

Regular Session, 2012

ACT No. 294

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

BY REPRESENTATIVE THIBAUT

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

SUBPART G-1. INSURANCE HOLDING COMPANY SYSTEM

REGULATORY ACT

§691.1. Title

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

§691.2. Definitions

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

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

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

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

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

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

24 (6) "Insurer" shall have the same meaning as set forth in R.S. 22:46(10). For
25 the purposes of this Subpart, a health maintenance organization as defined R.S.
26 22:242(7) shall also be considered an insurer. The term "insurer" shall not include
27 agencies, authorities, or instrumentalities of the United States, its possessions and
28 territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state
29 or political subdivision of a state.

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

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

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

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

14 §691.3. Subsidiaries of insurers

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

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

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

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

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

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

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

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

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

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

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

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

15 §691.4. Acquisition of control of or merger with domestic insurer

16 A. Filing requirements.

17 (1) No person other than the issuer shall make a tender offer for or a request
18 or invitation for tenders of, or enter into any agreement to exchange securities for,
19 seek to acquire, or acquire, in the open market or otherwise, any voting security of
20 a domestic insurer if, after the consummation thereof, such person would, directly
21 or indirectly, or by conversion or by exercise of any right to acquire, be in control of
22 the insurer, and no person shall enter into an agreement to merge with or otherwise
23 to acquire control of a domestic insurer or any person controlling a domestic insurer
24 unless, at the time the offer, request, or invitation is made or the agreement is entered
25 into, or prior to the acquisition of the securities if no offer or agreement is involved,
26 such person has filed with the commissioner and has sent to the insurer, a statement
27 containing the information required by this Section and the offer, request, invitation,
28 agreement, or acquisition has been approved by the commissioner in the manner
29 prescribed in this Subpart.

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

12 (3) With respect to a transaction subject to this Section, the acquiring person
13 shall also file a pre-acquisition notification with the commissioner, which shall
14 contain the information set forth in R.S. 22:691.5(C)(1). Failure to file the
15 notification may subject such acquiring person to the penalties specified in R.S.
16 22:691.5(E)(3).

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

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

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

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

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

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

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

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

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

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

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

1 (5) The number of shares of any security referred to in Subsection A of this
2 Section which each acquiring party proposes to acquire; the terms of the offer,
3 request, invitation, agreement, or acquisition referred to in Subsection A of this
4 Section; and a statement as to the method by which the fairness of the proposal was
5 determined.

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

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

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

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

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

28 (11) The term of any agreement, contract, or understanding made with or
29 proposed to be made with any broker-dealer as to solicitation of securities referred

1 to in Subsection A of this Section for tender, and the amount of any fees,
2 commissions, or other compensation to be paid to broker-dealers with regard thereto.

3 (12) An agreement by the person required to file the statement referred to in
4 Subsection A of this Section that it will provide the annual report, specified in R.S.
5 22:691.6(L), for so long as control exists.

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

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

13 C.(1) If the person required to file the statement referred to in Subsection A
14 of this Section is a partnership, limited partnership, syndicate, or other group, the
15 commissioner may require that the information called for by Paragraphs (B)(1)
16 through (14) of this Section shall be given with respect to each partner of the
17 partnership or limited partnership, each member of the syndicate or group, and each
18 person who controls the partner or member. If any partner, member, or person is a
19 corporation or the person required to file the statement referred to in Subsection A
20 of this Section is a corporation, the commissioner may require that the information
21 called for by Paragraphs (B)(1) through (14) of this Section shall be given with
22 respect to the corporation, each officer and director of the corporation, and each
23 person who is directly or indirectly the beneficial owner of more than ten percent of
24 the outstanding voting securities of the corporation.

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

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

9 E. Approval by commissioner: hearings.

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

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

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

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

22 (ii) The merger or other acquisition shall not be disapproved if the
23 commissioner finds that any of the situations meeting the criteria provided by R.S.
24 22:691.5(D)(3) exist.

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

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

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

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

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

11 (2) The public hearing referred to in Paragraph (1) of this Subsection shall
12 be held within thirty days after the statement required by Subsection A of this
13 Section is filed, and at least twenty days notice shall be given by the commissioner
14 to the person filing the statement and to the insurer. The commissioner shall publish
15 a notice of the hearing in a daily newspaper in each of the congressional districts of
16 the state for at least three consecutive days. The last date of publication shall be not
17 less than ten days prior to the date of the hearing. Such notice shall include the name
18 of the insurer and the name of person or persons who have filed the statement
19 pursuant to Subsection A of this Section. The commissioner shall make a
20 determination within the thirty-day period after the conclusion of such hearing. At
21 the hearing, the person filing the statement, the insurer, any person to whom notice
22 of hearing was sent, and any other person whose interest may be affected shall have
23 the right to present evidence, examine, and cross examine witnesses, and offer oral
24 and written arguments, and in connection with such hearing, shall be entitled to
25 conduct discovery proceedings in the same manner as is presently allowed in the
26 district courts of this state. All discovery proceedings shall be concluded not later
27 than three days prior to the commencement of the public hearing.

28 (3) If the proposed acquisition of control will require the approval of more
29 than one commissioner, the public hearing referred to in Paragraph (2) of this
30 Subsection may be held on a consolidated basis upon request of the person filing the

1 statement referred to in Subsection A of this Section. Such person shall file the
2 statement referred to in Subsection A of this Section with the National Association
3 of Insurance Commissioners (NAIC) within five days of making the request for a
4 public hearing. A commissioner may opt out of a consolidated hearing, and shall
5 provide notice to the applicant of the opt-out within ten days of the receipt of the
6 statement referred to in Subsection A of this Section. A hearing conducted on a
7 consolidated basis shall be public and shall be held within the United States before
8 the commissioners of the states in which the insurers are domiciled. Such
9 commissioners shall hear and receive evidence. A commissioner may attend such
10 hearing in person or by telecommunication.

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

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

21 F. Exemptions.

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

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

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

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

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

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

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

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

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

15 H. Jurisdiction; consent to service of process. The courts of this state are
16 hereby vested with jurisdiction over every person not resident, domiciled, or
17 authorized to do business in this state who files a statement with the commissioner
18 under this Section, and over all actions involving such person arising out of
19 violations of this Section, and each such person shall be deemed to have performed
20 acts equivalent to and constituting an appointment by the person of the commissioner
21 to be his true and lawful attorney upon whom may be served all lawful process in
22 any action, suit, or proceeding arising out of violations of this Section. Copies of all
23 lawful process shall be served on the commissioner and transmitted by registered or
24 certified mail by the commissioner to the person at his last known address.

25 §691.5. Acquisitions involving insurers not otherwise covered

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

28 (1) "Acquisition" means any agreement, arrangement, or activity the
29 consummation of which results in a person acquiring directly or indirectly the

1 control of another person and includes but is not limited to the acquisition of voting
2 securities, the acquisition of assets, bulk reinsurance, and mergers.

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

5 B. Scope.

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

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

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

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

25 (c) The acquisition of already affiliated persons.

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

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

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

1 ~~(cc) There is no market wherein the combined market share of the involved~~
2 ~~insurers would exceed twelve percent of the total market, and the market share would~~
3 ~~increase by more than two percent of the total market.~~

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

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

10 ~~(f) An acquisition of an insurer whose domiciliary commissioner~~
11 ~~affirmatively finds that the insurer is in failing condition, there is a lack of feasible~~
12 ~~alternative to improving such condition, the public benefits of improving the~~
13 ~~insurer's condition through the acquisition exceed the public benefits that would~~
14 ~~arise from not lessening competition, and the findings are communicated by the~~
15 ~~domiciliary commissioner to the commissioner of this state.~~

16 ~~C. Pre-acquisition notification; waiting period. An acquisition covered by~~
17 ~~Subsection B of this Section may be subject to an order pursuant to Subsection E of~~
18 ~~this Section unless the acquiring person files a pre-acquisition notification and the~~
19 ~~waiting period has expired. The acquired person may file a pre-acquisition~~
20 ~~notification. The commissioner shall give confidential treatment to information~~
21 ~~submitted under this Subsection in the same manner as provided in R.S. 22:691.10.~~

22 ~~(1) The pre-acquisition notification shall be in such form and contain such~~
23 ~~information as prescribed by the commissioner relating to those markets, in~~
24 ~~accordance with Subparagraph (B)(2)(d) of this Section, which cause the acquisition~~
25 ~~not to be exempted from the provisions of this Section. The commissioner may~~
26 ~~require such additional material and information as deemed necessary to determine~~
27 ~~whether the proposed acquisition, if consummated, would violate the competitive~~
28 ~~standard set forth in Subsection D of this Section. The required information may~~
29 ~~include an opinion of an economist as to the competitive impact of the acquisition~~

in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

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

D. Competitive standard.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) For the purposes of this Subsection:

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

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

13 (d) The burden of showing prima facie evidence of violation of the
14 competitive standard rests upon the commissioner.

15 (e) Even if an acquisition is not a prima facie violation of the competitive
16 standard pursuant to Subparagraphs (a) and (b) of this Paragraph, the commissioner
17 may establish the requisite anticompetitive effect based upon other substantial
18 evidence. Even when an acquisition is a prima facie violation of the competitive
19 standard pursuant to Subparagraphs (a) and (b) of this Paragraph, a party may
20 establish the absence of the requisite anticompetitive effect based upon other
21 substantial evidence. Relevant factors in making a determination under this
22 Subparagraph include but shall not be limited to market shares, volatility of ranking
23 of market leaders, number of competitors, concentration, trend of concentration in
24 the industry, and ease of entry and exit into the market.

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

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

1 **(b) The acquisition will substantially increase the availability of insurance,**
2 **and the public benefits of the increase exceed the public benefits which would arise**
3 **from not lessening competition.**

4 **E. Orders and penalties.**

5 **(1)(a) If an acquisition violates the standards of this Section, the**
6 **commissioner may enter an order which:**

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

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

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

13 **(i) Interested parties have opportunity for a hearing.**

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

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

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

20 **(d) An order issued pursuant to this Paragraph shall not apply if the**
21 **acquisition is not consummated.**

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

25 **(a) A monetary penalty of not more than ten thousand dollars for every day**
26 **of violation.**

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

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

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

3 §691.6. Registration of insurers

4 A. Registration.

5 (1) Every insurer which is authorized to do business in this state and which
6 is a member of an insurance holding company system shall register with the
7 commissioner, except a foreign insurer subject to registration requirements and
8 standards adopted by statute or regulation in the jurisdiction of its domicile which
9 are substantially similar to those contained in the provisions of this Section or the
10 provisions of R.S. 22:691.5(A)(1), (B), and (D), and either the provisions of R.S.
11 22:691.7(A)(2) or a provision such as the following: "Each registered insurer shall
12 keep current the information required to be disclosed in its registration statement by
13 reporting all material changes or additions within fifteen days after the end of the
14 month in which it learns of each change or addition."

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

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

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

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

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

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

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

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

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

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

15 (f) Reinsurance agreements.

16 (g) Dividends and other distributions to shareholders.

17 (h) Consolidated tax allocation agreements.

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

21 (5) If requested by the commissioner, the insurer shall include financial
22 statements of or within an insurance holding company system, including all
23 affiliates. Financial statements may include but are not limited to annual audited
24 financial statements filed with the United States Securities and Exchange
25 Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the
26 Securities Exchange Act of 1934, as amended. An insurer required to file financial
27 statements pursuant to this Paragraph may satisfy the request by providing the
28 commissioner with the most recently filed parent corporation financial statements
29 that have been filed with the SEC.

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

4 (7) Statements that the insurer's board of directors oversees corporate
5 governance and internal controls and that the insurer's officers or senior management
6 have approved, implemented, and continue to maintain and monitor corporate
7 governance and internal control procedures.

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

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

12 C. Summary of changes to registration statement. All registration statements
13 shall contain a summary outlining all items in the current registration statement
14 representing changes from the prior registration statement.

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

22 E. Reporting of dividends to shareholders. Subject to the provisions of R.S.
23 22:691.7(B), each registered insurer shall report to the commissioner all dividends
24 and other distributions to shareholders within fifteen business days following the
25 declaration thereof.

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

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

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

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

11 J. Exemptions.

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

16 (2) Unless it appears in the discretion of the commissioner that the condition
17 of a small company renders the continuance of its business hazardous to the public
18 or its insureds, a small company shall not be required to submit to the department a
19 registration statement required by this Section, but shall be considered a registered
20 insurer for the purposes of the provisions of Subsection E of this Section, R.S.
21 22:704(A), and 705.

22 K. Disclaimer. Any person may file with the commissioner a disclaimer of
23 affiliation with any authorized insurer, or such a disclaimer may be filed by such
24 insurer or any member of an insurance holding company system. The disclaimer
25 shall fully disclose all material relationships and bases for affiliation between such
26 person and such insurer as well as the basis for disclaiming such affiliation. After
27 a disclaimer has been filed, the insurer shall be relieved of any duty to register or
28 report under this Section which may arise out of the insurer's relationship with such
29 person unless and until the commissioner disallows such a disclaimer. The person
30 filing such a disclaimer shall notify the commissioner of any material change to the

1 affiliations and relationships as reported in the disclaimer within thirty days of the
2 effective date of the change.

3 L. Enterprise risk filing. The ultimate controlling person of every insurer
4 subject to registration shall also file an annual enterprise risk report. The report
5 shall, to the best of the ultimate controlling person's knowledge and belief, identify
6 the material risks within the insurance holding company system that could pose
7 enterprise risk to the insurer. The report shall be filed with the lead state
8 commissioner of the insurance holding company system as determined by the
9 procedures within the Financial Analysis Handbook adopted by the National
10 Association of Insurance Commissioners. The provisions of this Section shall
11 become effective for the 2014 calendar year report filing cycle.

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

15 N. Incorporation by reference.

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

27 (2) If a filing requires a summary or outline of the provisions of any
28 document, only a brief statement shall be made as to the pertinent provisions of the
29 document. In addition to the brief statement, the summary or outline may
30 incorporate, by reference, particular parts of any exhibit or document currently on

1 file with the commissioner which was filed within three years and may be included
2 in its entirety by the reference. In any case where two or more documents required
3 to be filed as exhibits are substantially identical in all material respects except as to
4 the parties, the dates of execution, or other details, a copy of one of the documents
5 shall be filed with a schedule identifying the omitted documents and setting forth the
6 material details in which such documents differ from the documents filed.

7 §691.7. Standards and management of an insurer within an insurance holding
8 company system

9 A. Transactions within an insurance holding company system.

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

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

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

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

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

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

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

25 (2) None of the following enumerated transactions involving a domestic
26 insurer and any person in its insurance holding company system, including
27 amendments or modifications of affiliate agreements previously filed pursuant to this
28 Section, which are subject to any materiality standards contained in Subparagraphs
29 (a) through (g) of this Paragraph, may be entered into unless the insurer has notified
30 the commissioner in writing of its intention to enter into the transaction at least thirty

1 days prior thereto, or such shorter period as the commissioner may permit, and the
2 commissioner has not disapproved it within that period. The notice for amendments
3 or modifications shall include the reasons for the change and the financial impact on
4 the domestic insurer. Informal notice shall be reported, within thirty days after a
5 termination of a previously filed agreement, to the commissioner for determination
6 of the type of filing required, if any.

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

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

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

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

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

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

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

29 (i) All reinsurance pooling agreements.

1 (ii) Agreements in which the reinsurance premium or a change in the
2 insurer's liabilities, or the projected reinsurance premium or a change in the insurer's
3 liabilities in any of the next three years, equals or exceeds five percent of the
4 insurer's surplus as regards policyholders, as of the thirty-first day of December next
5 preceding, including those agreements which may require as consideration the
6 transfer of assets from an insurer to a non-affiliate, if an agreement or understanding
7 exists between the insurer and non-affiliate that any portion of the assets will be
8 transferred to one or more affiliates of the insurer.

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

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

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

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

1 (3) A domestic insurer may not enter into transactions which are part of a
2 plan or series of like transactions with persons within the insurance holding company
3 system if the purpose of those separate transactions is to avoid the statutory threshold
4 amount and thus avoid the review that would occur otherwise. If the commissioner
5 determines that separate transactions were entered into over any twelve-month period
6 for that purpose, the commissioner may exercise his authority pursuant to R.S.
7 22:691.13.

8 (4) The commissioner, in reviewing transactions pursuant to Paragraph (2)
9 of this Subsection, shall consider whether the transactions comply with the standards
10 set forth in Paragraph (1) of this Subsection and whether they may adversely affect
11 the interests of policyholders.

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

16 B. Dividends and other distributions.

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

22 (2) For purposes of this Subsection, an extraordinary dividend or distribution
23 includes any dividend or distribution of cash or other property, whose fair market
24 value together with that of other dividends or distributions made within the preceding
25 twelve months exceeds the lesser of the following amounts:

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

28 (b) The net gain from operations of the insurer if the insurer is a life insurer,
29 or the net income, if the insurer is not a life insurer, not including realized capital
30 gains, for the twelve-month period ending the thirty-first day of December next

1 preceding, but shall not include pro rata distributions of any class of the insurer's
2 own securities. In determining whether a dividend or distribution is extraordinary,
3 an insurer other than a life insurer may carry forward net income from the previous
4 two calendar years that has not already been paid out as dividends. This
5 carryforward shall be computed by taking the net income from the second and third
6 preceding calendar years, not including realized capital gains, less dividends paid in
7 the second and immediate preceding calendar years.

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

14 C. Management of domestic insurers subject to registration.

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

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

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

1 (4) The board of directors of a domestic insurer shall establish one or more
2 committees comprised solely of directors who are not officers or employees of the
3 insurer or of any entity controlling, controlled by, or under common control with the
4 insurer and who are not beneficial owners of a controlling interest in the voting stock
5 of the insurer or any such entity. The committee or committees shall have
6 responsibility for nominating candidates for director for election by shareholders or
7 policyholders, evaluating the performance of officers deemed to be principal officers
8 of the insurer, and recommending to the board of directors the selection and
9 compensation of the principal officers.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 §691.8. Examination

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

26 B. Access to books and records.

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

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

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

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

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

Such persons shall be entitled to the same fees and mileage, if claimed, as a witness in R.S. 13:3661, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

§691.9. Supervisory colleges

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

(1) Initiating the establishment of a supervisory college.

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

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

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

(5) Establishing a crisis management plan.

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

C. Supervisory college. In order to assess the business strategy, financial 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
30 to this Act shall be permitted or required to testify in any private civil action

1 concerning any confidential documents, materials, or information subject to
2 Subsection A of this Section.

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

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

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

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

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

29 (a) Specify procedures and protocols regarding the confidentiality and
30 security of information shared with the NAIC and its affiliates and subsidiaries

1 pursuant to this Act, including procedures and protocols for sharing by the NAIC
2 with other state, federal, or international regulators.

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

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

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

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

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

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

26 §691.11. Rules and regulations

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

1 §691.12. Injunctions; prohibitions against voting securities; sequestration of voting
2 securities

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

12 B. Voting of securities; when prohibited. No security which is the subject
13 of any agreement or arrangement regarding acquisition, or which is acquired or to
14 be acquired, in contravention of the provisions of this Subpart or of any rule,
15 regulation, or order issued by the commissioner hereunder may be voted at any
16 shareholder's meeting, or may be counted for quorum purposes, and any action of
17 shareholders requiring the affirmative vote of a percentage of shares may be taken
18 as though the securities were not issued and outstanding; however, no action taken
19 at any such meeting shall be invalidated by the voting of the securities, unless the
20 action would materially affect control of the insurer or unless the courts of this state
21 have so ordered. If an insurer or the commissioner has reason to believe that any
22 security of the insurer has been or is about to be acquired in contravention of the
23 provisions of this Subpart or of any rule, regulation, or order issued by the
24 commissioner hereunder, the insurer or the commissioner may apply to the
25 Nineteenth Judicial District Court in and for the parish of East Baton Rouge to enjoin
26 any offer, request, invitation, agreement, or acquisition made in contravention of
27 R.S. 22:691.4 or any rule, regulation, or order issued by the commissioner thereunder
28 to enjoin the voting of any security so acquired, to void any vote of the security
29 already cast at any meeting of shareholders and for such other equitable relief as the

1 nature of the case and the interest of the insurer's policyholders, creditor and
2 shareholders or the public may require.

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

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

14 §691.13. Sanctions

15 A. Except as provided in R.S. 691.5(E)(3), any insurer failing, without just
16 cause, to file any registration statement as required in this Subpart shall be required,
17 after notice and hearing, to pay a penalty of one hundred dollars for each day's delay,
18 to be recovered by the commissioner of insurance and the penalty so recovered shall
19 be paid into the general revenue fund of this state. The maximum penalty under this
20 Section is ten thousand dollars. The commissioner may reduce the penalty if the
21 insurer demonstrates to the commissioner that the imposition of the penalty would
22 constitute a financial hardship to the insurer.

23 B. Every director or officer of an insurance holding company system who
24 knowingly violates, participates in, or assents to, or who knowingly shall permit any
25 of the officers or agents of the insurer to engage in transactions or make investments
26 which have not been properly reported or submitted pursuant to or which violate this
27 Subpart shall pay, in their individual capacity, a civil forfeiture of not more than one
28 thousand dollars per violation, after notice and opportunity for a hearing. In
29 determining the amount of the civil forfeiture, the commissioner shall take into
30 account the appropriateness of the forfeiture with respect to the seriousness of the

1 violation, the history of previous violations, and such other matters as justice may
2 require.

3 C. Whenever it appears to the commissioner that any insurer subject to this
4 Subpart or any director, officer, employee, or agent thereof has engaged in any
5 transaction or entered into a contract which is subject to the provisions of R.S.
6 22:691.7 and which would not have been approved had the approval been requested,
7 the commissioner may order the insurer to cease and desist immediately any further
8 activity under that transaction or contract. After notice and opportunity for hearing,
9 the commissioner may also order the insurer to void any contracts and restore the
10 status quo if the action is in the best interest of the policyholders, creditors, or the
11 public.

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

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

28 F. If at the discretion of the commissioner, it appears that any person has
29 committed a violation of R.S. 22:691.4 and the violation prevents the full
30 understanding of the enterprise risk to the insurer by affiliates or by the insurance

1 holding company system, the violation may serve as an independent basis for
2 disapproving dividends or distributions and for placing the insurer under an order of
3 supervision in accordance with R.S. 22:731 et seq.

4 §691.14. Receivership

5 If at the discretion of the commissioner, it appears that any person has
6 committed a violation of this Subpart which so impairs the financial condition of a
7 domestic insurer as to threaten insolvency or make the further transaction of business
8 by it hazardous to its policyholders, creditors, shareholders, or the public, then the
9 commissioner may proceed pursuant to the provisions contained in R.S. 22:73, 96,
10 731 et seq., 2001 et seq., as well as Subpart H of this Part and Chapter 9 of this Code.

11 §691.15. Recovery

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

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

19 (2) Any payment in the form of a bonus, termination settlement, or
20 extraordinary lump sum salary adjustment made by the insurer or its subsidiary to
21 a director, officer or employee, where the distribution or payment pursuant to
22 Paragraph (1) or (2) of this Subsection is made at any time during the one year
23 preceding the petition for liquidation, conservation, or rehabilitation, as the case may
24 be, subject to the limitations of Subsections B, C, and D of this Section.

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

29 C. Any person who was a parent corporation or holding company or a person
30 who otherwise controlled the insurer or affiliate at the time the distributions were

1 paid shall be liable up to the amount of distributions or payments pursuant to
2 Subsection A of this Section, which the person received. Any person who otherwise
3 controlled the insurer at the time the distributions were declared shall be liable up to
4 the amount of distributions that would have been received if they had been paid
5 immediately. If two or more persons are liable with respect to the same
6 distributions, they shall be jointly and severally liable.

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

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

17 §691.16. Revocation, suspension, or nonrenewal of insurer's authority

18 If at the discretion of the commissioner, it appears that any person has
19 committed a violation of this Subpart which makes the continued operation of an
20 insurer contrary to the interests of policyholders or the public, the commissioner
21 may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse
22 to renew the insurer's license or authority to do business in this state for such period
23 as the commissioner finds is required for the protection of policyholders or the
24 public. Any such determination shall be accompanied by specific findings of fact
25 and conclusions of law.

26 §691.17. Judicial review; mandamus

27 A. Any person aggrieved by any act, determination, rule, regulation, or order
28 or any other action of the commissioner pursuant to this Subpart may appeal to the
29 Nineteenth Judicial District Court in and for the parish of East Baton Rouge. The
30 court shall conduct its review without a jury and by trial de novo, except that if all

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

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

9 C. Any person aggrieved by any failure of the commissioner to act or make
10 a determination required by this Subpart may petition the Nineteenth Judicial District
11 Court in and for the parish of East Baton Rouge for a writ of mandamus directing the
12 commissioner to act or make a determination forthwith.

13 §691.18. Severability

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

18 ~~§714.~~ §691.19. Substitution of policies; charge by lender prohibited; penalty

19 A. It shall be unlawful for any person, firm, or corporation engaged in
20 financing the purchase of ~~real or personal~~ immovable or movable property, or of
21 lending money on the security of ~~real or personal~~ immovable or movable property,
22 or for any trustee, director, officer, agent, or other employee of any such person, firm
23 or corporation, to require, directly or indirectly, that a borrower, or any other person,
24 in obtaining insurance coverage on the property, pay a service charge or fee of any
25 kind to substitute the insurance policy of one insurance company for that of another.

26 B. Any violation of any of the provisions of this Section by any person, firm,
27 or corporation ~~is declared to~~ shall be a misdemeanor and is punishable by a fine of
28 not less than one hundred dollars or more than five hundred dollars, or imprisonment
29 for not less than sixty days or more than one year, or both fine and imprisonment, for
30 each offense, in the discretion of the court.

1 ~~§715. §691.20.~~ Ownership of domestic stock insurance company equity securities;
2 filing of statements

3 Every person who is directly or indirectly the beneficial owner of more than
4 ten percent of any class of any equity security of a domestic stock insurance
5 company, or who is a director or an officer of such company, shall file in the office
6 of the commissioner of insurance within ten days after he becomes such beneficial
7 owner, director, or officer, a statement, in such form as the commissioner of
8 insurance may prescribe, of the amount of all equity securities of such company of
9 which he is the beneficial owner, and within ten days after the close of each calendar
10 month thereafter, if there has been a change in such ownership during such month,
11 shall file in the office of the commissioner of insurance a statement, in such form as
12 the commissioner of insurance may prescribe, indicating his ownership at the close
13 of the calendar month and such changes in his ownership as have occurred during
14 such calendar month.

15 ~~§716. §691.21.~~ Profits to inure to company; suits to recover

16 For the purpose of preventing the unfair use of information which may have
17 been obtained by such beneficial owner, director, or officer by reason of his
18 relationship to such company, any profit realized by him from any purchase and sale,
19 or any sale and purchase, of any equity security of such company within any period
20 of less than six months, unless such security was acquired in good faith in connection
21 with a debt previously contracted, shall inure to and be recoverable by the company,
22 irrespective of any intention on the part of such beneficial owner, director, or officer
23 in entering into such transaction of holding the security purchased or of not
24 repurchasing the security sold for a period exceeding six months. Suit to recover
25 such profit may be instituted at law or in equity in any court of competent
26 jurisdiction by the company, or by the owner of any security of the company in the
27 name and in behalf of the company if the company shall fail or refuse to bring such
28 suit within sixty days after request or shall fail to diligently prosecute the same
29 thereafter; but no such suit shall be brought more than two years after the date such
30 profit was realized. This Section shall not be construed to cover any transaction

1 where such beneficial owner was not such, both at the time of the purchase and sale,
2 or the sale and purchase, of the security involved, or any transaction or transactions
3 which the commissioner of insurance, by rules and regulations may exempt as not
4 comprehended within the purpose of this Section.

5 ~~§717:~~ §691.22. Unlawful sales

6 It shall be unlawful for any such beneficial owner, director, or officer,
7 directly or indirectly, to sell any equity security of such company if the person
8 selling the security or his principal (1) does not own the security sold, or (2) if
9 owning the security, does not deliver it against such sale within twenty days
10 thereafter, or does not within five days after such sale deposit it in the mails, or other
11 usual channels of transportation; but no person shall be deemed to have violated this
12 Section if he proves that notwithstanding the exercise of good faith he was unable
13 to make such delivery or deposit within such time, or that to do so would cause
14 undue inconvenience or expense.

15 ~~§718:~~ §691.23. Sales exempt

16 The provisions of R.S. ~~22:716~~ 22:691.21 shall not apply to any purchase and
17 sale, or sale and purchase, and the provisions of R.S. ~~22:717~~ 22:691.22 shall not
18 apply to any sale, of an equity security of a domestic stock insurance company not
19 then or theretofore held by him in an investment account, by a dealer in the ordinary
20 course of his business and incident to the establishment or maintenance by him of
21 a primary or secondary market (~~,~~ otherwise than on an exchange as defined in the
22 Securities Exchange Act of 1934), ~~2~~ for such security. The commissioner of insurance
23 may, by such rules and regulations as he deems necessary or appropriate in the
24 public interest, define and prescribe terms and conditions with respect to securities
25 held in an investment account and transactions made in the ordinary course of
26 business and incident to the establishment or maintenance of a primary or secondary
27 market.

28 ~~§719:~~ §691.24. Arbitrage transactions

29 The provisions of ~~R.S. 22:715 through 22:717~~ R.S. 22:691.20 through 691.22
30 shall not apply to foreign or domestic arbitrage transactions unless made in

1 contravention of such rules and regulations as the commissioner of insurance may
2 adopt in order to carry out the purposes of R.S. 22:49 and ~~715 through 723~~ 691.20
3 through 691.27.

4 ~~§720. §691.25.~~ "Equity security" defined

5 The term "equity security" when used in R.S. 22:49, ~~715 through 720, 722~~
6 691.20 through 691.27, means any stock or similar security; or any security
7 convertible, with or without consideration, into such a security, or carrying any
8 warrant or right to subscribe to or purchase such a security; or any such warrant or
9 right; or any other equity security of a domestic stock insurance company which the
10 commissioner of insurance shall deem to be of a similar nature and consider
11 necessary or appropriate, by such rules and regulations as he may prescribe in the
12 public interest or for the protection of investors, to treat as an equity security of a
13 domestic stock insurance company.

14 ~~§722. §691.26.~~ Securities exempt

15 The provisions of R.S. 22:~~715 through 717~~ 691.20 through 691.22 shall not
16 apply to such equity securities of a domestic stock insurance company if either of the
17 following apply:

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

20 (2) Such domestic stock insurance company shall not have any class of its
21 equity securities held of record by one hundred or more persons on the last business
22 day of the year next preceding the year in which equity securities of the company
23 would be subject to the provisions of R.S. 22:~~715 through 717~~ 691.20 through 691.22
24 except for the provisions of this Paragraph.

25 ~~§723. §691.27.~~ Rules and regulations

26 The commissioner of insurance shall have the power to make such rules and
27 regulations as may be necessary for the execution of the functions vested in him by
28 R.S. 22:49, ~~715 through 720, and 722, and 723~~ 691.20 through 691.27 and may for
29 such purpose classify domestic stock insurance companies, securities, and other
30 persons or matters within his jurisdiction. No provision of R.S. 22:~~715 through 717~~

1 691.20 through 691.22 imposing any liability shall apply to any act done or omitted
2 in good faith in conformity with any rule or regulation of the commissioner of
3 insurance, notwithstanding that such rule or regulation may, after such act or
4 omission, be amended or rescinded or determined by judicial or other authority to
5 be invalid for any reason.

6 Section 2. Except as provided in Section 3 of this Act, Subpart G of Part III of
7 Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:691
8 through 723, is hereby repealed.

9 Section 3. R.S. 22:695 through 702 are hereby redesignated in their entirety to R.S.
10 22:232.1 through 232.8.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____