

Regular Session, 2012

HOUSE BILL NO. 1191 (Substitute for House Bill No. 970 by Representative Thibaut)

BY REPRESENTATIVE THIBAUT

INSURANCE DEPARTMENT: Provides relative to holding companies

1 AN ACT

2 To enact Subpart G-1 of Part III of Chapter 2 of Title 22 of the Louisiana Revised Statutes
3 of 1950, to be comprised of R.S. 22:691.1 through 691.27 and to repeal Subpart G
4 of Part III of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950,
5 comprised of R.S. 22:691 through 723, relative to insurance holding company
6 systems; to provide for definitions; to provide relative to subsidiaries of insurers; to
7 provide relative to acquisitions of domestic insurers; to provide relative to filing
8 requirements for persons offering to acquire domestic insurers; to provide relative
9 to public hearings in relation to denied acquisition attempts; to provide for penalties
10 for violations of holding company laws; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Subpart G-1 of Part III of Chapter 2 of Title 22 of the Louisiana Revised
13 Statutes of 1950, comprised of R.S. 22:691.1 through 691.27, is hereby enacted to read as
14 follows:

15 SUBPART G-1. INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

16 §691.1 Title

17 This Subpart shall be known and may be cited as the "Insurance Holding
18 Company System Regulatory Law".

19 §691.2 Definitions

1 As used in this Subpart, the following terms shall have these meanings unless
2 the context shall otherwise require:

3 (1) "Affiliate" means a person that directly or indirectly, through one or more
4 intermediaries, controls, or is controlled by, or is under common control with, the
5 person specified.

6 (2) "Commissioner" means the commissioner of insurance, the
7 commissioner's deputies, or the Department of Insurance, as appropriate.

8 (3) "Control", including the terms "controlling", "controlled by", and "under
9 common control with", means the possession, direct or indirect, of the power to
10 direct or cause the direction of the management and policies of a person, whether
11 through the ownership of voting securities, by contract other than a commercial
12 contract for goods or nonmanagement services, or otherwise, unless the power is the
13 result of an official position with or corporate office held by the person. Control
14 shall be presumed to exist if any person, directly or indirectly, owns, controls, holds
15 with the power to vote, or holds proxies representing, ten percent or more of the
16 voting securities of any other person. This presumption may be rebutted by a
17 showing made in the manner provided by R.S. 22:691.4 (E) and 691.6 (K) that
18 control does not exist in fact. The commissioner may determine that control exists
19 in fact, notwithstanding the absence of a presumption to that effect.

20 (4) "Enterprise Risk" means any activity, circumstance, event, or series of
21 events involving one or more affiliates of an insurer that, if not remedied promptly,
22 is likely to have a material adverse effect upon the financial condition or liquidity
23 of the insurer or its insurance holding company system as a whole, including
24 but not limited to anything that would cause the insurer's risk-based capital to fall
25 into company action level as set forth in R.S. 22:611 et seq., and 631 et seq., or
26 would cause the insurer to be in hazardous financial condition.

27 (5) An "insurance holding company system" consists of two or more
28 affiliated persons, one or more of which is an insurer.

1 (6) "Insurer" shall have the same meaning as set forth in R.S. 22:46(10). For
2 the purposes of this Subpart, a health maintenance organization as defined R.S.
3 22:242(7) shall also be considered an insurer. The term "insurer" shall not include
4 agencies, authorities, or instrumentalities of the United States, its possessions and
5 territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state
6 or political subdivision of a state.

7 (7) "Person" means an individual, a corporation, a limited liability company,
8 a partnership, an association, a joint stock company, a trust, an unincorporated
9 organization, any similar entity or any combination of the foregoing acting in
10 concert, but shall not include any joint venture partnership exclusively engaged in
11 owning, managing, leasing or developing real or tangible personal property.

12 (8) A "securityholder" of a specified person is one who owns any security of
13 such person, including common stock, preferred stock, debt obligations, and any
14 other security convertible into or evidencing the right to acquire any of the foregoing.

15 (9) A "subsidiary" of a specified person is an affiliate controlled by such
16 person directly or indirectly through one or more intermediaries.

17 (10) "Voting security" shall include any security convertible into or
18 evidencing a right to acquire a voting security.

19 §691.3. Subsidiaries of insurers

20 A. Authorization. A domestic insurer, either by itself or in cooperation with
21 one or more persons, may organize or acquire one or more subsidiaries. The
22 subsidiaries may conduct any kind of business or businesses and their authority to
23 do so shall not be limited by reason of the fact that they are subsidiaries of a
24 domestic insurer.

25 B. Additional investment authority. In addition to investments in common
26 stock, preferred stock, debt obligations and other securities permitted under all other
27 Sections of this Code, a domestic insurer may also:

28 (1) Invest, in common stock, preferred stock, debt obligations, and other
29 securities of one or more subsidiaries, amounts which do not exceed the lesser of ten

1 percent of the insurer's assets or fifty percent of the insurer's surplus as regards
2 policyholders, provided that after such investments, the insurer's surplus as regards
3 policyholders will be reasonable in relation to the insurer's outstanding liabilities and
4 adequate to meet its financial needs. In calculating the amount of such investments,
5 investments in domestic or foreign insurance subsidiaries and health maintenance
6 organizations shall be excluded, and each of the following shall be included:

7 (a) Total net monies or other consideration expended and obligations
8 assumed in the acquisition or formation of a subsidiary, including all organizational
9 expenses and contributions to capital and surplus of the subsidiary whether or not
10 represented by the purchase of capital stock or issuance of other securities.

11 (b) All amounts expended in acquiring additional common stock,
12 preferred stock, debt obligations, and other securities and all contributions to the
13 capital or surplus of a subsidiary subsequent to its acquisition or formation.

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

23 (a) Any direct investment by the insurer in an asset.

24 (b) The insurer's proportionate share of any investment in an asset by any
25 subsidiary of the insurer, which shall be calculated by multiplying the amount of the
26 subsidiary's investment by the percentage of the ownership of the subsidiary.

27 (3) With the approval of the commissioner, invest any greater amount in
28 common stock, preferred stock, debt obligations, or other securities of one or more
29 subsidiaries, provided that after the investment the insurer's surplus as regards

1 policyholders will be reasonable in relation to the insurer's outstanding liabilities and
2 adequate to its financial needs.

3 C. Exemption from investment restrictions. Investments in common stock,
4 preferred stock, debt obligations, or other securities of subsidiaries made pursuant
5 to Subsection B of this Section shall not be subject to any of the otherwise applicable
6 restrictions or prohibitions contained in this Code applicable to such investments of
7 insurers.

8 D. Qualification of investment; when determined. Whether any investment
9 made pursuant to Subsection B of this Section meets the applicable requirements of
10 that Subsection is to be determined before the investment is made, by calculating the
11 applicable investment limitations as though the investment had already been made,
12 taking into account the then outstanding principal balance on all previous
13 investments in debt obligations, and the value of all previous investments in equity
14 securities as of the day they were made, net of any return of capital invested, not
15 including dividends.

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

22 §691.4. Acquisition of control of or merger with domestic insurer

23 A. Filing requirements.

24 (1) No person other than the issuer shall make a tender offer for or a request
25 or invitation for tenders of, or enter into any agreement to exchange securities for,
26 seek to acquire, or acquire, in the open market or otherwise, any voting security of
27 a domestic insurer if, after the consummation thereof, such person would, directly
28 or indirectly, or by conversion or by exercise of any right to acquire, be in control of
29 the insurer, and no person shall enter into an agreement to merge with or otherwise

1 to acquire control of a domestic insurer or any person controlling a domestic insurer
2 unless, at the time the offer, request, or invitation is made or the agreement is entered
3 into, or prior to the acquisition of the securities if no offer or agreement is involved,
4 such person has filed with the commissioner and has sent to the insurer, a statement
5 containing the information required by this Section and the offer, request, invitation,
6 agreement or acquisition has been approved by the commissioner in the manner
7 prescribed in this Subpart.

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

19 (3) With respect to a transaction subject to this Section, the acquiring person
20 shall also file a pre-acquisition notification with the commissioner, which shall
21 contain the information set forth in R.S. 22:691.5(C)(1). Failure to file the
22 notification may subject such acquiring person to the penalties specified in R.S.
23 22:691.5 (E)(3).

24 (4) For purposes of this Section, a domestic insurer shall include any person
25 controlling a domestic insurer unless the person, as determined by the commissioner,
26 is, either directly or through its affiliates, primarily engaged in business other than
27 the business of insurance. For the purposes of this Section, person shall not include
28 any securities broker holding, in the usual and customary broker's function, less than

1 twenty percent of the voting securities of an insurance company or of any person
2 which controls an insurance company.

3 B. Content of statement. The statement to be filed with the commissioner
4 shall be made under oath or affirmation and shall contain a complete disclosure of
5 the following information:

6 (1) The name and address of each person by whom or on whose behalf the
7 merger or other acquisition of control referred to in Subsection A of this Section is
8 to be effected, hereinafter called the "acquiring party".

9 (a) If the person is an individual, he shall also disclose his principal
10 occupation and all offices and positions held during the past five years, and any
11 conviction of crimes other than minor traffic violations during the past ten years.

12 (b) If the person is not an individual, it shall include a report that
13 discloses the following information:

14 (i) The nature of its business operations during the past five years or for such
15 lesser period as such person any predecessors thereof have been in existence.

16 (ii) An informative description of the business intended to be done by the
17 person and the person's subsidiaries.

18 (iii) A list of all individuals who are or who have been selected to become
19 directors or executive officers of the person, or who perform or will perform
20 functions appropriate to such positions. The list shall include for each individual the
21 information required by Subparagraph (a) of this Paragraph.

22 (2) The source, nature, and amount of the consideration used or to be used in
23 effecting the merger or other acquisition of control; a description of any transaction
24 where funds were or are to be obtained for any such purpose, including any pledge
25 of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates;
26 and the identity of persons furnishing consideration, provided however, that where
27 a source of consideration is a loan made in the lender's ordinary course of business,
28 the identity of the lender shall remain confidential if the person filing the
29 statement so requests.

1 (3) Fully audited financial information as to the earnings and financial
2 condition of each acquiring party for the preceding five fiscal years of each acquiring
3 party, or for such lesser period as the acquiring party and any predecessors shall have
4 been in existence, and similar unaudited information as of a date not earlier than
5 ninety days prior to the filing of the statement.

6 (4) Any plans or proposals which each acquiring party may have to liquidate
7 the insurer, to sell its assets or merge or consolidate it with any person, or to make
8 any other material change in its business or corporate structure or management.

9 (5) The number of shares of any security referred to in Subsection A of this
10 Section which each acquiring party proposes to acquire; the terms of the offer,
11 request, invitation, agreement or acquisition referred to in Subsection A of this
12 Section; and a statement as to the method by which the fairness of the proposal was
13 arrived.

14 (6) The amount of each class of any security referred to in Subsection A of
15 this Section which is beneficially owned or concerning which there is a right to
16 acquire beneficial ownership by each acquiring party.

17 (7) A full description of any contracts, arrangements, or understandings with
18 respect to any security referred to in Subsection A of this Section in which any
19 acquiring party is involved, including but not limited to transfer of any of the
20 securities, joint ventures, loan or option arrangements, puts or calls, guarantees of
21 loans, guarantees against loss or guarantees of profits, division of losses or profits,
22 or the giving or withholding of proxies. The description shall identify the persons
23 with whom the contracts, arrangements, or understandings have been entered into.

24 (8) A description of the purchase of any security referred to in Subsection A
25 of this Section during the twelve calendar months preceding the filing of the
26 statement by any acquiring party, including the dates of purchase, names of the
27 purchasers, and consideration paid or agreed to be paid.

28 (9) A description of any recommendations to purchase any security referred
29 to in Subsection A of this Section made during the twelve calendar months preceding

1 the filing of the statement by any acquiring party, or by anyone based upon
2 interviews or at the suggestion of the acquiring party.

3 (10) Copies of all tender offers for requests, or invitations for tenders of,
4 exchange offers for, and agreements to acquire or exchange any securities referred
5 to in Subsection A of this Section, and, if distributed, of additional soliciting material
6 relating to them.

7 (11) The term of any agreement, contract, or understanding made with or
8 proposed to be made with any broker-dealer as to solicitation of securities referred
9 to in Subsection A of this Section for tender, and the amount of any fees,
10 commissions, or other compensation to be paid to broker-dealers with regard thereto.

11 (12) An agreement by the person required to file the statement referred to in
12 Subsection A of this Section that it will provide the annual report, specified in R.S.
13 22:691.6(L), for so long as control exists.

14 (13) An acknowledgment by the person required to file the statement referred
15 to in Subsection A of this Section that the person and all subsidiaries within its
16 control in the insurance holding company system will provide information to the
17 commissioner upon request as necessary to evaluate enterprise risk to the insurer.

18 (14) Such additional information as the commissioner may by rule or
19 regulation prescribe as necessary or appropriate for the protection of policyholders
20 of the insurer or in the public interest.

21 C.(1) If the person required to file the statement referred to in Subsection A
22 of this Section is a partnership, limited partnership, syndicate, or other group, the
23 commissioner may require that the information called for by Paragraphs (1) through
24 (14) of this Subsection shall be given with respect to each partner of the partnership
25 or limited partnership, each member of the syndicate or group, and each person who
26 controls the partner or member. If any partner, member, or person is a corporation
27 or the person required to file the statement referred to in Subsection A of this Section
28 is a corporation, the commissioner may require that the information called for by
29 Paragraphs (1) through (14) of this Subsection shall be given with respect to the

1 corporation, each officer and director of the corporation, and each person who is
2 directly or indirectly the beneficial owner of more than ten percent of the outstanding
3 voting securities of the corporation.

4 (2) If any material change occurs in the facts set forth in the statement filed
5 with the commissioner and sent to the insurer pursuant to this Section, an amendment
6 setting forth the change, together with copies of all documents and other material
7 relevant to the change, shall be filed with the commissioner and sent to the insurer
8 within two business days after the person learns of the change.

9 D. Alternative filing materials. If any offer, request, invitation, agreement,
10 or acquisition referred to in Subsection A of this Section is proposed to be made by
11 means of a registration statement under the Securities Act of 1933, or in
12 circumstances requiring the disclosure of similar information under the Securities
13 Exchange Act of 1934, or under a state law requiring similar registration or
14 disclosure, the person required to file the statement referred to in Subsection A of
15 this Section may utilize the documents in furnishing the information called for by
16 that statement.

17 E. Approval by commissioner: hearings.

18 (1) The commissioner shall approve any merger or other acquisition of
19 control referred to in Subsection A of this Section unless, after a public hearing, the
20 commissioner makes any of the following findings:

21 (a) After the change of control, the domestic insurer referred to in
22 Subsection A of this Section would not be able to satisfy the requirements for the
23 issuance of a license to write the line or lines of insurance for which it is presently
24 licensed.

25 (b) The effect of the merger or other acquisition of control would be
26 to substantially lessen competition in insurance in this state or tend to create a
27 monopoly. In applying the competitive standard mandated by this Subparagraph,
28 the following factors shall apply:

1 (i) The informational requirements of R.S. 22:691.5(C)(1) and the standards
2 of R.S. 22:691.5(D)(2).

3 (ii) The merger or other acquisition shall not be disapproved if the
4 commissioner finds that any of the situations meeting the criteria provided by R.S.
5 22:691.35(D)(3) exist.

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

9 (c) The financial condition of any acquiring party is such as might
10 jeopardize the financial stability of the insurer or prejudice the interest of its
11 policyholders.

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

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

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

22 (2) The public hearing referred to in Paragraph (1) of this Subsection shall
23 be held within thirty days after the statement required by Subsection A of this
24 Section is filed, and at least twenty days notice shall be given by the commissioner
25 to the person filing the statement and to the insurer. The commissioner shall publish
26 a notice of the hearing in a daily newspaper in each of the congressional districts of
27 the state for at least three consecutive days. The last date of publication shall be not
28 less than ten days prior to the date of the hearing. Such notice shall include the name
29 of the insurer and the name of person or persons who have filed the statement

1 pursuant to Subsection A of this Section. The commissioner shall make a
2 determination within the thirty day period after the conclusion of such hearing. At
3 the hearing, the person filing the statement, the insurer, any person to whom notice
4 of hearing was sent, and any other person whose interest may be affected shall have
5 the right to present evidence, examine, and cross examine witnesses, and offer oral
6 and written arguments, and in connection with such hearing, shall be entitled to
7 conduct discovery proceedings in the same manner as is presently allowed in the
8 district courts of this state. All discovery proceedings shall be concluded not later
9 than three days prior to the commencement of the public hearing.

10 (3) If the proposed acquisition of control will require the approval of more
11 than one commissioner, the public hearing referred to in Paragraph (2) of this
12 Subsection may be held on a consolidated basis upon request of the person filing the
13 statement referred to in Subsection A of this Section. Such person shall file the
14 statement referred to in Subsection A of this Section with the National Association
15 of Insurance Commissioners (NAIC) within five days of making the request for a
16 public hearing. A commissioner may opt out of a consolidated hearing, and shall
17 provide notice to the applicant of the opt-out within ten days of the receipt of the
18 statement referred to in Subsection A of this Section. A hearing conducted on a
19 consolidated basis shall be public and shall be held within the United States before
20 the commissioners of the states in which the insurers are domiciled. Such
21 commissioners shall hear and receive evidence. A commissioner may attend such
22 hearing in person or by telecommunication.

23 (4) In connection with a change of control of a domestic insurer, any
24 determination by the commissioner that the person acquiring control of the insurer
25 shall be required to maintain or restore the capital of the insurer to the level required
26 by the laws and regulations of this state shall be made not later than sixty days after
27 the date of notification of the change in control submitted pursuant to Paragraph (1)
28 of Subsection A of this Section.

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

5 F. Exemptions.

6 (1) The provisions of this Section shall not apply to any offer, request,
7 invitation, agreement, or acquisition which the commissioner, by order, shall exempt
8 for any of the following reasons:

9 (a) The offer or agreement was not made or entered into for the purpose of,
10 and did not have the effect of hanging or influencing the control of a domestic
11 insurer.

12 (b) The offer or agreement was not otherwise comprehended within the
13 purposes of this Section.

14 (c) The change in control results from an inheritance, donation, or similar
15 type transfer of ownership.

16 (2) Exemptions pursuant to Subparagraphs (a) or (b) of Paragraph (1) shall
17 be requested and granted by the commissioner prior to the transaction.

18 (3) Notice of any change of control which results from an inheritance,
19 donation, or similar type transfer of ownership shall be submitted to the
20 commissioner no more than sixty days after such change in the format required by
21 the commissioner.

22 G. Violations. The following shall be violations of this Section:

23 (1) The failure to file any statement, amendment or other material required
24 to be filed pursuant to Subsection A or B of this Section.

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

28 H. Jurisdiction; consent to service of process. The courts of this state are
29 hereby vested with jurisdiction over every person not resident, domiciled, or

1 authorized to do business in this state who files a statement with the commissioner
2 under this Section, and over all actions involving such person arising out of
3 violations of this Section, and each such person shall be deemed to have performed
4 acts equivalent to and constituting an appointment by the person of the
5 commissioner to be his true and lawful attorney upon whom may be served all lawful
6 process in any action, suit, or proceeding arising out of violations of this Section.
7 Copies of all lawful process shall be served on the commissioner and transmitted by
8 registered or certified mail by the commissioner to the person at his last known
9 address.

10 §691.5. Acquisitions involving insurers not otherwise covered

11 A. Definitions. The following definitions shall apply for the purposes of this
12 Section only:

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

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

19 B. Scope.

20 (1) Except as exempted in Paragraph (2) of this Subsection, this Section
21 applies to any acquisition in which there is a change in control of an insurer
22 authorized to do business in this state.

23 (2) This Section shall not apply to any of the following events:

24 (a) A purchase of securities solely for investment purposes so long as the
25 securities are not used by voting, or otherwise, to cause or attempt to cause the
26 substantial lessening of competition in any insurance market in this state. If a
27 purchase of securities results in a presumption of control pursuant to R.S.22:691.2,
28 it is not solely for investment purposes unless the commissioner of the insurer's
29 state of domicile accepts a disclaimer of control or affirmatively finds that control

1 does not exist and the disclaimer action or affirmative finding is communicated by
2 the domiciliary commissioner to the commissioner of this state.

3 (b) The acquisition of a person by another person when both persons are
4 neither directly nor through affiliates primarily engaged in the business of insurance,
5 if pre-acquisition notification is filed with the commissioner in accordance with
6 Subsection C of this Section thirty days prior to the proposed effective date of the
7 acquisition. However, such pre-acquisition notification is not required for exclusion
8 from this Section if the acquisition would otherwise be excluded from this Section
9 by any other Subparagraph of Subsection B of this Section.

10 (c) The acquisition of already affiliated persons.

11 (d)(i) An acquisition if, as an immediate result of the acquisition, any of the
12 following circumstances would exist:

13 (aa) There is no market where the combined market share of the involved
14 insurers would exceed five percent of the total market.

15 (bb) There would be no increase in any market share.

16 (cc) There is no market wherein the combined market share of the involved
17 insurers would exceed twelve percent of the total market and the market share would
18 increase by more than two percent of the total market.

19 (ii) For the purpose of this Subparagraph, a market means direct written
20 insurance premiums in this state for a line of business as contained in the annual
21 statement required to be filed by insurers licensed to do business in this state.

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

25 (f) An acquisition of an insurer whose domiciliary commissioner
26 affirmatively finds that the insurer is in failing condition, there is a lack of feasible
27 alternative to improving such condition, the public benefits of improving the
28 insurer's condition through the acquisition exceed the public benefits that would

1 arise from not lessening competition, and the findings are communicated by the
2 domiciliary commissioner to the commissioner of this state.

3 C. Pre-acquisition notification; waiting period. An acquisition covered by
4 Subsection B of this Section may be subject to an order pursuant to R.S. 22:691.5(E)
5 unless the acquiring person files a pre-acquisition notification and the waiting period
6 has expired. The acquired person may file a pre-acquisition notification. The
7 commissioner shall give confidential treatment to information submitted under this
8 Subsection in the same manner as provided in R.S. 22:691.10.

9 (1) The pre-acquisition notification shall be in such form and contain such
10 information as prescribed by the commissioner relating to those markets, in
11 accordance with Subparagraph (d) of Paragraph (2) of Subsection B of this Section,
12 which cause the acquisition not to be exempted from the provisions of this Section.
13 The commissioner may require such additional material and information as deemed
14 necessary to determine whether the proposed acquisition, if consummated, would
15 violate the competitive standard set forth in R.S. 22:691.5(C). The required
16 information may include an opinion of an economist as to the competitive impact of
17 the acquisition in this state accompanied by a summary of the education and
18 experience of such person indicating his or her ability to render an informed opinion.

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

27 D. Competitive standard

28 (1) The commissioner may enter an order pursuant to Subsection E of this
29 Section with respect to an acquisition if there is substantial evidence that the effect

1 of the acquisition may be to substantially lessen competition in any line of insurance
2 in this state or tend to create a monopoly, or if the insurer fails to file adequate
3 information in compliance with the provisions of Subsection C of this Section.

4 (2) In determining whether a proposed acquisition would violate the
5 competitive standard set forth in Paragraph (1) of this Subsection, the commissioner
6 shall consider the following:

7 (a) Any acquisition covered under Subsection B of this Section that involves
8 two or more insurers competing in the same market shall be prima facie evidence of
9 violation of the competitive standards if either of the following circumstances are
10 present:

11 (i) The market is highly concentrated and the involved insurers possess the
12 following shares of the market:

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

16 (ii) The market is not highly concentrated and the involved insurers possess
17 the following shares of the market:

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

22 (aa) A highly concentrated market is one in which the share of the four
23 largest insurers is seventy-five percent or more of the market.

24 (bb) Percentages not shown in the tables are interpolated proportionately to
25 the percentages that are shown. If more than two insurers are involved, exceeding the
26 total of the two columns in the table shall be prima facie evidence of violation of the
27 competitive standard set forth in Paragraph (1) of this Subsection.

1 (cc) For the purpose of Items (i) and (ii) of this Subparagraph, the insurer
2 with the largest share of the market shall be deemed to be Insurer A.

3 (b) Whether there is a significant trend toward increased concentration when
4 the aggregate market share of any grouping of the largest insurers in the market,
5 from the two largest to the eight largest, has increased by seven percent or more of
6 the market over a period of time extending from any base year of five to ten years
7 prior to the acquisition up to the time of the acquisition. Any acquisition or merger
8 covered under Subsection B of this Section involving two or more insurers
9 competing in the same market is prima facie evidence of violation of the competitive
10 standard set forth in Paragraph (1) of this Subsection if each of the following
11 circumstances exist:

12 (i) There is a significant trend toward increased concentration in the market.

13 (ii) One of the insurers involved is one of the insurers in a grouping of large
14 insurers showing the requisite increase in the market share.

15 (iii) Another involved insurer's market is two percent or more.

16 (c) For the purposes of this Subsection:

17 (i) The term "insurer" includes any company or group of companies under
18 common management, ownership, or control.

19 (ii) The term "market" means the relevant product and geographical markets.
20 In determining the relevant product and geographical markets, the commissioner
21 shall give due consideration to any applicable definitions or guidelines promulgated
22 by the NAIC and to any relevant information submitted by parties to the acquisition,
23 as well as any other factors the commissioner deems relevant. In the absence of
24 sufficient information to the contrary, the relevant product market is assumed to be
25 the direct written insurance premium for a line of business, such line being the same
26 one that is used in the annual statement required to be filed by insurers doing
27 business in this state. The relevant geographical market shall be assumed to be this
28 state.

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

3 (d) Even if an acquisition is not a prima facie violation of the competitive
4 standard pursuant to Subparagraphs (a) and (b) of Paragraph (2) of this Subsection,
5 the commissioner may establish the requisite anticompetitive effect based upon other
6 substantial evidence. Even when an acquisition is a prima facie violation of the
7 competitive standard pursuant to Subparagraphs (a) and (b) of Paragraph (2) of
8 this Subsection, a party may establish the absence of the requisite anticompetitive
9 effect based upon other substantial evidence. Relevant factors in making a
10 determination under this Subparagraph include but shall not be limited to market
11 shares, volatility of ranking of market leaders, number of competitors, concentration,
12 trend of concentration in the industry, and ease of entry and exit into the market.

13 (3) An order may not be entered pursuant to Subsection E of this Section if
14 either of the following circumstances exists:

15 (a) The acquisition will yield substantial economies of scale or economies in
16 resource utilization that cannot be feasibly achieved in any other way and the public
17 benefits which would arise from such economies exceed the public benefits which
18 would arise from not lessening competition.

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

22 E.Orders and penalties.

23 (1)(a) If an acquisition violates the standards of this Section, the
24 commissioner may enter an order which has the following effects:

25 (i) Requires an involved insurer to cease and desist from doing business in
26 this state with respect to the line or lines of insurance involved in the violation.

27 (ii) Denies the application of an acquired or acquiring insurer for a license to
28 do business in this state.

1 (b) Such an order shall not be entered unless each of the following
2 requirements have been satisfied:

3 (i) Interested parties have opportunity for a hearing.

4 (ii) Notice of the hearing is issued prior to the end of the waiting period and
5 not less than fifteen days prior to the hearing.

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

8 (c) Every order shall be accompanied by a written decision of the
9 commissioner setting forth findings of fact and conclusions of law.

10 (d) An order pursuant to this Paragraph shall not apply if the acquisition is
11 not consummated.

12 (2) Any person who violates a cease and desist order of the commissioner
13 issued in accordance with Paragraph (1) of this Subsection while the order is in effect
14 may be subject to one or more of the following penalties:

15 (a) A monetary penalty of not more than ten thousand dollars for every day
16 of violation.

17 (b) Suspension or revocation of the person's license.

18 (3) Any insurer or other person who fails to make any filing required by this
19 Section, and who fails to demonstrate a good faith effort to comply with any filing
20 requirement, shall be subject to a fine of not more than fifty thousand dollars.

21 F. The provisions of R.S. 22:691.12(B) and (C) and R.S. 22:691.14 do not
22 apply to acquisitions covered under Subsection B of this Section.

23 §691.6. Registration of insurers

24 A. Registration.

25 (1) Every insurer which is authorized to do business in this state and which
26 is a member of an insurance holding company system shall register with the
27 commissioner, except a foreign insurer subject to registration requirements and
28 standards adopted by statute or regulation in the jurisdiction of its domicile which
29 are substantially similar to those contained in the provisions of this Section or the

1 provisions of R.S. 22:691.5(A)(1), (B), and (D), and either the provisions of R.S.
2 22:691.7(A)(2) or a provision such as the following: "Each registered insurer shall
3 keep current the information required to be disclosed in its registration statement by
4 reporting all material changes or additions within fifteen days after the end of the
5 month in which it learns of each change or addition."

6 (2) Any insurer which is subject to registration under this Section shall
7 register within fifteen days after it becomes subject to registration, and annually
8 thereafter by the first of April of each year for the previous calendar year, unless the
9 commissioner for good cause shown extends the time for registration, and then
10 within the extended time. The commissioner may require any insurer authorized to
11 do business in the state which is a member of an insurance holding company system,
12 and which is not subject to registration under this Section, to furnish a copy of the
13 registration statement, the summary specified in Subsection C of this Section or other
14 information filed by the insurance company with the insurance regulatory authority
15 of its domiciliary jurisdiction.

16 B. Information and form required. Every insurer subject to registration shall
17 file the registration statement with the commissioner on a form and in a format
18 prescribed by the commissioner, which shall contain a complete and current
19 disclosure of the following information:

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

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

24 (3) A listing of any agreements which are of the type listed below and which
25 have transactions that are outstanding or which have occurred during the last
26 calendar year between the insurer and its affiliates:

27 (a) Loans, other investments, or purchases, sales, or exchanges of securities
28 of the affiliates by the insurer or of the insurer by its affiliates.

29 (b) Purchases, sales or exchange of assets.

1 (c) Transactions not in the ordinary course of business.

2 (d) Guarantees or undertakings for the benefit of an affiliate which
3 result in an actual contingent exposure of the insurer's assets to liability, other than
4 insurance contracts entered into in the ordinary course of the insurer's business.

5 (e) All management agreements, service contracts, and all cost-sharing
6 arrangements.

7 (f) Reinsurance agreements.

8 (g) Dividends and other distributions to shareholders.

9 (h) Consolidated tax allocation agreements.

10 (4) Any pledge of the insurer's stock, including stock of any subsidiary
11 or controlling affiliate, for a loan made to any member of the insurance holding
12 company system.

13 (5) If requested by the commissioner, the insurer shall include financial
14 statements of or within an insurance holding company system, including all
15 affiliates. Financial statements may include but are not limited to annual audited
16 financial statements filed with the U.S. Securities and Exchange Commission (SEC)
17 pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act
18 of 1934, as amended. An insurer required to file financial statements pursuant to this
19 Paragraph may satisfy the request by providing the commissioner with the most
20 recently filed parent corporation financial statements that have been filed with the
21 SEC.

22 (6) Other matters concerning transactions between registered insurers and any
23 affiliates as may be included from time to time in any registration forms adopted or
24 approved by the commissioner.

25 (7) Statements that the insurer's board of directors is responsible for
26 and oversees corporate governance and internal controls and that the insurer's
27 officers or senior management have approved, implemented, and continue to
28 maintain and monitor corporate governance and internal control procedures.

1 (8) Any other information required by the commissioner by rule or
2 regulation.

3 (9) Financial statements of the ultimate controlling person in the holding
4 company system as of the end of the person's latest fiscal year.

5 C. Summary of changes to registration statement. All registration statements
6 shall contain a summary outlining all items in the current registration statement
7 representing changes from the prior registration statement.

8 D. Materiality. No information need be disclosed on the registration
9 statement filed pursuant to Subsection B of this Section if the information is not
10 material for the purposes of this Section. Unless the commissioner by rule,
11 regulation, or order provides otherwise: sales, purchases, exchanges, loans or
12 extensions of credit, investments, or guarantees involving one-half of one percent or
13 less of an insurer's admitted assets as of the thirty-first day of December next
14 preceding shall not be deemed material for purposes of this Section.

15 E. Reporting of dividends to shareholders. Subject to the provisions of R.S.
16 22:691.7(B), each registered insurer shall report to the commissioner all dividends
17 and other distributions to shareholders within fifteen business days following the
18 declaration thereof.

19 F. Information of insurers. Any person within an insurance holding company
20 system subject to registration shall be required to provide complete and accurate
21 information to an insurer, where the information is reasonably necessary to enable
22 the insurer to comply with the provisions of this Act.

23 G. Termination of registration. The commissioner shall terminate the
24 registration of any insurer which demonstrates that it no longer is a member of an
25 insurance holding company system.

26 H. Consolidated filing. The commissioner may require or allow two or more
27 affiliated insurers subject to registration to file a consolidated registration statement.

28 I. Alternative registration. The commissioner may allow an insurer which is
29 authorized to do business in this state and which is part of an insurance holding

1 company system to register on behalf of any affiliated insurer which is required to
2 register under Subsection A of this Section and to file all information and material
3 required to be filed under this Section.

4 J. Exemptions.

5 (1) The provisions of this Section shall not apply to any insurer,
6 information, or transaction if, and to the extent that, the commissioner by rule,
7 regulation, or order shall exempt such insurer, information, or transaction from
8 applicability of the provisions of this Section.

9 (2) Unless it appears in the discretion of the commissioner that the condition
10 of a small company renders the continuance of its business hazardous to the public
11 or its insureds, a small company shall not be required to submit to the department a
12 registration statement required by this Section, but shall be considered a registered
13 insurer for the purposes of the provisions of Subsection E of this Section, R.S.
14 22:704(A), and 705.

15 K. Disclaimer. Any person may file with the commissioner a disclaimer of
16 affiliation with any authorized insurer, or such a disclaimer may be filed by such
17 insurer or any member of an insurance holding company system. The disclaimer
18 shall fully disclose all material relationships and bases for affiliation between such
19 person and such insurer as well as the basis for disclaiming such affiliation. After
20 a disclaimer has been filed, the insurer shall be relieved of any duty to register or
21 report under this Section which may arise out of the insurer's relationship with such
22 person unless and until the commissioner disallows such a disclaimer. The person
23 filing such a disclaimer shall notify the commissioner of any material change to the
24 affiliations and relationships as reported in the disclaimer within thirty days of the
25 effective date of the change.

26 L. Enterprise risk filing. The ultimate controlling person of every insurer
27 subject to registration shall also file an annual enterprise risk report. The report
28 shall, to the best of the ultimate controlling person's knowledge and belief, identify
29 the material risks within the insurance holding company system that could pose

1 enterprise risk to the insurer. The report shall be filed with the lead state
2 commissioner of the insurance holding company system as determined by the
3 procedures within the Financial Analysis Handbook adopted by the National
4 Association of Insurance Commissioners.

5 M. Violations. The failure to file a registration statement or any
6 summary of the registration statement or enterprise risk filing required by this
7 Section within the time specified for filing shall be a violation of this Section.

8 N. Incorporation by reference.

9 (1) Any information contained in any financial statement, annual report,
10 proxy statement, statement filed with a governmental authority, or any other
11 document may be incorporated by reference, provided the document is filed as an
12 exhibit to the registration statement. Any excerpt of a document may be filed as an
13 exhibit if the document is extensive. Any documents currently on file with the
14 commissioner which were filed within three years need not be attached as exhibits,
15 but shall be referred to if not so attached. All references to information contained
16 in exhibits or in documents duly filed shall clearly identify the material and
17 specifically indicate that the material is to be incorporated by reference to the item.
18 No materials shall be incorporated by reference in any instance that the incorporation
19 would render the statement incomplete, unclear, or confusing.

20 (2) If a filing requires a summary or outline of the provisions of any
21 document, only a brief statement shall be made as to the pertinent provisions of the
22 document. In addition to the brief statement, the summary or outline may
23 incorporate, by reference, particular parts of any exhibit or document currently on
24 file with the commissioner which was filed within three years and may be included
25 in its entirety by the reference. In any case where two or more documents required
26 to be filed as exhibits are substantially identical in all material respects except as to
27 the parties, the dates of execution, or other details, a copy of one of the documents
28 shall be filed with a schedule identifying the omitted documents and setting forth the
29 material details in which such documents differ from the documents filed.

1 §691.7. Standards and management of an insurer within an insurance holding
2 company system

3 A. Transactions within an insurance holding company system

4 (1) Transactions within an insurance holding company system to which an
5 insurer subject to registration is a party shall be subject to the following standards:

6 (a) The terms shall be fair and reasonable.

7 (b) Agreements for cost sharing services and management shall include such
8 provisions as required by rule and regulation issued by the commissioner.

9 (c) Charges or fees for services performed shall be reasonable.

10 (d) Expenses incurred and payment received shall be allocated to the insurer
11 in conformity with customary insurance accounting practices consistently applied.

12 (e) The books, accounts, and records of each party to all such transactions
13 shall be maintained as to clearly and accurately disclose the nature and details of the
14 transactions including such accounting information as is necessary to support the
15 reasonableness of the charges or fees to the respective parties.

16 (f) The insurer's surplus as regards policyholders following any
17 dividends or distributions to shareholder affiliates shall be reasonable in relation to
18 the insurer's outstanding liabilities and adequate to meet its financial needs.

19 (2) None of the following enumerated transactions involving a domestic
20 insurer and any person in its insurance holding company system, including
21 amendments or modifications of affiliate agreements previously filed pursuant to this
22 Section, which are subject to any materiality standards contained in Subparagraphs
23 (a) through (g) of this Paragraph, may be entered into unless the insurer has notified
24 the commissioner in writing of its intention to enter into the transaction at least thirty
25 days prior thereto, or such shorter period as the commissioner may permit, and the
26 commissioner has not disapproved it within that period. The notice for amendments
27 or modifications shall include the reasons for the change and the financial impact on
28 the domestic insurer. Informal notice shall be reported, within thirty days after a

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

3 (a) Sales, purchases, exchanges, loans, extensions of credit, or investments.

4 (i) Relevant transactions relative to nonlife insurers shall equal or exceed the
5 lesser of three percent of the insurer's admitted assets or twenty- five percent of
6 surplus as regards policyholders as of the thirty-first day of December next
7 preceding.

8 (ii) Relevant transactions relative to life insurers shall equal or exceed three
9 percent of the insurer's admitted assets as of the thirty-first day of December next
10 preceding.

11 (b) Loans or extensions of credit to any person who is not an affiliate, where
12 the insurer makes loans or extensions of credit with the agreement or understanding
13 that the proceeds of the transactions, in whole or in substantial part, are to be used
14 to make loans or extensions of credit to, to purchase assets of, or to make
15 investments in, any affiliate of the insurer making the loans or extensions of credit.

16 (i) Relevant transactions relative to nonlife insurers shall equal or exceed
17 the lesser of three percent of the insurer's admitted assets or twenty- five percent
18 of surplus as regards policyholders as of the thirty-first day of December next
19 preceding.

20 (ii) Relevant transactions relative to life insurers shall equal or exceed three
21 percent of the insurer's admitted assets as of the thirty-first day of December next
22 preceding.

23 (c) Reinsurance agreements or modifications thereto, including each of the
24 following types of reinsurance agreements:

25 (i) All reinsurance pooling agreements.

26 (ii) Agreements in which the reinsurance premium or a change in the
27 insurer's liabilities, or the projected reinsurance premium or a change in the insurer's
28 liabilities in any of the next three years, equals or exceeds five percent of the
29 insurer's surplus as regards policyholders, as of the thirty-first day of December

1 next preceding, including those agreements which may require as consideration the
2 transfer of assets from an insurer to a non-affiliate, if an agreement or understanding
3 exists between the insurer and non-affiliate that any portion of the assets will be
4 transferred to one or more affiliates of the insurer.

5 (d) All management agreements, service contracts, tax allocation agreements,
6 guarantees and all cost-sharing arrangements.

7 (e) Guarantees when made by a domestic insurer; provided, however, that a
8 guarantee which is quantifiable as to amount is not subject to the notice requirements
9 of this Paragraph unless it exceeds the lesser of one-half of one percent of the
10 insurer's admitted assets or ten percent of surplus as regards policyholders as of the
11 thirty-first day of December next preceding. Further, all guarantees which are not
12 quantifiable as to amount are subject to the notice requirements of this Paragraph.

13 (f) Direct or indirect acquisitions or investments in a person that
14 controls the insurer or in an affiliate of the insurer in an amount which, together
15 with its present holdings in such investments, exceeds two and one-half percent
16 of the insurer's surplus to policyholders. Direct or indirect acquisitions or
17 investments in subsidiaries acquired pursuant to R.S. 22: 691.3 or authorized under
18 any other section of this Code, or in non-subsiary insurance affiliates that are
19 subject to the provisions of this Act, are exempt from this requirement.

20 (g) Any material transactions, specified by regulation, which the
21 commissioner determines may adversely affect the interests of the insurer's
22 policyholders. Nothing in this Paragraph shall be deemed to authorize or permit any
23 transactions which, in the case of an insurer not a member of the same insurance
24 holding company system, would be otherwise contrary to law.

25 (3) A domestic insurer may not enter into transactions which are part of a
26 plan or series of like transactions with persons within the insurance holding company
27 system if the purpose of those separate transactions is to avoid the statutory threshold
28 amount and thus avoid the review that would occur otherwise. If the commissioner
29 determines that separate transactions were entered into over any twelve-month-

1 period for that purpose, the commissioner may exercise his authority pursuant to R.S.
2 22:691.13.

3 (4) The commissioner, in reviewing transactions pursuant to Paragraph (2)
4 of Subsection A of this Section, shall consider whether the transactions comply with
5 the standards set forth in Paragraph (1) of Subsection A of this Section and whether
6 they may adversely affect the interests of policyholders.

7 (5) The commissioner shall be notified within thirty days of any investment
8 of the domestic insurer in any one corporation if the total investment in the
9 corporation by the insurance holding company system exceeds ten percent of the
10 corporation's voting securities.

11 B. Dividends and other distributions.

12 (1) No domestic insurer shall pay any extraordinary dividend or make any
13 other extraordinary distribution to its shareholders until thirty days after the
14 commissioner has received notice of the declaration thereof and has not within that
15 period disapproved the payment, or until the commissioner has approved the
16 payment within the thirty-day period.

17 (2) For purposes of this Section, an extraordinary dividend or distribution
18 includes any dividend or distribution of cash or other property, whose fair market
19 value together with that of other dividends or distributions made within the preceding
20 twelve months exceeds the lesser of the following amounts:

21 (a) Ten percent of the insurer's surplus as regards policyholders as of the
22 thirty-first day of December next preceding.

23 (b) The net gain from operations of the insurer if the insurer is a life insurer,
24 or the net income, if the insurer is not a life insurer, not including realized capital
25 gains, for the twelve-month period ending the thirty-first day of December next
26 preceding, but shall not include pro rata distributions of any class of the insurer's
27 own securities. In determining whether a dividend or distribution is extraordinary,
28 an insurer other than a life insurer may carry forward net income from the previous
29 two calendar years that has not already been paid out as dividends. This carry-

1 forward shall be computed by taking the net income from the second and third
2 preceding calendar years, not including realized capital gains, less dividends paid in
3 the second and immediate preceding calendar years.

4 (3) Notwithstanding any other provision of law, an insurer may declare an
5 extraordinary dividend or distribution which is conditional upon the commissioner's
6 approval, and the declaration shall confer no rights upon shareholders until either
7 the commissioner has approved the payment of the dividend or distribution, or, the
8 commissioner has not disapproved payment within the thirty-day period referred to
9 above.

10 C. Management of domestic insurers subject to registration.

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

15 (2) Nothing in this Section shall preclude a domestic insurer from having or
16 sharing a common management or cooperative or joint use of personnel, property or
17 services with one or more other persons under arrangements meeting the standards
18 of Paragraph (1) of Subsection A of this Section.

19 (3) Not less than one-third of the directors of a domestic insurer, and not less
20 than one-third of the members of each committee of the board of directors of any
21 domestic insurer shall be persons who are not officers or employees of the insurer
22 or of any entity controlling, controlled by, or under common control with the insurer
23 and who are not beneficial owners of a controlling interest in the voting stock of the
24 insurer or entity. At least one such person shall be included in any quorum for the
25 transaction of business at any meeting of the board of directors or any committee
26 thereof.

27 (4) The board of directors of a domestic insurer shall establish one or more
28 committees comprised solely of directors who are not officers or employees of the
29 insurer or of any entity controlling, controlled by, or under common control with the

1 insurer and who are not beneficial owners of a controlling interest in the voting stock
2 of the insurer or any such entity. The committee or committees shall have
3 responsibility for nominating candidates for director for election by shareholders or
4 policyholders, evaluating the performance of officers deemed to be principal officers
5 of the insurer, and recommending to the board of directors the selection and
6 compensation of the principal officers.

7 (5) The provisions of Paragraphs (3) and (4) of this Subsection shall not
8 apply to a domestic insurer if the person controlling the insurer, such as an insurer,
9 a mutual insurance holding company, or a publicly held corporation, has a board of
10 directors and committees thereof that meet the requirements of Paragraphs (3) and
11 (4) of this Subsection with respect to such controlling entity.

12 (6) An insurer may make application to the commissioner for a waiver from
13 the requirements of this Subsection, if the insurer's annual direct written and
14 assumed premium, excluding premiums reinsured with the Federal Crop Insurance
15 Corporation and Federal Flood Program, is less than three hundred million dollars.
16 An insurer may also make application to the commissioner for a waiver from the
17 requirements of this Subsection based upon unique circumstances. The commissioner
18 may consider various factors including, but not limited to, the type of business entity,
19 volume of business written, availability of qualified board members, or the
20 ownership or organizational structure of the entity.

21 D. Adequacy of surplus. For purposes of this Subpart, in determining
22 whether an insurer's surplus as regards policyholders is reasonable in relation to the
23 insurer's outstanding liabilities and adequate to meet its financial needs, the
24 following factors, among others, shall be considered:

25 (1) The size of the insurer as measured by its assets, capital and
26 surplus, reserves, premium writings, insurance in force, and other appropriate
27 criteria.

28 (2) The extent to which the insurer's business is diversified among several
29 lines of insurance.

- 1 (3) The number and size of risks insured in each line of business.
- 2 (4) The extent of the geographical dispersion of the insurer's insured risks.
- 3 (5) The nature and extent of the insurer's reinsurance program.
- 4 (6) The quality, diversification, and liquidity of the insurer's investment
5 portfolio.
- 6 (7) The recent past and projected future trend in the size of the
7 insurer's investment portfolio.
- 8 (8) The surplus as regards policyholders maintained by other comparable
9 insurers.
- 10 (9) The adequacy of the insurer's reserves.
- 11 (10) The quality and liquidity of investments in affiliates. The commissioner
12 may treat any such investment as a disallowed asset for purposes of determining the
13 adequacy of surplus as regards policyholders whenever in the judgment of the
14 commissioner the investment so warrants.

15 §691.8. Examination

16 A. Power of commissioner. Subject to the limitation contained in this Section
17 and in addition to the powers which the commissioner has under this Code relating
18 to the examination of insurers, the commissioner shall have the power to examine
19 any insurer registered under R.S. 22: 691.6 and its affiliates to ascertain the
20 financial condition of the insurer, including the enterprise risk to the insurer by the
21 ultimate controlling party, or by any entity or combination of entities within the
22 insurance holding company system, or by the insurance holding company system on
23 a consolidated basis.

24 B. Access to books and records.

25 (1) The commissioner may order any insurer registered under R.S. 22:691.6
26 to produce such records, books, or other information papers in the possession of the
27 insurer or its affiliates as are reasonably necessary to determine compliance with this
28 Subpart.

1 (2) To determine compliance with this Subpart, the commissioner may order
2 any insurer registered under R.S. 22:691.6 to produce information not in the
3 possession of the insurer if the insurer can obtain access to such information pursuant
4 to contractual relationships, statutory obligations, or other method. In the event the
5 insurer cannot obtain the information requested by the commissioner, the insurer
6 shall provide the commissioner a detailed explanation of the reason that the insurer
7 cannot obtain the information and the identity of the holder of information.
8 Whenever it appears to the commissioner that the detailed explanation is without
9 merit, the commissioner may require, after notice and hearing, the insurer to pay a
10 penalty of one hundred dollars for each day's delay, or may suspend or revoke the
11 insurer's authority.

12 C. Use of consultants. The commissioner may retain at the registered
13 insurer's expense such attorneys, actuaries, accountants, and other experts not
14 otherwise a part of the commissioner's staff as shall be reasonably necessary to assist
15 in the conduct of the examination under Subsection A. Any persons so retained shall
16 be under the direction and control of the commissioner and shall act in a purely
17 advisory capacity.

18 D. Expenses. Each registered insurer producing for examination records,
19 books and papers pursuant to Subsection A of this Section shall be liable for and
20 shall pay the expense of examination in accordance with R.S. 22:1985 through 1988.

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

1 to attend as a witness at the place specified in the subpoena, when subpoenaed,
2 anywhere within the state. He shall be entitled to the same fees and mileage, if
3 claimed, as a witness in R.S. 13:3661, which fees, mileage, and actual expense, if
4 any, necessarily incurred in securing the attendance of witnesses, and their
5 testimony, shall be itemized and charged against, and be paid by, the company being
6 examined.

7 §691.9. Supervisory colleges

8 A. Power of commissioner. With respect to any insurer registered under R.S.
9 22:691.6, and in accordance with Subsection C of this Section, the commissioner
10 shall also have the power to participate in a supervisory college for any domestic
11 insurer that is part of an insurance holding company system with international
12 operations in order to determine compliance by the insurer with this Subpart. The
13 powers of the commissioner with respect to supervisory colleges include but are not
14 limited to the following:

15 (1) Initiating the establishment of a supervisory college.

16 (2) Clarifying the membership and participation of other supervisors in
17 the supervisory college.

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

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

22 (5) Establishing a crisis management plan.

23 B. Expenses. Each registered insurer subject to this Section shall be liable
24 for and shall pay the reasonable expenses of the commissioner's participation in a
25 supervisory college in accordance with Subsection C of this Section, including
26 reasonable travel expenses. For purposes of this Section, a supervisory college may
27 be convened as either a temporary or permanent forum for communication and
28 cooperation between the regulators charged with the supervision of the insurer or its

1 affiliates, and the commissioner may establish a regular assessment to the insurer for
2 the payment of these expenses.

3 C. Supervisory college. In order to assess the business strategy, financial
4 position, legal and regulatory position, risk exposure, risk management and
5 governance processes, and as part of the examination of individual insurers in
6 accordance with R.S. 691.8, the commissioner may participate in a supervisory
7 college with other regulators charged with supervision of the insurer or its affiliates,
8 including other state, federal and international regulatory agencies. The
9 commissioner may enter into agreements in accordance with R.S. 22:691.10(C)
10 providing the basis for cooperation between the commissioner and the other
11 regulatory agencies, and the activities of the supervisory college. Nothing in this
12 Section shall delegate to the supervisory college the authority of the commissioner
13 to regulate or supervise the insurer or its affiliates within its jurisdiction.

14 §691.10. Confidential treatment

15 A. Documents, materials or other information in the possession or
16 control of the Department of Insurance that are obtained by or disclosed to the
17 commissioner or any other person in the course of an examination or investigation
18 made pursuant to R.S. 22:691.8 and all information reported pursuant to R.S.
19 22:691.4(B)(12) and (13), R.S. 22:691.6, and 691.7 shall be confidential by law and
20 privileged, shall not be subject to subpoena, and shall not be subject to discovery or
21 admissible in evidence in any private civil action. However, the commissioner is
22 authorized to use the documents, materials, or other information in the furtherance
23 of any regulatory or legal action brought as a part of the commissioner's official
24 duties. The commissioner shall not otherwise make the documents, materials, or
25 other information public without the prior written consent of the insurer to which it
26 pertains unless the commissioner, after giving the insurer and its affiliates who
27 would be affected thereby notice and opportunity to be heard, determines that the
28 interest of policyholders, shareholders, or the public will be served by the publication

1 thereof, in which event the commissioner may publish all or any part in such manner
2 as may be deemed appropriate.

3 B. Neither the commissioner nor any person who received documents,
4 materials, or other information while acting under the authority of the commissioner
5 or with whom such documents, materials or other information are shared pursuant
6 to this Act shall be permitted or required to testify in any private civil action
7 concerning any confidential documents, materials, or information subject to
8 Subsection A of this Section.

9 C. In order to assist in the performance of the commissioner's duties, the
10 commissioner:

11 (1) May share documents, materials, or other information, including the
12 confidential and privileged documents, materials or information subject to
13 Subsection A of this Section, with other state, federal and international regulatory
14 agencies with the NAIC and its affiliates and subsidiaries and with state, federal, and
15 international law enforcement authorities, including members of any supervisory
16 college described in R.S. 22:691.9, provided that the recipient agrees in writing to
17 maintain the confidentiality and privileged status of the document, material or other
18 information, and has verified in writing the legal authority to maintain
19 confidentiality.

20 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, the
21 commissioner may only share confidential and privileged documents, material, or
22 information reported pursuant to R.S. 22:691.6(L) with commissioners of states
23 having statutes or regulations substantially similar to Subsection A of this Section
24 and who have agreed in writing not to disclose such information.

25 (3) May receive documents, materials, or information, including otherwise
26 confidential and privileged documents, materials, or information from the NAIC and
27 its affiliates and subsidiaries and from regulatory and law enforcement officials of
28 other foreign or domestic jurisdictions, and shall maintain as confidential or
29 privileged any document, material, or information received with notice or the

1 understanding that it is confidential or privileged under the laws of the jurisdiction
2 that is the source of the document, material, or information.

3 (4) Shall enter into written agreements with the NAIC governing sharing and
4 use of information provided pursuant to this Act consistent with this Subsection that
5 shall:

6 (i) Specify procedures and protocols regarding the confidentiality and
7 security of information shared with the NAIC and its affiliates and subsidiaries
8 pursuant to this Act, including procedures and protocols for sharing by the NAIC
9 with other state, federal or international regulators.

10 (ii) Specify that ownership of information shared with the NAIC and its
11 affiliates and subsidiaries pursuant to this Act remains with the commissioner and
12 the NAIC's use of the information is subject to the direction of the commissioner.

13 (iii) Require prompt notice to be given to an insurer whose confidential
14 information in the possession of the NAIC pursuant to this Act is subject to a request
15 or subpoena to the NAIC for disclosure or production.

16 (iv) Require the NAIC and its affiliates and subsidiaries to consent to
17 intervention by an insurer in any judicial or administrative action in which the NAIC
18 and its affiliates and subsidiaries may be required to disclose confidential
19 information about the insurer shared with the NAIC and its affiliates and subsidiaries
20 pursuant to this Act.

21 D. The sharing of information by the commissioner pursuant to this Act
22 shall not constitute a delegation of regulatory authority or rulemaking, and the
23 commissioner is solely responsible for the administration, execution, and
24 enforcement of the provisions of this Act.

25 E. No waiver of any applicable privilege or claim of confidentiality in the
26 documents, materials, or information shall occur as a result of disclosure to the
27 commissioner under this Section or as a result of sharing as authorized in Subsection
28 C of this Section.

1 F. Documents, materials, or other information in the possession or control of
2 the NAIC pursuant to this Act shall be confidential by law and privileged, shall not
3 be subject to subpoena, and shall not be subject to discovery or admissible in
4 evidence in any private civil action.

5 §691.11. Rules and regulations

6 The commissioner may, upon notice and opportunity for all interested
7 persons to be heard, issue such rules, regulations and orders as shall be necessary to
8 carry out the provisions of this Subpart.

9 §691.12. Injunctions; prohibitions against voting securities; sequestration of voting
10 Securities

11 A. Injunctions. Whenever it appears to the commissioner that any insurer or
12 any director, officer, employee, or agent thereof has committed or is about to commit
13 a violation of this Act or of any rule, regulation or order issued by the commissioner
14 hereunder, the commissioner may apply to the Nineteenth Judicial District Court in
15 and for the parish of East Baton Rouge, for an order enjoining the insurer or director,
16 officer, employee, or agent thereof from violating or continuing to violate this
17 Subpart or any rule, regulation, or order, and for such other equitable relief as the
18 nature of the case and the interest of the insurer's policyholders, creditors, and
19 shareholders or the public may require.

20 B. Voting of securities; when prohibited. No security which is the subject of
21 any agreement or arrangement regarding acquisition, or which is acquired or to be
22 acquired, in contravention of the provisions of this Subpart or of any rule, regulation,
23 or order issued by the commissioner hereunder may be voted at any shareholder's
24 meeting, or may be counted for quorum purposes, and any action of shareholders
25 requiring the affirmative vote of a percentage of shares may be taken as though the
26 securities were not issued and outstanding; however, no action taken at any such
27 meeting shall be invalidated by the voting of the securities, unless the action would
28 materially affect control of the insurer or unless the courts of this state have so
29 ordered. If an insurer or the commissioner has reason to believe that any security of

1 the insurer has been or is about to be acquired in contravention of the provisions of
2 this Subpart or of any rule, regulation or order issued by the commissioner
3 hereunder, the insurer or the commissioner may apply to the Nineteenth Judicial
4 District Court in and for the parish of East Baton Rouge to enjoin any offer, request,
5 invitation, agreement, or acquisition made in contravention of R.S. 22:691.4 or any
6 rule, regulation, or order issued by the commissioner thereunder to enjoin the voting
7 of any security so acquired, to void any vote of the security already cast at any
8 meeting of shareholders and for such other equitable relief as the nature of the case
9 and the interest of the insurer's policyholders, creditor and shareholders or the public
10 may require.

11 C. Sequestration of voting securities. In any case where a person has
12 acquired or is proposing to acquire any voting securities in violation of this Subpart
13 or any rule, regulation, or order issued by the commissioner hereunder, the
14 Nineteenth Judicial District Court in and for the parish of East Baton Rouge, on
15 such notice as the court deems appropriate, upon the application of the insurer or
16 the commissioner, seize or sequester any voting securities of the insurer owned
17 directly or indirectly by the person, and issue such order as may be appropriate to
18 effectuate the provisions of this Act.

19 D. Site of ownership. Notwithstanding any other provisions of law, for the
20 purposes of this Act the situs of the ownership of the securities of domestic insurers
21 shall be deemed to be in this state.

22 §691.13. Sanctions

23 A. Any insurer failing, without just cause, to file any registration statement
24 as required in this Subpart shall be required, after notice and hearing, to pay a
25 penalty of one hundred dollars for each day's delay, to be recovered by the
26 commissioner of Insurance and the penalty so recovered shall be paid into the
27 general revenue fund of this state. The maximum penalty under this Section is ten
28 thousand dollars. The commissioner may reduce the penalty if the insurer

1 demonstrates to the commissioner that the imposition of the penalty would constitute
2 a financial hardship to the insurer.

3 B. Every director or officer of an insurance holding company system who
4 knowingly violates, participates in, or assents to, or who knowingly shall permit any
5 of the officers or agents of the insurer to engage in transactions or make investments
6 which have not been properly reported or submitted pursuant to or which violate this
7 Subpart shall pay, in their individual capacity, a civil forfeiture of not more than one
8 thousand dollars per violation, after notice and opportunity for a hearing. In
9 determining the amount of the civil forfeiture, the commissioner shall take into
10 account the appropriateness of the forfeiture with respect to the gravity of the
11 violation, the history of previous violations, and such other matters as justice may
12 require.

13 C. Whenever it appears to the commissioner that any insurer subject to this
14 Subpart or any director, officer, employee, or agent thereof has engaged in any
15 transaction or entered into a contract which is subject to the provisions of R.S.
16 22:691.7 and which would not have been approved had the approval been requested,
17 the commissioner may order the insurer to cease and desist immediately any further
18 activity under that transaction or contract. After notice and opportunity for hearing
19 the commissioner may also order the insurer to void any contracts and restore the
20 status quo if the action is in the best interest of the policyholders, creditors or the
21 public.

22 D. Whenever it appears to the commissioner that any insurer or any director,
23 officer, employee, or agent thereof has committed a willful violation of this Subpart,
24 the commissioner may cause criminal proceedings to be instituted by the Nineteenth
25 Judicial District Court in and for the parish of East Baton Rouge, against the insurer
26 or the responsible director, officer, employee, or agent thereof. Any insurer which
27 willfully violates this Subpart may be fined not more than one hundred thousand
28 dollars. Any individual who willfully violates this Subpart may be fined in his

1 individual capacity not more than fifty thousand dollars or be imprisoned with or
2 without hard labor for not more than five years or both.

3 E. Any officer, director, or employee of an insurance holding company
4 system who willfully and knowingly subscribes to or makes or causes to be made
5 any false statements or false reports or false filings with the intent to deceive
6 the commissioner in the performance of his duties under this Subpart, upon
7 conviction thereof shall be imprisoned with or without hard labor for not more than
8 five years or fined not more than fifty thousand dollars or both. Any fines imposed
9 shall be paid by the officer, director, or employee in his individual capacity.

10 F. Whenever it appears to the commissioner that any person has committed
11 a violation of R.S. 22:691.4 and which prevents the full understanding of the
12 enterprise risk to the insurer by affiliates or by the insurance holding company
13 system, the violation may serve as an independent basis for disapproving dividends
14 or distributions and for placing the insurer under an order of supervision in
15 accordance with R.S. 22:731 et seq.

16 §691.14. Receivership

17 Whenever it appears to the commissioner that any person has committed a
18 violation of this Subpart which so impairs the financial condition of a domestic
19 insurer as to threaten insolvency or make the further transaction of business by it
20 hazardous to its policyholders, creditors, shareholders or the public, then the
21 commissioner may proceed pursuant to the provisions contained in R.S. 22:73, 96,
22 731 et seq., 2001 et seq., as well as Subpart H of this Part and Chapter 9 of this Code.

23 §691.15. Recovery

24 A. If an order for liquidation or rehabilitation of a domestic insurer has been
25 entered, the receiver appointed under the order shall have a right to recover on behalf
26 of the insurer either of following:

27 (i) from any parent corporation or holding company or person or affiliate
28 who otherwise controlled the insurer, the amount of distributions, other

1 than distributions of shares of the same class of stock, paid by the insurer on its
2 capital stock.

3 (ii) any payment in the form of a bonus, termination settlement or
4 extraordinary lump sum salary adjustment made by the insurer or its subsidiary to
5 a director, officer or employee, where the distribution or payment pursuant to (i) or
6 (ii) is made at any time during the one year preceding the petition for liquidation,
7 conservation or rehabilitation, as the case may be, subject to the limitations of
8 Subsections B, C, and D of this Section.

9 B. No distribution shall be recoverable if the parent or affiliate shows that,
10 when paid, the distribution was lawful and reasonable, and that the insurer did not
11 know and could not reasonably have known that the distribution might adversely
12 affect the ability of the insurer to fulfill its contractual obligations.

13 C. Any person who was a parent corporation or holding company or a person
14 who otherwise controlled the insurer or affiliate at the time the distributions were
15 paid shall be liable up to the amount of distributions or payments pursuant to
16 Subsection A of this Section, which the person received. Any person who otherwise
17 controlled the insurer at the time the distributions were declared shall be liable up to
18 the amount of distributions that would have been received if they had been paid
19 immediately. If two or more persons are liable with respect to the same distributions,
20 they shall be jointly and severally liable.

21 D. The maximum amount recoverable under this Section shall be the amount
22 needed in excess of all other available assets of the impaired or insolvent insurer to
23 pay the contractual obligations of the impaired or insolvent insurer and to reimburse
24 any guaranty funds.

25 E. To the extent that any person liable under Subsection C of this Section is
26 insolvent or otherwise fails to pay claims due from it, its parent corporation or
27 holding company, or person who otherwise controlled it at the time the distribution
28 was paid, shall be jointly and severally liable for any resulting deficiency in the

1 amount recovered from the parent corporation or holding company or person who
2 otherwise controlled it.

3 §691.16. Revocation, suspension, or nonrenewal of insurer's authority

4 Whenever it appears to the commissioner that any person has committed a
5 violation of this Subpart which makes the continued operation of an insurer contrary
6 to the interests of policyholders or the public, the commissioner may, after giving
7 notice and an opportunity to be heard, suspend, revoke, or refuse to renew the
8 insurer's license or authority to do business in this state for such period as the
9 commissioner finds is required for the protection of policyholders or the public.

10 Any such determination shall be accompanied by specific findings of fact and
11 conclusions of law.

12 §691.17. Judicial review; mandamus

13 A. Any person aggrieved by any act, determination, rule, regulation or order
14 or any other action of the commissioner pursuant to this Subpart may appeal to the
15 Nineteenth Judicial District Court in and for the parish of East Baton Rouge. The
16 court shall conduct its review without a jury and by trial de novo, except that if all
17 parties, including the commissioner, so stipulate, the review shall be confined to the
18 record. Portions of the record may be introduced by stipulation into evidence in a
19 trial de novo as to those parties so stipulating.

20 B. The filing of an appeal pursuant to this Section shall stay the application
21 of any rule, regulation, order, or other action of the commissioner to the appealing
22 party unless the court, after giving the party notice and an opportunity to be heard,
23 determines that a stay would be detrimental to the interest of policyholders,
24 shareholders, creditors, or the public.

25 C. Any person aggrieved by any failure of the commissioner to act or
26 make a determination required by this Subpart may petition the Nineteenth Judicial
27 District Court in and for the parish of East Baton Rouge for a writ in the nature of a
28 mandamus or a peremptory mandamus directing the commissioner to act or make a
29 determination forthwith.

1 §691.18. Severability

2 The provisions of this Act are severable. If any provision or item of this
3 Subpart, or application thereof, is held invalid, such invalidity shall not affect other
4 provisions, items, or applications of this Subpart which are to be given effect without
5 the invalid provision, item, or application of the Subpart.

6 ~~§714:~~ §691.19 Substitution of policies; charge by lender prohibited; penalty

7 A. It shall be unlawful for any person, firm, or corporation engaged in
8 financing the purchase of real or personal property, or of lending money on the
9 security of real or personal property, or for any trustee, director, officer, agent, or
10 other employee of any such person, firm or corporation, to require, directly or
11 indirectly, that a borrower, or any other person, in obtaining insurance coverage on
12 the property, pay a service charge or fee of any kind to substitute the insurance
13 policy of one insurance company for that of another.

14 B. Any violation of any of the provisions of this Section by any person, firm,
15 or corporation is declared to be a misdemeanor and is punishable by a fine of not less
16 than one hundred dollars or more than five hundred dollars, or imprisonment for not
17 less than sixty days or more than one year, or both fine and imprisonment, for each
18 offense, in the discretion of the court.

19 ~~§715:~~ §691.20 Ownership of domestic stock insurance company equity securities;
20 filing of statements

21 Every person who is directly or indirectly the beneficial owner of more than
22 ten percent of any class of any equity security of a domestic stock insurance
23 company, or who is a director or an officer of such company, shall file in the office
24 of the commissioner of insurance within ten days after he becomes such beneficial
25 owner, director, or officer, a statement, in such form as the commissioner of
26 insurance may prescribe, of the amount of all equity securities of such company of
27 which he is the beneficial owner, and within ten days after the close of each calendar
28 month thereafter, if there has been a change in such ownership during such month,
29 shall file in the office of the commissioner of insurance a statement, in such form as

1 the commissioner of insurance may prescribe, indicating his ownership at the close
2 of the calendar month and such changes in his ownership as have occurred during
3 such calendar month.

4 ~~§716:~~ §691.21 Profits to inure to company; suits to recover

5 For the purpose of preventing the unfair use of information which may have
6 been obtained by such beneficial owner, director or officer by reason of his
7 relationship to such company, any profit realized by him from any purchase and sale,
8 or any sale and purchase, of any equity security of such company within any period
9 of less than six months, unless such security was acquired in good faith in connection
10 with a debt previously contracted, shall inure to and be recoverable by the company,
11 irrespective of any intention on the part of such beneficial owner, director or officer
12 in entering into such transaction of holding the security purchased or of not
13 repurchasing the security sold for a period exceeding six months. Suit to recover
14 such profit may be instituted at law or in equity in any court of competent
15 jurisdiction by the company, or by the owner of any security of the company in the
16 name and in behalf of the company if the company shall fail or refuse to bring such
17 suit within sixty days after request or shall fail to diligently prosecute the same
18 thereafter; but no such suit shall be brought more than two years after the date such
19 profit was realized. This Section shall not be construed to cover any transaction
20 where such beneficial owner was not such, both at the time of the purchase and sale,
21 or the sale and purchase, of the security involved, or any transaction or transactions
22 which the commissioner of insurance, by rules and regulations may exempt as not
23 comprehended within the purpose of this Section.

24 ~~§717:~~ §691.22 Unlawful sales

25 It shall be unlawful for any such beneficial owner, director or officer, directly
26 or indirectly, to sell any equity security of such company if the person selling the
27 security or his principal (1) does not own the security sold, or (2) if owning the
28 security, does not deliver it against such sale within twenty days thereafter, or does
29 not within five days after such sale deposit it in the mails, or other usual channels of

1 transportation; but no person shall be deemed to have violated this Section if he
2 proves that notwithstanding the exercise of good faith he was unable to make such
3 delivery or deposit within such time, or that to do so would cause undue
4 inconvenience or expense.

5 ~~§718.~~ §691.23 Sales exempt

6 The provisions of R.S. 22:716 shall not apply to any purchase and sale, or
7 sale and purchase, and the provisions of R.S. 22:717 shall not apply to any sale, of
8 an equity security of a domestic stock insurance company not then or theretofore
9 held by him in an investment account, by a dealer in the ordinary course of his
10 business and incident to the establishment or maintenance by him of a primary or
11 secondary market (otherwise than on an exchange as defined in the Securities
12 Exchange Act of 1934) for such security. The commissioner of insurance may, by
13 such rules and regulations as he deems necessary or appropriate in the public interest,
14 define and prescribe terms and conditions with respect to securities held in an
15 investment account and transactions made in the ordinary course of business and
16 incident to the establishment or maintenance of a primary or secondary market.

17 ~~§719.~~ §691.24 Arbitrage transactions

18 The provisions of R.S. 22:715 through 22:717 shall not apply to foreign or
19 domestic arbitrage transactions unless made in contravention of such rules and
20 regulations as the commissioner of insurance may adopt in order to carry out the
21 purposes of R.S. 22:49 and 715 through 723.

22 ~~§720.~~ §691.25 "Equity security" defined

23 The term "equity security" when used in R.S. 22:49, 715 through 720, 722,
24 and 723, means any stock or similar security; or any security convertible, with or
25 without consideration, into such a security, or carrying any warrant or right to
26 subscribe to or purchase such a security; or any such warrant or right; or any other
27 equity security of a domestic stock insurance company which the commissioner of
28 insurance shall deem to be of a similar nature and consider necessary or appropriate,
29 by such rules and regulations as he may prescribe in the public interest or for the

1 protection of investors, to treat as an equity security of a domestic stock insurance
2 company.

3 ~~§722:~~ §691.26 Securities exempt

4 The provisions of R.S. 22:715 through 717 shall not apply to such equity
5 securities of a domestic stock insurance company if either of the following apply:

6 (1) Such securities shall be registered or shall be required to be registered
7 pursuant to Section 12 of the Securities Exchange Act of 1934, as amended.

8 (2) Such domestic stock insurance company shall not have any class of its
9 equity securities held of record by one hundred or more persons on the last business
10 day of the year next preceding the year in which equity securities of the company
11 would be subject to the provisions of R.S. 22:715 through 717 except for the
12 provisions of this Paragraph.

13 ~~§723:~~ §691.27 Rules and regulations

14 The commissioner of insurance shall have the power to make such rules and
15 regulations as may be necessary for the execution of the functions vested in him by
16 R.S. 22:49, 715 through 720, and 722, and 723 and may for such purpose classify
17 domestic stock insurance companies, securities, and other persons or matters within
18 his jurisdiction. No provision of R.S. 22:715 through 717 imposing any liability
19 shall apply to any act done or omitted in good faith in conformity with any rule or
20 regulation of the commissioner of insurance, notwithstanding that such rule or
21 regulation may, after such act or omission, be amended or rescinded or determined
22 by judicial or other authority to be invalid for any reason.

23 Section 2. Subpart G of Part III of Chapter 2 of Title 22 of the Louisiana Revised
24 Statutes of 1950, comprised of R.S. 22:691 through 723, is hereby repealed in its entirety.

25 Section 3. R.S. 22:695 through 702 are hereby redesignated in their entirety to R.S.
26 22:232.1 through 232.8.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Thibaut

HB No. 1191

Abstract: Provides relative to insurance holding company systems.

Proposed law provides for definitions relative to insurance holding company systems.

Present law provides that a domestic insurer may organize or acquire one or more subsidiaries, and that such subsidiaries have the authority to conduct any kind of business.

Proposed law restates present law.

Present law provides relative to a domestic insurer's authority to make investments using common stock, preferred stock, debt obligations, and other securities.

Proposed law restates present law.

Present law requires an insurer who ceases to control a subsidiary to dispose of any investment in that subsidiary within a three year period.

Proposed law restates present law.

Present law prohibits any person from making an offer of acquisition, agreement to merge, or other attempt to acquire a domestic insurer without first filing a statement to the commissioner which includes the contents required by present law.

Proposed law restates present law, and further adds additional filing requirements for controlling persons of domestic insurers.

Proposed law clarifies who shall be considered a controlling person for purposes of proposed law.

Present law provides relative to public hearings for persons who have submitted filings, which were subsequently denied.

Proposed law restates present law and makes clarifications.

Proposed law provides for a pre-acquisition notification to be filed with the commissioner and what shall be contained in the notification.

Proposed law establishes a notice requirement for acquisition hearings.

Proposed law adds a provision for acquisitions which occur as a result of an inheritance.

Proposed law provides for management of domestic insurers subject to registration.

Proposed law adds a provision for the commissioner to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations.

Proposed law grants the commissioner the authority to issue cease and desist orders to persons who violate the provisions of proposed law.

(Adds R.S. 22:691.1-691.27; Repeals R.S. 22:691-723)