

House Bill 312 (AS PASSED HOUSE AND SENATE)

By: Representatives Carson of the 46th, Golick of the 40th, Smith of the 134th, Brockway of the 102nd, Shaw of the 176th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 13 of Title 33 of the Official Code of Georgia Annotated, relating to
2 insurance holding company systems, so as to provide for comprehensive revision of the
3 provisions regulating insurance holding company systems; to amend Chapter 21 of Title 33
4 of the Official Code of Georgia Annotated, relating to health maintenance organizations, so
5 as to provide the extension of malpractice insurance to a medical group which has a mutually
6 exclusive contract to provide medical services to the enrollees of a health maintenance
7 organization under certain circumstances; to provide for related matters; to repeal conflicting
8 laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Chapter 13 of Title 33 of the Official Code of Georgia Annotated, relating to insurance
12 holding company systems, is amended by revising the entire chapter as follows:

13 style="text-align:center">"CHAPTER 13

14 33-13-1.

15 As used in this chapter, the term:

16 (1) 'Affiliate,' including the term 'affiliate of' or 'person affiliated with' a specific person,
17 means a person who directly or indirectly through one or more intermediaries controls,
18 is controlled by, or is under common control with ~~any person specified in paragraph (6)~~
19 ~~of this Code section~~ the person specified.

20 (2) 'Commissioner' means the Commissioner of Insurance, ~~his~~ the Commissioner's
21 deputies, or the Insurance Department, as appropriate.

22 (3) 'Control,' including the terms 'controlling,' 'controlled by,' and 'under common control
23 with,' means the direct or indirect possession of the power to direct or cause the direction
24 of the management and policies of a person whether through the ownership of voting

25 securities, by contract other than a commercial contract for goods or nonmanagement
 26 services, or otherwise, unless the power is the result of an official position ~~with an entity~~
 27 ~~listed in paragraph (6) of this Code section~~ or corporate office held by the person. Control
 28 shall be presumed to exist if any person directly or indirectly owns, controls, holds with
 29 the power to vote, or holds proxies representing 10 percent or more of the voting
 30 securities of any other person. This presumption may be rebutted by a showing made in
 31 the manner provided by subsection ~~(i)~~ (k) of Code Section 33-13-4 that control does not
 32 exist in fact. The Commissioner may determine after furnishing all persons in interest
 33 notice and opportunity to be heard and after making specific findings of fact to support
 34 such determination that control exists in fact, notwithstanding the absence of a
 35 presumption to that effect.

36 (4) 'Enterprise risk' means any activity, circumstance, event, or series of events involving
 37 one or more affiliates of an insurer that, if not remedied promptly, is likely to have a
 38 material adverse effect upon the financial condition or liquidity of the insurer or its
 39 insurance holding company system as a whole, including, but not limited to, anything that
 40 would cause the insurer's risk-based capital to fall into company action level as set forth
 41 in Chapter 56 of this title or would cause the insurer to be in hazardous financial
 42 condition based on the standards prescribed by Chapter 120-2-54 of the Commissioner's
 43 rules and regulations.

44 ~~(4)~~(5) 'Insurance holding company system' means two or more affiliated persons, one or
 45 more of which is an insurer.

46 ~~(5)~~(6) 'Insurer' shall have the same meaning as set forth in Code Section 33-1-2, except
 47 that it shall not include: ~~(A)~~ agencies, authorities, or instrumentalities of the United
 48 States, its possessions and territories, the Commonwealth of Puerto Rico, the District of
 49 Columbia, or a state or political subdivision of a state; ~~(B)~~ fraternal benefit societies; or
 50 ~~(C)~~ nonprofit medical and hospital service associations.

51 ~~(6)~~(7) 'Person' means an individual, a corporation, a limited liability company, a
 52 partnership, an association, a joint-stock company, a trust, an unincorporated
 53 organization, any similar entity, or any combination of the foregoing acting in concert,
 54 but shall not include ~~any securities broker performing no more than the usual and~~
 55 ~~customary broker's function~~ any joint venture partnership exclusively engaged in owning,
 56 managing, leasing, or developing real or tangible personal property.

57 ~~(7)~~ 'Securityholder' means ~~one who owns any security of a specified person including~~
 58 ~~common stock, preferred stock, debt obligations, and any other security convertible into~~
 59 ~~or evidencing the right to acquire any of the foregoing.~~

60 (8) 'Subsidiary' means an affiliate controlled by a specified person directly or indirectly
 61 through one or more intermediaries.

62 (9) 'Voting security' means any instrument which in law or by contract gives the holder
 63 the right to vote, consent, or authorize any corporate action of an insurer. Voting security
 64 shall also include any security convertible into or evidencing a right to acquire a voting
 65 security.

66 33-13-2.

67 (a) Any domestic insurer either by itself or in cooperation with one or more persons may
 68 organize or acquire one or more subsidiaries. The subsidiaries may conduct any kind of
 69 business or businesses permitted by the Constitution and laws of this state; and their
 70 authority to do so shall not be limited by reason of the fact that they are subsidiaries of a
 71 domestic insurer.

72 (b) In addition to investments in common stock, preferred stock, debt obligations, and
 73 other securities permitted under all other Code sections of this title, a domestic insurer may
 74 also:

75 (1) Invest in common stock, preferred stock, debt obligations, and other securities of one
 76 or more subsidiaries amounts which do not exceed the lesser of 5 10 percent of the
 77 insurer's assets or 50 percent of the insurer's surplus as regards policyholders, provided
 78 that after the investments the insurer's surplus as regards policyholders will be reasonable
 79 in relation to the insurer's outstanding liabilities and adequate to its financial needs. In
 80 calculating the amount of such investments, investments in domestic or foreign insurance
 81 subsidiaries and health maintenance organizations shall be excluded, and there shall be
 82 included:

83 (A) Total net moneys or other consideration expended and obligations assumed in the
 84 acquisition or formation of a subsidiary, including all organizational expenses and
 85 contributions to capital and surplus of the subsidiary whether or not represented by the
 86 purchase of capital stock or issuance of other securities; and

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

90 ~~(2) Invest any amount in common stock, preferred stock, debt obligations, and other~~
 91 ~~securities of one or more subsidiaries, if the insurer's total liabilities, as calculated for~~
 92 ~~purposes of the National Association of Insurance Commissioners' annual statement, are~~
 93 ~~less than 10 percent of its assets, provided that after the investment the insurer's surplus~~
 94 ~~as regards policyholders, considering the investment as if it were a disallowed asset, will~~
 95 ~~be reasonable in relation to the insurer's outstanding liabilities and adequate to its~~
 96 ~~financial needs;~~

97 ~~(3)~~(2) Invest any amount in common stock, preferred stock, debt obligations, and other
 98 securities of one or more subsidiaries engaged or organized to engage exclusively in the
 99 ownership and management of assets authorized as investments for the insurer, provided
 100 that each subsidiary agrees to limit its investments in any asset so that the investments
 101 will not cause the amount of the total investment of the insurer to exceed any of the
 102 investment limitations applicable to the insurer as specified in ~~paragraph (1) of this~~
 103 ~~subsection or~~ in Chapter 11 of this title. For the purpose of this paragraph, 'the total
 104 investment of the insurer' shall include:

105 (A) Any any direct investment by the insurer in an asset; and

106 (B) The the insurer's proportionate share of any investment in an asset by any
 107 subsidiary of the insurer which shall be calculated by multiplying the amount of the
 108 subsidiary's investment by the percentage of the insurer's ownership of such subsidiary;
 109 and

110 ~~(4)~~(3) Invest any amount in common stock, preferred stock, debt obligations, or other
 111 securities of one or more subsidiaries with the approval of the Commissioner, provided
 112 that after the investment the insurer's surplus as regards policyholders will be reasonable
 113 in relation to the insurer's outstanding liabilities and adequate to its financial needs; ~~and~~
 114 ~~(5) Invest any amount in the common stock, preferred stock, debt obligations, or other~~
 115 ~~securities of any subsidiary exclusively engaged in holding title to or holding title to and~~
 116 ~~managing or developing real or personal property if, after considering as a disallowed~~
 117 ~~asset so much of the investment as is represented by subsidiary assets which if held~~
 118 ~~directly by the insurer would be considered as a disallowed asset, the insurer's surplus as~~
 119 ~~regards policyholders will be reasonable in relation to the insurer's outstanding liabilities~~
 120 ~~and adequate to its financial needs and if following such investment all voting securities~~
 121 ~~of such subsidiary would be owned by the insurer.~~

122 (c) Investments in common stock, preferred stock, debt obligations, or other securities of
 123 subsidiaries made pursuant to subsection (b) of this Code section shall not be subject to any
 124 of the otherwise applicable restrictions or prohibitions contained in this title applicable to
 125 the investments of insurers.

126 (d) Whether any investment pursuant to subsection (b) of this Code section meets the
 127 applicable requirements of ~~paragraphs (1) through (5) of that~~ subsection (b) of this Code
 128 section is to be determined ~~immediately after the investment is made, taking into account~~
 129 ~~the then outstanding principal balance on all previous investments in debt obligations and~~
 130 ~~the value of all previous investments in equity securities as of the date they were made~~
 131 before the investment is made, by calculating the applicable investment limitations as
 132 though the investment had already been made, taking into account the then outstanding
 133 principal balance on all previous investments in debt obligations, and the value of all

134 previous investments in equity securities as of the day they were made, net of any return
 135 of capital invested, not including dividends.

136 (e) If an insurer ceases to control a subsidiary, it shall dispose of any investment in the
 137 subsidiary made pursuant to this Code section within three years from the time of the
 138 cessation of control or within any further time as the Commissioner may prescribe unless
 139 at any time after the investment shall have been made the investment shall have met the
 140 requirements for investment under any other Code section of this title and the insurer
 141 notifies the Commissioner that the requirement has been met.

142 33-13-3.

143 (a) **~~Requirement of filing of statement~~ Filing requirements.**

144 (1) No person other than the issuer shall make a tender offer for or a request or invitation
 145 for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or
 146 acquire, in the open market or otherwise, any voting security of a domestic insurer if after
 147 the consummation of the agreement the person would directly or indirectly or by
 148 conversion or by exercise of any right to acquire be in control of the insurer; and no
 149 person shall enter into an agreement to merge with or otherwise to acquire control of a
 150 domestic insurer or any person controlling a domestic insurer unless at the time the offer,
 151 request, or invitation is made or the agreement is entered into, or prior to the acquisition
 152 of the securities if no offer or agreement is involved, the person has filed with the
 153 Commissioner and has sent to the insurer ~~and the insurer has sent to its shareholders~~ a
 154 statement containing the information required by this Code section and the offer, request,
 155 invitation, agreement, or acquisition has been approved by the Commissioner in the
 156 manner prescribed in subsection ~~(e)~~ (d) of this Code section.

157 (2) For the purposes of this Code section, a ~~'domestic insurer'~~ means ~~any other person~~
 158 ~~controlling a domestic insurer, unless the other person is either directly or through its~~
 159 ~~affiliates primarily engaged in business other than the business of insurance~~ any
 160 controlling person of a domestic insurer seeking to divest its controlling interest in the
 161 domestic insurer, in any manner, shall file with the Commissioner, with a copy to the
 162 insurer, confidential notice of its proposed divestiture at least 30 days prior to the
 163 cessation of control. The Commissioner shall determine those instances in which the
 164 party seeking to divest or to acquire a controlling interest in an insurer will be required
 165 to file for and obtain approval of the transaction. The information shall remain
 166 confidential until the conclusion of the transaction unless the Commissioner, in his or her
 167 discretion, determines that confidential treatment will interfere with enforcement of this
 168 Code section. If the statement referred to in paragraph (1) of this subsection is otherwise
 169 filed, this paragraph shall not apply.

170 (3) With respect to a transaction subject to this Code section, the acquiring person must
 171 also file a preacquisition notification with the Commissioner, which shall contain the
 172 information set forth in paragraph (1) of subsection (c) of Code Section 33-13-3.1. A
 173 failure to file the notification may be subject to penalties specified in paragraph (3) of
 174 subsection (e) of Code Section 33-13-3.1.

175 (4) For purposes of this Code section, a 'domestic insurer' shall include any person
 176 controlling a domestic insurer unless the person, as determined by the Commissioner, is
 177 either directly or through its affiliates primarily engaged in business other than the
 178 business of insurance. For the purposes of this Code section, 'person' shall not include
 179 any securities broker holding, in the usual and customary broker's function, less than 20
 180 percent of the voting securities of an insurance company or of any person which controls
 181 an insurance company.

182 (b) **Execution and content of statement.** The statement to be filed with the
 183 Commissioner in accordance with this Code section shall be made under oath or
 184 affirmation and shall contain the following information:

185 (1) The name and address of each person, hereinafter called 'acquiring party,' by whom
 186 or on whose behalf the merger or other acquisition of control referred to in subsection (a)
 187 of this Code section is to be effected and:

188 (A) If the person is an individual, his or her principal occupation and all offices and
 189 positions held during the past five years and any conviction of crimes other than minor
 190 traffic violations during the past ten years; and

191 (B) If the person is not an individual, a report of the nature of its business operations
 192 during the past five years or for any lesser periods as the person and any predecessors
 193 of such person shall have been in existence; an informative description of the business
 194 intended to be done by the person and the person's subsidiaries; and a list of all
 195 individuals who are or who have been selected to become directors or executive officers
 196 of the person or who perform or will perform functions appropriate to the positions.
 197 The list shall include for each individual the information required by subparagraph (A)
 198 of this paragraph;

199 (2) The source, nature, and amount of the consideration used or to be used in effecting
 200 the merger or other acquisition of control, a description of any transaction wherein funds
 201 were or are to be obtained for that purpose, including any pledge of the insurer's stock,
 202 or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons
 203 furnishing the consideration; provided, however, that where a source of the consideration
 204 is a loan made in the lender's ordinary course of business, the identity of the lender shall
 205 remain confidential if the person filing the statement so requests;

- 206 (3) ~~Financial statements containing independent fully~~ Fully audited financial information
207 as to the earnings and financial condition of each acquiring party for the preceding five
208 fiscal years of each acquiring party or for any lesser period as the acquiring party and any
209 predecessors of the acquiring party shall have been in existence and similar unaudited
210 information as of a date not earlier than 90 days prior to the filing of the statement;
- 211 (4) Any plans or proposals which each acquiring party may have to liquidate the insurer,
212 to sell its assets or merge or consolidate it with any person, or to make any other material
213 change in its business or corporate structure or management;
- 214 (5) The number of shares of any security referred to in subsection (a) of this Code
215 section which each acquiring party proposes to acquire and the terms of the offer, request,
216 invitation, agreement, or acquisition referred to in subsection (a) of this Code section and
217 a statement as to the method by which the fairness of the proposal was arrived at;
- 218 (6) The amount of each class of any security referred to in subsection (a) of this Code
219 section which is beneficially owned or concerning which there is a right to acquire
220 beneficial ownership by each acquiring party;
- 221 (7) A full description of any contracts, arrangements, or understandings with respect to
222 any security referred to in subsection (a) of this Code section in which any acquiring
223 party is involved, including but not limited to transfer of any of the securities, joint
224 ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees
225 against loss or guarantees of profits, division of losses or profits, or the giving or
226 withholding of proxies; and the description shall identify the persons with whom the
227 contracts, arrangements, or understandings have been entered into;
- 228 (8) A description of the purchase by any acquiring party of any security referred to in
229 subsection (a) of this Code section during the 12 calendar months preceding the filing of
230 the statement by any acquiring party, including the dates of purchase, names of the
231 purchasers, and consideration paid or agreed to be paid ~~for such purchase~~;
- 232 (9) A description of any recommendations to purchase any security referred to in
233 subsection (a) of this Code section made during the 12 calendar months preceding the
234 filing of the statement by any acquiring party or by anyone based upon interviews or at
235 the suggestion of the acquiring party;
- 236 (10) Copies of all tender offers for, requests or invitations for tenders of exchange offers
237 for, and agreements to acquire or exchange any securities referred to in subsection (a) of
238 this Code section and, if distributed, of additional soliciting material relating thereto;
- 239 (11) The terms of any agreement, contract, or understanding made with or proposed to
240 be made with any broker-dealer as to solicitation of securities referred to in subsection
241 (a) of this Code section for tender and the amount of any fees, commissions, or other

242 compensation to be paid to broker-dealers with regard to the agreement, contract, or
 243 understanding; and

244 (12) An agreement by the person required to file the statement referred to in subsection
 245 (a) of this Code section that it will provide the annual report, specified in subsection (1)
 246 of Code Section 33-13-4, for so long as control exists;

247 (13) An acknowledgment by the person required to file the statement referred to in
 248 subsection (a) of this Code section that the person and all subsidiaries within its control
 249 in the insurance holding company system will provide information to the Commissioner
 250 upon request as necessary to evaluate enterprise risk to the insurer; and

251 ~~(12)~~(14) Any additional information as the Commissioner may by rule or regulation
 252 prescribe as necessary or appropriate for the protection of policyholders and
 253 securityholders of the insurer or in the public interest.

254 If the person required to file the statement referred to in subsection (a) of this Code section
 255 is a partnership, limited partnership, syndicate, or other group, the Commissioner may
 256 require that the information called for by paragraphs (1) through (14) of this subsection
 257 shall be given with respect to each partner of the partnership or limited partnership, each
 258 member of the syndicate or group, and each person who controls the partner or member.
 259 If any partner, member, or person is a corporation or the person required to file the
 260 statement referred to in subsection (a) of this Code section is a corporation, the
 261 Commissioner may require that the information called for by paragraphs (1) through (14)
 262 of this subsection shall be given with respect to the corporation, each officer and director
 263 of the corporation, and each person who is directly or indirectly the beneficial owner of
 264 more than 10 percent of the outstanding voting securities of the corporation. If any
 265 material change occurs in the facts set forth in the statement filed with the Commissioner
 266 and sent to the insurer pursuant to this Code section, an amendment setting forth the
 267 change, together with copies of all documents and other material relevant to the change,
 268 shall be filed with the Commissioner and sent to the insurer within two business days after
 269 the person learns of the change.

270 ~~(c) **Filing requirements for partnerships.** If the person required to file the statement~~
 271 ~~referred to in subsection (a) of this Code section is a partnership, limited partnership,~~
 272 ~~syndicate, or other group, the Commissioner may require that the information called for by~~
 273 ~~paragraphs (1) through (12) of subsection (b) of this Code section shall be given with~~
 274 ~~respect to each partner of the partnership or limited partnership, each member of the~~
 275 ~~syndicate or group, and each person who controls the partner or member. If any partner,~~
 276 ~~member, or person is a corporation or if the person required to file the statement referred~~
 277 ~~to in subsection (a) of this Code section is a corporation, the Commissioner may require~~
 278 ~~that the information called for by paragraphs (1) through (12) of subsection (b) of this Code~~

279 ~~section shall be given with respect to the corporation, each officer and director of the~~
 280 ~~corporation, and each person who is directly or indirectly the beneficial owner of more than~~
 281 ~~10 percent of the outstanding voting securities of the corporation.~~

282 ~~(d) **Amendment of statement.** If any material change occurs in the facts set forth in the~~
 283 ~~statement filed with the Commissioner and sent to the insurer pursuant to this Code section,~~
 284 ~~an amendment setting forth the change together with copies of all documents and other~~
 285 ~~material relevant to the change shall be filed with the Commissioner and sent to the insurer~~
 286 ~~within two business days after the person learns of the change. The insurer shall send the~~
 287 ~~amendment to its shareholders.~~

288 ~~(e)(c) **Alternate filing of registration statements materials.** If any offer, request,~~
 289 ~~invitation, agreement, or acquisition referred to in subsection (a) of this Code section is~~
 290 ~~proposed to be made by means of a registration statement under the Securities Act of 1933,~~
 291 ~~in circumstances requiring the disclosure of similar information, under the Securities~~
 292 ~~Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the~~
 293 ~~person required to file the statement referred to in subsection (a) of this Code section may~~
 294 ~~utilize the documents in furnishing the information called for by that statement.~~

295 ~~(f)(d) **Approval or disapproval by Commissioner; hearings.**~~

296 (1) The Commissioner shall approve any merger or other acquisition of control referred
 297 to in subsection (a) of this Code section unless, after a public hearing thereon, he or she
 298 finds that:

299 (A) After the change of control the domestic insurer referred to in subsection (a) of this
 300 Code section would not be able to satisfy the requirements for the issuance of a license
 301 to write the line or lines of insurance for which it is presently licensed;

302 (B) The effect of the merger or other acquisition of control would be substantially to
 303 lessen competition in insurance in this state or tend to create a monopoly, ~~in the~~
 304 ~~insurance business in this state; In applying the competitive standard in this~~
 305 ~~subparagraph:~~

306 (i) The informational requirements of paragraph (1) of subsection (c) of Code Section
 307 33-13-3.1 and the standards of paragraph (2) of subsection (d) of Code Section
 308 33-13-3.1 shall apply;

309 (ii) The merger or other acquisition shall not be disapproved if the Commissioner
 310 finds that any of the situations meeting the criteria provided by paragraph (3) of
 311 subsection (d) of Code Section 33-13-3.1 exist; and

312 (iii) The Commissioner may condition the approval of the merger or other acquisition
 313 on the removal of the basis of disapproval within a specified period of time;

314 (C) The financial condition of any acquiring party is such as might jeopardize the
 315 financial stability of the insurer or prejudice the interest of its policyholders ~~or the~~
 316 ~~interests of any remaining securityholders who are unaffiliated with the acquiring party;~~
 317 ~~(D) The terms of the offer, request, invitation, agreement, or acquisition referred to in~~
 318 ~~subsection (a) of this Code section are unfair and unreasonable to the securityholders~~
 319 ~~of the insurer;~~
 320 ~~(E)~~(D) The plans or proposals which the acquiring party has to liquidate the insurer,
 321 to sell its assets or consolidate or merge it with any person, or to make any other
 322 material change in its business or corporate structure or management are unfair and
 323 unreasonable to policyholders of the insurer and not in the public interest; ~~or~~
 324 ~~(F)~~(E) The competence, experience, and integrity of those persons who would control
 325 the operation of the insurer are such that it would not be in the interest of policyholders
 326 of the insurer and of the public to permit the merger or other acquisition of control; or
 327 (F) The acquisition is likely to be hazardous or prejudicial to the insurance buying
 328 public.

329 (2) The public hearing referred to in paragraph (1) of this subsection shall be held within
 330 30 days after the statement required by subsection (a) of this Code section is filed; and
 331 at least 20 days' notice of the public hearing shall be given by the Commissioner to the
 332 person filing the statement. Not less than seven days' notice of the public hearing shall
 333 be given by the person filing the statement to the insurer and to any other persons as may
 334 be designated by the Commissioner. ~~The insurer shall give the notice to its~~
 335 ~~securityholders.~~ The Commissioner shall make a determination within ~~30 days after the~~
 336 ~~conclusion of the hearing~~ the 60 day period preceding the effective date of the proposed
 337 transaction. At the hearing, the person filing the statement, the insurer, any person to
 338 whom notice of hearing was sent, and any other person whose interests may be affected
 339 thereby shall have the right to present evidence, examine and cross-examine witnesses,
 340 and offer oral and written arguments and in connection therewith shall be entitled to
 341 conduct discovery proceedings in the same manner as is presently allowed in the superior
 342 courts of this state. All discovery proceedings shall be concluded not later than three
 343 days prior to the commencement of the public hearing.

344 (3) If the proposed acquisition of control will require the approval of more than one
 345 commissioner, the public hearing referred to in paragraph (2) of this subsection may be
 346 held on a consolidated basis upon request of the person filing the statement referred to
 347 in subsection (a) of this Code section. Such person shall file the statement referred to in
 348 subsection (a) of this Code section with the National Association of Insurance
 349 Commissioners within five days of making the request for a public hearing. A
 350 commissioner may opt out of a consolidated hearing and shall provide notice to the

351 applicant of the opt-out within ten days of the receipt of the statement referred to in
 352 subsection (a) of this Code section. A hearing conducted on a consolidated basis shall
 353 be public and shall be held within the United States before the commissioners of the
 354 states in which the insurers are domiciled. Such commissioners shall hear and receive
 355 evidence. A commissioner may attend such hearing, in person or by telecommunication.

356 (4) In connection with a change of control of a domestic insurer, any determination by
 357 the Commissioner that the person acquiring control of the insurer shall be required to
 358 maintain or restore the capital of the insurer to the level required by the laws and
 359 regulations of this state shall be made not later than 60 days after the date of notification
 360 of the change in control submitted pursuant to paragraph (1) of subsection (a) of this
 361 Code section.

362 (5) The Commissioner may retain at the acquiring person's expense any attorneys,
 363 actuaries, accountants, and other experts not otherwise a part of the Commissioner's staff
 364 as may be reasonably necessary to assist the Commissioner in reviewing the proposed
 365 acquisition of control.

366 ~~(g) **Mailing of statements, etc., to shareholders; payment of expenses.** All statements,~~
 367 ~~amendments, or other material filed pursuant to subsection (a) or (b) of this Code section~~
 368 ~~and all notices of public hearings held pursuant to subsection (f) of this Code section shall~~
 369 ~~be mailed by the insurer to its shareholders within five business days after the insurer has~~
 370 ~~received the statements, amendments, other material, or notices. The expenses of mailing~~
 371 ~~shall be borne by the person making the filing. As security for the payment of the~~
 372 ~~expenses, such person shall file with the Commissioner an acceptable bond or other deposit~~
 373 ~~in an amount to be determined by the Commissioner.~~

374 ~~(h)~~(e) **Exemptions.** This Code section shall not apply to any offer, request, invitation,
 375 agreement, or acquisition which the Commissioner by order shall exempt from this Code
 376 section as not having been made or entered into for the purpose and not having the effect
 377 of changing or influencing the control of a domestic insurer or as otherwise not
 378 comprehended within the purposes of this Code section.

379 ~~(i)~~(f) **Violations.** The following shall be violations of this Code section:

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

382 (2) The effectuation or any attempt to effectuate an acquisition of control of or merger
 383 with a domestic insurer unless the Commissioner has given his approval to the acquisition
 384 of control or merger.

385 ~~(j)~~(g) **Jurisdiction; service of process.** The courts of this state are vested with jurisdiction
 386 over every person not resident, domiciled, or authorized to do business in this state who
 387 files a statement with the Commissioner under this Code section and over all actions

388 involving that person arising out of violations of this Code section; and each person shall
 389 be deemed to have performed acts equivalent to and constituting an appointment by that
 390 person of the Commissioner to be his or her true and lawful attorney upon whom may be
 391 served all lawful process in any action, suit, or proceeding arising out of violations of this
 392 Code section. Copies of all lawful process shall be served on the Commissioner and
 393 transmitted by registered or certified mail or statutory overnight delivery by the
 394 Commissioner to the person at his or her last known address.

395 33-13-3.1.

396 (a) As used in this Code section, the term:

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

401 (2) 'Involved insurer' includes an insurer which either acquires or is acquired, is affiliated
 402 with an acquirer or acquired, or is the result of a merger.

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

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

407 ~~(A) An acquisition subject to approval or disapproval by the Commissioner pursuant~~
 408 ~~to Code Section 33-13-3;~~

409 ~~(B)~~(A) A purchase of securities solely for investment purposes so long as such
 410 securities are not used by voting or otherwise to cause or attempt to cause the
 411 substantial lessening of competition in any insurance market in this state. If a purchase
 412 of securities results in a presumption of control under paragraph (3) of Code Section
 413 33-13-1, it is not solely for investment purposes unless the commissioner of the
 414 insurer's state of domicile accepts a disclaimer of control or affirmatively finds that
 415 control does not exist and such disclaimer action or affirmative finding is
 416 communicated by the domiciliary commissioner to the Commissioner of this state;

417 ~~(C)~~(B) The acquisition of a person by another person when both persons are neither
 418 directly nor through affiliates primarily engaged in the business of insurance, if
 419 preacquisition notification is filed with the Commissioner in accordance with paragraph
 420 (1) of subsection (c) of this Code section 30 days prior to the proposed effective date
 421 of the acquisition. However, such preacquisition notification is not required for
 422 exclusion from this Code section if the acquisition would otherwise be excluded from
 423 this Code section by any other subparagraph of this paragraph;

- 424 ~~(D)~~(C) The acquisition of already affiliated persons;
- 425 ~~(E)~~(D) An acquisition if, as an immediate result of the acquisition:
- 426 (i) In no market would the combined market share of the involved insurers exceed
- 427 5 percent of the total market;
- 428 (ii) There would be no increase in any market share; or
- 429 (iii) In no market would:
- 430 (I) The combined market share of the involved insurers exceed 12 percent of the
- 431 total market; and
- 432 (II) The market share increase by more than 2 percent of the total market.
- 433 For the purpose of this subparagraph, the term 'market' means a direct written insurance
- 434 premium in this state for a line of business as contained in the annual statement required
- 435 to be filed by insurers licensed to do business in this state;
- 436 ~~(F)~~(E) An acquisition for which a preacquisition notification would be required
- 437 pursuant to this Code section due solely to the resulting effect on the ocean marine
- 438 insurance line of business; or
- 439 ~~(G)~~(F) An acquisition of an insurer whose domiciliary commissioner affirmatively
- 440 finds that such insurer is in failing condition; there is a lack of feasible alternative to
- 441 improving such condition; the public benefits of improving such insurer's condition
- 442 through the acquisition exceed the public benefits that would arise from not lessening
- 443 competition; and such findings are communicated by the domiciliary commissioner to
- 444 the Commissioner of this state.
- 445 (c) An acquisition covered by subsection (b) of this Code section may be subject to an
- 446 order pursuant to subsection (e) of this Code section unless the acquiring person files a
- 447 preacquisition notification and the waiting period has expired. The acquired person may
- 448 file a preacquisition notification. The Commissioner shall give confidential treatment to
- 449 information submitted under this subsection in the same manner as provided in Code
- 450 Section ~~33-13-7~~ 33-13-8:
- 451 (1) The preacquisition notification shall be in such form and contain such information
- 452 as prescribed by the National Association of Insurance Commissioners relating to those
- 453 markets which, under subparagraph ~~(b)(2)(E)~~ (b)(2)(D) of this Code section, cause the
- 454 acquisition not to be exempted from the provisions of this Code section. The
- 455 Commissioner may require such additional material and information as he or she deems
- 456 necessary to determine whether the proposed acquisition, if consummated, would violate
- 457 the competitive standard of subsection (d) of this Code section. The required information
- 458 may include an opinion of an economist as to the competitive impact of the acquisition
- 459 in this state accompanied by a summary of the education and experience of such person
- 460 indicating his or her ability to render an informed opinion; and

461 (2) The waiting period required shall begin on the date of receipt of the Commissioner
 462 of a preacquisition notification and shall end on the earlier of the thirtieth day after the
 463 date of such receipt or termination of the waiting period by the Commissioner. Prior to
 464 the end of the waiting period, the Commissioner on a one-time basis may require the
 465 submission of additional needed information relevant to the proposed acquisition, in
 466 which event the waiting period shall end on the earlier of the thirtieth day after receipt of
 467 such additional information by the Commissioner or termination of the waiting period by
 468 the Commissioner.

469 (d)(1) The Commissioner may enter an order under paragraph (1) of subsection (e) of
 470 this Code section with respect to an acquisition if there is substantial evidence that the
 471 effect of the acquisition may be substantially to lessen competition in any line of
 472 insurance in this state or tend to create a monopoly therein or if the insurer fails to file
 473 adequate information in compliance with subsection (c) of this Code section.

474 (2) In determining whether a proposed acquisition would violate the competitive
 475 standard of paragraph (1) of this subsection, the Commissioner shall consider the
 476 following:

477 (A) Any acquisition covered under subsection (b) of this Code section involving two
 478 or more insurers competing in the same market is prima-facie evidence of violation of
 479 the competitive standards:

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

482	Insurer A	Insurer B
483	4 percent	4 percent or more
484	10 percent	2 percent or more
485	15 percent	1 percent or more; or

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

488	Insurer A	Insurer B
489	5 percent	5 percent or more
490	10 percent	4 percent or more
491	15 percent	3 percent or more
492	19 percent	1 percent or more

493 A highly concentrated market is one in which the share of the four largest insurers is
 494 75 percent or more of the market. Percentages not shown in the tables are interpolated
 495 proportionately to the percentages that are shown. If more than two insurers are

496 involved, exceeding the total of the two columns in the table is prima-facie evidence
497 of violation of the competitive standard in paragraph (1) of this subsection. For the
498 purpose of this subparagraph, the insurer with the largest share of the market shall be
499 deemed to be Insurer A;

500 (B) There is a significant trend toward increased concentration when the aggregate
501 market share of any grouping of the largest insurers in the market, from the two largest
502 to the eight largest, has increased by 7 percent or more of the market over a period of
503 time extending from any base year five to ten years prior to the acquisition up to the
504 time of the acquisition. Any acquisition or merger covered under subsection (b) of this
505 Code section involving two or more insurers competing in the same market is
506 prima-facie evidence of violation of the competitive standard in paragraph (1) of this
507 subsection if:

- 508 (i) There is a significant trend toward increased concentration in the market;
- 509 (ii) One of the insurers involved is one of the insurers in a grouping of such large
510 insurers showing the requisite increase in the market share; and
- 511 (iii) Another involved insurer's market is 2 percent or more;

512 (C) For the purposes of this paragraph:

- 513 (i) The term 'insurer' includes any company or group of companies under common
514 management, ownership, or control;
- 515 (ii) The term 'market' means the relevant product and geographical markets. In
516 determining the relevant product and geographical markets, the Commissioner shall
517 give due consideration to, among other things, the definitions or guidelines, if any,
518 promulgated by the National Association of Insurance Commissioners and to
519 information, if any, submitted by parties to the acquisition. In the absence of
520 sufficient information to the contrary, the relevant product market is assumed to be
521 the direct written insurance premium for a line of business, such line being that used
522 in the annual statement required to be filed by insurers doing business in this state,
523 and the relevant geographical market is assumed to be this state; and
- 524 (iii) The burden of showing prima-facie evidence of violation of the competitive
525 standard rests upon the Commissioner; and

526 (D) Even though an acquisition is not prima-facie violative of the competitive standard
527 under subparagraphs (A) and (B) of this paragraph, the Commissioner may establish
528 the requisite anticompetitive effect based upon other substantial evidence. Even though
529 an acquisition is prima-facie violative of the competitive standard under subparagraphs
530 (A) and (B) of this paragraph, a party may establish the absence of the requisite
531 anticompetitive effect based upon other substantial evidence. Relevant factors in
532 making a determination under this paragraph include, but are not limited to, the

533 following: market shares, volatility of ranking of market leaders, number of
 534 competitors, concentration, trend of concentration in the industry, and ease of entry into
 535 the market and exit from the market.

536 (3) An order may not be entered under paragraph (1) of subsection (e) of this Code
 537 section if:

538 (A) The acquisition will yield substantial economies of scale or economies in resource
 539 utilization that cannot be feasibly achieved in any other way, and the public benefits
 540 which would arise from such economies exceed the public benefits which would arise
 541 from not lessening competition; or

542 (B) The acquisition will substantially increase the availability of insurance, and the
 543 public benefits of such increase exceed the public benefits which would arise from not
 544 lessening competition.

545 (e)(1)(A) If an acquisition violates the standards of this Code section, the
 546 Commissioner may enter an order:

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

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

551 (B) Such an order shall not be entered unless:

552 (i) There is a hearing;

553 (ii) Notice of such hearing is issued prior to the end of the waiting period and not less
 554 than 15 days prior to the hearing; and

555 (iii) The hearing is concluded and the order is issued no later than 60 days after the
 556 end of the waiting period. Every order shall be accompanied by a written decision of
 557 the Commissioner setting forth his or her findings of fact and conclusions of law.

558 ~~(C) An order entered under this paragraph shall not become final earlier than 30 days~~
 559 ~~after it is issued, during which time the involved insurer may submit a plan to remedy~~
 560 ~~the anticompetitive impact of the acquisition within a reasonable time. Based upon such~~
 561 ~~plan or other information, the Commissioner shall specify the conditions, if any, under~~
 562 ~~the time period during which the aspects of the acquisition causing a violation of the~~
 563 ~~standards of this Code section would be remedied and the order vacated or modified.~~

564 ~~(D)~~(C) An order pursuant to this paragraph shall not apply if the acquisition is not
 565 consummated.

566 (2) Any person who violates a cease and desist order of the Commissioner under
 567 paragraph (1) of this subsection and while such order is in effect; may after notice and
 568 hearing and upon order of the Commissioner, be subject, at the discretion of the
 569 Commissioner, to any one or more of the following:

570 (A) A monetary penalty of not more than \$10,000.00 for every day of violation; or

571 (B) Suspension or revocation of such person's license.

572 (3) Any insurer or other person who fails to make any filing required by this subsection
573 and who also fails to demonstrate a good faith effort to comply with any such filing
574 requirement shall be subject to a fine of not more than \$50,000.00.

575 (f) Paragraphs (b) and (c) of Code Section 33-13-10 and Code Section 33-13-12 shall not
576 apply to acquisitions covered under this Code section.

577 33-13-4.

578 (a) **Requirement of registration generally.** Every insurer which is authorized to do
579 business in this state and which is a member of an insurance holding company system shall
580 register with the Commissioner, except a foreign insurer subject to disclosure requirements
581 and standards adopted by statute or regulation in the jurisdiction of its domicile which are
582 substantially similar to those contained; ~~in this Code section. Any insurer which is subject~~
583 ~~to registration under this Code section shall register within 15 days after it becomes subject~~
584 ~~to registration unless the Commissioner for good cause shown extends the time for~~
585 ~~registration, and then within the extended time. The Commissioner may require any~~
586 ~~authorized insurer which is a member of a holding company system which is not subject~~
587 ~~to registration under this Code section to furnish a copy of the registration statement or~~
588 ~~other information filed by the insurance company with the insurance regulatory authority~~
589 ~~of its domiciliary jurisdiction~~

590 (1) In this Code section;

591 (2) In paragraph (1) of subsection (a), subsection (b), and subsection (d) of Code Section
592 33-13-5; and

593 (3) In either paragraph (2) of subsection (a) of Code Section 33-13-5 or a provision such
594 as the following: 'Each registered insurer shall keep current the information required to
595 be disclosed in its registration statement by reporting all material changes or additions
596 within 15 days after the end of the month in which it learns of each change or addition.'

597 Any insurer which is subject to registration under this Code section shall register within 15
598 days after it becomes subject to registration and annually thereafter by April 30 of each
599 year for the previous calendar year, unless the Commissioner for good cause shown
600 extends the time for registration, and then within the extended time. The Commissioner
601 may require any insurer authorized to do business in this state which is a member of an
602 insurance holding company system, and which is not subject to registration under this Code
603 section, to furnish a copy of the registration statement, the summary specified in subsection
604 (c) of this Code section, or other information filed by the insurance company with the
605 insurance regulatory authority of its domiciliary jurisdiction.

606 (b) **Contents of registration statement.** Every insurer subject to registration shall file a
 607 registration statement with the Commissioner on a form and in a format provided by the
 608 Commissioner prescribed by the National Association of Insurance Commissioners, which
 609 statement shall contain current information about:

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

612 (2) The identity of every member of the insurance holding company system;

613 (3) The following agreements in force, relationships subsisting, and transactions
 614 currently outstanding between such insurer and its affiliates:

615 (A) Loans, other investments, or purchases, sales, or exchanges of the affiliates by the
 616 insurer or of the insurer by its affiliates;

617 (B) Purchases, sales, or exchanges of assets;

618 (C) Transactions not in the ordinary course of business;

619 (D) Guarantees or undertakings for the benefit of an affiliate which result in an actual
 620 contingent exposure of the insurer's assets to liability other than insurance contracts
 621 entered into in the ordinary course of the insurer's business;

622 (E) All management and service contracts and all cost-sharing arrangements; ~~other~~
 623 ~~than cost allocation arrangements based upon generally accepted accounting principles;~~
 624 ~~and~~

625 (F) Reinsurance agreements; ~~covering all or substantially all of one or more lines of~~
 626 ~~insurance of the ceding company; and~~

627 (G) Dividends and other distributions to shareholders; and

628 (H) Consolidated tax allocation agreements;

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

631 (5) If requested by the Commissioner, financial statements of or within an insurance
 632 holding company system, including all affiliates. Financial statements may include but
 633 are not limited to annual audited financial statements filed with the federal Securities and
 634 Exchange Commission pursuant to the federal Securities Act of 1933, as amended, or the
 635 Securities Exchange Act of 1934, as amended. An insurer required to file financial
 636 statements pursuant to this paragraph may satisfy the request by providing the
 637 Commissioner with the most recently filed parent corporation financial statements that
 638 have been filed with the Securities and Exchange Commission;

639 ~~(4)~~(6) Other matters concerning transactions between registered insurers and any
 640 affiliates as may be included from time to time in any registration forms adopted or
 641 approved by the Commissioner;

642 (7) Statements that the insurer's board of directors is responsible for and oversees
 643 corporate governance and internal controls and that the insurer's officers or senior
 644 management have approved, implemented, and continue to maintain and monitor
 645 corporate governance and internal control procedures; and

646 (8) Any other information required by the Commissioner by rule or regulation.

647 **(c) Summary of changes to registration statement.** All registration statements shall
 648 contain a summary outlining all items in the current registration statement representing
 649 changes from the prior registration statement.

650 ~~(c)~~**(d) Disclosure of nonmaterial information.** No information need be disclosed on the
 651 registration statement filed pursuant to subsection (b) of this Code section if the
 652 information is not material for the purposes of this Code section. Unless the Commissioner
 653 by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans,
 654 extensions of credit, or investments involving one-half of 1 percent or less of an insurer's
 655 admitted assets as of December 31 of the preceding year shall not be deemed material for
 656 purposes of this Code section.

657 ~~(d)~~ **Amendment of registration statements.** Each registered insurer shall keep current
 658 ~~the information required to be disclosed in its registration statement by reporting all~~
 659 ~~material changes or additions on amendment forms provided by the Commissioner, within~~
 660 ~~15 days after the end of the month in which it learns of each change or addition; provided,~~
 661 ~~however, subject to subsection (c) of Code Section 33-13-5, each registered insurer shall~~
 662 ~~so report all dividends and other distributions to shareholders within five business days~~
 663 ~~following the declaration of the dividends and other distributions and at least ten days prior~~
 664 ~~to the payment thereof.~~

665 **(e) Reporting dividends to shareholders.** Subject to subsection (b) of Code Section
 666 33-13-5, each registered insurer shall report to the Commissioner all dividends and other
 667 distributions to shareholders within 15 business days following the declaration thereof.

668 **(f) Information of insurers.** Any person within an insurance holding company system
 669 subject to registration shall be required to provide complete and accurate information to an
 670 insurer, where the information is reasonably necessary to enable the insurer to comply with
 671 the provisions of this chapter.

672 ~~(e)~~**(g) Termination of registration.** The Commissioner shall terminate the registration
 673 of any insurer which demonstrates that it no longer is a member of an insurance holding
 674 company system.

675 ~~(f)~~**(h) Filing of consolidated registration.** The Commissioner may require or allow two
 676 or more affiliated insurers subject to registration under this Code section to file a
 677 consolidated registration statement ~~or consolidated reports amending their consolidated~~
 678 ~~registration statement or their individual registration statements.~~

679 ~~(g)~~**(i) Filing of registration for affiliated insurer.** The Commissioner may allow an
 680 insurer which is authorized to do business in this state and which is part of an insurance
 681 holding company system to register on behalf of any affiliated insurer which is required to
 682 register under subsection (a) of this Code section and to file all information and material
 683 required to be filed under this Code section.

684 ~~(h)~~**(j) Exemptions.** This Code section shall not apply to any insurer, information, or
 685 transaction if and to the extent that the Commissioner by rule, regulation, or order shall
 686 exempt the same from this Code section.

687 ~~(i)~~**(k) Filing of disclaimer.** Any person may file with the Commissioner a disclaimer of
 688 affiliation with any authorized insurer or the disclaimer may be filed by the insurer or any
 689 member of an insurance holding company system. The disclaimer shall fully disclose all
 690 material relationships and bases for affiliation between the persons and the insurer as well
 691 as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to
 692 have been granted unless the Commissioner, within 30 days following receipt of a
 693 complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of
 694 disallowance, the disclaiming party may request an administrative hearing, which shall be
 695 granted. The disclaiming party shall be relieved of its duty to register under this Code
 696 section if approval of the disclaimer has been granted by the Commissioner, or if the
 697 disclaimer is deemed to have been approved. After a disclaimer has been filed, the insurer
 698 shall be relieved of any duty to register or report under this Code section which may arise
 699 out of the insurer's relationship with the person, unless and until the Commissioner
 700 disallows the disclaimer. The Commissioner shall disallow the disclaimer only after
 701 furnishing all parties in interest with notice and opportunity to be heard after making
 702 specific findings of fact to support the disallowance.

703 (l) Enterprise risk filing. The ultimate controlling person of every insurer subject to
 704 registration shall also file an annual enterprise risk report. The report shall, to the best of
 705 the ultimate controlling person's knowledge and belief, identify the material risks within
 706 the insurance holding company system that could pose enterprise risk to the insurer. The
 707 report shall be filed with the lead state commissioner of the insurance holding system as
 708 determined by the procedures within the Financial Analysis Handbook adopted by the
 709 National Association of Insurance Commissioners.

710 ~~(j)~~**(m) Violations.** The failure to file a registration statement or any amendment to the
 711 registration statement required by this Code section within the time specified for the filing
 712 shall be a violation of this Code section.

713 33-13-5.

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

716 (A) The terms shall be fair and reasonable;

717 (B) Agreements for cost sharing services and management shall include such
718 provisions as required by the Commissioner by rule or regulation;

719 ~~(B)~~(C) Charges or fees for services performed shall be reasonable;

720 ~~(C)~~(D) Expenses incurred and payment received shall be allocated to the insurer in
721 conformity with customary insurance accounting practices consistently applied;

722 ~~(D)~~(E) The books, accounts, and records of each party to all such transactions shall be
723 so maintained as to clearly and accurately disclose the nature and details of the
724 transactions, including such accounting information as is necessary to support the
725 reasonableness of the charges or fees to the respective parties; and

726 ~~(E)~~(F) The insurer's surplus with regard to policyholders following any dividends or
727 distributions to shareholder affiliates shall be reasonable in relation to the insurer's
728 outstanding liabilities and adequate to its financial needs.

729 (2) The following transactions involving a domestic insurer and any person in its holding
730 company system, including amendments or modifications of affiliate agreements
731 previously filed pursuant to this Code section, which are subject to any materiality
732 standards contained in subparagraphs (A) through (G) of this paragraph, may not be
733 entered into unless the insurer has notified the Commissioner in writing of its intention
734 to enter into such transaction at least 30 days prior thereto, or such shorter period as the
735 Commissioner may permit, and the Commissioner has not disapproved it within such
736 period. The notice for amendments or modifications shall include the reasons for the
737 change and the financial impact on the domestic insurer. Informal notice shall be
738 reported, within 30 days after a termination of a previously filed agreement, to the
739 Commissioner for determination of the type of filing required, if any:

740 (A) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or
741 investments, provided such transactions are equal to or exceed: with respect to nonlife
742 insurers, the lesser of 3 percent of the insurer's admitted assets or 25 percent of surplus
743 as regards policyholders; or with respect to life insurers, 3 percent of the insurer's
744 admitted assets; each as of December 31 next preceding;

745 (B) Loans or extensions of credit to any person who is not an affiliate, where the
746 insurer makes such loans or extensions of credit with the agreement or understanding
747 that the proceeds of such transactions, in whole or in substantial part, are to be used to
748 make loans or extensions of credit to, to purchase assets of, or to make investments in
749 any affiliate of the insurer making such loans or extensions of credit to purchase assets

750 of, or to make investments in, any affiliate of the insurer making the loans or extensions
 751 of credit, provided such transactions are equal to or exceed: with respect to nonlife
 752 insurers, the lesser of 3 percent of the insurer's admitted assets or 25 percent of surplus
 753 with regard to policyholders; or with respect to life insurers, 3 percent of the insurer's
 754 admitted assets; each as of December 31 next preceding;

755 ~~(C) Reinsurance agreements or modifications thereto, in which the reinsurance~~
 756 ~~premium or a change in the insurer's liabilities equals or exceeds 5 percent of the~~
 757 ~~insurer's surplus with regard to policyholders, as of December 31 next preceding,~~
 758 ~~including those agreements which may require as consideration the transfer of assets~~
 759 ~~from an insurer to a nonaffiliate, if an agreement or understanding exists between the~~
 760 ~~insurer and nonaffiliate that any portion of such assets will be transferred to one or~~
 761 ~~more affiliates of the insurer; including:~~

762 (i) All reinsurance pooling agreements; and

763 (ii) Agreements in which the reinsurance premium or a change in the insurer's
 764 liabilities, or the projected reinsurance premium or a change in the insurer's liabilities
 765 in any of the next three years, equals or exceeds 5 percent of the insurer's surplus with
 766 regard to policyholders, as of December 31 next preceding, including those
 767 agreements which may require as consideration the transfer of assets from an insurer
 768 to a nonaffiliate, if an agreement or understanding exists between the insurer and
 769 nonaffiliate that any portion of the assets will be transferred to one or more affiliates
 770 of the insurer;

771 (D) All management agreements, service contracts, tax allocation agreements,
 772 guarantees, and all cost-sharing agreements; ~~and~~

773 (E) Guarantees when made by a domestic insurer; provided, however, that a guarantee
 774 which is quantifiable as to amount is not subject to the notice requirements of this
 775 paragraph unless it exceeds the lesser of one-half of 1 percent of the insurer's admitted
 776 assets or 10 percent of surplus as regards policyholders as of December 31 next
 777 preceding. Further, all guarantees which are not quantifiable as to amount are subject
 778 to the notice requirements of this paragraph;

779 (F) Direct or indirect acquisitions or investments in a person that controls the insurer
 780 or in an affiliate of the insurer in an agreement which, together with its present holdings
 781 in such investments, exceeds 2 1/2 percent of the insurer's surplus to policyholders.
 782 Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Code
 783 Section 33-13-2 or authorized under any other Code section of this title, or in
 784 nonsubsidiary insurance affiliates that are subject to the provisions of this chapter, are
 785 exempt from this requirement; and

786 ~~(E)~~(G) Any material transactions, specified by regulation, which the Commissioner
787 determines may adversely affect the interests of the insurer's policyholders.

788 Nothing contained in this paragraph shall be deemed to authorize or permit any
789 transactions which, in the case of an insurer ~~who~~ that is not a member of the same holding
790 company system, would be otherwise contrary to law.

791 (3) A domestic insurer may not enter into transactions which are part of a plan or series
792 of like transactions with persons within the holding company system if the purpose of
793 those separate transactions is to avoid the statutory threshold amount and thus avoid the
794 review that would occur otherwise. If the Commissioner determines that such separate
795 transactions were entered into over any 12 month period for such purpose, ~~he~~ the
796 Commissioner may exercise his or her authority under Code Section ~~33-13-9 or Code~~
797 ~~Section 33-13-100~~ 33-13-11.

798 (4) The Commissioner, in reviewing transactions pursuant to paragraph (2) of this
799 subsection, shall consider whether the transactions comply with the standards set forth
800 in paragraph (1) of this subsection and whether they may adversely affect the interests of
801 policyholders.

802 (5) The Commissioner shall be notified within 30 days of any investment of the domestic
803 insurer in any one corporation if the total investment in such corporation by the insurance
804 holding company system exceeds 10 percent of such corporation's voting securities.

805 (b)(1) No domestic insurer shall apply any extraordinary dividend or make any other
806 extraordinary distribution to its shareholders until 30 days after the Commissioner has
807 received notice of the declaration thereof and has not within such period disapproved
808 such payment, or until the Commissioner ~~shall have~~ has approved such payment within
809 such 30 day period.

810 (2) For the purposes of this subsection, an extraordinary dividend or distribution includes
811 any dividend or distribution of cash or other property, whose fair market value together
812 with that of other dividends or distributions made within the preceding 12 months
813 exceeds the ~~greater~~ lesser of 10 percent of such insurer's surplus with regard to
814 policyholders as of December 31 next preceding, or the net gain from operations of such
815 insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life
816 insurer, not including realized capital gains, for the 12 month period ending December
817 31 next preceding, but shall not include pro rata distributions of any class of the insurer's
818 own securities.

819 (3) In determining whether a dividend or distribution is extraordinary, an insurer other
820 than a life insurer may carry forward net income from the previous two calendar years
821 that has not already been paid out as dividends. This carry-forward shall be computed
822 by taking the net income from the second and third preceding calendar years, not

823 including realized capital gains, less dividends paid in the second and immediate
 824 preceding calendar years.

825 ~~(3)~~(4) Notwithstanding any other provision of law, an insurer may declare an
 826 extraordinary dividend or distribution which is conditional upon the Commissioner's
 827 approval thereof, and such a declaration shall confer no rights upon shareholders until the
 828 Commissioner has approved the payment of such a dividend or distribution or the
 829 Commissioner has not disapproved such payment within the 30 day period referred to in
 830 paragraph (1) of this subsection.

831 (c) For purposes of this chapter, in determining whether an insurer's surplus with regard
 832 to policyholders is reasonable in relation to the insurer's outstanding liabilities and
 833 adequate to its financial needs, the following factors, among others, shall be considered:

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

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

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

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

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

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

842 (7) The recent past and projected future trend in the size of the insurer's surplus as
 843 regards policyholders;

844 (8) The surplus with regard to policyholders maintained by other comparable insurers;
 845 ~~considering the factors provided in paragraphs (1) through (7) of this subsection;~~

846 (9) The adequacy of the insurer's reserves; and

847 (10) The quality and liquidity of investments in affiliates. ~~The Commissioner may~~
 848 ~~discount or treat any such investment as a disallowed asset for purposes of determining~~
 849 ~~the adequacy of surplus with regard to policyholders whenever in the Commissioner's~~
 850 ~~judgment such investment so warrants; and The Commissioner may treat any such~~
 851 investment as a disallowed asset for purposes of determining the adequacy of surplus
 852 with regard to policyholders whenever in the judgment of the Commissioner the
 853 investment so warrants.

854 ~~(11) The quality of the insurer's earnings and the extent to which reported earnings~~
 855 ~~include extraordinary items.~~

856 33-13-6.

857 (a) **Powers of Commissioner.** Subject to the limitation contained in this Code section and
 858 in addition to the powers which the Commissioner has under this title relating to the

859 examination of insurers, the Commissioner shall also have the power to order any insurer
 860 registered under examine any insurer registered under Code Section 33-13-4 to produce
 861 any records, books, or other information papers in the possession of the insurer or its
 862 affiliates as shall be necessary to ascertain the financial condition or legality of conduct of
 863 the insurer. In the event the insurer fails to comply with the order, the Commissioner shall
 864 have the power to examine the affiliates to obtain such information and its affiliates to
 865 ascertain the financial condition of the insurer, including the enterprise risk to the insurer
 866 by the ultimate controlling party, or by any entity or combination of entities within the
 867 insurance holding company system, or by the insurance holding company system on a
 868 consolidated basis.

869 (b) ~~The Commissioner shall exercise his power under subsection (a) of this Code section~~
 870 ~~only if the examination of the insurer under other chapters of this title is inadequate or if~~
 871 ~~the interests of the policyholders of the insurer may be adversely affected~~ **Access to books**
 872 **and records.**

873 (1) The Commissioner may order any insurer registered under Code Section 33-13-4 to
 874 produce such records, books, or other information in the possession of the insurer or its
 875 affiliates as are reasonably necessary to determine compliance with this chapter.

876 (2) To determine compliance with this chapter, the Commissioner may order any insurer
 877 registered under Code Section 33-13-4 to produce information not in the possession of
 878 the insurer if the insurer can obtain access to such information pursuant to contractual
 879 relationships, statutory obligations, or other method. In the event the insurer cannot
 880 obtain the information requested by the Commissioner, the insurer shall provide the
 881 Commissioner a detailed explanation of the reason that the insurer cannot obtain the
 882 information and the identity of the holder of information. Whenever it appears to the
 883 Commissioner that the detailed explanation is without merit, the Commissioner may
 884 require, after notice and hearing, the insurer to pay a penalty of \$1,000.00 for each day's
 885 delay, or may suspend or revoke the insurer's license.

886 (c) **Use of consultants.** The Commissioner may retain at the registered insurer's expense
 887 such attorneys, actuaries, accountants, and other experts not otherwise a part of the
 888 Commissioner's staff as shall be reasonably necessary to assist in the conduct of the
 889 examination under subsection (a) of this Code section. Any persons so retained shall be
 890 under the direction and control of the Commissioner and shall act in a purely advisory
 891 capacity.

892 (d) **Expenses.** Each registered insurer producing for examination records, books, and
 893 papers ~~for examination~~ pursuant to subsection (a) of this Code section shall be liable for
 894 and shall pay the expense of the examination in accordance with Code Section 33-2-15.

895 (e) ~~All filings and registrations required by this Code section shall be accompanied by a~~
 896 ~~fee or fees as provided in Code Section 33-8-1. **Compelling production.** In the event the~~
 897 ~~insurer fails to comply with an order, the Commissioner shall have the power to examine~~
 898 ~~the affiliates to obtain the information. The Commissioner shall also have the power to~~
 899 ~~issue subpoenas, to administer oaths, and to examine under oath any person for purposes~~
 900 ~~of determining compliance with this subsection. Upon the failure or refusal of any person~~
 901 ~~to obey a subpoena, the Commissioner may petition a court of competent jurisdiction, and~~
 902 ~~upon proper showing, the court may enter an order compelling the witness to appear and~~
 903 ~~testify or produce documentary evidence. Failure to obey the court order shall be~~
 904 ~~punishable as contempt of court. Every person shall be obliged to attend as a witness at the~~
 905 ~~place specified in the subpoena, when subpoenaed, anywhere within the state. He or she~~
 906 ~~shall be entitled to the same fees and mileage, if claimed, as a witness in superior court,~~
 907 ~~which fees, mileage, and actual expense, if any, necessarily incurred in securing the~~
 908 ~~attendance of witnesses, and their testimony, shall be itemized and charged against, and be~~
 909 ~~paid by, the company being examined.~~

910 33-13-7.

911 (a) **Power of Commissioner.** With respect to any insurer registered under Code Section
 912 33-13-4, and in accordance with subsection (c) of this Code section, the Commissioner
 913 shall also have the power to participate in a supervisory college for any domestic insurer
 914 that is part of an insurance holding company system with international operations in order
 915 to determine compliance by the insurer with this title. The powers of the Commissioner
 916 with respect to supervisory colleges include, but are not limited to, the following:

- 917 (1) Initiating the establishment of a supervisory college;
 918 (2) Clarifying the membership and participation of other supervisors in the supervisory
 919 college;
 920 (3) Clarifying the functions of the supervisory college and the role of other regulators,
 921 including the establishment of a group-wide supervisor;
 922 (4) Coordinating the ongoing activities of the supervisory college, including planning
 923 meetings, supervisory activities, and processes for information sharing; and
 924 (5) Establishing a crisis management plan.

925 (b) **Expenses.** Each registered insurer subject to this Code section shall be liable for and
 926 shall pay the reasonable expenses of the Commissioner's participation in a supervisory
 927 college in accordance with subsection (c) of this Code section, including reasonable travel
 928 expenses. For purposes of this Code section, a supervisory college may be convened as
 929 either a temporary or permanent forum for communication and cooperation between the
 930 regulators charged with the supervision of the insurer or its affiliates, and the

931 Commissioner may establish a regular assessment to the insurer for the payment of these
 932 expenses.

933 (c) **Supervisory college.** In order to assess the business strategy, financial position, legal
 934 and regulatory position, risk exposure, risk management and governance processes, and as
 935 part of the examination of individual insurers in accordance with Code Section 33-13-6,
 936 the Commissioner may participate in a supervisory college with other regulators charged
 937 with supervision of the insurer or its affiliates, including other state, federal, and
 938 international regulatory agencies. The Commissioner may enter into agreements in
 939 accordance with subsection (c) of Code Section 33-13-8 providing the basis for cooperation
 940 between the Commissioner and the other regulatory agencies, and the activities of the
 941 supervisory college. Nothing in this Code section shall delegate to the supervisory college
 942 the authority of the Commissioner to regulate or supervise the insurer or its affiliates within
 943 its jurisdiction.

944 33-13-8.

945 ~~All information, documents, and copies thereof obtained by or disclosed to the~~
 946 ~~Commissioner or any other person in the course of an examination or investigation made~~
 947 ~~pursuant to Code Section 33-13-6 and all information reported pursuant to Code Section~~
 948 ~~33-13-4 shall be given confidential treatment, shall not be subject to subpoena, and shall~~
 949 ~~not be made public by the Commissioner or any other person, except to insurance~~
 950 ~~departments of other states, without the prior written consent of the insurer to which it~~
 951 ~~pertains unless the Commissioner, after giving the insurer and its affiliates who would be~~
 952 ~~affected thereby notice and opportunity to be heard, determines that the interests of~~
 953 ~~policyholders, shareholders, or the public will be served by the publication of the~~
 954 ~~information and documents, in which event he may publish all or any part of the~~
 955 ~~information and documents in such manner as he may deem appropriate.~~

956 (a) Documents, materials, or other information in the possession or control of the
 957 department that are obtained by or disclosed to the Commissioner or any other person in
 958 the course of an examination or investigation made pursuant to Code Section 33-13-6 and
 959 all information reported pursuant to paragraphs (12) and (13) of subsection (b) of Code
 960 Section 33-13-3, Code Section 33-13-4, and Code Section 33-13-5 shall be confidential by
 961 law and privileged, shall not be subject to public disclosure under Article 4 of Chapter 18
 962 of Title 50, shall not be subject to subpoena, and shall not be subject to discovery or
 963 admissible in evidence in any private civil action. However, the Commissioner is
 964 authorized to use the documents, materials, or other information in the furtherance of any
 965 regulatory or legal action brought as a part of the Commissioner's official duties. The
 966 Commissioner shall not otherwise make the documents, materials, or other information

967 public without the prior written consent of the insurer to which it pertains unless the
968 Commissioner, after giving the insurer and its affiliates that would be affected thereby
969 notice and opportunity to be heard, determines that the interest of policyholders,
970 shareholders, or the public will be served by the publication thereof, in which event the
971 Commissioner may publish all or any part in such manner as may be deemed appropriate.
972 (b) Neither the Commissioner nor any person who received documents, materials, or other
973 information while acting under the authority of the Commissioner or with whom such
974 documents, materials, or other information are shared pursuant to this chapter shall be
975 permitted or required to testify in any private civil action concerning any confidential
976 documents, materials, or other information subject to subsection (a) of this Code section.
977 (c) In order to assist in the performance of the Commissioner's duties, the Commissioner:
978 (1) May share documents, materials, or other information, including the confidential and
979 privileged documents, materials, or other information subject to subsection (a) of this
980 Code section, with other state, federal, and international regulatory agencies, with the
981 National Association of Insurance Commissioners and its affiliates and subsidiaries, and
982 with state, federal, and international law enforcement authorities, including members of
983 any supervisory college described in Code Section 33-13-7, provided that the recipient
984 agrees in writing to maintain the confidentiality and privileged status of the document,
985 material, or other information and has verified in writing the legal authority to maintain
986 confidentiality;
987 (2) Notwithstanding paragraph (1) of this subsection, may only share confidential and
988 privileged documents, materials, or other information reported pursuant to subsection (1)
989 of Code Section 33-13-4 with commissioners of states having statutes or regulations
990 substantially similar to subsection (a) of this Code section and who have agreed in writing
991 not to disclose such information;
992 (3) May receive documents, materials, or other information, including otherwise
993 confidential and privileged documents, materials, or other information from the National
994 Association of Insurance Commissioners and its affiliates and subsidiaries and from
995 regulatory and law enforcement officials of other foreign or domestic jurisdictions and
996 shall maintain as confidential or privileged any document, material, or other information
997 received with notice or the understanding that it is confidential or privileged under the
998 laws of the jurisdiction that is the source of the document, material, or other information;
999 and
1000 (4) Shall enter into written agreements with the National Association of Insurance
1001 Commissioners governing sharing and use of information provided pursuant to this
1002 chapter consistent with this subsection that shall:

1003 (A) Specify procedures and protocols regarding the confidentiality and security of
 1004 information shared with the National Association of Insurance Commissioners and its
 1005 affiliates and subsidiaries pursuant to this chapter, including procedures and protocols
 1006 for sharing by the National Association of Insurance Commissioners with other state,
 1007 federal, and international regulatory agencies;

1008 (B) Specify that ownership of information shared with the National Association of
 1009 Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter
 1010 remains with the Commissioner and that the National Association of Insurance
 1011 Commissioners' use of the information is subject to the direction of the Commissioner;

1012 (C) Require prompt notice to be given to an insurer whose confidential information in
 1013 the possession of the National Association of Insurance Commissioners pursuant to this
 1014 chapter is subject to a request or subpoena to the National Association of Insurance
 1015 Commissioners for disclosure or production; and

1016 (D) Require the National Association of Insurance Commissioners and its affiliates and
 1017 subsidiaries to consent to intervention by an insurer in any judicial or administrative
 1018 action in which the National Association of Insurance Commissioners and its affiliates
 1019 and subsidiaries may be required to disclose confidential information about the insurer
 1020 shared with the National Association of Insurance Commissioners and its affiliates and
 1021 subsidiaries pursuant to this chapter.

1022 (d) The sharing of information by the Commissioner pursuant to this chapter shall not
 1023 constitute a delegation of regulatory authority or rule making, and the Commissioner is
 1024 solely responsible for the administration, execution, and enforcement of the provisions of
 1025 this chapter.

1026 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,
 1027 materials, or other information shall occur as a result of disclosure to the Commissioner
 1028 under this Code section or as a result of sharing as authorized in subsection (c) of this Code
 1029 section.

1030 (f) Documents, materials, or other information in the possession or control of the National
 1031 Association of Insurance Commissioners pursuant to this chapter shall be confidential by
 1032 law and privileged, shall not be subject to the open records laws, shall not be subject to
 1033 subpoena, and shall not be subject to discovery or admissible in evidence in any private
 1034 civil action.

1035 ~~33-13-8~~ 33-13-9.

1036 The Commissioner may, upon notice and opportunity for all interested persons to be heard,
 1037 issue any rules, regulations, and orders as shall be necessary to carry out this chapter.

1038 ~~33-13-9~~ 33-13-10.

1039 (a) **Injunctions.** Whenever it appears to the Commissioner that any insurer or any
 1040 director, officer, employee, or agent of any insurer has committed or is about to commit a
 1041 violation of this chapter or of any rule, regulation, or order issued by the Commissioner
 1042 under this chapter, the Commissioner may apply to the superior court of the county in
 1043 which the principal office of the insurer is located or, if the insurer has no such office in
 1044 this state, to the Superior Court of Fulton County for an order enjoining the insurer or the
 1045 director, officer, employee, or agent of such insurer from violating or continuing to violate
 1046 this chapter or any rule, regulation, or order and for any other equitable relief as the nature
 1047 of the case and the interests of the insurer's policyholders, creditors, and shareholders or
 1048 the public may require.

1049 (b) **Voting of securities; when prohibited.** No security which is the subject of any
 1050 agreement or arrangement regarding acquisition or which is acquired or to be acquired in
 1051 contravention of this chapter or of any rule, regulation, or order issued by the
 1052 Commissioner under this chapter may be voted at any shareholders' meeting or counted for
 1053 quorum purposes; and any action of shareholders requiring the affirmative vote of a
 1054 percentage of shares may be taken as though such securities were not issued and
 1055 outstanding; but no action taken at any such meeting shall be invalidated by the voting of
 1056 such securities unless the action would materially affect control of the insurer or unless the
 1057 courts of this state have so ordered. If an insurer or the Commissioner has reason to
 1058 believe that any security of the insurer has been or is about to be acquired in contravention
 1059 of this chapter or of any rule, regulation, or order issued by the Commissioner under this
 1060 chapter, the insurer or the Commissioner may apply to the Superior Court of Fulton County
 1061 or to the superior court of the county in which the insurer has its principal place of business
 1062 to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of
 1063 Code Section 33-13-3 or any rule, regulation, or order issued by the Commissioner under
 1064 Code Section 33-13-3 to enjoin the voting of any security so acquired, to void any vote of
 1065 the security already cast at any meeting of shareholders, and for any other equitable relief
 1066 as the nature of the case and the interests of the insurer's policyholders, creditors, and
 1067 shareholders or the public may require.

1068 (c) **Sequestration of voting securities.** In any case in which a person has acquired or is
 1069 proposing to acquire any voting securities in violation of this chapter or any rule,
 1070 regulation, or order issued by the Commissioner under this chapter, the Superior Court of
 1071 Fulton County or the superior court of the county in which the insurer has its principal
 1072 place of business, on any notice as the court deems appropriate and upon the application
 1073 of the insurer or the Commissioner, may seize or sequester any voting securities of the
 1074 insurer owned directly or indirectly by the person and issue such orders with respect to the

1075 seizure or sequestration as may be appropriate to effectuate this chapter. Notwithstanding
 1076 any other provisions of law, for the purposes of this chapter the situs of the ownership of
 1077 the securities of domestic insurers shall be deemed to be in this state.

1078 ~~33-13-10.~~

1079 ~~Whenever it appears to the Commissioner that any insurer or any director, officer,~~
 1080 ~~employee, or agent of any insurer has committed a willful violation of this chapter, the~~
 1081 ~~Commissioner may cause criminal proceedings to be instituted by the superior court of the~~
 1082 ~~county in which the principal office of the insurer is located or, if the insurer has no such~~
 1083 ~~office in the state, by the Superior Court of Fulton County against the insurer or the~~
 1084 ~~responsible director, officer, employee, or agent of the insurer.~~

1085 33-13-11.

1086 (a) Any insurer failing, without just cause, to file any registration statement as required in
 1087 this chapter shall be required, after notice and hearing, to pay a penalty of \$1,000.00 for
 1088 each day's delay. The maximum penalty under this Code section is \$50,000.00. The
 1089 Commissioner may reduce the penalty if the insurer demonstrates to the Commissioner that
 1090 the imposition of the penalty would constitute a financial hardship to the insurer.

1091 (b) Every director or officer of an insurance holding company system who knowingly
 1092 violates, participates in, or assents to or who knowingly shall permit any of the officers or
 1093 agents of the insurer to engage in transactions or make investments which have not been
 1094 properly reported or submitted pursuant to subsection (a) of Code Section 33-13-4,
 1095 paragraph (2) of subsection (a) of Code Section 33-13-5, or subsection (b) of Code
 1096 Section 33-13-5, or which violate this chapter, shall pay, in their individual capacity, a civil
 1097 forfeiture of not more than \$50,000.00 per violation, after notice and hearing before the
 1098 Commissioner. In determining the amount of the civil forfeiture, the Commissioner shall
 1099 take into account the appropriateness of the forfeiture with respect to the gravity of the
 1100 violation, the history of previous violations, and such other matters as justice may require.

1101 (c) Whenever it appears to the Commissioner that any insurer subject to this chapter or any
 1102 director, officer, employee, or agent thereof has engaged in any transaction or entered into
 1103 a contract which is subject to Code Section 33-13-5 and which would not have been
 1104 approved had the approval been requested, the Commissioner may order the insurer to
 1105 cease and desist immediately any further activity under that transaction or contract. After
 1106 notice and hearing the Commissioner may also order the insurer to void any contracts and
 1107 restore the status quo if the action is in the best interest of its policyholders, creditors, or
 1108 the public.

1109 (d) Whenever it appears to the Commissioner that any insurer or any director, officer,
 1110 employee, or agent thereof has committed a willful violation of this chapter, the
 1111 Commissioner may cause criminal proceedings to be instituted by the Superior Court of
 1112 Fulton County against the insurer or the responsible director, officer, employee, or agent
 1113 thereof. Any insurer which willfully violates this chapter may be fined not more than
 1114 \$100,000.00. Any individual who willfully violates this chapter may be fined in his or her
 1115 individual capacity not more than \$100,000.00 or be imprisoned for not more than one to
 1116 three years, or both.

1117 (e) Any officer, director, or employee of an insurance holding company system who
 1118 willfully and knowingly subscribes to or makes or causes to be made any false statements
 1119 or false reports or false filings with the intent to deceive the Commissioner in the
 1120 performance of his or her duties under this chapter upon conviction shall be imprisoned for
 1121 not more than three years or fined \$100,000.00, or both. Any fines imposed shall be paid
 1122 by the officer, director, or employee in his or her individual capacity.

1123 (f) Whenever it appears to the Commissioner that any person has committed a violation
 1124 of Code Section 33-13-3 and which prevents the full understanding of the enterprise risk
 1125 to the insurer by affiliates or by the insurance holding company system, the violation may
 1126 serve as an independent basis for disapproving dividends or distributions and for placing
 1127 the insurer under an order of supervision in accordance with Code Section 33-3-18.

1128 ~~33-13-11~~ 33-13-12.

1129 Whenever it appears to the Commissioner that any person has committed a violation of this
 1130 chapter which so impairs the financial condition of a domestic insurer as to threaten
 1131 insolvency or make the further transaction of business by it hazardous to its policyholders,
 1132 creditors, shareholders, or the public, the Commissioner may proceed as provided in
 1133 Chapter 37 of this title to take possession of the property of the domestic insurer and to
 1134 conduct the business of the domestic insurer.

1135 ~~33-13-12~~ 33-13-13.

1136 Whenever it appears to the Commissioner that any person has committed a violation of this
 1137 chapter which makes the continued operation of an insurer contrary to the interests of
 1138 policyholders or the public, the Commissioner may, after giving notice and an opportunity
 1139 to be heard, determine to suspend, revoke, or refuse to renew the insurer's license or
 1140 authority to do business in this state for any period as he or she finds is required for the
 1141 protection of policyholders or the public. Any determination shall be accompanied by
 1142 specific findings of fact and conclusions of law.

1143 ~~33-13-13~~ 33-13-14.

1144 (a) If an order for the liquidation, rehabilitation, or conservation of an insurer authorized
 1145 to do business in this state is entered under Chapter 37 of this title, the receiver appointed
 1146 under the order shall have a right to recover on behalf of the insurer ~~the amount of~~
 1147 ~~distributions other than stock dividends paid by the insurer on its capital stock at any time~~
 1148 ~~during the five years preceding the petition for liquidation, rehabilitation, or conservation,~~
 1149 ~~subject to the limitations of subsections (b) through (d) of this Code section~~ (i) from any
 1150 parent corporation or holding company or person or affiliate who otherwise controlled the
 1151 insurer, the amount of distributions, other than distributions of shares of the same class of
 1152 stock, paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus,
 1153 termination settlement, or extraordinary lump sum salary adjustment made by the insurer
 1154 or its subsidiary to a director, officer, or employee, where the distribution or payment
 1155 pursuant to (i) or (ii) is made at any time during the one year preceding the petition for
 1156 liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations
 1157 of subsections (b), (c), and (d) of this Code section.

1158 (b) No ~~dividend~~ distribution shall be recoverable if that insurer shows that when paid the
 1159 distribution was lawful and reasonable and that the insurer did not know and could not
 1160 reasonably have known that the distribution might adversely affect the ability of the insurer
 1161 to fulfill the obligations to claimants under its insurance contracts.

1162 (c)(1) Any person who was ~~an affiliate of the insurer~~ a parent corporation or holding
 1163 company or a person who otherwise controlled the insurer or affiliate at the time the
 1164 distributions were paid shall be liable up to the amount of distributions ~~he~~ or payments
 1165 under subsection (a) of this Code section which the person received.

1166 (2) Any person who was ~~an affiliate of the insurer~~ otherwise controlled the insurer at the
 1167 time the distributions were declared shall be liable up to the amount of distributions he
 1168 or she would have received if they had been paid immediately.

1169 (3) If under paragraphs (1) and (2) of this subsection two persons are liable with respect
 1170 to the same distributions, they shall be jointly and severally liable.

1171 (d) The maximum amount recoverable under this Code section shall be:

1172 (1) ~~The~~ the amount needed in excess of all other available assets ~~to pay all claims under~~
 1173 ~~the receivership of the impaired or insolvent insurer to pay the contractual obligations of~~
 1174 ~~the impaired or insolvent insurer and to reimburse any guaranty funds,; and~~

1175 (2) ~~Reduced by any amount already paid to receivers under similar laws of other states.~~

1176 (e) ~~If any person liable under subsection (b) of this Code section is insolvent, all its~~
 1177 ~~affiliates that controlled it at the time the dividend was paid shall be jointly and severally~~
 1178 ~~liable for any resulting deficiency in the amount recovered from the insolvent affiliate. To~~
 1179 the extent that any person liable under subsection (c) of this Code section is insolvent or

1180 otherwise fails to pay claims due from it, its parent corporation or holding company or
 1181 person who otherwise controlled it at the time the distribution was paid, shall be jointly and
 1182 severally liable for any resulting deficiency in the amount recovered from the parent
 1183 corporation or holding company or person who otherwise controlled it.

1184 ~~(f) In addition to any authority of the Commissioner contained elsewhere under this title~~
 1185 ~~or under the laws of this state, whenever the Commissioner shall deem it expedient, he~~
 1186 ~~shall also have the authority to examine either in person or by some examiner duly~~
 1187 ~~authorized by him the affairs, transactions, accounts, records, documents, and assets of any~~
 1188 ~~insurer, person, parent, subsidiary, or affiliate within an insurance holding company system~~
 1189 ~~and any other facts relative to the business methods, management, and affairs of the~~
 1190 ~~insurers, persons, parents, subsidiaries, or affiliates to determine whether any dividends or~~
 1191 ~~other distributions made by an insurer to any person, parent, subsidiary, or affiliate within~~
 1192 ~~the holding company system are recoverable under subsection (b) of this Code section; and~~
 1193 ~~the Commissioner may subpoena any portion or all of the documents, books, accounts,~~
 1194 ~~records, or other information of insurers, persons, parents, subsidiaries, or affiliates as he~~
 1195 ~~may deem necessary to reach his determination. The subpoenas may be obtained by the~~
 1196 ~~Commissioner in accordance with Chapter 2 of this title and the expenses of any~~
 1197 ~~examination made pursuant to this Code section shall be paid by the persons, affiliates,~~
 1198 ~~subsidiaries, or insurers in the same manner as provided for insurers in Chapter 2 of this~~
 1199 ~~title.~~

1200 ~~33-13-14~~ 33-13-15.

1201 (a) Any person aggrieved by any act, determination, rule, regulation, or order or any other
 1202 action of the Commissioner pursuant to this chapter may appeal the action to the Superior
 1203 Court of Fulton County. The court shall conduct its review without a jury and by trial de
 1204 novo, except that, if all parties including the Commissioner so stipulate, the review shall
 1205 be confined to the record. Portions of the record may be introduced by stipulation into
 1206 evidence in a trial de novo as to those parties so stipulating.

1207 (b) The filing of an appeal pursuant to this Code section shall stay the application of any
 1208 such rule, regulation, order, or other action of the Commissioner to the appealing party
 1209 unless the court, after giving the party notice and an opportunity to be heard, determines
 1210 that such a stay would be detrimental to the interests of policyholders, shareholders,
 1211 creditors, or the public.

1212 (c) Any person aggrieved by any failure of the Commissioner to act or make a
 1213 determination required by this chapter may petition the Superior Court of Fulton County
 1214 for a writ in the nature of a mandamus or a peremptory mandamus directing the
 1215 Commissioner to act or make the determination immediately.

1216 ~~33-13-15.~~

1217 ~~Any insurer which willfully violates this chapter may be fined not more than \$10,000.00.~~

1218 ~~Any individual who willfully violates this chapter may be fined not more than \$1,000.00~~

1219 ~~or, if the willful violation involves the deliberate perpetration of a fraud upon the~~

1220 ~~Commissioner, imprisoned not more than two years, or both."~~

1221 **SECTION 2.**

1222 Chapter 21 of Title 33 of the Official Code of Georgia Annotated, relating to health

1223 maintenance organizations, is amended by revising subsection (a) of Code Section 33-21-8,

1224 relating to general powers of health maintenance organizations and filing of notice of

1225 exercise of powers, as follows:

1226 "(a) The powers of a health maintenance organization include, but are not limited to, the
1227 following:

1228 (1) The purchase, lease, construction, renovation, operation, or maintenance of hospitals,
1229 medical facilities, or both, their ancillary equipment, and such property as may
1230 reasonably be required for the organization's principal office or for such other purposes
1231 as may be necessary in the transaction of the business of the organization;

1232 (2) The making of loans to a medical group under contract with it in furtherance of its
1233 program or the making of loans to a corporation or corporations under its control for the
1234 purpose of acquiring or constructing medical facilities and hospitals or in furtherance of
1235 a program providing health care services to enrollees;

1236 (3) The furnishing of health care services through providers which are under contract
1237 with or employed by the organization;

1238 (4) The contracting with any person for the performance on its behalf of certain functions
1239 such as marketing and enrollment;

1240 (5) The contracting with another insurer licensed in this state for the provision of
1241 insurance, indemnity, or reimbursement against the cost of health care services provided
1242 by the organization; ~~and~~

1243 (6) The offering, in addition to basic health care services, of:

1244 (A) Additional health care services;

1245 (B) Indemnity benefits covering out-of-area or emergency services; and

1246 (C) Indemnity benefits, in addition to those relating to out-of-area and emergency
1247 services, provided through insurers; and

1248 (7) The extension of malpractice insurance to a medical group with which it has a
1249 mutually exclusive contract to provide medical services to the enrollees of the health
1250 maintenance organization; provided, however, that coverage only protects against
1251 liability arising from medical care provided to enrollees of the health maintenance

1252 organization who receive medical care at a facility under contract with or owned or
1253 operated by the health maintenance organization."

1254 **SECTION 3.**

1255 All laws and parts of laws in conflict with this Act are repealed.