

2010 -- H 7607

=====  
LC01804  
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

-----  
A N A C T

RELATING TO INSURANCE

Introduced By: Representatives Kennedy, Marcello, Pacheco, Carter, and Naughton

Date Introduced: February 25, 2010

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 27-35-1, 27-35-2, 27-35-3, 27-35-4, 27-35-5, 27-35-6, 27-35-8,  
2   27-35-9 and 27-35-12 of the General Laws in Chapter 27-35 entitled "Insurance Holding  
3   Company Systems" are hereby amended to read as follows:

4           **27-35-1. Definitions.** -- (a) "Affiliate" An "affiliate" of, or person "affiliated" with, a  
5   specific person, is a person ~~who~~ that directly, or indirectly through one or more intermediaries,  
6   controls, or is controlled by, or is under common control with, the person specified. An "affiliate"  
7   does not include a protected cell of a protected cell company organized under the Protected Cell  
8   Companies Act, chapter 64 of this title.

9           (b) "Commissioner" The term "commissioner" means the ~~insurance commissioner~~  
10 director of the department of business regulation and any assistant to the ~~insurance commissioner~~  
11 director designated and authorized by him or her while acting under that designation.

12           (c) "Control"; The term "control" (including the terms "controlling," "controlled by" and  
13 "under common control with"), means the possession, direct or indirect, of the power to direct or  
14 cause the direction of the management and policies of a person, whether through the ownership of  
15 voting securities, by contract ~~other than a commercial contract for goods or non-management~~  
16 ~~services~~, or otherwise, unless the power is the result of an official position with or corporate  
17 office held by the person. Control shall be presumed to exist if any person, directly or indirectly,  
18 owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or  
19 more of the voting securities of any other person. This presumption may be rebutted by a showing

1 made in the manner provided by section 27-35-3(i) that control does not exist in fact. The  
2 commissioner may determine, after furnishing all persons in interest notice and opportunity to be  
3 heard and making specific findings of fact to support ~~that~~ the determination, that control exists in  
4 fact, notwithstanding the absence of a presumption to that effect.

5 (d) "Insurance holding company system" An "insurance holding company system"  
6 consists of two (2) or more affiliated persons, one or more of which is an insurer.

7 (e) "Insurer" The term "insurer" means any person or persons or corporation, partnership  
8 or company authorized by the laws of this state to transact the business of insurance in this state,  
9 including entities organized or authorized to transact business in this state pursuant to chapters  
10 19, 20, 20.1, 20.2, 20.3, and 41 of this title, except that it ~~does~~ shall not include: (1) agencies,  
11 authorities, or instrumentalities of the United States, its possessions and territories, the  
12 Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a  
13 state; or

14 (2) Fraternal benefit societies.

15 (f) "NAIC" means the National Association of Insurance Commissioners.

16 ~~(g)~~ (g) "Person" A "person" is an individual, a corporation, a limited liability company, a  
17 partnership, an association, a joint stock company, a trust, an unincorporated organization, or any  
18 similar entity or any combination of the foregoing acting in concert, but shall not include any  
19 ~~securities broker performing no more than the usual and customary broker's function~~ joint venture  
20 partnership exclusively engaged in owning, managing, leasing or developing real or tangible  
21 personal property.

22 ~~(g)~~ (h) "Securityholder" A "securityholder" of a specified person is one who owns any  
23 security of ~~the~~ such person, including common stock, preferred stock, debt obligations, and any  
24 other security convertible into or evidencing the right to acquire any of ~~these~~ the foregoing.

25 ~~(h)~~ (i) "Subsidiary" A "subsidiary" of a specified person is an affiliate controlled by ~~the~~  
26 such person directly, or indirectly through one or more intermediaries.

27 ~~(i)~~ (j) "Voting security" The term "voting security" shall ~~includes~~ include any security  
28 convertible into or evidencing a right to acquire a voting security.

29 **27-35-2. Acquisition of control of or merger with domestic insurer.** -- (a) Filing  
30 Requirements. - (1) No person other than the issuer shall make a tender offer for or a request or  
31 invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire,  
32 or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the  
33 consummation ~~of the agreement~~ thereof, ~~the~~ such person would, directly or indirectly; (or by  
34 conversion or by exercise of any right to acquire); be in control of the insurer, and no person shall

1 enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any  
2 person controlling a domestic insurer unless, at the time the offer, request, or invitation is made or  
3 the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement  
4 is involved, ~~the~~ such person has filed with the commissioner and has sent to the insurer, ~~and, to~~  
5 ~~the extent permitted by applicable federal laws, rules, and regulations, the insurer has sent to its~~  
6 ~~shareholders~~, a statement containing the information required by this section and the offer,  
7 request, invitation, agreement or acquisition has been approved by the commissioner in the  
8 manner ~~prescribed in subsection (d) of this section~~ prescribed in this chapter;

9 (2) For the purposes of this section, a domestic insurer shall ~~includes~~ include any ~~other~~  
10 person controlling a domestic insurer unless the ~~other~~ person, as determined by the commissioner,  
11 is either directly or through its affiliates primarily engaged in business other than the business of  
12 insurance. However, the person shall file a pre-acquisition notification with the commissioner  
13 containing the information set forth in subdivision 27-35-2.5(c)(1) sixty (60) days prior to the  
14 proposed effective date of the acquisition. Failure to file is subject to subdivision 27-35-2.5(e)(3).  
15 For the purposes of this section, "person" shall not include any securities broker holding, in the  
16 usual and customary broker's function, less than twenty percent (20%) of the voting securities of  
17 an insurance company or of any person which controls an insurance company.

18 (b) Content of Statement. - (1) The statement to be filed with the commissioner under  
19 this section shall be made under oath or affirmation and shall contain the following information:

20 (i) The name and address of each person by whom or on whose behalf the merger or  
21 other acquisition of control referred to in subsection (a) of this section is to be effected,  
22 (hereinafter called the "acquiring party" in this section), and:

23 (A) If ~~that~~ the person is an individual, his or her principal occupation and all offices and  
24 positions held during the past five (5) years, and any conviction for crimes other than minor  
25 traffic violations during the past ten (10) years; ~~or~~

26 (B) If ~~that~~ the person is not an individual, a report of the nature of its business operations  
27 during the past five (5) years or for the lesser period as ~~that~~ the person and any predecessors ~~of~~  
28 ~~that person~~ shall have been in existence; an informative description of the business intended to be  
29 done by the person and the person's subsidiaries; and a list of all individuals who are or who have  
30 been selected to become directors or executive officers of the person, or who perform or will  
31 perform functions appropriate to ~~those~~ such positions. The list shall include for each individual  
32 the information required by this subdivision;

33 (ii) The source, nature, and amount of the consideration used or to be used in affecting  
34 the merger or other acquisition of control, a description of any transaction ~~in which~~ where funds

1 were or are to be obtained for ~~the~~ any such purpose, (including any pledge of the insurer's stock,  
2 or stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing  
3 the consideration; provided, however, that where a source of the consideration is a loan made in  
4 the lender's ordinary course of business, the identity of the lender shall remain confidential, if the  
5 person filing the statement so requests;

6 (iii) Fully audited financial information as to the earnings and financial condition of each  
7 acquiring party for the preceding five (5) fiscal years of each acquiring party; (or for any such  
8 lesser period as the acquiring party and any predecessors ~~of it~~ shall have been in existence); and  
9 similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of  
10 the statement;

11 (iv) Any plans or proposals which each acquiring party may have to liquidate the insurer,  
12 to sell its assets or merge or consolidate it with any person, or to make any other material change  
13 in its business or corporate structure or management;

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

18 (vi) The amount of each class of any security referred to in subsection (a) of this section  
19 ~~that~~ which is beneficially owned or concerning which there is a right to acquire beneficial  
20 ownership by each acquiring party;

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

27 (viii) A description of the purchase of any security referred to in subsection (a) of this  
28 section during the twelve (12) calendar months preceding the filing of the statement by any  
29 acquiring party, including the dates of purchase, names of the purchasers, and consideration paid  
30 or agreed to be paid ~~for the purchase~~;

31 (ix) A description of any recommendations to purchase any security referred to in  
32 subsection (a) of this section made during the twelve (12) calendar months preceding the filing of  
33 the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of  
34 the acquiring party;

1 (x) Copies of all tender offers for, requests or invitations for tenders of, exchange offers  
2 for, and agreements to acquire or exchange any securities referred to in subsection (a) of this  
3 section, and, ~~(if distributed,)~~ of additional soliciting material relating to ~~the offer, request, or~~  
4 ~~agreement~~ them;

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

9 (xii) Any Such additional information that the commissioner may by rule or regulation  
10 prescribe as necessary or appropriate for the protection of policyholders and securityholders of  
11 the insurer or in the public interest;

12 (2) If the person required to file the statement referred to in subsection (a) of this section  
13 is a partnership, limited partnership, syndicate, or other group, the commissioner may require that  
14 the information called for by paragraphs (1)(i) -- (1)(xii) of this subsection shall be given with  
15 respect to each partner of the partnership or limited partnership, ~~each member of the syndicate or~~  
16 ~~group~~, each member of the syndicate or group, and each person who controls the partner or  
17 member. If any partner, member, or person is a corporation, or the person required to file the  
18 statement referred to in subsection (a) of this section is a corporation, the commissioner may  
19 require that the information called for by paragraphs (1)(i) -- (1)(xii) of this subsection shall be  
20 given with respect to the corporation, each officer and director of the corporation, and each  
21 person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the  
22 outstanding voting securities of the corporation;

23 (3) If any material change occurs in the facts set forth in the statement filed with the  
24 commissioner and sent to the insurer pursuant to this section, an amendment setting forth the  
25 change, together with copies of all documents and other material relevant to the change, shall be  
26 filed with the commissioner and sent to the insurer within two (2) business days after the person  
27 learns of the change. ~~The insurer shall send the amendment to its shareholders.~~

28 (c) Alternative filing materials. - If any offer, request, invitation, agreement or  
29 acquisition referred to in subsection (a) of this section is proposed to be made by means of a  
30 registration statement under the Securities Act of 1933 ~~15 U.S.C. sections 77a et seq.~~ or in  
31 circumstances requiring the disclosure of similar information under the Securities Exchange Act  
32 of 1934 ~~15 U.S.C. sections 78a et seq.~~ or under a state law requiring similar registration or  
33 disclosure, the person required to file the statement referred to in subsection (a) of this section  
34 may utilize the documents in furnishing the information called for by that statement.

1 (d) Approval by commissioner; ~~hearings~~ Hearings. - (1) The commissioner shall  
2 approve any merger or other acquisition of control referred to in subsection (a) of this section  
3 unless, after a public hearing held on the merger or acquisition, at the discretion of the  
4 commissioner or upon the request of the acquiring party, the insurer or any other interested party,  
5 he or she finds that any of the following conditions exist:

6 (i) After the change of control the domestic insurer referred to in subsection (a) of this  
7 section would not be able to satisfy the requirements for the issuance of a license to write the line  
8 or lines of insurance for which it is presently ~~authorized~~ licensed;

9 (ii) The effect of the merger or other acquisition of control would be substantially to  
10 lessen competition in insurance in this state or tend to create a monopoly ~~in insurance~~; In  
11 applying the competitive standard in this subparagraph:

12 (A) The informational requirements of subdivision 27-35-2.5(c)(1) and the standards of  
13 subdivision 27-35-2.5(d)(2) shall apply;

14 (B) The merger or other acquisition shall not be disapproved if the commissioner finds  
15 that any of the situations meeting the criteria provided by subdivision 27-35-2.5(d)(3) exist; and

16 (C) The commissioner may condition the approval of the merger or other acquisition on  
17 the removal of the basis of disapproval within a specified period of time;

18 (iii) The financial condition of any acquiring party is such as might jeopardize the  
19 financial stability of the insurer, or prejudice the interest of its policyholders; ~~or the interests of~~  
20 ~~any remaining securityholders who are unaffiliated with the acquiring party;~~

21 ~~(iv) The terms of the offer, request, invitation, agreement or acquisition referred to in~~  
22 ~~subsection (a) of this section are unfair and unreasonable to the securityholders of the insurer;~~

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

27 ~~(vi)~~(v) The competence, experience, and integrity of those persons who would control  
28 the operation of the insurer are such that it would not be in the interest of policyholders of the  
29 insurer and of the public to permit the merger or other acquisition of control; or

30 (vi) The acquisition is likely to be hazardous or prejudicial to the insurance-buying  
31 public.

32 (2) The public hearing referred to in **subdivision** (1) of this **subsection**, if required, shall  
33 be held within ~~sixty (60)~~ thirty (30) days after the statement required by subsection (a) of this  
34 section is filed, and at least twenty (20) days notice of the public hearing shall be given by the

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

13 (3) In connection with a change of control of a domestic insurer, any determination by  
14 the commissioner that the person acquiring control of the insurer shall be required to maintain or  
15 restore the capital of the insurer to the level required by the laws and regulations of this state shall  
16 be made not later than sixty (60) days after the date of notification of the change in control  
17 submitted pursuant to section 27-35-2(a).

18 ~~(3)~~(4) The commissioner may retain at the acquiring person's expense any attorneys,  
19 actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may  
20 be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of  
21 control.

22 ~~(e) Mailings to shareholders; payment of expenses. To the extent permitted by~~  
23 ~~applicable federal laws, rules and regulations, all statements, amendments, or other material filed~~  
24 ~~pursuant to subsection (a) or (b) of this section, and all notices of public hearings held pursuant to~~  
25 ~~subsection (d) of this section, shall be mailed by the insurer to its shareholders within five (5)~~  
26 ~~business days after the insurer has received the statements, amendments, other material, or~~  
27 ~~notices. The expenses of mailing shall be borne by the person making the filing. As security for~~  
28 ~~the payment of the expenses, the person shall file with the commissioner an acceptable bond or~~  
29 ~~other deposit in an amount to be determined by the commissioner.~~

30 ~~(f)~~(e) Exemptions. - The provisions of this section shall not apply to any offer, request,  
31 invitation, agreement or acquisition which the commissioner by order shall exempt from this  
32 section as: ~~(1)~~ not having been made or entered into for the purpose and not having the effect of  
33 changing or influencing the control of a domestic insurer, or ~~(2)~~ as otherwise not comprehended  
34 within the purposes of this section.

1 ~~(g)~~(f) Violations. - The following shall be violations of this section:

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

4 (2) The effectuation or any attempt to effectuate an acquisition of control of, or merger  
5 with, a domestic insurer unless the commissioner has given his or her approval ~~to the acquisition~~  
6 ~~or merger~~.

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

16 **27-35-3. Registration of insurers.** -- (a) Registration. - Every insurer ~~that~~ which is  
17 authorized to do business in this state and ~~that~~ which is a member of an insurance holding  
18 company system shall ~~annually~~ register with the commissioner, except a foreign insurer subject to  
19 ~~disclosure~~ registration requirements and standards adopted by statute or regulation in the  
20 jurisdiction of its domicile which are substantially similar to those contained in:

21 (1) this section; and

22 (2) section 27-35-4(a)(1), (b), ~~(f)~~ and ~~(g)~~(d) and-

23 (3) Either subdivision 27-35-4(a)(2) or a provision such as the following: Each registered  
24 insurer shall keep current the information required to be disclosed in its registration statement by  
25 reporting all material changes or additions within fifteen (15) days after the end of the month in  
26 which it learns of each change or addition.

27 Any insurer ~~that~~ which is subject to registration under this section shall register fifteen  
28 (15) days after it becomes subject to registration, and annually thereafter by March 1 of each year  
29 for the previous calendar year, unless the commissioner for good cause shown extends the time  
30 for registration, and then within ~~that~~ the extended time. The commissioner may require any  
31 ~~authorized~~ insurer ~~that~~ authorized to do business in the state which is a member of a holding  
32 company system and which is not subject to registration under this section to furnish a copy of  
33 the registration statement, the summary specified in subsection (c) of this section or other  
34 information filed by the insurance company with the insurance regulatory authority of domiciliary

1 jurisdiction.

2 (b) Information and form required. - Every insurer subject to registration shall file a  
3 registration statement on a form ~~provided~~ prescribed by the ~~commissioner~~ NAIC, which shall  
4 contain the following current information ~~about~~:

5 (1) The capital structure, general financial condition, ownership, and management of the  
6 insurer and any person controlling the insurer;

7 (2) The identity and relationship of every member of the insurance holding company  
8 system;

9 (3) The following agreements in force, ~~relationships subsisting~~, and transactions  
10 currently outstanding or which have occurred during the last calendar year between the insurer  
11 and its affiliates:

12 (i) Loans, other investments or purchases, ~~and~~ sales ~~and~~ or exchanges of securities of the  
13 affiliates by the insurer or of the insurer by its affiliates;

14 (ii) Purchases, sales, or exchanges of assets;

15 (iii) Transactions not in the ordinary course of business;

16 (iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual  
17 contingent exposure of the insurer's assets to liability, other than insurance contracts entered into  
18 in the ordinary course of the insurer's business;

19 (v) All management service contracts, service contracts and all cost sharing  
20 arrangements; ~~and~~

21 (vi) Reinsurance agreements;

22 (vii) Dividends and other distributions to ~~shareholder~~ shareholders; ~~and~~

23 (viii) Consolidated tax allocation agreements; ~~and~~

24 ~~(3-1)~~(4) Any pledge of the insurer's stock, including stock of any subsidiary or  
25 controlling affiliate, for a loan made to any member of the insurance holding company system;  
26 and

27 ~~(4)~~(5) Other matters concerning transactions between registered insurers and any  
28 affiliates as may be included from time to time in any registration forms adopted or approved by  
29 the commissioner.

30 (c) Summary of Registration Statement. All registration statement shall contain a  
31 summary outlining all items in the current registration statement representing changes from the  
32 prior registration statement.

33 ~~(e)~~(d) Materiality. - No information need be disclosed on the registration statement filed  
34 pursuant to subsection (b) of this section if that information is not material for the purposes of this

1 section. Unless the commissioner by rule, regulation, or order provides otherwise, sales,  
2 purchases, exchanges, loans, or extensions of credit, ~~or~~ investments or guarantees involving one-  
3 half of one percent (.5%) or less of an insurer's admitted assets as of the thirty-first day of  
4 December next preceding shall not be deemed material for purposes of this section.

5 ~~(d) Amendments to registration statements.— Each registered insurer shall keep current~~  
6 ~~the information required to be disclosed in its registration statement by reporting all material~~  
7 ~~changes or additions on amendment forms provided by the commissioner within fifteen (15) days~~  
8 ~~after the end of the month in which it learns of each change or addition; provided, that subject to~~  
9 ~~section 27-35-4(e), each registered insurer shall report all dividends and other distributions to~~  
10 ~~shareholders within two (2) business days following the declaration of the dividend or other~~  
11 ~~distribution.~~

12 (e) Reporting of Dividends to Shareholders. Subject to subsection 27-35-4(b), each  
13 registered insurer shall report to the commissioner all dividends and other distributions to  
14 shareholders within fifteen (15) business days following the declaration thereof.

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

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

22 ~~(f)~~(h) Consolidated filing. - The commissioner may require or allow two (2) or more  
23 affiliated insurers subject to registration ~~under this chapter~~ to file a consolidated registration  
24 statement ~~or consolidated reports amending their consolidated registration statement or their~~  
25 ~~individual registration statements.~~

26 ~~(g)~~(i) Alternative registration. - The commissioner may allow an insurer that is  
27 authorized to do business in this state and which is part of an insurance holding company system  
28 to register on behalf of any affiliated insurer ~~that~~ which is required to register under subsection (a)  
29 ~~of this section~~ and to file all information and material required to be filed under this section.

30 ~~(h)~~(j) Exemptions. - The provisions of this section shall not apply to any insurer,  
31 information, or transaction if and to the extent that the commissioner by rule, regulation, or order  
32 shall exempt from the provisions of this section.

33 ~~(i)~~(k) Disclaimer. - Any person may file with commissioner a disclaimer of affiliation  
34 with any authorized insurer or ~~the~~ a disclaimer may be filed by the insurer or any member of an

1 insurance holding company system. The disclaimer shall fully disclose all material relationships  
2 and ~~basis~~ bases for affiliation between the person and the insurer as well as the basis for  
3 disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any  
4 duty to register or report under this section ~~that~~ which may arise out of the insurer's relationship  
5 with the person unless and until the commissioner disallows the disclaimer. The commissioner  
6 ~~shall~~ may disallow ~~the~~ a disclaimer only after furnishing all parties in interest with notice and  
7 opportunity to be heard and after making specific findings of fact to support the disallowance.

8 ~~(j)(l)~~ (l) Violations. - The failure to file a registration statement or any ~~amendment to it~~  
9 summary of the registration statement required by this section within the time specified for the  
10 filing shall be a violation of this section.

11 ~~(k) Summary of registration statement. — All registration statements shall contain a~~  
12 ~~summary outlining all items in the current registration statement representing changes from the~~  
13 ~~prior registration statement.~~

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

18 ~~27-35-4. Standards -- Reasonableness of surplus -- Extraordinary distributions. --~~  
19 ~~Standards – and Management of an insurer within a holding company system. --(a)~~

20 ~~Transaction with affiliates~~ Transactions within a Holding Company System. - (1) Transactions  
21 within a holding company system to which an insurer subject to registration is a party shall be  
22 subject to the following standards:

23 ~~(1)~~(i) The terms shall be fair and reasonable;

24 (ii) Charges or fees for services performed shall be reasonable;

25 (iii) Expensed incurred and payment received shall be allocated to the insurer in  
26 conformity with customary insurance accounting practices consistently applied;

27 ~~(2)~~(iv) The books, accounts, and records of each party to all such transactions shall be so  
28 maintained as to clearly and accurately disclose the ~~precise~~ nature and details of the transactions  
29 including ~~any~~ such accounting information ~~that~~ as is necessary to support the reasonableness of  
30 the charges or fees to the respective parties; and

31 ~~(3)~~(v) The insurer's surplus as regards policyholders following any dividends or  
32 distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding  
33 liabilities and adequate to its financial needs;

34 (4) The charges or fees for services performed shall be reasonable; and

1 ~~(5) The expenses incurred and payment received shall be allocated to the insurer in~~  
2 ~~conformity with consistently applied customary insurance accounting practices.~~

3 ~~(b)(2) Prior notification to commissioner.~~ (1) The following transactions involving a  
4 domestic insurer and any person in its holding company system may not be entered into unless  
5 the insurer has notified the commissioner in writing of its intention to enter into the transaction at  
6 least thirty (30) days prior ~~thereto to entering into it~~, or ~~any~~ such shorter period ~~that~~ as the  
7 commissioner may permit, and the commissioner has not disapproved it within that period: .

8 ~~(i)(A)~~ (A) Sales, purchases, exchanges, loans, ~~or~~ extensions of credit, or investments,  
9 provided the transactions are equal to or exceed:

10 ~~(A)(i) with~~ With respect to nonlife insurers, the lesser of three percent (3%) of the  
11 insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of  
12 the 31<sup>st</sup> day of December next preceding; or

13 ~~(B)(ii) with~~ With respect to life insurers, three percent (3%) of the insurer's admitted  
14 assets; each as of the 31st day of December next preceding;

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

20 ~~(A)(i) with~~ With respect to nonlife insurers, the lesser of three percent (3%) of the  
21 insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of  
22 the 31<sup>st</sup> day of December next preceding; ~~or~~

23 ~~(B)(ii) with~~ With respect to life insurers, three percent (3%) of the insurer's admitted  
24 assets; each as of the 31st day of December next preceding;

25 ~~(iii)(C)~~ (C) Reinsurance agreements or modifications ~~thereto to them~~ in which the  
26 reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent (5%) of  
27 the insurer's surplus as regards policyholders as of the 31st day of December next preceding,  
28 including those agreements which may require as consideration the transfer of assets from an  
29 insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and  
30 nonaffiliate that any portion of those assets will be transferred to one or more ~~affiliate~~ affiliates of  
31 the insurer;

32 ~~(iv)(D)~~ (D) All management agreements, service contracts, guarantees and all cost sharing  
33 arrangements; ~~and~~

34 (E) Direct or indirect acquisitions or investments in a person that controls the insurer or

1 in an affiliate of the insurer in an amount which, together with its present holdings in such  
2 investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders.  
3 Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to section 2 of this  
4 act (or authorized under any other section of this chapter), or in non-subsiary insurance  
5 affiliates that are subject to the provisions of this act, are exempt from this requirements; and

6 ~~(+)~~(G) Any material transactions, specified by regulation, which the commissioner  
7 determines may adversely affect the interests of the insurer's policyholders;

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

11 ~~(e)~~(3) ~~Prohibited transactions.~~— A domestic insurer may not enter into transactions ~~that~~  
12 which are part of a plan or series of like transactions with persons within the holding company  
13 system if the purpose of those separate transactions is to avoid the statutory threshold amount and  
14 thus avoid the review that would occur otherwise. If the commissioner determines that the  
15 separate transactions were entered into over any twelve (12) month period for that purpose, he or  
16 she may exercise his or her authority under section 27-35-9.

17 ~~(d)~~(4) ~~Standard.~~— The commissioner, in reviewing transactions pursuant to subsection  
18 (b) of this section shall consider whether the transactions comply with the standards set forth in  
19 subsection (a) of this section and whether they may adversely affect the interests of policyholders.

20 ~~(e)~~(5) ~~Notice to commissioner.~~— The commissioner shall be notified within thirty (30)  
21 days of any investment of the domestic insurer in any one corporation if the total investment in  
22 the corporation by the insurance holding company system exceeds ten percent (10%) of the  
23 corporation's voting securities.

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

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

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

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

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

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

- 1 (6) The quality, diversification, and liquidity of the insurer's investment portfolio;
- 2 (7) The recent past and projected future trend in the size of the insurer's investment
- 3 portfolio;
- 4 (8) The surplus as regards policyholders maintained by other comparable insurers;
- 5 (9) The adequacy of the insurer's reserves; and
- 6 (10) The quality and liquidity of investment in affiliates. The commissioner may treat
- 7 this investment as a disallowed asset for the purposes of determining the adequacy of surplus as
- 8 regards policyholders whenever in his or her judgment the investment warrants.

9 ~~(g)~~(c) Dividends and other distributions. - (1) No domestic insurer ~~subject to registration~~

10 ~~under section 27-35-3~~ shall pay any extraordinary dividend or make any other extraordinary

11 distribution to its shareholders until~~(i)~~ thirty (30) days after the commissioner has received

12 notice of ~~it's~~ the declaration thereof and has not within that period disapproved the payment, or

13 ~~(ii)~~ until the commissioner ~~shall have~~ has approved the payment within the thirty (30) day period;

14 (2) For ~~the~~ purposes of this section, an "extraordinary dividend or distribution" includes

15 any dividend or distribution of cash or other property, whose fair market value together with that

16 of other dividends or distributions made within the preceding twelve (12) months exceeds the

17 lesser of:

18 (i) ten percent (10%) of the insurer's surplus as regards policyholders as of the thirty-first

19 day of December next preceding, or

20 (ii) the net gain from operations of the insurer, if the insurer is a life insurer, or the net

21 income, if the insurer is not a life insurer, not including realized capital gains, for the twelve (12)

22 month period ending the 31st day of December next preceding, but shall not include pro rata

23 distributions of any class of the insurer's own securities.

24 In determining whether a dividend or distribution is extraordinary, an insurer other than a

25 life insurer may carry forward net income from the previous two (2) calendar years that has not

26 already been paid out as dividends. This carry forward shall be computed by taking the net

27 income from the second and third preceding calendar years, not including realized capital gains,

28 less dividends paid in the second and immediate preceding calendar years;

29 (3) Notwithstanding any other provision of law, an insurer may declare an extraordinary

30 dividend or distribution which is conditional upon the commissioner's approval ~~of it~~, and the

31 declaration shall confer no rights upon shareholders until: (i) the commissioner has approved the

32 payment of the dividend or distribution or (ii) the commissioner has not disapproved the payment

33 within the thirty (30) day period referred to in subdivision (1) of this subsection.

34 (d) Management of Domestic Insurers Subject to Registration. All domestic insurers shall

1 become in compliance and maintain compliance with the provisions of this title addressing good  
2 corporate governance standards section 27-1-2.1, unless otherwise exempted in section 27-1-2.1.

3 **27-35-5. Examination.** -- (a) Power of commissioner. - Subject to the limitation  
4 contained in this section and in addition to the powers which the commissioner has under other  
5 sections of this title relating to the examination of insurers, the commissioner shall also have the  
6 power to order any insurer registered under section 27-35-3 to produce ~~such any~~ records, books,  
7 or other information papers in the possession of the insurer or its affiliates ~~that shall be~~ as are  
8 reasonably necessary to ascertain the financial condition of the insurer or to determine  
9 compliance with this chapter ~~legality of conduct of the insurer~~. In the event the insurer fails to  
10 comply with the order, the commissioner shall have the power to examine the affiliates to obtain  
11 the information.

12 ~~(b) Purpose and limitation of examination.—The commissioner shall exercise his or her~~  
13 ~~power under subsection (a) of this section only if the examination of the insurer under other~~  
14 ~~sections of this title is inadequate or the interests of the policyholders of the insurer may be~~  
15 ~~adversely affected.~~

16 ~~(e)~~(b) Use of consultants. - The commissioner may retain at the registered insurer's  
17 expense ~~those~~ such attorneys, actuaries, accountants, and other experts not otherwise a part of the  
18 commissioner's staff ~~that~~ as shall be reasonably necessary to assist in the conduct of the  
19 examination under subsection (a) of this section. Any persons so retained shall be under the  
20 direction and control of the commissioner and shall act in a purely advisory capacity.

21 ~~(d)~~(c) Expenses. - Each registered insurer producing for examination records, books and  
22 papers pursuant to subsection (a) of this section shall be liable for and shall pay the expense of the  
23 examination in accordance with applicable laws of this state.

24 **27-35-6. Confidential treatment.** -- ~~All information, documents, and copies of them~~ (a)  
25 Documents, materials or other information in the possession or control of the department of  
26 business regulation that are obtained by or disclosed to the commissioner or any other person in  
27 the course of an examination or investigation made pursuant to section 27-35-5, and all  
28 information reported pursuant to section 27-35-3, and 27-35-5, shall be ~~given~~ confidential  
29 ~~treatment~~ by law and privileged, shall not be subject to the access of public records act, and shall  
30 not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any  
31 private civil action. However, the commissioner is authorized to use the documents, materials or  
32 other information in the furtherance of any regulatory or legal action brought as part of the  
33 commissioner's official duties. ~~and shall not be made public by the~~ The commissioner shall not  
34 otherwise make the documents, materials or other information public ~~or any other person, except~~

1 ~~to insurance departments of other states~~, without the prior written consent of the insurer to which  
2 it pertains unless the commissioner, after giving the insurer and its affiliates who would be  
3 affected ~~by thereby the information~~, notice and opportunity to be heard, determines that the  
4 interests of policyholders, shareholders, or the public will be served by ~~it's~~ the publication  
5 thereof, in which event the commissioner may publish all or any part of it in a manner that he or  
6 she may deem appropriate.

7 (b) Neither the commissioner nor any person who received documents, materials or other  
8 information while acting under the authority of the commissioner shall be permitted or required to  
9 testify in any private civil action concerning any confidential documents, materials, or  
10 information subject to subsection (a) of this section.

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

12 (1) May share documents, materials or other information, including the confidential and  
13 privileged documents, materials or information subject to section (a), with other state, federal and  
14 international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state,  
15 federal, and international law enforcement authorities, provided that the recipient agrees to  
16 maintain the confidentiality and privileged status of the document, material or other information;

17 (2) May receive documents, materials or information, including otherwise confidential  
18 and privileged documents, materials or information from the NAIC and its affiliates and  
19 subsidiaries and from regulatory and law enforcement officials of other foreign or domestic  
20 jurisdictions, and shall maintain as confidential or privileged any document, material or  
21 information received with notice or the understanding that it is confidential or privileged under  
22 the laws of the jurisdiction that is the source of the document, material or information; and

23 (3) May enter into agreements governing sharing and use of information consistent with  
24 this subsection.

25 (d) No waiver of any applicable privilege or claim of confidentiality in the documents,  
26 materials or information shall occur as a result of disclosure to the commissioner under this  
27 section or as a result of sharing as authorized in section (c).

28 **27-35-8. Injunctions -- Prohibitions against voting securities -- Sequestration of**

29 **voting securities.** -- (a) Injunctions. - Whenever it appears to the commissioner that any ~~person~~  
30 ~~insurer~~ or any director, officer, employee, or agent ~~of any director, officer, or employee thereof~~  
31 has committed or is about to commit a violation of this chapter or of any rule, regulation, or order  
32 issued by the commissioner under this chapter, the commissioner may apply to the superior court  
33 of Providence County for an order enjoining ~~that person~~ the insurer or ~~that~~ director, officer,  
34 employee, or agent ~~of any director, officer, or employee thereof~~ from violating or continuing to

1 violate this chapter or any rule, regulation or order, and for ~~any~~ such other equitable relief ~~that~~ as  
2 the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders  
3 or the public may require.

4 (b) Voting of securities; when prohibited. - No security which is the subject of any  
5 agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in  
6 contravention of the provisions of this chapter or of any rule, regulation, or order issued by the  
7 commissioner under this chapter may be voted at any shareholders' meeting, or may be counted  
8 for quorum purposes, and any action of shareholders requiring the affirmative vote of a  
9 percentage of shares may be taken as though the securities were not issued and outstanding; but  
10 no action taken at the meeting shall be invalidated by the voting of the securities, unless the  
11 action would materially affect control of the insurer or unless the courts of this state have so  
12 ordered. If an insurer or the commissioner has reason to believe that any security of the insurer  
13 has been or is about to be acquired in contravention of the provisions of this chapter or of any  
14 rule, regulation, or order issued by the commissioner under this chapter the insurer or the  
15 commissioner may apply to the superior court for Providence County to enjoin any offer, request,  
16 invitation, agreement, or acquisition made in contravention of section 27-35-4 or any rule,  
17 regulation, or order issued by the commissioner under that section to enjoin the voting of any  
18 security so acquired, to void any vote of the security already cast at any meeting of shareholders,  
19 and for ~~any~~ such other equitable relief ~~that~~ as the nature of the case and the interests of the  
20 insurer's policyholders, creditors, and shareholders or the public may require.

21 (c) Sequestration of voting securities. - In any case where a person has acquired or is  
22 proposing to acquire any voting securities in violation of this chapter or any rule, regulation, or  
23 order issued by the commissioner under this chapter, the superior court for Providence County  
24 may, on such ~~any~~ notice that the court deems appropriate, upon the application of the insurer or  
25 the commissioner seize or sequester any voting securities of the insurer owned directly or  
26 indirectly by the person, and issue such ~~any~~ orders ~~with respect to those securities that~~ as may be  
27 appropriate to effectuate the provisions of this chapter. Notwithstanding any other provisions of  
28 law, for the purposes of this chapter, the situs of the ownership of the securities of domestic  
29 insurers shall be deemed to be in this state.

30 ~~**27-35-9. Criminal proceedings and civil penalties. --- Sanctions. -- (a) Criminal**~~  
31 ~~**penalties. --- Whenever it appears to the commissioner that any person or any director, officer,**~~  
32 ~~**employee, or agent of the person has committed a willful violation of this chapter, the**~~  
33 ~~**commissioner may cause criminal proceedings to be instituted against the person or the**~~  
34 ~~**responsible director, officer, employee, or agent of the person. Any insurer that willfully violates**~~

~~this chapter may be fined not more than ten thousand dollars (\$10,000). Any individual who willfully violates this chapter may be fined not more than ten thousand dollars (\$10,000) or, if the willful violation involves the deliberate perpetration of a fraud upon the commissioner, be imprisoned not more than two (2) years, or both.~~

~~(b)(a) Civil penalties.~~—(1) Any insurer failing, without just cause, to file any registration statement as required in this chapter shall be required, after notice and hearing, to pay a penalty of five hundred dollars (\$500) for each day's delay, to be recovered by the commissioner, and the penalty ~~to be~~ so recovered shall be paid into the general revenue fund of this state. The maximum penalty under this section is ~~ten thousand dollars (\$10,000)~~ that determined pursuant to section 42-12-16. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer;

~~(2)(b)~~ Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted as required by this chapter or which violate this chapter shall pay, in their individual capacity, a civil forfeiture determined pursuant to section 42-12-16, of not more than one thousand dollars (\$1,000) per violation, after notice and hearing ~~before the commissioner~~. In determining the amount of the civil forfeiture, the ~~commission~~ commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and ~~any~~ such other matters ~~that as~~ as justice may require;

~~(3)(c)~~ Whenever it appears to the commissioner that any insurer subject to this act or any director, officer, employee, or agent of the insurer has engaged in any transaction or entered into a contract which is subject to section 27-35-4 of this chapter and which would not have been approved had approval been requested, the commissioner may order the insurer to immediately cease and desist any further activity under the transaction or contract. After notice and hearing the commissioner may also order the insurer to void any contracts and restore the status quo if that action is in the best interest of the policyholders, creditors, or the public.

(d) Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this chapter, that any insurer or any director, officer, employee or agent shall be in violation of chapter 54 of title 27.

**27-35-12. Judicial review -- Mandamus.** -- (a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the commissioner pursuant to this chapter may appeal the action to the superior court. The court shall conduct its review without a

1 jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the  
2 review shall be confined to the record. Portions of the record may be introduced by stipulation  
3 into evidence in a trial de novo as to those parties so stipulating.

4 (b) The filing of an appeal pursuant to this section shall stay the application of any rule,  
5 regulation, order or other action of the commissioner to the appealing party unless the court, after  
6 giving the party notice and an opportunity to be heard, determines that a stay would be  
7 detrimental to the interest of policyholders, shareholders, creditors or the public.

8 ~~(b)~~(c) Any person aggrieved by any failure of the commissioner to act or make a  
9 determination required by this chapter may petition the superior court of Providence County for a  
10 writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or  
11 make the determination.

12 SECTION 2. Chapter 27-35 of the General Laws entitled "Insurance Holding Company  
13 Systems" are hereby amended by adding thereto the following sections:

14 **27-35-1.5. Subsidiaries of insurer. -- (a) Authorization. A domestic insurer, either by**  
15 itself or in cooperation with one or more persons, may organize or acquire one or more  
16 subsidiaries. The subsidiaries may conduct any kind of business or businesses and their authority  
17 to do so shall not be limited by reason of the fact they are subsidiaries of a domestic insurer.

18 (b) Additional Investment Authority. In addition to investments in common stock,  
19 preferred stock, debt obligations and other securities permitted under all other sections of this  
20 chapter, a domestic insurer may also:

21 (1) Invest, in common stock, preferred stock, debt obligations, and other securities of one  
22 or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of the insurer's  
23 assets or fifty percent (50%) of the insurer's surplus as regards policyholders, provided that after  
24 such investments, the insurer's surplus as regards policyholders will be reasonable in relation to  
25 the insurer's outstanding liabilities and adequate to meet its financial needs. In calculating the  
26 amount of such investments, investments in domestic or foreign insurance subsidiaries and health  
27 maintenance organizations shall be excluded, and there shall be included:

28 (i) Total net monies or other consideration expended and obligations assumed in the  
29 acquisition or formation of a subsidiary, including all organizational expenses and contributions  
30 to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock  
31 or issuance of other securities; and

32 (ii) All amounts expended in acquiring additional common stock, preferred stock, debt  
33 obligations, and other securities; and all contributions to the capital or surplus of a subsidiary  
34 subsequent to its acquisition or formation;

1           (2) Invest any amount in common stock, preferred stock, debt obligations and other  
2 securities of one or more subsidiaries engaged or organized to engage exclusively in the  
3 ownership and management of assets authorized as investments for the insurer provided that each  
4 subsidiary agrees to limit its investments in any asset so that such investments will not cause the  
5 amount of the total investment of the insurer to exceed any of the investment limitations specified  
6 in subsection (b)(1) of this section or in chapter 11.1 of title 27 of this chapter applicable to the  
7 insurer. For the purpose of this paragraph, "the total investment of the insurer" shall include:

8           (i) Any direct investment by the insurer in an asset; and

9           (ii) The insurer's proportionate share of any investment in an asset by any subsidiary of  
10 the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by  
11 the percentage of the ownership of the subsidiary;

12           (3) With the approval of the commissioner, invest any greater amount in common stock,  
13 preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that  
14 after the investment the insurer's surplus as regards policyholders will be reasonable in relation to  
15 the insurer's outstanding liabilities and adequate to its financial needs.

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

20           (d) Qualification of Investment; When Determined. Whether any investment made  
21 pursuant to subsection (b) of this section meets the applicable requirements of that subsection is  
22 to be determined before the investment is made, by calculating the applicable investment  
23 limitations as though the investment had already been made, taking into account the then  
24 outstanding principal balance on all previous investments in debt obligations, and the value of all  
25 previous investments in equity securities as of the day they were made, net of any return of  
26 capital invested, not including dividends.

27           (e) Cessation of Control. If an insurer ceases to control a subsidiary, it shall dispose of  
28 any investment therein made pursuant to this section within three (3) years from the time of the  
29 cessation of control or within such further time as the commissioner may prescribe, unless at any  
30 time after the investment shall have been made, the investment shall have met the requirements  
31 for investment under any other section of this chapter, and the insurer has so notified the  
32 commissioner.

33           **27-35-2.5. Acquisitions involving insurers not otherwise covered. -- (a) Definitions.**

34           The following definitions shall apply for the purposes of this section only:

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

5           (2) An "involved insurer" includes an insurer which either acquires or is acquired, is  
6 affiliated with an acquirer or acquired, or is the result of a merger.

7           (b) Scope. (1) Except as exempted in paragraph (2) of this subsection, this section applies  
8 to any acquisition in which there is a change in control of an insurer authorized to do business in  
9 this state.

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

11           (a) An acquisition subject to approval or disapproval by the commissioner pursuant to  
12 section 27-35-2;

13           (b) A purchase of securities solely for investment purposes so long as the securities are  
14 not used by voting or otherwise to cause or attempt to cause the substantial lessening of  
15 competition in any insurance market in this state. If a purchase of securities results in a  
16 presumption of control under subsection 27-35-1(c), it is not solely for investment purposes  
17 unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or  
18 affirmatively finds that control does not exist and the disclaimer action or affirmative finding is  
19 communicated by the domiciliary commissioner to the commissioner of this state;

20           (c) The acquisition of a person by another person when both persons are neither directly  
21 nor through affiliates primarily engaged in the business of insurance, if pre-acquisition  
22 notification is filed with the commissioner in accordance with subsection 27-35-2.5(c) thirty (30)  
23 days prior to the proposed effective date of the acquisition. However, such pre-acquisition  
24 notification is not required for exclusion from this section if the acquisition would otherwise be  
25 excluded from this section by any other subparagraph of subdivision 27-35-2.5(b)(2);

26           (d) The acquisition of already affiliated persons;

27           (e) An acquisition if, as an immediate result of the acquisition,

28           (i) In no market would the combined market share of the involved insurers exceed five  
29 percent (5%) of the total market,

30           (ii) There would be no increase in any market share, or

31           (iii) In no market would

32           (I) The combined market share of the involved insurers exceed twelve percent (12%) of  
33 the total market, and

34           (II) The market share increase by more than two percent (2%) of the total market.

1           For the purpose of section (2)(e), a market means direct written insurance premium in  
2 this state for a line of business as contained in the annual statement required to be filed by  
3 insurers licensed to do business in this state;

4           (f) An acquisition for which a pre-acquisition notification would be required pursuant to  
5 this section due solely to the resulting effect on the ocean marine insurance line of business;

6           (g) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that  
7 the insurer is in failing condition; there is a lack of feasible alternative to improving such  
8 condition; the public benefits of improving the insurer's condition through the acquisition exceed  
9 the public benefits that would arise from not lessening competition; and the findings are  
10 communicated by the domiciliary commissioner to the commissioner of this state.

11           (c) Pre-acquisition Notification; Waiting Period. An acquisition covered by subsection  
12 27-35-2.5(b) may be subject to an order pursuant to subsection 27-35-2.5(e) unless the acquiring  
13 person files a pre-acquisition notification and the waiting period has expired. The acquired person  
14 may file a pre-acquisition notification. The commissioner shall give confidential treatment to  
15 information submitted under this subsection in the same manner as provided in §27-35-6.

16           (1) The pre-acquisition notification shall be in such form and contain such information as  
17 prescribed by the NAIC relating to those markets which, under subdivision 27-35-2.5(b)(2)(e),  
18 cause the acquisition not to be exempted from the provisions of this section. The commissioner  
19 may require such additional material and information as deemed necessary to determine whether  
20 the proposed acquisition, if consummated, would violate the competitive standard of subsection  
21 27-35-2.5(d). The required information may include an opinion of an economist as to the  
22 competitive impact of the acquisition in this state accompanied by a summary of the education  
23 and experience of such person indicating his or her ability to render an informed opinion.

24           (2) The waiting period required shall begin on the date of receipt of the commissioner of  
25 a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of  
26 receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting  
27 period, the commissioner on a one-time basis may require the submission of additional needed  
28 information relevant to the proposed acquisition, in which event the waiting period shall end on  
29 the earlier of the thirtieth day after receipt of the additional information by the commissioner or  
30 termination of the waiting period by the commissioner.

31           (d) Competitive Standard

32           (1) The commissioner may enter an order under subdivision 27-35-2.5(e)(1) with respect  
33 to an acquisition if there is substantial evidence that the effect of the acquisition may be  
34 substantially to lessen competition in any line of insurance in this state or tend to create a

1 monopoly or if the insurer fails to file adequate information in compliance with subsection 27-35-  
2 2.5(c).

3 (2) In determining whether a proposed acquisition would violate the competitive standard  
4 of paragraph (1) of this subsection, the commissioner shall consider the following:

5 (a) Any acquisition covered under subsection 27-35-2.5(b) involving two (2) or more  
6 insurers competing in the same market is prima facie evidence of violation of the competitive  
7 standards.

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

<u>Insurer A</u>	<u>Insurer B</u>
<u>4%</u>	<u>4% or more</u>
<u>10%</u>	<u>2% or more</u>
<u>15%</u>	<u>1% or more</u>

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

<u>Insurer A</u>	<u>Insurer B</u>
<u>5%</u>	<u>5% or more</u>
<u>10%</u>	<u>4% or more</u>
<u>15%</u>	<u>3% or more</u>
<u>19%</u>	<u>1% or more</u>

21 A highly concentrated market is one in which the share of the four (4) largest insurers is  
22 seventy-five percent (75%) or more of the market. Percentages not shown in the tables are  
23 interpolated proportionately to the percentages that are shown. If more than two (2) insurers are  
24 involved, exceeding the total of the two columns in the table is prima facie evidence of violation  
25 of the competitive standard in paragraph (1) of this subsection. For the purpose of this item, the  
26 insurer with the largest share of the market shall be deemed to be Insurer A.

27 (b) There is a significant trend toward increased concentration when the aggregate market  
28 share of any grouping of the largest insurers in the market, from the two (2) largest to the eight  
29 (8) largest, has increased by seven percent (7%) or more of the market over a period of time  
30 extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of  
31 the acquisition. Any acquisition or merger covered under subsection 27-35-2.5(b) involving two  
32 (2) or more insurers competing in the same market is prima facie evidence of violation of the  
33 competitive standard in paragraph (1) of this subsection if:

34 (i) There is a significant trend toward increased concentration in the market;

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

3           (iii) Another involved insurer's market is two percent (2%) or more.

4           (c) For the purposes of subdivision 27-35-2.5(d)(2):

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

7           (ii) The term "market" means the relevant product and geographical markets. In  
8 determining the relevant product and geographical markets, the commissioner shall give due  
9 consideration to, among other things, the definitions or guidelines, if any, promulgated by the  
10 NAIC and to information, if any, submitted by parties to the acquisition. In the absence of  
11 sufficient information to the contrary, the relevant product market is assumed to be the direct  
12 written insurance premium for a line of business, such line being that used in the annual statement  
13 required to be filed by insurers doing business in this state, and the relevant geographical market  
14 is assumed to be this state;

15           (iii) The burden of showing prima facie evidence of violation of the competitive standard  
16 rests upon the commissioner.

17           (d) Even though an acquisition is not prima facie violative of the competitive standard  
18 under paragraphs (2)(a) and (2)(b) of this subsection, the commissioner may establish the  
19 requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition  
20 is prima facie violative of the competitive standard under sections (2)(a) and (2)(b) of this  
21 subsection, a party may establish the absence of the requisite anticompetitive effect based upon  
22 other substantial evidence. Relevant factors in making a determination under this subparagraph  
23 include, but are not limited to, the following: market shares, volatility of ranking of market  
24 leaders, number of competitors, concentration, trend of concentration in the industry, and ease of  
25 entry and exit into the market.

26           (3) An order may not be entered under subdivision 27-35-2.5(e)(1) if:

27           (a) The acquisition will yield substantial economies of scale or economies in resource  
28 utilization that cannot be feasibly achieved in any other way, and the public benefits which would  
29 arise from such economies exceed the public benefits which would arise from not lessening  
30 competition; or

31           (b) The acquisition will substantially increase the availability of insurance, and the public  
32 benefits of the increase exceed the public benefits which would arise from not lessening  
33 competition.

34           (e) Orders and Penalties

1           (1) (a) If an acquisition violates the standards of this section, the commissioner may enter  
2 an order:

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

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

7           (b) Such an order shall not be entered unless:

8           (i) There is a hearing;

9           (ii) Notice of the hearing is issued prior to the end of the waiting period and not less than  
10 fifteen (15) days prior to the hearing; and

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

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

15           (c) An order pursuant to this paragraph shall not apply if the acquisition is not  
16 consummated.

17           (2) Any person who violates a cease and desist order of the commissioner under  
18 paragraph (1) and while the order is in effect may, after notice and hearing and upon order of the  
19 commissioner, be subject to one or more of the penalties set forth in section 42-14-16:

20           (f) Inapplicable Provisions. Subsections 27-35-8(b), 27-35-8(c), and 27-35-10 do not  
21 apply to acquisitions covered under subsection 27-35-2.5(b).

22           **27-35-10.5. Recovery.** -- (a) If an order for liquidation or rehabilitation of a domestic  
23 insurer has been entered, the receiver appointed under the order shall have a right to recover on  
24 behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate  
25 who otherwise controlled the insurer, the amount of distributions (other than distributions of  
26 shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in  
27 the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by  
28 the insurer or its subsidiary to a director, officer or employee, where the distribution or payment  
29 pursuant to (i) or (ii) is made at any time during the one year preceding the petition for  
30 liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of  
31 subsections (b), (c), and (d) of this section.

32           (b) No distribution shall be recoverable if the parent or affiliate shows that when paid the  
33 distribution was lawful and reasonable, and that the insurer did not know and could not  
34 reasonably have known that the distribution might adversely affect the ability of the insurer to

1 fulfill its contractual obligations.

2 (c) Any person who was a parent corporation or holding company or a person who  
3 otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable  
4 up to the amount of distributions or payments under subsection (a) of this section which the  
5 person received. Any person who otherwise controlled the insurer at the time the distributions  
6 were declared shall be liable up to the amount of distributions that would have been received if  
7 they had been paid immediately. If two (2) or more persons are liable with respect to the same  
8 distributions, they shall be jointly and severally liable.

9 (d) The maximum amount recoverable under this section shall be the amount needed in  
10 excess of all other available assets of the impaired or insolvent insurer to pay the contractual  
11 obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

12 (e) To the extent that any person liable under subsection (c) of this section is insolvent or  
13 otherwise fails to pay claims due from it, its parent corporation or holding company or person  
14 who otherwise controlled it at the time the distribution was paid, shall be jointly and severally  
15 liable for any resulting deficiency in the amount recovered from the parent corporation or holding  
16 company or person who otherwise controlled it.

17 SECTION 3. This act shall take effect upon passage.

=====  
LC01804  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO INSURANCE

\*\*\*

- 1           This act would amend the Insurance Holding Company Act to bring it into conformance
- 2 with the current National Association of Insurance Commissioners Model Act.
- 3           This act would take effect upon passage.

=====  
LC01804  
=====