

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

16 REGULATORY ACT

17 §691.1. Title

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

20 §691.2. Definitions

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

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

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

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

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

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

27           (6) "Insurer" shall have the same meaning as set forth in R.S. 22:46(10). For  
28           the purposes of this Subpart, a health maintenance organization as defined R.S.  
29           22:242(7) shall also be considered an insurer. The term "insurer" shall not include

1 agencies, authorities, or instrumentalities of the United States, its possessions and  
2 territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state  
3 or political subdivision of a state.

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

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

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

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

16 §691.3. Subsidiaries of insurers

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

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

25 (1) Invest, in common stock, preferred stock, debt obligations, and other  
26 securities of one or more subsidiaries, amounts which do not exceed the lesser of ten  
27 percent of the insurer's assets or fifty percent of the insurer's surplus as regards  
28 policyholders, provided that after such investments, the insurer's surplus as regards  
29 policyholders will be reasonable in relation to the insurer's outstanding liabilities and

1        adequate to meet its financial needs. In calculating the amount of such investments,  
2        investments in domestic or foreign insurance subsidiaries and health maintenance  
3        organizations shall be excluded, and each of the following shall be included:

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

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

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

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

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

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

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

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

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

20          §691.4. Acquisition of control of or merger with domestic insurer

21                 A. Filing requirements.

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

1 into, or prior to the acquisition of the securities if no offer or agreement is involved,  
2 such person has filed with the commissioner and has sent to the insurer, a statement  
3 containing the information required by this Section and the offer, request, invitation,  
4 agreement, or acquisition has been approved by the commissioner in the manner  
5 prescribed in this Subpart.

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

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

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

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

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

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

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

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

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

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

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

28          (3) Fully audited financial information as to the earnings and financial  
29          condition of each acquiring party for the preceding five fiscal years of each acquiring

1 party, or for such lesser period as the acquiring party and any predecessors shall have  
2 been in existence, and similar unaudited information as of a date not earlier than  
3 ninety days prior to the filing of the statement.

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

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

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

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

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

26 (9) A description of any recommendations to purchase any security referred  
27 to in Subsection A of this Section made during the twelve calendar months preceding  
28 the filing of the statement by any acquiring party, or by anyone based upon  
29 interviews, or at the suggestion of the acquiring party.

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

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

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

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

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

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

1 person who is directly or indirectly the beneficial owner of more than ten percent of  
2 the outstanding voting securities of the corporation.

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

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

16 E. Approval by commissioner: hearings.

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

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

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

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

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

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

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

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

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

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

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

1 of hearing was sent, and any other person whose interest may be affected shall have  
2 the right to present evidence, examine, and cross examine witnesses, and offer oral  
3 and written arguments, and in connection with such hearing, shall be entitled to  
4 conduct discovery proceedings in the same manner as is presently allowed in the  
5 district courts of this state. All discovery proceedings shall be concluded not later  
6 than three days prior to the commencement of the public hearing.

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

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

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

1           F. Exemptions.

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

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

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

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

12          (2) Exemptions pursuant to Subparagraph (1)(a) or (b) this Subsection shall  
13          be requested and granted by the commissioner prior to the transaction.

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

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

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

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

24           H. Jurisdiction; consent to service of process. The courts of this state are  
25           hereby vested with jurisdiction over every person not resident, domiciled, or  
26           authorized to do business in this state who files a statement with the commissioner  
27           under this Section, and over all actions involving such person arising out of  
28           violations of this Section, and each such person shall be deemed to have performed  
29           acts equivalent to and constituting an appointment by the person of the commissioner

1        to be his true and lawful attorney upon whom may be served all lawful process in  
2        any action, suit, or proceeding arising out of violations of this Section. Copies of all  
3        lawful process shall be served on the commissioner and transmitted by registered or  
4        certified mail by the commissioner to the person at his last known address.

5        §691.5. Acquisitions involving insurers not otherwise covered

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

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

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

14               B. Scope.

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

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

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

27               (b) The acquisition of a person by another person when both persons are  
28       neither directly nor through affiliates primarily engaged in the business of insurance,  
29       if pre-acquisition notification is filed with the commissioner in accordance with

1        Subsection C of this Section thirty days prior to the proposed effective date of the  
2        acquisition. However, such pre-acquisition notification is not required for exclusion  
3        from this Section if the acquisition would otherwise be excluded from this Section  
4        by any other Subparagraph of Subsection B of this Section.

5            (c) The acquisition of already affiliated persons.

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

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

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

11          (cc) There is no market wherein the combined market share of the involved  
12        insurers would exceed twelve percent of the total market, and the market share would  
13        increase by more than two percent of the total market.

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

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

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

26          C. Pre-acquisition notification; waiting period. An acquisition covered by  
27        Subsection B of this Section may be subject to an order pursuant to Subsection E of  
28        this Section unless the acquiring person files a pre-acquisition notification and the  
29        waiting period has expired. The acquired person may file a pre-acquisition

1 notification. The commissioner shall give confidential treatment to information  
2 submitted under this Subsection in the same manner as provided in R.S. 22:691.10.

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

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

21 D. Competitive standard.

22 (1) The commissioner may enter an order pursuant to Subsection E of this  
23 Section with respect to an acquisition if there is substantial evidence that the effect  
24 of the acquisition may be to substantially lessen competition in any line of insurance  
25 in this state or tend to create a monopoly, or if the insurer fails to file adequate  
26 information in compliance with the provisions of Subsection C of this Section.

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

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

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

	<u>Insurer A</u>	<u>Insurer B</u>
7		
8	<u>4%</u>	<u>4% or more</u>
9	<u>10%</u>	<u>2% or more</u>
10	<u>15%</u>	<u>1% or more.</u>

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

	<u>Insurer A</u>	<u>Insurer B</u>
13		
14	<u>5%</u>	<u>5% or more</u>
15	<u>10%</u>	<u>4% or more</u>
16	<u>15%</u>	<u>3% or more</u>
17	<u>19%</u>	<u>1% or more</u>

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

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

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

26           (b) Whether there is a significant trend toward increased concentration when  
27           the aggregate market share of any grouping of the largest insurers in the market,  
28           from the two largest to the eight largest, has increased by seven percent or more of  
29           the market over a period of time extending from any base year of five to ten years

1 prior to the acquisition up to the time of the acquisition. Any acquisition or merger  
2 covered under Subsection B of this Section involving two or more insurers  
3 competing in the same market is prima facie evidence of violation of the competitive  
4 standard set forth in Paragraph (1) of this Subsection if each of the following  
5 circumstances exist:

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

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

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

10 (c) For the purposes of this Subsection:

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

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

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

25 (d) Even if an acquisition is not a prima facie violation of the competitive  
26 standard pursuant to Subparagraphs (a) and (b) of this Paragraph, the commissioner  
27 may establish the requisite anticompetitive effect based upon other substantial  
28 evidence. Even when an acquisition is a prima facie violation of the competitive  
29 standard pursuant to Subparagraphs (a) and (b) of this Paragraph, a party may

1 establish the absence of the requisite anticompetitive effect based upon other  
2 substantial evidence. Relevant factors in making a determination under this  
3 Subparagraph include but shall not be limited to market shares, volatility of ranking  
4 of market leaders, number of competitors, concentration, trend of concentration in  
5 the industry, and ease of entry and exit into the market.

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

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

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

15 E. Orders and penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16          §691.6. Registration of insurers

17          A. Registration.

18          (1) Every insurer which is authorized to do business in this state and which  
19          is a member of an insurance holding company system shall register with the  
20          commissioner, except a foreign insurer subject to registration requirements and  
21          standards adopted by statute or regulation in the jurisdiction of its domicile which  
22          are substantially similar to those contained in the provisions of this Section or the  
23          provisions of R.S. 22:691.5(A)(1), (B), and (D), and either the provisions of R.S.  
24          22:691.7(A)(2) or a provision such as the following: "Each registered insurer shall  
25          keep current the information required to be disclosed in its registration statement by  
26          reporting all material changes or additions within fifteen days after the end of the  
27          month in which it learns of each change or addition."

28          (2) Any insurer which is subject to registration under this Section shall  
29          register within fifteen days after it becomes subject to registration, and annually

1        thereafter by the first of April of each year for the previous calendar year, unless the  
2        commissioner for good cause shown extends the time for registration, and then  
3        within the extended time. The commissioner may require any insurer authorized to  
4        do business in the state which is a member of an insurance holding company system,  
5        and which is not subject to registration under this Section, to furnish a copy of the  
6        registration statement, the summary specified in Subsection C of this Section or other  
7        information filed by the insurance company with the insurance regulatory authority  
8        of its domiciliary jurisdiction.

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

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

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

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

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

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

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

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

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

29                (f) Reinsurance agreements.

1           (g) Dividends and other distributions to shareholders.

2           (h) Consolidated tax allocation agreements.

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

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

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

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

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

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

26           C. Summary of changes to registration statement. All registration statements  
27 shall contain a summary outlining all items in the current registration statement  
28 representing changes from the prior registration statement.

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

8           E. Reporting of dividends to shareholders. Subject to the provisions of R.S.  
9           22:691.7(B), each registered insurer shall report to the commissioner all dividends  
10           and other distributions to shareholders within fifteen business days following the  
11           declaration thereof.

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

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

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

21           I. Alternative registration. The commissioner may allow an insurer which  
22           is authorized to do business in this state and which is part of an insurance holding  
23           company system to register on behalf of any affiliated insurer which is required to  
24           register under Subsection A of this Section and to file all information and material  
25           required to be filed under this Section.

26           J. Exemptions.

27           (1) The provisions of this Section shall not apply to any insurer,  
28           information, or transaction if, and to the extent that, the commissioner by rule,

1 regulation, or order shall exempt such insurer, information, or transaction from  
2 applicability of the provisions of this Section.

3 (2) Unless it appears in the discretion of the commissioner that the condition  
4 of a small company renders the continuance of its business hazardous to the public  
5 or its insureds, a small company shall not be required to submit to the department a  
6 registration statement required by this Section, but shall be considered a registered  
7 insurer for the purposes of the provisions of Subsection E of this Section, R.S.  
8 22:704(A), and 705.

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

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

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

4           N. Incorporation by reference.

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

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

26           §691.7. Standards and management of an insurer within an insurance holding  
27           company system

28           A. Transactions within an insurance holding company system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22               (i) All reinsurance pooling agreements.

23               (ii) Agreements in which the reinsurance premium or a change in the  
24               insurer's liabilities, or the projected reinsurance premium or a change in the insurer's  
25               liabilities in any of the next three years, equals or exceeds five percent of the  
26               insurer's surplus as regards policyholders, as of the thirty-first day of December next  
27               preceding, including those agreements which may require as consideration the  
28               transfer of assets from an insurer to a non-affiliate, if an agreement or understanding

1 exists between the insurer and non-affiliate that any portion of the assets will be  
2 transferred to one or more affiliates of the insurer.

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

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

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

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

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

1        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 this Section, shall consider whether the transactions comply with the standards set  
5        forth in Paragraph (1) of this Subsection and whether they may adversely affect the  
6        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

1 carryforward 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,  
17 or services with one or more other persons under arrangements meeting the standards  
18 of Paragraph (A)(1) 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 assumed  
14 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  
18 commissioner may consider various factors, including but not limited to the type of  
19 business entity, volume of business written, availability of qualified board members,  
20 or the 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 surplus,  
26 reserves, premium writings, insurance in force, and other appropriate criteria.

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

29 (3) The number and size of risks insured in each line of business.

1           (4) The extent of the geographical dispersion of the insurer's insured risks.

2           (5) The nature and extent of the insurer's reinsurance program.

3           (6) The quality, diversification, and liquidity of the insurer's investment  
4 portfolio.

5           (7) The recent past and projected future trend in the size of the insurer's  
6 investment portfolio.

7           (8) The surplus as regards policyholders maintained by other comparable  
8 insurers.

9           (9) The adequacy of the insurer's reserves.

10          (10) The quality and liquidity of investments in affiliates. The commissioner  
11 may treat any such investment as a disallowed asset for purposes of determining the  
12 adequacy of surplus as regards policyholders whenever in the judgment of the  
13 commissioner the investment so warrants.

14          §691.8. Examination

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

23            B. Access to books and records.

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

28            (2) To determine compliance with this Subpart, the commissioner may order  
29 any insurer registered under R.S. 22:691.6 to produce information not in the

1       possession of the insurer if the insurer can obtain access to such information pursuant  
2       to contractual relationships, statutory obligations, or other method. In the event the  
3       insurer cannot obtain the information requested by the commissioner, the insurer  
4       shall provide the commissioner a detailed explanation of the reason that the insurer  
5       cannot obtain the information and the identity of the holder of information.  
6       Whenever it appears to the commissioner that the detailed explanation is without  
7       merit, the commissioner may require, after notice and hearing, the insurer to pay a  
8       penalty of one hundred dollars for each day's delay, or may suspend or revoke the  
9       insurer's authority.

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

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

19           E. Compelling production. In the event the insurer fails to comply with an  
20       order, the commissioner shall have the power to examine the affiliates to obtain the  
21       information. The commissioner shall also have the power to issue subpoenas, to  
22       administer oaths, and to examine under oath any person for purposes of determining  
23       compliance with this Section. Upon the failure or refusal of any person to obey a  
24       subpoena, the commissioner may petition a court of competent jurisdiction, and upon  
25       proper showing, the court may enter an order compelling the witness to appear and  
26       testify or produce documentary evidence. Failure to obey the court order shall be  
27       punishable as contempt of court. Every person shall be obliged to attend as a witness  
28       at the place specified in the subpoena, when subpoenaed, anywhere within the state.  
29       He shall be entitled to the same fees and mileage, if claimed, as a witness in R.S.

1        13:3661, which fees, mileage, and actual expense, if any, necessarily incurred in  
2        securing the attendance of witnesses, and their testimony, shall be itemized and  
3        charged against, and be paid by, the company being examined.

4        §691.9. Supervisory colleges

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

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

13            (2) Clarifying the membership and participation of other supervisors in the  
14        supervisory college.

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

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

19            (5) Establishing a crisis management plan.

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

28            C. Supervisory college. In order to assess the business strategy, financial  
29        position, legal and regulatory position, risk exposure, risk management and

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

10 §691.10. Confidential treatment

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

27 B. Neither the commissioner nor any person who received documents,  
28 materials, or other information while acting under the authority of the commissioner  
29 or with whom such documents, materials, or other information are shared pursuant

1 to this Act shall be permitted or required to testify in any private civil action  
2 concerning any confidential documents, materials, or information subject to  
3 Subsection A of this Section.

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

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

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

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

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

1           (a) Specify procedures and protocols regarding the confidentiality and  
2           security of information shared with the NAIC and its affiliates and subsidiaries  
3           pursuant to this Act, including procedures and protocols for sharing by the NAIC  
4           with other state, federal, or international regulators.

5           (b) Specify that ownership of information shared with the NAIC and its  
6           affiliates and subsidiaries pursuant to this Act remains with the commissioner and  
7           the NAIC's use of the information is subject to the direction of the commissioner.

8           (c) Require prompt notice to be given to an insurer whose confidential  
9           information in the possession of the NAIC pursuant to this Act is subject to a request  
10          or subpoena to the NAIC for disclosure or production.

11          (d) Require the NAIC and its affiliates and subsidiaries to consent to  
12          intervention by an insurer in any judicial or administrative action in which the NAIC  
13          and its affiliates and subsidiaries may be required to disclose confidential  
14          information about the insurer shared with the NAIC and its affiliates and subsidiaries  
15          pursuant to this Act.

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

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

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

1        §691.11. Rules and regulations

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

5        §691.12. Injunctions; prohibitions against voting securities; sequestration of voting  
6                securities

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

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

1        any offer, request, invitation, agreement, or acquisition made in contravention of  
2        R.S. 22:691.4 or any rule, regulation, or order issued by the commissioner thereunder  
3        to enjoin the voting of any security so acquired, to void any vote of the security  
4        already cast at any meeting of shareholders and for such other equitable relief as the  
5        nature of the case and the interest of the insurer's policyholders, creditor and  
6        shareholders or the public may require.

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

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

18        §691.13. Sanctions

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

27           B. Every director or officer of an insurance holding company system who  
28       knowingly violates, participates in, or assents to, or who knowingly shall permit any  
29       of the officers or agents of the insurer to engage in transactions or make investments

1 which have not been properly reported or submitted pursuant to or which violate this  
2 Subpart shall pay, in their individual capacity, a civil forfeiture of not more than one  
3 thousand dollars per violation, after notice and opportunity for a hearing. In  
4 determining the amount of the civil forfeiture, the commissioner shall take into  
5 account the appropriateness of the forfeiture with respect to the gravity of the  
6 violation, the history of previous violations, and such other matters as justice may  
7 require.

8 C. Whenever it appears to the commissioner that any insurer subject to this  
9 Subpart or any director, officer, employee, or agent thereof has engaged in any  
10 transaction or entered into a contract which is subject to the provisions of R.S.  
11 22:691.7 and which would not have been approved had the approval been requested,  
12 the commissioner may order the insurer to cease and desist immediately any further  
13 activity under that transaction or contract. After notice and opportunity for hearing,  
14 the commissioner may also order the insurer to void any contracts and restore the  
15 status quo if the action is in the best interest of the policyholders, creditors, or the  
16 public.

17 D. Whenever it appears to the commissioner that any insurer or any director,  
18 officer, employee, or agent thereof has committed a willful violation of this Subpart,  
19 the commissioner may cause criminal proceedings to be instituted by the Nineteenth  
20 Judicial District Court in and for the parish of East Baton Rouge, against the insurer  
21 or the responsible director, officer, employee, or agent thereof. Any insurer which  
22 willfully violates this Subpart may be fined not more than one hundred thousand  
23 dollars. Any individual who willfully violates this Subpart may be fined in his  
24 individual capacity not more than fifty thousand dollars or be imprisoned with or  
25 without hard labor for not more than five years or both.

26 E. Any officer, director, or employee of an insurance holding company  
27 system who willfully and knowingly subscribes to or makes or causes to be made  
28 any false statements or false reports or false filings with the intent to deceive the  
29 commissioner in the performance of his duties under this Subpart, upon conviction

1 thereof shall be imprisoned with or without hard labor for not more than five years  
2 or fined not more than fifty thousand dollars, or both. Any fines imposed shall be  
3 paid by the officer, director, or employee in his individual capacity.

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

10 §691.14. Receivership

11 Whenever it appears to the commissioner that any person has committed a  
12 violation of this Subpart which so impairs the financial condition of a domestic  
13 insurer as to threaten insolvency or make the further transaction of business by it  
14 hazardous to its policyholders, creditors, shareholders, or the public, then the  
15 commissioner may proceed pursuant to the provisions contained in R.S. 22:73, 96,  
16 731 et seq., 2001 et seq., as well as Subpart H of this Part and Chapter 9 of this Code.

17 §691.15. Recovery

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

21 (1) From any parent corporation or holding company or person or affiliate  
22 who otherwise controlled the insurer, the amount of distributions, other than  
23 distributions of shares of the same class of stock, paid by the insurer on its capital  
24 stock.

25 (2) Any payment in the form of a bonus, termination settlement, or  
26 extraordinary lump sum salary adjustment made by the insurer or its subsidiary to  
27 a director, officer or employee, where the distribution or payment pursuant to  
28 Paragraph (1) or (2) of this Subsection is made at any time during the one year

1        preceding the petition for liquidation, conservation, or rehabilitation, as the case may  
2        be, subject to the limitations of Subsections B, C, and D of this Section.

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

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

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

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

25        §691.16. Revocation, suspension, or nonrenewal of insurer's authority

26               Whenever it appears to the commissioner that any person has committed a  
27       violation of this Subpart which makes the continued operation of an insurer contrary  
28       to the interests of policyholders or the public, the commissioner may, after giving  
29       notice and an opportunity to be heard, suspend, revoke, or refuse to renew the

1 insurer's license or authority to do business in this state for such period as the  
2 commissioner finds is required for the protection of policyholders or the public. Any  
3 such determination shall be accompanied by specific findings of fact and conclusions  
4 of law.

5 §691.17. Judicial review; mandamus

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

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

18 C. Any person aggrieved by any failure of the commissioner to act or make  
19 a determination required by this Subpart may petition the Nineteenth Judicial District  
20 Court in and for the parish of East Baton Rouge for a writ in the nature of a  
21 mandamus or a peremptory mandamus directing the commissioner to act or make a  
22 determination forthwith.

23 §691.18. Severability

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

1       ~~§714.~~ §691.19. Substitution of policies; charge by lender prohibited; penalty

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

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

14       ~~§715.~~ §691.20. Ownership of domestic stock insurance company equity securities;  
15       filing of statements

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

1       ~~§716:~~ §691.21. Profits to inure to company; suits to recover

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

21      ~~§717:~~ §691.22. Unlawful sales

22               It shall be unlawful for any such beneficial owner, director, or officer,  
23      directly or indirectly, to sell any equity security of such company if the person  
24      selling the security or his principal (1) does not own the security sold, or (2) if  
25      owning the security, does not deliver it against such sale within twenty days  
26      thereafter, or does not within five days after such sale deposit it in the mails, or other  
27      usual channels of transportation; but no person shall be deemed to have violated this  
28      Section if he proves that notwithstanding the exercise of good faith he was unable

1 to make such delivery or deposit within such time, or that to do so would cause  
2 undue inconvenience or expense.

3 ~~§718:~~ §691.23. Sales exempt

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

15 ~~§719:~~ §691.24. Arbitrage transactions

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

20 ~~§720:~~ §691.25. "Equity security" defined

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

1       ~~§722:~~ §691.26. Securities exempt

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

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

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

11       ~~§723:~~ §691.27. Rules and regulations

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

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

23       Section 3. R.S. 22:695 through 702 are hereby redesignated in their entirety to R.S.  
24 22:232.1 through 232.8.

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**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)]

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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)