN CONTROL
26 SUBMITTED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1) OF THIS
27 SECTION.

1 (g) THE COMMISSIONER MAY RETAIN, AT THE ACQUIRING PERSON'S
2 EXPENSE, ANY ATTORNEYS, ACTUARIES, ACCOUNTANTS, AND OTHER
3 EXPERTS NOT OTHERWISE A PART OF THE COMMISSIONER'S STAFF AS MAY
4 BE REASONABLY NECESSARY TO ASSIST THE COMMISSIONER IN REVIEWING
5 THE PROPOSED ACQUISITION OF CONTROL.

6 (9) THE INSURER SHALL MAIL A SYNOPSIS OF THE STATEMENT
7 REFERRED TO IN SUBSECTION (1) OF THIS SECTION, AND ALL NOTICES OF
8 PUBLIC HEARINGS HELD PURSUANT TO SUBSECTION (7) OF THIS SECTION,
9 TO ITS SHAREHOLDERS WITHIN FIVE BUSINESS DAYS AFTER THE INSURER
10 HAS RECEIVED SUCH STATEMENTS, AMENDMENTS, OTHER MATERIAL, OR
11 NOTICES FILED PURSUANT TO THIS SECTION. THE PERSON MAKING THE
12 FILING SHALL BEAR THE EXPENSES OF THE MAILING. AS SECURITY FOR THE
13 PAYMENT OF SUCH EXPENSES, THE PERSON SHALL FILE WITH THE
14 COMMISSIONER AN ACCEPTABLE BOND OR OTHER DEPOSIT IN AN AMOUNT
15 TO BE DETERMINED BY THE COMMISSIONER.

16 (10) THIS SECTION DOES NOT APPLY TO:

17 (a) AN EXCHANGE OF STOCK OF A DOMESTIC INSURER ACTUALLY
18 ACCOMPLISHED IN ACCORDANCE WITH SECTIONS 10-3-604 TO 10-3-606,
19 OR ANY PRELIMINARY AGREEMENT BETWEEN A DOMESTIC INSURER AND
20 ANY OTHER CORPORATION ENTERED INTO IN CONTEMPLATION OF THE
21 ADOPTION OF A PLAN OF EXCHANGE UNDER PART 6 OF THIS ARTICLE; OR

22 (b) AN OFFER, REQUEST, INVITATION, AGREEMENT, OR
23 ACQUISITION THAT THE COMMISSIONER, BY ORDER, EXEMPTS FROM THIS
24 SECTION AS NOT HAVING BEEN MADE OR ENTERED INTO FOR THE PURPOSE
25 AND NOT HAVING THE EFFECT OF CHANGING OR INFLUENCING THE
26 CONTROL OF A DOMESTIC INSURER, OR AS OTHERWISE NOT
27 COMPREHENDED WITHIN THE PURPOSES OF THIS SECTION.

1 (11) THE FOLLOWING ARE VIOLATIONS OF THIS SECTION:

2 (a) THE FAILURE TO FILE ANY STATEMENT, AMENDMENT, OR OTHER
3 MATERIAL REQUIRED TO BE FILED PURSUANT TO SUBSECTION (1) OR (2) OF
4 THIS SECTION; OR

5 (b) THE EFFECTUATION OF, OR ANY ATTEMPT TO EFFECTUATE, AN
6 ACQUISITION OF CONTROL OF, OR MERGER WITH, A DOMESTIC INSURER
7 UNLESS THE COMMISSIONER HAS GIVEN HIS OR HER APPROVAL TO THE
8 ACQUISITION OR MERGER.

9 (12) THE COURTS OF THIS STATE HAVE JURISDICTION OVER EVERY
10 PERSON NOT RESIDENT, DOMICILED, OR AUTHORIZED TO DO BUSINESS IN
11 THIS STATE WHO FILES A STATEMENT WITH THE COMMISSIONER UNDER
12 THIS SECTION AND OVER ALL ACTIONS INVOLVING THE PERSON ARISING
13 OUT OF VIOLATIONS OF THIS SECTION, AND EACH SUCH PERSON IS DEEMED
14 TO HAVE PERFORMED ACTS EQUIVALENT TO AND CONSTITUTING AN
15 APPOINTMENT BY THE PERSON OF THE COMMISSIONER TO BE HIS OR HER
16 TRUE AND LAWFUL ATTORNEY UPON WHOM MAY BE SERVED ALL LAWFUL
17 PROCESS IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF A
18 VIOLATION OF THIS SECTION. COPIES OF ALL SUCH LAWFUL PROCESS SHALL
19 BE SERVED ON THE COMMISSIONER AND THE COMMISSIONER SHALL
20 TRANSMIT THE PROCESS BY REGISTERED OR CERTIFIED MAIL TO THE
21 PERSON AT HIS OR HER LAST-KNOWN ADDRESS.

22 (13) IF THE PROCEDURES SET FORTH IN THIS SECTION ARE NOT
23 FOLLOWED BEFORE THE ISSUANCE OF THE ORDER OF THE COMMISSIONER
24 THAT APPROVES OR DISAPPROVES THE MERGER, THE AGGRIEVED PARTY
25 MAY SEEK REMEDIES PURSUANT TO SECTION 10-3-814.

26 (14) NOTHING IN THIS SECTION LIMITS THE COMMISSIONER'S
27 ABILITY TO CONDUCT A HEARING FOR TRANSACTIONS THAT DO NOT MEET

1 THE REQUIREMENTS IN SUBSECTION (6) OF THIS SECTION.

2 **10-3-803.5. Acquisitions involving insurers not otherwise**
3 **covered - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE
4 CONTEXT OTHERWISE REQUIRES:

5 (a) "ACQUISITION" MEANS AN AGREEMENT, ARRANGEMENT, OR
6 ACTIVITY THE CONSUMMATION OF WHICH RESULTS IN A PERSON
7 ACQUIRING DIRECTLY OR INDIRECTLY THE CONTROL OF ANOTHER PERSON,
8 AND INCLUDES THE ACQUISITION OF VOTING SECURITIES, THE ACQUISITION
9 OF ASSETS, BULK REINSURANCE, AND MERGERS.

10 (b) FOR THE PURPOSES OF SUBPARAGRAPH (IV) OF PARAGRAPH (b)
11 OF SUBSECTION (2) OF THIS SECTION, "INSURER" INCLUDES ANY COMPANY
12 OR GROUP OF COMPANIES UNDER COMMON MANAGEMENT, OWNERSHIP, OR
13 CONTROL.

14 (c) "INVOLVED INSURER" INCLUDES AN INSURER THAT EITHER
15 ACQUIRES OR IS ACQUIRED THROUGH AN ACQUISITION, IS AFFILIATED WITH
16 AN INSURER THAT ACQUIRES OR IS ACQUIRED THROUGH AN ACQUISITION,
17 OR IS THE RESULT OF A MERGER.

18 (d) "MARKET" MEANS:

19 (I) FOR THE PURPOSES OF SUBPARAGRAPH (IV) OF PARAGRAPH (b)
20 OF SUBSECTION (2) OF THIS SECTION, DIRECT WRITTEN INSURANCE
21 PREMIUM IN THIS STATE FOR A LINE OF BUSINESS AS CONTAINED IN THE
22 ANNUAL STATEMENT REQUIRED TO BE FILED BY INSURERS LICENSED TO DO
23 BUSINESS IN THIS STATE.

24 (II) FOR THE PURPOSES OF PARAGRAPH (b) OF SUBSECTION (4) OF
25 THIS SECTION, THE RELEVANT PRODUCT AND GEOGRAPHICAL MARKETS. IN
26 DETERMINING THE RELEVANT PRODUCT AND GEOGRAPHICAL MARKETS,
27 THE COMMISSIONER SHALL GIVE DUE CONSIDERATION TO, AMONG OTHER

1 THINGS, THE DEFINITIONS OR GUIDELINES, IF ANY, PROMULGATED BY THE
2 NAIC AND TO INFORMATION, IF ANY, SUBMITTED BY PARTIES TO THE
3 ACQUISITION. IN THE ABSENCE OF SUFFICIENT INFORMATION TO THE
4 CONTRARY, THE RELEVANT PRODUCT MARKET IS ASSUMED TO BE THE
5 DIRECT WRITTEN INSURANCE PREMIUM FOR A LINE OF BUSINESS, SUCH LINE
6 BEING THAT USED IN THE ANNUAL STATEMENT REQUIRED TO BE FILED BY
7 INSURERS DOING BUSINESS IN THIS STATE, AND THE RELEVANT
8 GEOGRAPHICAL MARKET IS ASSUMED TO BE THIS STATE.

9 (2) **Scope.** (a) EXCEPT AS EXEMPTED IN PARAGRAPH (b) OF THIS
10 SUBSECTION (2), THIS SECTION APPLIES TO ANY ACQUISITION IN WHICH
11 THERE IS A CHANGE IN CONTROL OF AN INSURER AUTHORIZED TO DO
12 BUSINESS IN THIS STATE.

13 (b) THIS SECTION DOES NOT APPLY TO THE FOLLOWING:

14 (I) A PURCHASE OF SECURITIES SOLELY FOR INVESTMENT PURPOSES
15 IF THE SECURITIES ARE NOT USED BY VOTING OR OTHERWISE TO CAUSE OR
16 ATTEMPT TO CAUSE THE SUBSTANTIAL LESSENING OF COMPETITION IN ANY
17 INSURANCE MARKET IN THIS STATE. IF A PURCHASE OF SECURITIES
18 RESULTS IN A PRESUMPTION OF CONTROL UNDER SECTION 10-3-801 (3),
19 THE PURCHASE IS NOT SOLELY FOR INVESTMENT PURPOSES UNLESS THE
20 INSURANCE COMMISSIONER OF THE INSURER'S STATE OF DOMICILE ACCEPTS
21 A DISCLAIMER OF CONTROL OR AFFIRMATIVELY FINDS THAT CONTROL DOES
22 NOT EXIST AND THE DISCLAIMER ACTION OR AFFIRMATIVE FINDING IS
23 COMMUNICATED BY THE DOMICILIARY COMMISSIONER TO THE
24 COMMISSIONER OF THIS STATE.

25 (II) THE ACQUISITION OF A PERSON BY ANOTHER PERSON WHEN
26 BOTH PERSONS ARE NEITHER DIRECTLY NOR THROUGH AFFILIATES
27 PRIMARILY ENGAGED IN THE BUSINESS OF INSURANCE, IF PREACQUISITION

1 NOTIFICATION IS FILED WITH THE COMMISSIONER IN ACCORDANCE WITH
2 PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION THIRTY DAYS BEFORE
3 THE PROPOSED EFFECTIVE DATE OF THE ACQUISITION; EXCEPT THAT
4 PREACQUISITION NOTIFICATION IS NOT REQUIRED FOR EXCLUSION FROM
5 THIS SECTION IF THE ACQUISITION WOULD OTHERWISE BE EXCLUDED FROM
6 THIS SECTION BY ANY OTHER SUBPARAGRAPH OF THIS PARAGRAPH (b);

7 (III) THE ACQUISITION OF ALREADY AFFILIATED PERSONS;

8 (IV) AN ACQUISITION IF, AS AN IMMEDIATE RESULT OF THE
9 ACQUISITION:

10 (A) IN NO MARKET WOULD THE COMBINED MARKET SHARE OF THE
11 INVOLVED INSURERS EXCEED FIVE PERCENT OF THE TOTAL MARKET;

12 (B) THERE WOULD BE NO INCREASE IN ANY MARKET SHARE; OR

13 (C) IN NO MARKET WOULD THE COMBINED MARKET SHARE OF THE
14 INVOLVED INSURERS EXCEED TWELVE PERCENT OF THE TOTAL MARKET
15 AND THE COMBINED MARKET SHARE INCREASE BY MORE THAN TWO
16 PERCENT OF THE TOTAL MARKET;

17 (V) AN ACQUISITION FOR WHICH A PREACQUISITION NOTIFICATION
18 WOULD BE REQUIRED PURSUANT TO THIS SECTION DUE SOLELY TO THE
19 RESULTING EFFECT ON THE OCEAN MARINE INSURANCE LINE OF BUSINESS;

20 OR

21 (VI) AN ACQUISITION OF AN INSURER WHOSE DOMICILIARY
22 INSURANCE COMMISSIONER AFFIRMATIVELY FINDS THAT THE INSURER IS
23 IN FAILING CONDITION; THERE IS A LACK OF FEASIBLE ALTERNATIVES TO
24 IMPROVING ITS CONDITION; THE PUBLIC BENEFITS OF IMPROVING THE
25 INSURER'S CONDITION THROUGH THE ACQUISITION EXCEED THE PUBLIC
26 BENEFITS THAT WOULD ARISE FROM NOT LESSENING COMPETITION; AND
27 THE FINDINGS ARE COMMUNICATED BY THE DOMICILIARY COMMISSIONER

1 TO THE COMMISSIONER OF THIS STATE.

2 (3) (a) AN ACQUISITION COVERED BY SUBSECTION (2) OF THIS
3 SECTION MAY BE SUBJECT TO AN ORDER PURSUANT TO SUBSECTION (5) OF
4 THIS SECTION UNLESS THE ACQUIRING PERSON FILES A PREACQUISITION
5 NOTIFICATION AND THE WAITING PERIOD HAS EXPIRED. THE ACQUIRED
6 PERSON MAY FILE A PREACQUISITION NOTIFICATION. THE COMMISSIONER
7 SHALL GIVE CONFIDENTIAL TREATMENT TO INFORMATION SUBMITTED
8 UNDER THIS SUBSECTION (3) IN THE SAME MANNER AS OTHERWISE
9 PROVIDED IN THIS PART 8.

10 (b) THE PREACQUISITION NOTIFICATION MUST BE IN THE FORM AND
11 CONTAIN THE INFORMATION AS PRESCRIBED BY THE NAIC RELATING TO
12 THOSE MARKETS WHICH, UNDER SUBPARAGRAPH (IV) OF PARAGRAPH (b)
13 OF SUBSECTION (2) OF THIS SECTION, CAUSE THE ACQUISITION NOT TO BE
14 EXEMPTED FROM THIS SECTION. THE COMMISSIONER MAY REQUIRE
15 ADDITIONAL MATERIAL AND INFORMATION AS DEEMED NECESSARY TO
16 DETERMINE WHETHER THE PROPOSED ACQUISITION, IF CONSUMMATED,
17 WOULD VIOLATE THE COMPETITIVE STANDARD OF SUBSECTION (4) OF THIS
18 SECTION. THE REQUIRED INFORMATION MAY INCLUDE AN OPINION OF AN
19 ECONOMIST AS TO THE COMPETITIVE IMPACT OF THE ACQUISITION IN THIS
20 STATE ACCOMPANIED BY A SUMMARY OF THE EDUCATION AND EXPERIENCE
21 OF THE ECONOMIST INDICATING HIS OR HER ABILITY TO RENDER AN
22 INFORMED OPINION.

23 (c) THE WAITING PERIOD BEGINS ON THE DATE OF RECEIPT BY THE
24 COMMISSIONER OF A PREACQUISITION NOTIFICATION AND ENDS ON THE
25 EARLIER OF THE THIRTIETH DAY AFTER THE DATE OF RECEIPT OR
26 TERMINATION OF THE WAITING PERIOD BY THE COMMISSIONER. BEFORE
27 THE END OF THE WAITING PERIOD, THE COMMISSIONER ON A ONE-TIME

1 BASIS MAY REQUIRE THE SUBMISSION OF ADDITIONAL NEEDED
2 INFORMATION RELEVANT TO THE PROPOSED ACQUISITION, IN WHICH EVENT
3 THE WAITING PERIOD ENDS ON THE EARLIER OF THE THIRTIETH DAY AFTER
4 RECEIPT OF THE ADDITIONAL INFORMATION BY THE COMMISSIONER OR
5 TERMINATION OF THE WAITING PERIOD BY THE COMMISSIONER.

6 (4) **Competitive standard.** (a) THE COMMISSIONER MAY ENTER
7 AN ORDER UNDER PARAGRAPH (a) OF SUBSECTION (5) OF THIS SECTION
8 WITH RESPECT TO AN ACQUISITION IF:

9 (I) THERE IS SUBSTANTIAL EVIDENCE THAT THE EFFECT OF THE
10 ACQUISITION MAY BE SUBSTANTIALLY TO LESSEN COMPETITION IN ANY
11 LINE OF INSURANCE IN THIS STATE OR TEND TO CREATE A MONOPOLY; OR

12 (II) THE INSURER FAILS TO FILE ADEQUATE INFORMATION IN
13 COMPLIANCE WITH SUBSECTION (3) OF THIS SECTION.

14 (b) IN DETERMINING WHETHER A PROPOSED ACQUISITION WOULD
15 VIOLATE THE COMPETITIVE STANDARD OF PARAGRAPH (a) OF THIS
16 SUBSECTION (4), THE COMMISSIONER SHALL CONSIDER THE FOLLOWING:

17 (I) AN ACQUISITION COVERED UNDER SECTION 10-3-803 (2)
18 INVOLVING TWO OR MORE INSURERS COMPETING IN THE SAME MARKET IS
19 PRIMA FACIE EVIDENCE OF VIOLATION OF THE COMPETITIVE STANDARDS
20 IF ONE OF THE FOLLOWING OCCURS:

21 (A) THE MARKET IS HIGHLY CONCENTRATED AND THE INVOLVED
22 INSURERS POSSESS THE FOLLOWING SHARES OF THE MARKET:

| 23 | INSURER A | INSURER B |
|----|-------------|------------|
| 24 | 4% | 4% OR MORE |
| 25 | 10% | 2% OR MORE |
| 26 | 15% OR MORE | 1% OR MORE |

27 (B) THE MARKET IS NOT HIGHLY CONCENTRATED AND THE

1 INVOLVED INSURERS POSSESS THE FOLLOWING SHARES OF THE MARKET:

| 2 | INSURER A | INSURER B |
|---|-------------|------------|
| 3 | 5% | 5% OR MORE |
| 4 | 10% | 4% OR MORE |
| 5 | 15% | 3% OR MORE |
| 6 | 19% OR MORE | 1% OR MORE |

7 (II) A HIGHLY CONCENTRATED MARKET IS ONE IN WHICH THE
8 SHARE OF THE FOUR LARGEST INSURERS IS SEVENTY-FIVE PERCENT OR
9 MORE OF THE MARKET. PERCENTAGES NOT SHOWN IN THE TABLES OF
10 SUB-SUBPARAGRAPHS (A) AND (B) OF SUBPARAGRAPH (I) OF THIS
11 PARAGRAPH (b) ARE INTERPOLATED PROPORTIONATELY TO THE
12 PERCENTAGES THAT ARE SHOWN. FOR THE PURPOSE OF SUBPARAGRAPH (I)
13 OF THIS PARAGRAPH (b), THE INSURER WITH THE LARGEST SHARE OF THE
14 MARKET IS DEEMED TO BE INSURER A.

15 (III) WHETHER THERE IS A SIGNIFICANT TREND TOWARD
16 INCREASED CONCENTRATION IN THE MARKET. THERE IS A SIGNIFICANT
17 TREND TOWARD INCREASED CONCENTRATION IN THE MARKET WHEN THE
18 AGGREGATE MARKET SHARE OF ANY GROUPING OF THE LARGEST INSURERS
19 IN THE MARKET, FROM THE TWO LARGEST TO THE EIGHT LARGEST, HAS
20 INCREASED BY SEVEN PERCENT OR MORE OF THE MARKET OVER A PERIOD
21 OF TIME EXTENDING FROM ANY BASE YEAR FIVE TO TEN YEARS PRIOR TO
22 THE ACQUISITION UP TO THE TIME OF THE ACQUISITION. AN ACQUISITION
23 COVERED UNDER SUBSECTION (2) OF THIS SECTION INVOLVING TWO OR
24 MORE INSURERS COMPETING IN THE SAME MARKET IS PRIMA FACIE
25 EVIDENCE OF VIOLATION OF THE COMPETITIVE STANDARD IN PARAGRAPH
26 (a) OF THIS SUBSECTION (4) IF:

27 (A) THERE IS A SIGNIFICANT TREND TOWARD INCREASED

1 CONCENTRATION IN THE MARKET;

2 (B) ONE OF THE INSURERS INVOLVED IS ONE OF THE INSURERS IN
3 A GROUPING OF LARGE INSURERS SHOWING THE REQUISITE INCREASE IN
4 THE MARKET SHARE; AND

5 (C) ANOTHER INVOLVED INSURER'S MARKET IS TWO PERCENT OR
6 MORE; AND

7 (IV) EVEN THOUGH AN ACQUISITION IS NOT PRIMA FACIE
8 VIOLATIVE OF THE COMPETITIVE STANDARD UNDER SUBPARAGRAPH (I) OR
9 (III) OF THIS PARAGRAPH (b), THE COMMISSIONER MAY ESTABLISH THE
10 REQUISITE ANTICOMPETITIVE EFFECT BASED UPON OTHER SUBSTANTIAL
11 EVIDENCE. EVEN THOUGH AN ACQUISITION IS PRIMA FACIE VIOLATIVE OF
12 THE COMPETITIVE STANDARD UNDER SUBPARAGRAPH (I) OR (III) OF THIS
13 PARAGRAPH (b), A PARTY MAY ESTABLISH THE ABSENCE OF THE REQUISITE
14 ANTICOMPETITIVE EFFECT BASED UPON OTHER SUBSTANTIAL EVIDENCE.
15 RELEVANT FACTORS IN MAKING A DETERMINATION UNDER THIS
16 SUBPARAGRAPH (IV) INCLUDE THE FOLLOWING: MARKET SHARES,
17 VOLATILITY OF RANKING OF MARKET LEADERS, NUMBER OF COMPETITORS,
18 CONCENTRATION, TREND OF CONCENTRATION IN THE INDUSTRY, AND EASE
19 OF ENTRY AND EXIT INTO THE MARKET.

20 (c) THE BURDEN OF SHOWING PRIMA FACIE EVIDENCE OF
21 VIOLATION OF THE COMPETITIVE STANDARD RESTS UPON THE
22 COMMISSIONER.

23 (d) THE COMMISSIONER SHALL NOT ENTER AN ORDER UNDER
24 PARAGRAPH (a) OF SUBSECTION (5) OF THIS SECTION IF THE ACQUISITION
25 WILL:

26 (I) YIELD SUBSTANTIAL ECONOMIES OF SCALE OR ECONOMIES IN
27 RESOURCE UTILIZATION THAT CANNOT BE FEASIBLY ACHIEVED IN ANY

1 OTHER WAY AND THE PUBLIC BENEFITS THAT WOULD ARISE FROM SUCH
2 ECONOMIES EXCEED THE PUBLIC BENEFITS THAT WOULD ARISE FROM NOT
3 LESSENING COMPETITION; OR

4 (II) SUBSTANTIALLY INCREASE THE AVAILABILITY OF INSURANCE
5 AND THE PUBLIC BENEFITS OF THE INCREASE EXCEED THE PUBLIC BENEFITS
6 THAT WOULD ARISE FROM NOT LESSENING COMPETITION.

7 (5) **Orders and penalties.** (a) (I) IF AN ACQUISITION VIOLATES
8 THE STANDARDS OF THIS SECTION, THE COMMISSIONER MAY ENTER AN
9 ORDER:

10 (A) REQUIRING AN INVOLVED INSURER TO CEASE AND DESIST FROM
11 DOING BUSINESS IN THIS STATE WITH RESPECT TO THE LINE OR LINES OF
12 INSURANCE INVOLVED IN THE VIOLATION; OR

13 (B) DENYING THE APPLICATION OF AN ACQUIRED OR ACQUIRING
14 INSURER FOR A LICENSE TO DO BUSINESS IN THIS STATE.

15 (II) THE COMMISSIONER SHALL NOT ENTER AN ORDER UNDER THIS
16 PARAGRAPH (a) UNLESS:

17 (A) THERE IS A HEARING ON THE PROPOSED ORDER;

18 (B) NOTICE OF THE HEARING IS ISSUED BEFORE THE END OF THE
19 WAITING PERIOD AND NOT LESS THAN FIFTEEN DAYS BEFORE THE HEARING;
20 AND

21 (C) THE HEARING IS CONCLUDED AND THE ORDER IS ISSUED NO
22 LATER THAN SIXTY DAYS AFTER THE DATE OF THE FILING OF THE
23 PREACQUISITION NOTIFICATION WITH THE COMMISSIONER.

24 (III) EVERY ORDER MUST BE ACCOMPANIED BY A WRITTEN
25 DECISION OF THE COMMISSIONER SETTING FORTH FINDINGS OF FACT AND
26 CONCLUSIONS OF LAW.

27 (IV) AN ORDER ENTERED PURSUANT TO THIS PARAGRAPH (a) DOES

1 NOT APPLY IF THE ACQUISITION IS NOT CONSUMMATED.

2 (b) A PERSON WHO VIOLATES A CEASE-AND-DESIST ORDER OF THE
3 COMMISSIONER UNDER PARAGRAPH (a) OF THIS SUBSECTION (5) AND WHILE
4 THE ORDER IS IN EFFECT IS, AFTER NOTICE AND HEARING AND UPON ORDER
5 OF THE COMMISSIONER, SUBJECT AT THE DISCRETION OF THE
6 COMMISSIONER TO ONE OR MORE OF THE FOLLOWING:

7 (I) A MONETARY PENALTY OF NOT MORE THAN TEN THOUSAND
8 DOLLARS FOR EVERY DAY OF VIOLATION; OR

9 (II) SUSPENSION OR REVOCATION OF THE PERSON'S LICENSE.

10 (c) AN INSURER OR OTHER PERSON WHO FAILS TO MAKE ANY FILING
11 REQUIRED BY THIS SECTION, AND WHO ALSO FAILS TO DEMONSTRATE A
12 GOOD-FAITH EFFORT TO COMPLY WITH ANY FILING REQUIREMENT, IS
13 SUBJECT TO A FINE OF NOT MORE THAN FIFTY THOUSAND DOLLARS.

14 (6) SECTIONS 10-3-810 (2) AND (3) AND 10-3-812 DO NOT APPLY
15 TO ACQUISITIONS COVERED UNDER SUBSECTION (2) OF THIS SECTION.

16 **10-3-804. Registration of insurers.** (1) (a) EVERY INSURER THAT
17 IS AUTHORIZED TO DO BUSINESS IN THIS STATE AND THAT IS A MEMBER OF
18 AN INSURANCE HOLDING COMPANY SYSTEM SHALL REGISTER WITH THE
19 COMMISSIONER; EXCEPT THAT REGISTRATION IS NOT REQUIRED FOR A
20 FOREIGN INSURER THAT IS SUBJECT TO REGISTRATION REQUIREMENTS AND
21 STANDARDS ADOPTED BY STATUTE OR REGULATION IN THE JURISDICTION
22 OF ITS DOMICILE THAT ARE SUBSTANTIALLY SIMILAR TO THOSE CONTAINED
23 IN:

24 (I) THIS SECTION;

25 (II) SECTION 10-3-805 (1) (a), (2), OR (3); AND

26 (III) EITHER SECTION 10-3-805 (1) (b) OR A PROVISION SUCH AS
27 THE FOLLOWING: "EACH REGISTERED INSURER MUST KEEP CURRENT THE

1 INFORMATION REQUIRED TO BE DISCLOSED IN ITS REGISTRATION
2 STATEMENT BY REPORTING ALL MATERIAL CHANGES OR ADDITIONS WITHIN
3 FIFTEEN DAYS AFTER THE END OF THE MONTH IN WHICH IT LEARNS OF EACH
4 CHANGE OR ADDITION."

5 (b) AN INSURER THAT IS SUBJECT TO REGISTRATION UNDER THIS
6 SECTION SHALL REGISTER WITHIN FIFTEEN DAYS AFTER IT BECOMES
7 SUBJECT TO REGISTRATION, AND ANNUALLY THEREAFTER BY APRIL 30 OF
8 EACH YEAR FOR THE PREVIOUS CALENDAR YEAR, UNLESS THE
9 COMMISSIONER FOR GOOD CAUSE SHOWN EXTENDS THE TIME FOR
10 REGISTRATION, AND THEN WITHIN THE EXTENDED TIME. THE
11 COMMISSIONER MAY REQUIRE ANY INSURER AUTHORIZED TO DO BUSINESS
12 IN THE STATE THAT IS A MEMBER OF AN INSURANCE HOLDING COMPANY
13 SYSTEM AND THAT IS NOT SUBJECT TO REGISTRATION UNDER THIS SECTION
14 TO FURNISH A COPY OF THE REGISTRATION STATEMENT, THE SUMMARY
15 SPECIFIED IN SUBSECTION (3) OF THIS SECTION, OR OTHER INFORMATION
16 FILED BY THE INSURANCE COMPANY WITH THE INSURANCE REGULATORY
17 AUTHORITY OF ITS DOMICILIARY JURISDICTION.

18 (2) EVERY INSURER SUBJECT TO REGISTRATION SHALL FILE THE
19 REGISTRATION STATEMENT WITH THE COMMISSIONER ON A FORM AND IN
20 A FORMAT PRESCRIBED BY THE NAIC, WHICH MUST CONTAIN THE
21 FOLLOWING CURRENT INFORMATION:

22 (a) THE CAPITAL STRUCTURE, GENERAL FINANCIAL CONDITION,
23 AND OWNERSHIP AND MANAGEMENT OF THE INSURER AND ANY PERSON
24 CONTROLLING THE INSURER;

25 (b) THE IDENTITY AND RELATIONSHIP OF EVERY MEMBER OF THE
26 INSURANCE HOLDING COMPANY SYSTEM;

27 (c) THE FOLLOWING AGREEMENTS IN FORCE, AND TRANSACTIONS

1 CURRENTLY OUTSTANDING OR THAT HAVE OCCURRED DURING THE LAST
2 CALENDAR YEAR BETWEEN THE INSURER AND ITS AFFILIATES:

3 (I) LOANS, OTHER INVESTMENTS, OR PURCHASES, SALES, OR
4 EXCHANGES OF SECURITIES OF THE AFFILIATES BY THE INSURER OR OF THE
5 INSURER BY ITS AFFILIATES;

6 (II) PURCHASES, SALES, OR EXCHANGE OF ASSETS;

7 (III) TRANSACTIONS NOT IN THE ORDINARY COURSE OF BUSINESS;

8 (IV) GUARANTEES OR UNDERTAKINGS FOR THE BENEFIT OF AN
9 AFFILIATE THAT RESULT IN AN ACTUAL CONTINGENT EXPOSURE OF THE
10 INSURER'S ASSETS TO LIABILITY, OTHER THAN INSURANCE CONTRACTS
11 ENTERED INTO IN THE ORDINARY COURSE OF THE INSURER'S BUSINESS;

12 (V) ALL MANAGEMENT AGREEMENTS, SERVICE CONTRACTS, AND
13 COST-SHARING ARRANGEMENTS;

14 (VI) REINSURANCE AGREEMENTS;

15 (VII) DIVIDENDS AND OTHER DISTRIBUTIONS TO SHAREHOLDERS;

16 (VIII) CONSOLIDATED TAX ALLOCATION AGREEMENTS;

17 (IX) LOANS OR EXTENSIONS OF CREDIT TO ANY PERSON WHO IS
18 NOT AN AFFILIATE, WHERE THE INSURER MAKES SUCH LOANS OR
19 EXTENSIONS OF CREDIT WITH THE AGREEMENT OR UNDERSTANDING THAT
20 THE PROCEEDS OF SUCH TRANSACTIONS, IN WHOLE OR IN SUBSTANTIAL
21 PART, ARE TO BE USED TO MAKE LOANS OR EXTENSIONS OF CREDIT TO,
22 PURCHASE ASSETS OF, OR MAKE INVESTMENTS IN ANY AFFILIATE OF THE
23 INSURER MAKING SUCH LOANS OR EXTENSIONS OF CREDIT; AND

24 (X) ANY MATERIAL TRANSACTIONS, SPECIFIED BY RULE, THAT THE
25 COMMISSIONER DETERMINES MAY ADVERSELY AFFECT THE INTEREST OF
26 SUCH INSURER'S POLICYHOLDERS;

27 (d) INFORMATION ABOUT EACH PLEDGE OF THE INSURER'S STOCK,

1 INCLUDING STOCK OF ANY SUBSIDIARY OR CONTROLLING AFFILIATE, FOR
2 A LOAN MADE TO ANY MEMBER OF THE INSURANCE HOLDING COMPANY
3 SYSTEM;

4 (e) IF REQUESTED BY THE COMMISSIONER, FINANCIAL STATEMENTS
5 OF OR WITHIN AN INSURANCE HOLDING COMPANY SYSTEM, INCLUDING ALL
6 AFFILIATES. FINANCIAL STATEMENTS MAY INCLUDE ANNUAL AUDITED
7 FINANCIAL STATEMENTS FILED WITH THE FEDERAL SECURITIES AND
8 EXCHANGE COMMISSION PURSUANT TO THE FEDERAL "SECURITIES ACT OF
9 1933", 15 U.S.C. SEC. 77a ET SEQ., AS AMENDED, OR THE FEDERAL
10 "SECURITIES EXCHANGE ACT OF 1934", 15 U.S.C. SEC. 78a ET SEQ., AS
11 AMENDED. AN INSURER REQUIRED TO FILE FINANCIAL STATEMENTS
12 PURSUANT TO THIS PARAGRAPH (e) MAY SATISFY THE REQUEST BY
13 PROVIDING THE COMMISSIONER WITH THE MOST RECENTLY FILED PARENT
14 CORPORATION FINANCIAL STATEMENTS THAT HAVE BEEN FILED WITH THE
15 SECURITIES AND EXCHANGE COMMISSION.

16 (f) OTHER MATTERS CONCERNING TRANSACTIONS BETWEEN
17 REGISTERED INSURERS AND ANY AFFILIATES AS MAY BE INCLUDED FROM
18 TIME TO TIME IN ANY REGISTRATION FORMS ADOPTED OR APPROVED BY
19 THE COMMISSIONER;

20 (g) STATEMENTS THAT THE INSURER'S BOARD OF DIRECTORS
21 OVERSEES CORPORATE GOVERNANCE AND INTERNAL CONTROLS AND THAT
22 THE INSURER'S OFFICERS OR SENIOR MANAGEMENT HAVE APPROVED,
23 IMPLEMENTED, AND CONTINUE TO MAINTAIN AND MONITOR CORPORATE
24 GOVERNANCE AND INTERNAL CONTROL PROCEDURES; AND

25 (h) ANY OTHER INFORMATION REQUIRED BY THE COMMISSIONER
26 BY RULE.

27 (3) ALL REGISTRATION STATEMENTS MUST CONTAIN A SUMMARY

1 OUTLINING ALL ITEMS IN THE CURRENT REGISTRATION STATEMENT
2 REPRESENTING CHANGES FROM THE PRIOR REGISTRATION STATEMENT.

3 (4) NO INFORMATION NEED BE DISCLOSED ON THE REGISTRATION
4 STATEMENT FILED PURSUANT TO SUBSECTION (2) OF THIS SECTION IF THE
5 INFORMATION IS NOT MATERIAL FOR THE PURPOSES OF THIS SECTION.
6 UNLESS THE COMMISSIONER BY RULE OR ORDER PROVIDES OTHERWISE,
7 SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT,
8 INVESTMENTS, OR GUARANTEES INVOLVING ONE-HALF OF ONE PERCENT OR
9 LESS OF AN INSURER'S ADMITTED ASSETS AS OF THE THIRTY-FIRST DAY OF
10 THE PRECEDING DECEMBER ARE NOT MATERIAL FOR PURPOSES OF THIS
11 SUBSECTION (4).

12 (5) SUBJECT TO SECTION 10-3-805 (2), EACH REGISTERED INSURER
13 SHALL REPORT TO THE COMMISSIONER ALL DIVIDENDS AND OTHER
14 DISTRIBUTIONS TO SHAREHOLDERS WITHIN FIFTEEN BUSINESS DAYS
15 FOLLOWING THE DECLARATION OF THE DIVIDENDS OR DISTRIBUTION.

16 (6) A PERSON WITHIN AN INSURANCE HOLDING COMPANY SYSTEM
17 SUBJECT TO REGISTRATION SHALL PROVIDE COMPLETE AND ACCURATE
18 INFORMATION TO AN INSURER WHERE THE INFORMATION IS REASONABLY
19 NECESSARY TO ENABLE THE INSURER TO COMPLY WITH THIS PART 8.

20 (7) THE COMMISSIONER SHALL TERMINATE THE REGISTRATION OF
21 ANY INSURER THAT DEMONSTRATES THAT IT NO LONGER IS A MEMBER OF
22 AN INSURANCE HOLDING COMPANY SYSTEM.

23 (8) THE COMMISSIONER MAY REQUIRE OR ALLOW TWO OR MORE
24 AFFILIATED INSURERS SUBJECT TO REGISTRATION TO FILE A CONSOLIDATED
25 REGISTRATION STATEMENT.

26 (9) THE COMMISSIONER MAY ALLOW AN INSURER THAT IS
27 AUTHORIZED TO DO BUSINESS IN THIS STATE AND THAT IS PART OF AN

1 INSURANCE HOLDING COMPANY SYSTEM TO REGISTER ON BEHALF OF ANY
2 AFFILIATED INSURER THAT IS REQUIRED TO REGISTER UNDER SUBSECTION
3 (1) OF THIS SECTION AND TO FILE ALL INFORMATION AND MATERIAL
4 REQUIRED TO BE FILED UNDER THIS SECTION.

5 (10) THIS SECTION DOES NOT APPLY TO ANY INSURER,
6 INFORMATION, OR TRANSACTION IF AND TO THE EXTENT THAT THE
7 COMMISSIONER BY RULE OR ORDER EXEMPTS IT FROM THIS SECTION.

8 (11) A PERSON, INCLUDING AN INSURER OR ANY MEMBER OF AN
9 INSURANCE HOLDING COMPANY SYSTEM, MAY FILE WITH THE
10 COMMISSIONER A DISCLAIMER OF AFFILIATION WITH ANY AUTHORIZED
11 INSURER. THE DISCLAIMER MUST FULLY DISCLOSE ALL MATERIAL
12 RELATIONSHIPS AND BASES FOR AFFILIATION BETWEEN THE PERSON AND
13 THE INSURER AS WELL AS THE BASIS FOR DISCLAIMING THE AFFILIATION.
14 A DISCLAIMER OF AFFILIATION SHALL BE DEEMED TO HAVE BEEN GRANTED
15 UNLESS THE COMMISSIONER, WITHIN THIRTY DAYS FOLLOWING RECEIPT OF
16 A COMPLETE DISCLAIMER, NOTIFIES THE FILING PARTY THE DISCLAIMER IS
17 DISALLOWED. IN THE EVENT OF DISALLOWANCE, THE DISCLAIMING PARTY
18 MAY REQUEST AN ADMINISTRATIVE HEARING, WHICH THE COMMISSIONER
19 SHALL GRANT. THE DISCLAIMING PARTY NEED NOT REGISTER UNDER THIS
20 SECTION IF APPROVAL OF THE DISCLAIMER HAS BEEN GRANTED BY THE
21 COMMISSIONER OR IF THE DISCLAIMER IS DEEMED TO HAVE BEEN
22 APPROVED.

23 (12) THE ULTIMATE CONTROLLING PERSON OF EVERY INSURER
24 SUBJECT TO REGISTRATION SHALL ALSO FILE AN ANNUAL ENTERPRISE RISK
25 REPORT. THE REPORT MUST, TO THE BEST OF THE ULTIMATE CONTROLLING
26 PERSON'S KNOWLEDGE AND BELIEF, IDENTIFY THE MATERIAL RISKS WITHIN
27 THE INSURANCE HOLDING COMPANY SYSTEM THAT COULD POSE

1 ENTERPRISE RISK TO THE INSURER. THE CONTROLLING PERSON SHALL FILE
2 THE REPORT WITH THE LEAD STATE COMMISSIONER OF THE INSURANCE
3 HOLDING COMPANY SYSTEM AS DETERMINED BY THE PROCEDURES WITHIN
4 THE FINANCIAL ANALYSIS HANDBOOK ADOPTED BY THE NAIC.

5 (13) THE FAILURE TO FILE A REGISTRATION STATEMENT OR ANY
6 SUMMARY OF THE REGISTRATION STATEMENT OR ENTERPRISE RISK FILING
7 REQUIRED BY THIS SECTION WITHIN THE TIME SPECIFIED FOR FILING IS A
8 VIOLATION OF THIS SECTION.

9 **10-3-805. Standards and management of an insurer within an**
10 **insurance holding company system. (1) Transactions within an**
11 **insurance holding company system. (a) TRANSACTIONS WITHIN AN**
12 **INSURANCE HOLDING COMPANY SYSTEM TO WHICH AN INSURER SUBJECT**
13 **TO REGISTRATION IS A PARTY ARE SUBJECT TO THE FOLLOWING**
14 **STANDARDS:**

15 (I) THE TERMS MUST BE FAIR AND REASONABLE;

16 (II) AGREEMENTS FOR COST SHARING SERVICES AND MANAGEMENT
17 MUST INCLUDE SUCH PROVISIONS AS REQUIRED BY RULES ISSUED BY THE
18 COMMISSIONER;

19 (III) CHARGES OR FEES FOR SERVICES PERFORMED MUST BE
20 REASONABLE;

21 (IV) EXPENSES INCURRED AND PAYMENT RECEIVED SHALL BE
22 ALLOCATED TO THE INSURER IN CONFORMITY WITH CUSTOMARY
23 INSURANCE ACCOUNTING PRACTICES CONSISTENTLY APPLIED;

24 (V) THE BOOKS, ACCOUNTS, AND RECORDS OF EACH PARTY TO ALL
25 SUCH TRANSACTIONS SHALL BE SO MAINTAINED AS TO CLEARLY AND
26 ACCURATELY DISCLOSE THE NATURE AND DETAILS OF THE TRANSACTIONS,
27 INCLUDING SUCH ACCOUNTING INFORMATION AS IS NECESSARY TO

1 SUPPORT THE REASONABLENESS OF THE CHARGES OR FEES TO THE
2 RESPECTIVE PARTIES; AND

3 (VI) THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS
4 FOLLOWING ANY DIVIDENDS OR DISTRIBUTIONS TO SHAREHOLDER
5 AFFILIATES MUST BE REASONABLE IN RELATION TO THE INSURER'S
6 OUTSTANDING LIABILITIES AND ADEQUATE TO MEET ITS FINANCIAL NEEDS.

7 (b) THE FOLLOWING TRANSACTIONS INVOLVING A DOMESTIC
8 INSURER AND ANY PERSON IN ITS INSURANCE HOLDING COMPANY SYSTEM,
9 INCLUDING AMENDMENTS OR MODIFICATIONS OF AFFILIATE AGREEMENTS
10 PREVIOUSLY FILED PURSUANT TO THIS SECTION, THAT ARE SUBJECT TO
11 ANY MATERIALITY STANDARDS CONTAINED IN SUBPARAGRAPHS (I) TO
12 (VII) OF THIS PARAGRAPH (b), SHALL NOT BE ENTERED INTO UNLESS THE
13 INSURER HAS NOTIFIED THE COMMISSIONER IN WRITING OF ITS INTENTION
14 TO ENTER INTO THE TRANSACTION AT LEAST THIRTY DAYS BEFORE
15 ENTERING INTO THE TRANSACTION, OR SUCH SHORTER PERIOD AS THE
16 COMMISSIONER MAY PERMIT, AND THE COMMISSIONER HAS NOT
17 DISAPPROVED IT WITHIN THAT PERIOD:

18 (I) SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF
19 CREDIT, OR INVESTMENTS, IF THE TRANSACTIONS ARE EQUAL TO OR
20 EXCEED:

21 (A) WITH RESPECT TO NONLIFE INSURERS, THE LESSER OF THREE
22 PERCENT OF THE INSURER'S ADMITTED ASSETS OR TWENTY-FIVE PERCENT
23 OF SURPLUS AS REGARDS POLICYHOLDERS AS OF THE THIRTY-FIRST DAY OF
24 THE PRECEDING DECEMBER; OR

25 (B) WITH RESPECT TO LIFE INSURERS, THREE PERCENT OF THE
26 INSURER'S ADMITTED ASSETS AS OF THE THIRTY-FIRST DAY OF THE
27 PRECEDING DECEMBER;

1 (II) LOANS OR EXTENSIONS OF CREDIT TO ANY PERSON WHO IS NOT
2 AN AFFILIATE, WHERE THE INSURER MAKES LOANS OR EXTENSIONS OF
3 CREDIT WITH THE AGREEMENT OR UNDERSTANDING THAT THE PROCEEDS
4 OF THE TRANSACTIONS, IN WHOLE OR IN SUBSTANTIAL PART, ARE TO BE
5 USED TO MAKE LOANS OR EXTENSIONS OF CREDIT TO, PURCHASE ASSETS
6 OF, OR MAKE INVESTMENTS IN, ANY AFFILIATE OF THE INSURER MAKING
7 THE LOANS OR EXTENSIONS OF CREDIT IF THE TRANSACTIONS ARE EQUAL
8 TO OR EXCEED:

9 (A) WITH RESPECT TO NONLIFE INSURERS, THE LESSER OF THREE
10 PERCENT OF THE INSURER'S ADMITTED ASSETS OR TWENTY-FIVE PERCENT
11 OF SURPLUS AS REGARDS POLICYHOLDERS AS OF THE THIRTY-FIRST DAY OF
12 THE PRECEDING DECEMBER; OR

13 (B) WITH RESPECT TO LIFE INSURERS, THREE PERCENT OF THE
14 INSURER'S ADMITTED ASSETS AS OF THE THIRTY-FIRST DAY OF THE
15 PRECEDING DECEMBER;

16 (III) REINSURANCE AGREEMENTS OR MODIFICATIONS, INCLUDING:

17 (A) ALL REINSURANCE POOLING AGREEMENTS; AND

18 (B) AGREEMENTS IN WHICH THE REINSURANCE PREMIUM OR A
19 CHANGE IN THE INSURER'S LIABILITIES, OR THE PROJECTED REINSURANCE
20 PREMIUM OR A CHANGE IN THE INSURER'S LIABILITIES IN ANY OF THE NEXT
21 THREE YEARS, EQUALS OR EXCEEDS FIVE PERCENT OF THE INSURER'S
22 SURPLUS AS REGARDS POLICYHOLDERS, AS OF THE THIRTY-FIRST DAY OF
23 THE PRECEDING DECEMBER, INCLUDING THOSE AGREEMENTS THAT MAY
24 REQUIRE AS CONSIDERATION THE TRANSFER OF ASSETS FROM AN INSURER
25 TO A NONAFFILIATE, IF AN AGREEMENT OR UNDERSTANDING EXISTS
26 BETWEEN THE INSURER AND NONAFFILIATE THAT ANY PORTION OF THE
27 ASSETS WILL BE TRANSFERRED TO ONE OR MORE AFFILIATES OF THE

1 INSURER;

2 (IV) ALL MANAGEMENT AGREEMENTS, SERVICE CONTRACTS, TAX
3 ALLOCATION AGREEMENTS, GUARANTEES, AND COST-SHARING
4 ARRANGEMENTS;

5 (V) GUARANTEES WHEN MADE BY A DOMESTIC INSURER; EXCEPT
6 THAT A GUARANTEE THAT IS QUANTIFIABLE AS TO AMOUNT IS NOT
7 SUBJECT TO THE NOTICE REQUIREMENTS OF THIS SUBPARAGRAPH (V)
8 UNLESS IT EXCEEDS THE LESSER OF ONE-HALF OF ONE PERCENT OF THE
9 INSURER'S ADMITTED ASSETS OR TEN PERCENT OF SURPLUS AS REGARDS
10 POLICYHOLDERS AS OF THE THIRTY-FIRST DAY OF THE PRECEDING
11 DECEMBER. GUARANTEES THAT ARE NOT QUANTIFIABLE AS TO AMOUNT
12 ARE SUBJECT TO THE NOTICE REQUIREMENTS OF THIS SUBPARAGRAPH (V).

13 (VI) DIRECT OR INDIRECT ACQUISITIONS OR INVESTMENTS IN A
14 PERSON THAT CONTROLS THE INSURER OR IN AN AFFILIATE OF THE INSURER
15 IN AN AMOUNT THAT, TOGETHER WITH ITS PRESENT HOLDINGS IN SUCH
16 INVESTMENTS, EXCEEDS TWO AND ONE-HALF PERCENT OF THE INSURER'S
17 SURPLUS TO POLICYHOLDERS; EXCEPT THAT DIRECT OR INDIRECT
18 ACQUISITIONS OR INVESTMENTS IN SUBSIDIARIES ACQUIRED PURSUANT TO
19 SECTION 10-3-802 OR AUTHORIZED UNDER ANY OTHER SECTION OF
20 COLORADO LAW, OR IN NONSUBSIDIARY INSURANCE AFFILIATES THAT ARE
21 SUBJECT TO THIS PART 8, ARE EXEMPT FROM THIS REQUIREMENT; AND

22 (VII) ANY MATERIAL TRANSACTIONS, SPECIFIED BY RULE, THAT
23 THE COMMISSIONER DETERMINES MAY ADVERSELY AFFECT THE INTERESTS
24 OF THE INSURER'S POLICYHOLDERS.

25 (c) THE NOTICE FOR AMENDMENTS OR MODIFICATIONS SPECIFIED
26 IN PARAGRAPH (b) OF THIS SUBSECTION (1) MUST INCLUDE THE REASONS
27 FOR THE CHANGE AND THE FINANCIAL IMPACT ON THE DOMESTIC INSURER.

1 INFORMAL NOTICE SHALL BE REPORTED, WITHIN THIRTY DAYS AFTER A
2 TERMINATION OF A PREVIOUSLY FILED AGREEMENT, TO THE
3 COMMISSIONER FOR DETERMINATION OF THE TYPE OF FILING REQUIRED, IF
4 ANY.

5 (d) NOTHING IN PARAGRAPH (b) OF THIS SUBSECTION (1)
6 AUTHORIZES OR PERMITS ANY TRANSACTIONS THAT, IN THE CASE OF AN
7 INSURER NOT A MEMBER OF THE SAME INSURANCE HOLDING COMPANY
8 SYSTEM, WOULD BE OTHERWISE CONTRARY TO LAW.

9 (e) A DOMESTIC INSURER SHALL NOT ENTER INTO TRANSACTIONS
10 THAT ARE PART OF A PLAN OR SERIES OF LIKE TRANSACTIONS WITH
11 PERSONS WITHIN THE INSURANCE HOLDING COMPANY SYSTEM IF THE
12 PURPOSE OF THOSE SEPARATE TRANSACTIONS IS TO AVOID THE STATUTORY
13 THRESHOLD AMOUNT AND THUS AVOID THE REVIEW THAT WOULD OCCUR
14 OTHERWISE. IF THE COMMISSIONER DETERMINES THAT SEPARATE
15 TRANSACTIONS WERE ENTERED INTO OVER ANY TWELVE-MONTH PERIOD
16 FOR THAT PURPOSE, THE COMMISSIONER MAY EXERCISE HIS OR HER
17 AUTHORITY UNDER SECTION 10-3-811.

18 (f) THE COMMISSIONER, IN REVIEWING TRANSACTIONS PURSUANT
19 TO PARAGRAPH (b) OF THIS SUBSECTION (1), SHALL CONSIDER WHETHER
20 THE TRANSACTIONS COMPLY WITH THE STANDARDS SET FORTH IN
21 PARAGRAPH (a) OF THIS SUBSECTION (1) AND WHETHER THEY MAY
22 ADVERSELY AFFECT THE INTERESTS OF POLICYHOLDERS.

23 (g) A DOMESTIC INSURER SHALL NOTIFY THE COMMISSIONER
24 WITHIN THIRTY DAYS AFTER ANY INVESTMENT OF THE DOMESTIC INSURER
25 IN ANY ONE CORPORATION IF THE TOTAL INVESTMENT IN THE
26 CORPORATION BY THE INSURANCE HOLDING COMPANY SYSTEM EXCEEDS
27 TEN PERCENT OF THE CORPORATION'S VOTING SECURITIES.

1 **(2) Dividends and other distributions.** (a) A DOMESTIC INSURER
2 SHALL NOT PAY ANY EXTRAORDINARY DIVIDEND OR MAKE ANY OTHER
3 EXTRAORDINARY DISTRIBUTION TO ITS SHAREHOLDERS UNTIL THIRTY
4 DAYS AFTER THE COMMISSIONER HAS RECEIVED NOTICE OF THE
5 DECLARATION OF THE DIVIDEND OR DISTRIBUTION AND HAS NOT WITHIN
6 THAT PERIOD DISAPPROVED THE PAYMENT, OR UNTIL THE COMMISSIONER
7 HAS APPROVED THE PAYMENT WITHIN THE THIRTY-DAY PERIOD.

8 (b) FOR PURPOSES OF THIS SECTION, AN EXTRAORDINARY
9 DIVIDEND OR DISTRIBUTION INCLUDES ANY DIVIDEND OR DISTRIBUTION OF
10 CASH OR OTHER PROPERTY WHOSE FAIR MARKET VALUE, TOGETHER WITH
11 THAT OF OTHER DIVIDENDS OR DISTRIBUTIONS MADE WITHIN THE
12 PRECEDING TWELVE MONTHS, EXCEEDS THE LESSER OF:

13 (I) TEN PERCENT OF THE INSURER'S SURPLUS AS REGARDS
14 POLICYHOLDERS AS OF THE THIRTY-FIRST DAY OF THE PRECEDING
15 DECEMBER; OR

16 (II) THE NET GAIN FROM OPERATIONS OF THE INSURER, IF THE
17 INSURER IS A LIFE INSURER, OR THE NET INCOME, IF THE INSURER IS NOT A
18 LIFE INSURER, NOT INCLUDING REALIZED CAPITAL GAINS, FOR THE
19 TWELVE-MONTH PERIOD ENDING THE THIRTY-FIRST DAY OF THE
20 PRECEDING DECEMBER, BUT NOT INCLUDING PRO RATA DISTRIBUTIONS OF
21 ANY CLASS OF THE INSURER'S OWN SECURITIES.

22 (c) IN DETERMINING WHETHER A DIVIDEND OR DISTRIBUTION IS
23 EXTRAORDINARY, AN INSURER OTHER THAN A LIFE INSURER MAY CARRY
24 FORWARD NET INCOME FROM THE PREVIOUS TWO CALENDAR YEARS THAT
25 HAS NOT ALREADY BEEN PAID OUT AS DIVIDENDS. THIS CARRY-FORWARD
26 SHALL BE COMPUTED BY TAKING THE NET INCOME FROM THE SECOND AND
27 THIRD PRECEDING CALENDAR YEARS, NOT INCLUDING REALIZED CAPITAL

1 GAINS, LESS DIVIDENDS PAID IN THE SECOND AND IMMEDIATELY
2 PRECEDING CALENDAR YEARS.

3 (d) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN
4 INSURER MAY DECLARE AN EXTRAORDINARY DIVIDEND OR DISTRIBUTION
5 THAT IS CONDITIONAL UPON THE COMMISSIONER'S APPROVAL, AND THE
6 DECLARATION CONFERS NO RIGHTS UPON SHAREHOLDERS UNTIL:

7 (I) THE COMMISSIONER HAS APPROVED THE PAYMENT OF THE
8 DIVIDEND OR DISTRIBUTION; OR

9 (II) THE COMMISSIONER HAS NOT DISAPPROVED PAYMENT WITHIN
10 THE THIRTY-DAY PERIOD REFERRED TO IN PARAGRAPH (a) OF THIS
11 SUBSECTION (2).

12 (3) FOR PURPOSES OF THIS PART 8, IN DETERMINING WHETHER AN
13 INSURER'S SURPLUS AS REGARDS POLICYHOLDERS IS REASONABLE IN
14 RELATION TO THE INSURER'S OUTSTANDING LIABILITIES AND ADEQUATE TO
15 MEET ITS FINANCIAL NEEDS, THE COMMISSIONER SHALL CONSIDER THE
16 FOLLOWING FACTORS, AMONG OTHERS:

17 (a) THE SIZE OF THE INSURER AS MEASURED BY ITS ASSETS,
18 CAPITAL AND SURPLUS, RESERVES, PREMIUM WRITINGS, INSURANCE IN
19 FORCE, AND OTHER APPROPRIATE CRITERIA;

20 (b) THE EXTENT TO WHICH THE INSURER'S BUSINESS IS DIVERSIFIED
21 AMONG SEVERAL LINES OF INSURANCE;

22 (c) THE NUMBER AND SIZE OF RISKS INSURED IN EACH LINE OF
23 BUSINESS;

24 (d) THE EXTENT OF THE GEOGRAPHICAL DISPERSION OF THE
25 INSURER'S INSURED RISKS;

26 (e) THE NATURE AND EXTENT OF THE INSURER'S REINSURANCE
27 PROGRAM;

1 (f) THE QUALITY, DIVERSIFICATION, AND LIQUIDITY OF THE
2 INSURER'S INVESTMENT PORTFOLIO;

3 (g) THE RECENT PAST AND PROJECTED FUTURE TREND IN THE SIZE
4 OF THE INSURER'S INVESTMENT PORTFOLIO;

5 (h) THE SURPLUS AS REGARDS POLICYHOLDERS MAINTAINED BY
6 OTHER COMPARABLE INSURERS;

7 (i) THE ADEQUACY OF THE INSURER'S RESERVES;

8 (j) THE QUALITY AND LIQUIDITY OF INVESTMENTS IN AFFILIATES.

9 THE COMMISSIONER MAY TREAT ANY SUCH INVESTMENT AS A DISALLOWED
10 ASSET FOR PURPOSES OF DETERMINING THE ADEQUACY OF SURPLUS AS
11 REGARDS POLICYHOLDERS WHENEVER IN THE JUDGMENT OF THE
12 COMMISSIONER THE INVESTMENT SO WARRANTS.

13 (k) THE QUALITY OF THE INSURER'S EARNINGS AND THE EXTENT TO
14 WHICH THE REPORTED EARNINGS INCLUDE EXTRAORDINARY ITEMS, SUCH
15 AS SURPLUS RELIEF REINSURANCE TRANSACTIONS; AND

16 (l) ANY OTHER SITUATION NOT DESCRIBED IN THIS SUBSECTION (3)
17 THAT MAY RENDER THE OPERATIONS OF THE INSURER HAZARDOUS TO THE
18 PUBLIC OR ITS POLICYHOLDERS.

19 **10-3-806. Examination.** (1) SUBJECT TO THE LIMITATION
20 CONTAINED IN THIS SECTION AND IN ADDITION TO THE POWERS THAT THE
21 COMMISSIONER HAS UNDER THIS TITLE RELATING TO THE EXAMINATION OF
22 INSURERS, THE COMMISSIONER MAY EXAMINE ANY INSURER REGISTERED
23 UNDER SECTION 10-3-804 AND ITS AFFILIATES TO ASCERTAIN THE
24 FINANCIAL CONDITION OF THE INSURER, INCLUDING THE ENTERPRISE RISK
25 TO THE INSURER BY THE ULTIMATE CONTROLLING PARTY, BY ANY ENTITY
26 OR COMBINATION OF ENTITIES WITHIN THE INSURANCE HOLDING COMPANY
27 SYSTEM, OR BY THE INSURANCE HOLDING COMPANY SYSTEM ON A

1 CONSOLIDATED BASIS.

2 (2) **Access to books and records.** (a) THE COMMISSIONER MAY
3 ORDER ANY INSURER REGISTERED UNDER SECTION 10-3-804 TO PRODUCE
4 SUCH RECORDS, BOOKS, OR OTHER INFORMATION PAPERS IN THE
5 POSSESSION OF THE INSURER OR ITS AFFILIATES AS ARE REASONABLY
6 NECESSARY TO DETERMINE COMPLIANCE WITH THIS SECTION.

7 (b) TO DETERMINE COMPLIANCE WITH THIS SECTION, THE
8 COMMISSIONER MAY ORDER ANY INSURER REGISTERED UNDER SECTION
9 10-3-804 TO PRODUCE INFORMATION NOT IN THE POSSESSION OF THE
10 INSURER IF THE INSURER CAN OBTAIN ACCESS TO THE INFORMATION
11 PURSUANT TO CONTRACTUAL RELATIONSHIPS, STATUTORY OBLIGATIONS,
12 OR OTHER METHODS. IF THE INSURER CANNOT OBTAIN THE INFORMATION
13 REQUESTED BY THE COMMISSIONER, THE INSURER SHALL PROVIDE THE
14 COMMISSIONER A DETAILED EXPLANATION OF THE REASON THAT THE
15 INSURER CANNOT OBTAIN THE INFORMATION AND THE IDENTITY OF THE
16 HOLDER OF THE INFORMATION.

17 (3) THE COMMISSIONER MAY RETAIN, AT THE REGISTERED
18 INSURER'S EXPENSE, SUCH ATTORNEYS, ACTUARIES, ACCOUNTANTS, AND
19 OTHER EXPERTS NOT OTHERWISE A PART OF THE COMMISSIONER'S STAFF
20 AS ARE REASONABLY NECESSARY TO ASSIST IN THE CONDUCT OF THE
21 EXAMINATION UNDER SUBSECTION (1) OF THIS SECTION. EACH PERSON SO
22 RETAINED IS UNDER THE DIRECTION AND CONTROL OF THE COMMISSIONER
23 AND SHALL ACT IN A PURELY ADVISORY CAPACITY.

24 (4) EACH REGISTERED INSURER PRODUCING FOR EXAMINATION
25 RECORDS, BOOKS, AND PAPERS PURSUANT TO SUBSECTION (1) OF THIS
26 SECTION IS LIABLE FOR AND SHALL PAY THE EXPENSE OF EXAMINATION IN
27 ACCORDANCE WITH PART 2 OF ARTICLE 1 OF THIS TITLE.

1 **10-3-807. Supervisory colleges.** (1) WITH RESPECT TO ANY
2 INSURER REGISTERED UNDER SECTION 10-3-804, AND IN ACCORDANCE
3 WITH SUBSECTION (3) OF THIS SECTION, THE COMMISSIONER MAY
4 PARTICIPATE IN A SUPERVISORY COLLEGE FOR ANY DOMESTIC INSURER
5 THAT IS PART OF AN INSURANCE HOLDING COMPANY SYSTEM WITH
6 INTERNATIONAL OPERATIONS IN ORDER TO DETERMINE COMPLIANCE BY
7 THE INSURER WITH THIS SECTION. THE POWERS OF THE COMMISSIONER
8 WITH RESPECT TO SUPERVISORY COLLEGES INCLUDE THE FOLLOWING:

9 (a) INITIATING THE ESTABLISHMENT OF A SUPERVISORY COLLEGE;

10 (b) CLARIFYING THE MEMBERSHIP AND PARTICIPATION OF OTHER
11 SUPERVISORS IN THE SUPERVISORY COLLEGE;

12 (c) CLARIFYING THE FUNCTIONS OF THE SUPERVISORY COLLEGE
13 AND THE ROLE OF OTHER REGULATORS, INCLUDING THE ESTABLISHMENT
14 OF A GROUP-WIDE SUPERVISOR;

15 (d) COORDINATING THE ONGOING ACTIVITIES OF THE SUPERVISORY
16 COLLEGE, INCLUDING PLANNING MEETINGS, SUPERVISORY ACTIVITIES, AND
17 PROCESSES FOR INFORMATION SHARING; AND

18 (e) ESTABLISHING A CRISIS MANAGEMENT PLAN.

19 (2) EACH REGISTERED INSURER SUBJECT TO THIS SECTION IS LIABLE
20 FOR AND SHALL PAY THE REASONABLE EXPENSES OF THE COMMISSIONER'S
21 PARTICIPATION IN A SUPERVISORY COLLEGE IN ACCORDANCE WITH
22 SUBSECTION (3) OF THIS SECTION, INCLUDING REASONABLE TRAVEL
23 EXPENSES. FOR PURPOSES OF THIS SECTION, A SUPERVISORY COLLEGE MAY
24 BE CONVENED AS EITHER A TEMPORARY OR PERMANENT FORUM FOR
25 COMMUNICATION AND COOPERATION BETWEEN THE REGULATORS
26 CHARGED WITH THE SUPERVISION OF THE INSURER OR ITS AFFILIATES, AND
27 THE COMMISSIONER MAY ESTABLISH A REGULAR ASSESSMENT TO THE

1 INSURER FOR THE PAYMENT OF THESE EXPENSES.

2 (3) IN ORDER TO ASSESS THE BUSINESS STRATEGY, FINANCIAL
3 POSITION, LEGAL AND REGULATORY POSITION, RISK EXPOSURE, AND RISK
4 MANAGEMENT AND GOVERNANCE PROCESSES, AND AS PART OF THE
5 EXAMINATION OF INDIVIDUAL INSURERS IN ACCORDANCE WITH SECTION
6 10-3-806, THE COMMISSIONER MAY PARTICIPATE IN A SUPERVISORY
7 COLLEGE WITH OTHER REGULATORS CHARGED WITH SUPERVISION OF THE
8 INSURER OR ITS AFFILIATES, INCLUDING OTHER STATE, FEDERAL, AND
9 INTERNATIONAL REGULATORY AGENCIES. THE COMMISSIONER MAY ENTER
10 INTO AGREEMENTS, IN ACCORDANCE WITH SECTION 10-3-808 (3),
11 PROVIDING THE BASIS FOR COOPERATION BETWEEN THE COMMISSIONER
12 AND THE OTHER REGULATORY AGENCIES AND THE ACTIVITIES OF THE
13 SUPERVISORY COLLEGE. NOTHING IN THIS SECTION DELEGATES TO THE
14 SUPERVISORY COLLEGE THE COMMISSIONER'S AUTHORITY TO REGULATE
15 OR SUPERVISE THE INSURER OR ITS AFFILIATES WITHIN HIS OR HER
16 JURISDICTION.

17 **10-3-808. Confidential treatment.** (1) DOCUMENTS, MATERIALS,
18 OR OTHER INFORMATION IN THE POSSESSION OR CONTROL OF THE DIVISION
19 THAT ARE OBTAINED BY OR DISCLOSED TO THE COMMISSIONER OR ANY
20 OTHER PERSON IN THE COURSE OF AN EXAMINATION OR INVESTIGATION
21 MADE PURSUANT TO SECTION 10-3-806 AND ALL INFORMATION REPORTED
22 PURSUANT TO SECTION 10-3-803 (2) (l) AND (2) (m), 10-3-804, OR
23 10-3-805 ARE CONFIDENTIAL BY LAW AND PRIVILEGED, ARE NOT SUBJECT
24 TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE
25 24, C.R.S., ARE NOT SUBJECT TO SUBPOENA, AND ARE NOT SUBJECT TO
26 DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION.
27 HOWEVER, THE COMMISSIONER IS AUTHORIZED TO USE THE DOCUMENTS,

1 MATERIALS, OR OTHER INFORMATION IN THE FURTHERANCE OF ANY
2 REGULATORY OR LEGAL ACTION BROUGHT AS A PART OF THE
3 COMMISSIONER'S OFFICIAL DUTIES. THE COMMISSIONER SHALL NOT
4 OTHERWISE MAKE THE DOCUMENTS, MATERIALS, OR OTHER INFORMATION
5 PUBLIC WITHOUT THE PRIOR WRITTEN CONSENT OF THE INSURER TO WHICH
6 THEY PERTAIN UNLESS THE COMMISSIONER, AFTER GIVING THE INSURER
7 AND ITS AFFILIATES WHO WOULD BE AFFECTED NOTICE AND OPPORTUNITY
8 TO BE HEARD, DETERMINES THAT THE INTEREST OF POLICYHOLDERS,
9 SHAREHOLDERS, OR THE PUBLIC WILL BE SERVED BY THE PUBLICATION, IN
10 WHICH EVENT THE COMMISSIONER MAY PUBLISH ALL OR ANY PART IN SUCH
11 MANNER AS THE COMMISSIONER DEEMS APPROPRIATE.

12 (2) NEITHER THE COMMISSIONER NOR ANY PERSON WHO RECEIVED
13 DOCUMENTS, MATERIALS, OR OTHER INFORMATION WHILE ACTING UNDER
14 THE AUTHORITY OF THE COMMISSIONER OR WITH WHOM THE DOCUMENTS,
15 MATERIALS, OR OTHER INFORMATION ARE SHARED PURSUANT TO THIS
16 PART 8 SHALL BE PERMITTED OR REQUIRED TO TESTIFY IN ANY PRIVATE
17 CIVIL ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS, MATERIALS,
18 OR INFORMATION SUBJECT TO SUBSECTION (1) OF THIS SECTION.

19 (3) IN ORDER TO ASSIST IN THE PERFORMANCE OF THE
20 COMMISSIONER'S DUTIES, THE COMMISSIONER:

21 (a) MAY SHARE DOCUMENTS, MATERIALS, OR OTHER
22 INFORMATION, INCLUDING THE CONFIDENTIAL AND PRIVILEGED
23 DOCUMENTS, MATERIALS, OR INFORMATION SUBJECT TO SUBSECTION (1)
24 OF THIS SECTION, WITH OTHER STATE, FEDERAL, AND INTERNATIONAL
25 REGULATORY AGENCIES, WITH THE NAIC AND ITS AFFILIATES AND
26 SUBSIDIARIES, AND WITH STATE, FEDERAL, AND INTERNATIONAL LAW
27 ENFORCEMENT AUTHORITIES, INCLUDING MEMBERS OF ANY SUPERVISORY

1 COLLEGE DESCRIBED IN SECTION 10-3-807, IF THE RECIPIENT AGREES IN
2 WRITING TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF
3 THE DOCUMENT, MATERIAL, OR OTHER INFORMATION AND HAS VERIFIED
4 IN WRITING THE LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY;

5 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (3),
6 SHALL SHARE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIAL, OR
7 INFORMATION REPORTED PURSUANT TO SECTION 10-3-804 (12) ONLY WITH
8 COMMISSIONERS OF STATES HAVING STATUTES OR REGULATIONS
9 SUBSTANTIALLY SIMILAR TO SUBSECTION (1) OF THIS SECTION AND WHO
10 HAVE AGREED IN WRITING NOT TO DISCLOSE SUCH INFORMATION;

11 (c) MAY RECEIVE DOCUMENTS, MATERIALS, OR INFORMATION,
12 INCLUDING OTHERWISE CONFIDENTIAL AND PRIVILEGED DOCUMENTS,
13 MATERIALS, OR INFORMATION FROM THE NAIC AND ITS AFFILIATES AND
14 SUBSIDIARIES AND FROM REGULATORY AND LAW ENFORCEMENT OFFICIALS
15 OF OTHER FOREIGN OR DOMESTIC JURISDICTIONS, AND SHALL MAINTAIN AS
16 CONFIDENTIAL OR PRIVILEGED ANY DOCUMENT, MATERIAL, OR
17 INFORMATION RECEIVED WITH NOTICE OR THE UNDERSTANDING THAT IT
18 IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE JURISDICTION
19 THAT IS THE SOURCE OF THE DOCUMENT, MATERIAL, OR INFORMATION;
20 AND

21 (d) SHALL ENTER INTO WRITTEN AGREEMENTS WITH THE NAIC
22 GOVERNING THE SHARING AND USE OF INFORMATION PROVIDED PURSUANT
23 TO THIS PART 8 CONSISTENT WITH THIS SUBSECTION (3) THAT MUST:

24 (I) SPECIFY PROCEDURES AND PROTOCOLS REGARDING THE
25 CONFIDENTIALITY AND SECURITY OF INFORMATION SHARED WITH THE
26 NAIC AND ITS AFFILIATES AND SUBSIDIARIES PURSUANT TO THIS PART 8,
27 INCLUDING PROCEDURES AND PROTOCOLS FOR SHARING BY THE NAIC

1 WITH OTHER STATE, FEDERAL, OR INTERNATIONAL REGULATORS;

2 (II) SPECIFY THAT OWNERSHIP OF INFORMATION SHARED WITH THE
3 NAIC AND ITS AFFILIATES AND SUBSIDIARIES PURSUANT TO THIS PART 8
4 REMAINS WITH THE COMMISSIONER AND THAT THE NAIC'S USE OF THE
5 INFORMATION IS SUBJECT TO THE DIRECTION OF THE COMMISSIONER;

6 (III) REQUIRE PROMPT NOTICE TO BE GIVEN TO AN INSURER WHOSE
7 CONFIDENTIAL INFORMATION IN THE POSSESSION OF THE NAIC PURSUANT
8 TO THIS PART 8 IS SUBJECT TO A REQUEST OR SUBPOENA TO THE NAIC FOR
9 DISCLOSURE OR PRODUCTION; AND

10 (IV) REQUIRE THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES
11 TO CONSENT TO INTERVENTION BY AN INSURER IN ANY JUDICIAL OR
12 ADMINISTRATIVE ACTION IN WHICH THE NAIC AND ITS AFFILIATES AND
13 SUBSIDIARIES MAY BE REQUIRED TO DISCLOSE CONFIDENTIAL
14 INFORMATION ABOUT THE INSURER SHARED WITH THE NAIC AND ITS
15 AFFILIATES AND SUBSIDIARIES PURSUANT TO THIS PART 8.

16 (4) THE SHARING OF INFORMATION BY THE COMMISSIONER
17 PURSUANT TO THIS PART 8 DOES NOT CONSTITUTE A DELEGATION OF
18 REGULATORY AUTHORITY OR RULE-MAKING, AND THE COMMISSIONER IS
19 SOLELY RESPONSIBLE FOR THE ADMINISTRATION, EXECUTION, AND
20 ENFORCEMENT OF THIS PART 8.

21 (5) NO WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF
22 CONFIDENTIALITY IN THE DOCUMENTS, MATERIALS, OR INFORMATION
23 OCCURS AS A RESULT OF DISCLOSURE TO THE COMMISSIONER UNDER THIS
24 SECTION OR AS A RESULT OF SHARING AS AUTHORIZED IN SUBSECTION (3)
25 OF THIS SECTION.

26 (6) DOCUMENTS, MATERIALS, OR OTHER INFORMATION IN THE
27 POSSESSION OR CONTROL OF THE NAIC PURSUANT TO THIS PART 8 ARE

1 CONFIDENTIAL BY LAW AND PRIVILEGED, ARE NOT SUBJECT TO THE
2 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24,
3 C.R.S., ARE NOT SUBJECT TO SUBPOENA, AND ARE NOT SUBJECT TO
4 DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION.

5 **10-3-809. Rules.** THE COMMISSIONER MAY, UPON NOTICE AND
6 OPPORTUNITY FOR ALL INTERESTED PERSONS TO BE HEARD, ISSUE SUCH
7 RULES AND ORDERS AS ARE NECESSARY TO CARRY OUT THIS PART 8.

8 **10-3-810. Injunctions - prohibitions against voting securities -**
9 **sequestration of voting securities.** (1) WHENEVER IT APPEARS TO THE
10 COMMISSIONER THAT ANY INSURER OR ANY DIRECTOR, OFFICER,
11 EMPLOYEE, OR AGENT OF AN INSURER HAS COMMITTED OR IS ABOUT TO
12 COMMIT A VIOLATION OF THIS PART 8 OR OF ANY RULE OR ORDER ISSUED
13 BY THE COMMISSIONER UNDER THIS PART 8, THE COMMISSIONER MAY
14 APPLY TO THE DISTRICT COURT FOR THE COUNTY IN WHICH THE PRINCIPAL
15 OFFICER OF THE INSURER IS LOCATED OR, IF THE INSURER HAS NO OFFICE
16 IN THIS STATE, THEN TO THE DISTRICT COURT FOR THE CITY AND COUNTY
17 OF DENVER, FOR AN ORDER ENJOINING THE INSURER OR DIRECTOR,
18 OFFICER, EMPLOYEE, OR AGENT FROM VIOLATING OR CONTINUING TO
19 VIOLATE THIS PART 8 OR ANY RULE OR ORDER, AND FOR SUCH OTHER
20 EQUITABLE RELIEF AS THE NATURE OF THE CASE AND THE INTEREST OF THE
21 INSURER'S POLICYHOLDERS, CREDITORS, AND SHAREHOLDERS OR THE
22 PUBLIC MAY REQUIRE.

23 (2) (a) A SECURITY THAT IS THE SUBJECT OF ANY AGREEMENT OR
24 ARRANGEMENT REGARDING ACQUISITION, OR THAT IS ACQUIRED OR TO BE
25 ACQUIRED, IN CONTRAVENTION OF THIS PART 8 OR OF ANY RULE OR ORDER
26 ISSUED BY THE COMMISSIONER UNDER THIS PART 8 SHALL NOT BE VOTED
27 AT ANY SHAREHOLDER'S MEETING OR COUNTED FOR QUORUM PURPOSES,

1 AND ANY ACTION OF SHAREHOLDERS REQUIRING THE AFFIRMATIVE VOTE
2 OF A PERCENTAGE OF SHARES MAY BE TAKEN AS THOUGH THE SECURITIES
3 WERE NOT ISSUED AND OUTSTANDING; BUT AN ACTION TAKEN AT ANY
4 SUCH MEETING SHALL NOT BE INVALIDATED BY THE VOTING OF THE
5 SECURITIES UNLESS THE ACTION WOULD MATERIALLY AFFECT CONTROL OF
6 THE INSURER OR UNLESS THE COURTS OF THIS STATE HAVE SO ORDERED.

7 (b) IF AN INSURER OR THE COMMISSIONER HAS REASON TO BELIEVE
8 THAT ANY SECURITY OF THE INSURER HAS BEEN OR IS ABOUT TO BE
9 ACQUIRED IN CONTRAVENTION OF THIS PART 8 OR OF ANY RULE OR ORDER
10 ISSUED BY THE COMMISSIONER UNDER THIS PART 8, THE INSURER OR THE
11 COMMISSIONER MAY APPLY TO THE DISTRICT COURT FOR THE COUNTY IN
12 WHICH THE INSURER HAS ITS PRINCIPAL PLACE OF BUSINESS TO ENJOIN ANY
13 OFFER, REQUEST, INVITATION, AGREEMENT, OR ACQUISITION MADE IN
14 CONTRAVENTION OF SECTION 10-3-803 OR ANY RULE OR ORDER ISSUED BY
15 THE COMMISSIONER UNDER SECTION 10-3-803 TO ENJOIN THE VOTING OF
16 ANY SECURITY SO ACQUIRED, TO VOID ANY VOTE OF THE SECURITY
17 ALREADY CAST AT ANY MEETING OF SHAREHOLDERS, AND FOR SUCH
18 OTHER EQUITABLE RELIEF AS THE NATURE OF THE CASE AND THE INTEREST
19 OF THE INSURER'S POLICYHOLDERS, CREDITORS, AND SHAREHOLDERS OR
20 THE PUBLIC MAY REQUIRE.

21 (3) IF A PERSON HAS ACQUIRED OR IS PROPOSING TO ACQUIRE ANY
22 VOTING SECURITIES IN VIOLATION OF THIS PART 8 OR ANY RULE OR ORDER
23 ISSUED BY THE COMMISSIONER UNDER THIS PART 8, THE DISTRICT COURT
24 FOR THE COUNTY IN WHICH THE INSURER HAS ITS PRINCIPAL PLACE OF
25 BUSINESS MAY, ON SUCH NOTICE AS THE COURT DEEMS APPROPRIATE,
26 UPON THE APPLICATION OF THE INSURER OR THE COMMISSIONER, SEIZE OR
27 SEQUESTER ANY VOTING SECURITIES OF THE INSURER OWNED DIRECTLY OR

1 INDIRECTLY BY THE PERSON AND ISSUE SUCH ORDER AS MAY BE
2 APPROPRIATE TO EFFECTUATE THIS PART 8. NOTWITHSTANDING ANY
3 OTHER PROVISION OF LAW, FOR THE PURPOSES OF THIS PART 8, THE SITUS
4 OF THE OWNERSHIP OF THE SECURITIES OF DOMESTIC INSURERS IS DEEMED
5 TO BE IN THIS STATE.

6 **10-3-811. Criminal proceedings - civil penalties - definition.**

7 (1) WHENEVER IT APPEARS TO THE COMMISSIONER THAT AN INSURER OR
8 A DIRECTOR, OFFICER, EMPLOYEE, OR AGENT THEREOF HAS COMMITTED A
9 WILLFUL VIOLATION OF THIS PART 8, THE COMMISSIONER MAY CAUSE
10 CRIMINAL PROCEEDINGS TO BE INSTITUTED IN THE DISTRICT COURT FOR
11 THE COUNTY IN WHICH THE PRINCIPAL OFFICE OF THE INSURER IS LOCATED
12 OR, IF SUCH INSURER HAS NO SUCH OFFICE IN THIS STATE, IN THE DISTRICT
13 COURT FOR THE CITY AND COUNTY OF DENVER AGAINST SUCH INSURER OR
14 THE INSURER'S RESPONSIBLE DIRECTOR, OFFICER, EMPLOYEE, OR AGENT.
15 AN INSURER OR INDIVIDUAL THAT WILLFULLY VIOLATES THIS PART 8
16 COMMITS A CLASS 6 FELONY AND SHALL BE PUNISHED AS PROVIDED IN
17 SECTION 18-1.3-401, C.R.S.

18 (2) (a) AN INSURER OR AN INSURER'S DIRECTOR, OFFICER,
19 EMPLOYEE, OR AGENT THAT FAILS, WITHOUT JUST CAUSE, TO FILE ANY
20 REGISTRATION STATEMENT, AMENDMENT, OR NOTICE OF SHAREHOLDER
21 DISTRIBUTION AS REQUIRED IN THIS PART 8 MAY BE REQUIRED, AFTER
22 NOTICE AND HEARING, TO PAY A CIVIL PENALTY OF NOT MORE THAN FIVE
23 THOUSAND DOLLARS FOR EACH VIOLATION. EACH VIOLATION IS A
24 SEPARATE OFFENSE. THE COMMISSIONER SHALL ISSUE AN ORDER SETTING
25 FORTH THE AMOUNT OF THE CIVIL PENALTY, WHICH AMOUNT MUST BE
26 BASED ON THE ALLEGED VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS,
27 THE GOOD FAITH OF THE ALLEGED VIOLATOR IN ATTEMPTING TO ACHIEVE

1 RAPID COMPLIANCE AFTER NOTIFICATION OF THE VIOLATION, THE GRAVITY
2 AND WILLFULNESS OF THE VIOLATION, THE POTENTIAL DETERRENT EFFECT
3 OF THE CIVIL PENALTY, AND SUCH OTHER CONSIDERATIONS AS MAY BE
4 SPECIFIED BY THE COMMISSIONER. THE COMMISSIONER MAY COMPROMISE,
5 MITIGATE, OR REMIT ANY SUCH CIVIL PENALTY.

6 (b) FOR PURPOSES OF THIS SUBSECTION (2), "CIVIL PENALTY"
7 MEANS ANY MONETARY PENALTY LEVIED AGAINST AN INSURER OR AN
8 INSURER'S DIRECTOR, OFFICER, EMPLOYEE, OR AGENT BECAUSE OF A
9 VIOLATION OF THIS PART 8. "CIVIL PENALTY" DOES NOT INCLUDE ANY
10 CRIMINAL PENALTY LEVIED UNDER SUBSECTION (1) OF THIS SECTION.

11 (c) THE COMMISSIONER SHALL TRANSMIT ALL CIVIL PENALTIES
12 COLLECTED PURSUANT TO THIS SUBSECTION (2) TO THE STATE TREASURER,
13 WHO SHALL CREDIT THEM TO THE GENERAL FUND.

14 **10-3-812. Receivership.** WHENEVER IT APPEARS TO THE
15 COMMISSIONER THAT ANY PERSON HAS COMMITTED A VIOLATION OF THIS
16 PART 8 THAT SO IMPAIRS THE FINANCIAL CONDITION OF A DOMESTIC
17 INSURER AS TO THREATEN INSOLVENCY OR MAKE THE FURTHER
18 TRANSACTION OF BUSINESS BY IT HAZARDOUS TO ITS POLICYHOLDERS,
19 CREDITORS, SHAREHOLDERS, OR THE PUBLIC, THE COMMISSIONER MAY
20 PROCEED AS PROVIDED IN PART 4 OR 5 OF THIS ARTICLE.

21 **10-3-813. Revocation, suspension, or nonrenewal of insurer's**
22 **license.** WHENEVER IT APPEARS TO THE COMMISSIONER THAT A PERSON
23 HAS COMMITTED A VIOLATION OF THIS PART 8 THAT MAKES THE
24 CONTINUED OPERATION OF AN INSURER CONTRARY TO THE INTERESTS OF
25 POLICYHOLDERS OR THE PUBLIC, THE COMMISSIONER MAY, AFTER GIVING
26 NOTICE AND AN OPPORTUNITY TO BE HEARD, SUSPEND, REVOKE, OR
27 REFUSE TO RENEW THE INSURER'S LICENSE OR AUTHORITY TO DO BUSINESS

1 IN THIS STATE FOR SUCH PERIOD AS THE COMMISSIONER FINDS IS REQUIRED
2 FOR THE PROTECTION OF POLICYHOLDERS OR THE PUBLIC. THE
3 DETERMINATION MUST BE ACCOMPANIED BY SPECIFIC FINDINGS OF FACT
4 AND CONCLUSIONS OF LAW.

5 **10-3-814. Judicial review - mandamus.** (1) A PERSON
6 AGGRIEVED BY AN ACT, DETERMINATION, RULE, ORDER, OR OTHER ACTION
7 OF THE COMMISSIONER PURSUANT TO THIS PART 8 MAY APPEAL THE
8 ACTION TO THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER.
9 THE COURT SHALL CONDUCT ITS REVIEW WITHOUT A JURY AND BY TRIAL
10 DE NOVO; EXCEPT THAT, IF ALL PARTIES, INCLUDING THE COMMISSIONER,
11 SO STIPULATE, THE REVIEW SHALL BE CONFINED TO THE RECORD.
12 PORTIONS OF THE RECORD MAY BE INTRODUCED BY STIPULATION INTO
13 EVIDENCE IN A TRIAL DE NOVO AS TO THOSE PARTIES SO STIPULATING.

14 (2) THE FILING OF AN APPEAL PURSUANT TO THIS SECTION STAYS
15 THE APPLICATION OF THE ACT, RULE, ORDER, OR OTHER ACTION OF THE
16 COMMISSIONER TO THE APPEALING PARTY UNLESS THE COURT, AFTER
17 GIVING THE PARTIES NOTICE AND AN OPPORTUNITY TO BE HEARD,
18 DETERMINES THAT A STAY WOULD BE DETRIMENTAL TO THE INTERESTS OF
19 POLICYHOLDERS, SHAREHOLDERS, CREDITORS, OR THE PUBLIC.

20 (3) A PERSON AGGRIEVED BY A FAILURE OF THE COMMISSIONER TO
21 ACT OR MAKE A DETERMINATION REQUIRED BY THIS PART 8 MAY PETITION
22 THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER FOR AN
23 ACTION IN THE NATURE OF A MANDAMUS OR A PEREMPTORY MANDAMUS
24 DIRECTING THE COMMISSIONER TO ACT OR MAKE SUCH DETERMINATION
25 FORTHWITH.

26 **10-3-815. Recovery of distributions or payments.** (1) SUBJECT
27 TO THE LIMITATIONS OF THIS SECTION, WHERE A DISTRIBUTION OR

1 PAYMENT PURSUANT TO PARAGRAPH (a) OR (b) OF THIS SUBSECTION (1) IS
2 MADE AT ANY TIME DURING THE ONE YEAR PRECEDING A PETITION FOR
3 LIQUIDATION, CONSERVATION, OR REHABILITATION, AS THE CASE MAY BE,
4 IF AN ORDER FOR LIQUIDATION OR REHABILITATION OF A DOMESTIC
5 INSURER HAS BEEN ENTERED, THE RECEIVER APPOINTED UNDER THE ORDER
6 MAY RECOVER ON BEHALF OF THE INSURER:

7 (a) FROM ANY PARENT CORPORATION OR HOLDING COMPANY OR
8 PERSON OR AFFILIATE WHO OTHERWISE CONTROLLED THE INSURER, THE
9 AMOUNT OF DISTRIBUTIONS OTHER THAN DISTRIBUTIONS OF SHARES OF
10 THE SAME CLASS OF STOCK PAID BY THE INSURER ON ITS CAPITAL STOCK;
11 OR

12 (b) ANY PAYMENT IN THE FORM OF A BONUS, TERMINATION
13 SETTLEMENT, OR EXTRAORDINARY LUMP SUM SALARY ADJUSTMENT MADE
14 BY THE INSURER OR ITS SUBSIDIARY TO A DIRECTOR, OFFICER, OR
15 EMPLOYEE.

16 (2) A DISTRIBUTION IS NOT RECOVERABLE IF THE PARENT OR
17 AFFILIATE SHOWS THAT, WHEN PAID, THE DISTRIBUTION WAS LAWFUL AND
18 REASONABLE AND THAT THE INSURER DID NOT KNOW AND COULD NOT
19 REASONABLY HAVE KNOWN THAT THE DISTRIBUTION MIGHT ADVERSELY
20 AFFECT THE ABILITY OF THE INSURER TO FULFILL ITS CONTRACTUAL
21 OBLIGATIONS.

22 (3) A PERSON WHO WAS A PARENT CORPORATION OR HOLDING
23 COMPANY OR A PERSON WHO OTHERWISE CONTROLLED THE INSURER OR
24 AFFILIATE AT THE TIME THE DISTRIBUTIONS WERE PAID IS LIABLE UP TO
25 THE AMOUNT OF DISTRIBUTIONS OR PAYMENTS UNDER SUBSECTION (1) OF
26 THIS SECTION THAT THE PERSON RECEIVED. A PERSON WHO OTHERWISE
27 CONTROLLED THE INSURER AT THE TIME THE DISTRIBUTIONS WERE

1 DECLARED IS LIABLE UP TO THE AMOUNT OF DISTRIBUTIONS THAT WOULD
2 HAVE BEEN RECEIVED IF THEY HAD BEEN PAID IMMEDIATELY. IF TWO OR
3 MORE PERSONS ARE LIABLE WITH RESPECT TO THE SAME DISTRIBUTIONS,
4 THEY ARE JOINTLY AND SEVERALLY LIABLE.

5 (4) THE MAXIMUM AMOUNT RECOVERABLE UNDER THIS SECTION
6 IS THE AMOUNT NEEDED IN EXCESS OF ALL OTHER AVAILABLE ASSETS OF
7 THE IMPAIRED OR INSOLVENT INSURER TO PAY THE CONTRACTUAL
8 OBLIGATIONS OF THE IMPAIRED OR INSOLVENT INSURER AND TO
9 REIMBURSE THE COLORADO INSURANCE GUARANTY ASSOCIATION, AS
10 THAT TERM IS DEFINED IN SECTION 10-3-502 (9).

11 (5) TO THE EXTENT THAT A PERSON LIABLE UNDER SUBSECTION (3)
12 OF THIS SECTION IS INSOLVENT OR OTHERWISE FAILS TO PAY CLAIMS DUE
13 FROM IT, ITS PARENT CORPORATION, HOLDING COMPANY, OR A PERSON
14 WHO OTHERWISE CONTROLLED IT AT THE TIME THE DISTRIBUTION WAS
15 PAID IS JOINTLY AND SEVERALLY LIABLE FOR ANY RESULTING DEFICIENCY
16 IN THE AMOUNT RECOVERED FROM THE PARENT CORPORATION, HOLDING
17 COMPANY, OR PERSON WHO OTHERWISE CONTROLLED IT.

18 **10-3-816. Conflict with other laws.** ALL LAWS AND PARTS OF
19 LAWS OF THIS STATE INCONSISTENT WITH THIS PART 8 ARE HEREBY
20 SUPERSEDED WITH RESPECT TO MATTERS COVERED BY THIS PART 8.

21 **SECTION 3.** In Colorado Revised Statutes, **amend** 10-16-421.5
22 as follows:

23 **10-16-421.5. Acquisition of control of or merger of a health**
24 **maintenance organization.** No person may make a tender for or a
25 request or invitation for tenders of, or enter into an agreement to
26 exchange securities for or acquire in the open market or otherwise, any
27 voting security of a health maintenance organization or enter into any

1 other agreement if, after the consummation thereof, that person would,
2 directly or indirectly, (or by conversion or by exercise of any right to
3 acquire) be in control of the health maintenance organization, and no
4 person may enter into an agreement to merge or consolidate with or
5 otherwise to acquire control of a health maintenance organization, unless,
6 at the time any offer, request, or invitation is made or any agreement is
7 entered into, or prior to the acquisition of the securities if no offer or
8 agreement is involved, the person has filed with the commissioner and
9 has sent to the health maintenance organization information required by
10 sections 10-3-801, 10-3-802, 10-3-803 (2) to ~~(10)~~ (11), and 10-3-803.5
11 and the offer, request, invitation, agreement, or acquisition has been
12 approved by the commissioner.

13 **SECTION 4. Effective date.** This act takes effect July 1, 2014.

14 **SECTION 5. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, and safety.