House Bill 969 (AS PASSED HOUSE AND SENATE)
By: Representatives Smith of the 18th, Williams of the 148th, Erwin of the 28th, Gaines of the 117th, and Gambill of the 15th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 13 of Title 33 of the Official Code of Georgia Annotated, relating to insurance holding company systems, so as to update the regulation of insurance company holding systems per direction from the National Association of Insurance Commissioners; to provide for definitions; to provide guidelines for group capital calculation in insurance company holding systems; to provide guidelines for liquidity stress test framework in insurance company holding systems; to provide standards governing transactions within an insurance holding company system when an insurer is deemed to be in a hazardous financial condition; to provide protections for an affiliate in an insurance holding company system when a domestic insurer is subject to certain proceedings; to provide clarifications on confidentiality and to extend confidentiality protections to third-party consultants designated by the Commissioner; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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SECTION 1.

Chapter 13 of Title 33 of the Official Code of Georgia Annotated, relating to insurance holding company systems, is amended by revising Code Section 33-13-1, relating to definitions, as follows:

"33-13-1.

As used in this article, the term:

(1) 'Affiliate,' including the term 'affiliate of' or 'person affiliated with' a specific person, means a person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the person specified.

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

(3) 'Control,' including the terms 'controlling,' 'controlled by,' and 'under common control with,' means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office held by the person. Control shall be presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (k) of Code Section 33-13-4 that control does not exist in fact. The Commissioner may determine after furnishing all persons in interest notice and opportunity to be heard and after making specific findings of fact to support such determination that control exists in fact, notwithstanding the absence of a presumption to that effect.

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

(4.1)(5) 'Group-wide supervisor' means the regulatory official authorized to engage in
conducting and coordinating group-wide supervision activities who is determined or
acknowledged by the Commissioner under Code Section 33-13-7.1 to have sufficient
significant contacts with an internationally active insurance group.

(6) 'Group capital calculation instructions' mean the group capital calculation instructions
as adopted and amended by the NAIC and as adopted by regulation promulgated by the
Commissioner or as otherwise prescribed by regulation promulgated by the
Commissioner.

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

(6)(8) 'Insurer' shall have the same meaning as set forth in Code Section 33-1-2, except
that it shall not include agencies, authorities, or instrumentalities of the United States, its
possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia,
or a state or political subdivision of a state.

(6.1)(9) 'Internationally active insurance group' means an insurance holding company
system that includes an insurer registered under Code Section 33-13-4 and that meets the
following criteria:

(A) Premiums written in at least three countries;

(B) The percentage of gross premiums written outside the United States is at least 10
percent of the insurance holding company system's total gross written premiums; and

(C) Based on a three-year rolling average, the total assets of the insurance holding
company system are at least $50 billion or the total gross written premiums of the
insurance holding company system are at least $10 billion.

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(10) 'NAIC' means the National Association of Insurance Commissioners.

(11) 'NAIC Liquidity Stress Test Framework' means the separate NAIC publication which includes a history of the NAIC's development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates as adopted and amended by the NAIC and as adopted by regulation by the Commissioner or as otherwise prescribed by regulation promulgated by the Commissioner.

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

(13) 'Scope criteria' as set forth in the NAIC Liquidity Stress Test Framework means the designated exposure bases along with the minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC Liquidity Stress Test Framework for that data year.

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

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

(16) 'Voting security' shall include any security convertible into or evidencing a right to acquire a voting security."

SECTION 2.

Said chapter is further amended by revising Code Section 33-13-3, relating to the acquisition of control of or merger with domestic insurers, as follows:
"33-13-3.

(a) **Filing requirements.**

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

(2) For the purposes of this Code section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the Commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The Commissioner shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the Commissioner, in his or her discretion, determines that confidential treatment will interfere with enforcement of this Code section. If the statement referred to in paragraph (1) of this subsection is otherwise filed, this paragraph shall not apply.

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

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

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

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

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

(B) If the person is not an individual, a report of the nature of its business operations during the past five years or for any lesser periods as the person and any predecessors of such person shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person or who perform or will perform functions appropriate to the positions. The list shall include for each individual the information required by subparagraph (A) of this paragraph;
(2) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for that purpose, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration; provided, however, that where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing the statement so requests;

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party or for any lesser period as the acquiring party and any predecessors of the acquiring party shall have been in existence and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

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

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

(6) The amount of each class of any security referred to in subsection (a) of this Code section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

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

(8) A description of the purchase by any acquiring party of any security referred to in subsection (a) of this Code section during the 12 calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid;

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

(10) Copies of all tender offers for, requests or invitations for tenders of exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a) of this Code section and, if distributed, of additional soliciting material relating thereto;

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

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

(13) An acknowledgment by the person required to file the statement referred to in subsection (a) of this Code section that the person and all subsidiaries within its control in the insurance holding company system will provide information to the Commissioner upon request as necessary to evaluate enterprise risk to the insurer; and
(14) Any additional information as the Commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) of this Code section is a partnership, limited partnership, syndicate, or other group, the Commissioner may require that the information called for by paragraphs (1) through (14) of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member.

If any partner, member, or person is a corporation or the person required to file the statement referred to in subsection (a) of this Code section is a corporation, the Commissioner may require that the information called for by paragraphs (1) through (14) of this subsection shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the corporation. If any material change occurs in the facts set forth in the statement filed with the Commissioner and sent to the insurer pursuant to this Code section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the Commissioner and sent to the insurer within two business days after the person learns of the change.

(c) **Alternate filing materials.** If any offer, request, invitation, agreement, or acquisition referred to in subsection (a) of this Code section is proposed to be made by means of a registration statement under the Securities Act of 1933, in circumstances requiring the disclosure of similar information, under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) of this Code section may utilize the documents in furnishing the information called for by that statement.
(d) **Approval or disapproval by Commissioner; hearings.**

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

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

(B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly. In applying the competitive standard in this subparagraph:

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

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

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

(C) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;

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

(E) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
(F) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

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

(3) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in paragraph (2) of this subsection may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (a) of this Code section. Such person shall file the statement referred to in subsection (a) of this Code section with the National Association of Insurance Commissioners NAIC within five days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of the opt-out within ten days of the receipt of the statement referred to in subsection (a) of this Code section. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the National Association of Insurance Commissioners.
states in which the insurers are domiciled. Such commissioners shall hear and receive
evidence. A commissioner may attend such hearing, in person or by telecommunication.
(4) In connection with a change of control of a domestic insurer, any determination by
the Commissioner that the person acquiring control of the insurer shall be required to
maintain or restore the capital of the insurer to the level required by the laws and
regulations of this state shall be made not later than 60 days after the date of notification
of the change in control submitted pursuant to paragraph (1) of subsection (a) of this
Code section.
(5) The Commissioner may retain at the acquiring person's expense any attorneys,
actuaries, accountants, and other experts not otherwise a part of the Commissioner's staff
as may be reasonably necessary to assist the Commissioner in reviewing the proposed
acquisition of control.
(e) **Exemptions.** This Code section shall not apply to any offer, request, invitation,
agreement, or acquisition which the Commissioner by order shall exempt from this Code
section as not having been made or entered into for the purpose and not having the effect
of changing or influencing the control of a domestic insurer or as otherwise not
comprehended within the purposes of this Code section.
(f) **Violations.** The following shall be violations of this Code section:
(1) The failure to file any statement, amendment, or other material required to be filed
pursuant to subsection (a) or (b) of this Code section; or
(2) The effectuation or any attempt to effectuate an acquisition of control of or merger
with a domestic insurer unless the Commissioner has given approval to the acquisition
of control or merger.
(g) **Jurisdiction; service of process.** The courts of this state are vested with jurisdiction
over every person not resident, domiciled, or authorized to do business in this state who
files a statement with the Commissioner under this Code section and over all actions
involving that person arising out of violations of this Code section; and each person shall
be deemed to have performed acts equivalent to and constituting an appointment by that
person of the Commissioner to be his or her true and lawful attorney upon whom may be
served all lawful process in any action, suit, or proceeding arising out of violations of this
Code section. Copies of all lawful process shall be served on the Commissioner and
transmitted by registered or certified mail or statutory overnight delivery by the
Commissioner to the person at his or her last known address."

SECTION 3.
Said chapter is further amended by revising Code Section 33-13-4, relating to the registration
of insurers belonging to holding company systems, as follows:
"33-13-4.
(a) Requirement of registration generally. Every insurer which is authorized to do
business in this state and which is a member of an insurance holding company system shall
register with the Commissioner, except a foreign insurer subject to disclosure requirements
and standards adopted by statute or regulation in the jurisdiction of its domicile which are
substantially similar to those contained:
(1) In this Code section;
(2) In paragraph (1) of subsection (a), subsection (b), and subsection (d) of Code
Section 33-13-5; and
(3) In either paragraph (2) of subsection (a) of Code Section 33-13-5 or a provision such
as the following: 'Each registered insurer shall keep current the information required to
be disclosed in its registration statement by reporting all material changes or additions
within 15 days after the end of the month in which it learns of each change or addition.'
Any insurer which is subject to registration under this Code section shall register within 15
days after it becomes subject to registration and annually thereafter by April 30 of each
year for the previous calendar year, unless the Commissioner for good cause shown
extends the time for registration, and then within the extended time. The Commissioner

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may require any insurer authorized to do business in this state which is a member of an insurance holding company system, and which is not subject to registration under this Code section, to furnish a copy of the registration statement, the summary specified in subsection (c) of this Code section, or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(b) **Contents of registration statement.** Every insurer subject to registration shall file a registration statement with the Commissioner on a form and in a format prescribed by the National Association of Insurance Commissioners (NAIC) and adopted by regulation promulgated by the Commissioner or as otherwise prescribed by regulation promulgated by the Commissioner, which statement shall contain current information about:

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

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

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

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

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

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

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

(E) All management and service contracts and all cost-sharing arrangements;

(F) Reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements;
(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling
affiliate, for a loan made to any member of the insurance holding company system;
(5) If requested by the Commissioner, financial statements of or within an insurance
holding company system, including all affiliates. Financial statements may include, but
are not limited to, annual audited financial statements filed with the federal Securities and
Exchange Commission pursuant to the federal Securities Act of 1933, as amended, or the
Securities Exchange Act of 1934, as amended. An insurer required to file financial
statements pursuant to this paragraph may satisfy the request by providing the
Commissioner with the most recently filed parent corporation financial statements filed
with the Securities and Exchange Commission;
(6) Other matters concerning transactions between registered insurers and any affiliates
as may be included from time to time in any registration forms adopted or approved by
the Commissioner;
(7) Statements that the insurer's board of directors is responsible for and oversees
corporate governance and internal controls and that the insurer's officers or senior
management have approved, implemented, and continue to maintain and monitor
corporate governance and internal control procedures; and
(8) Any other information required by the Commissioner by rule or regulation.

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

(d) **Disclosure of nonmaterial information.** No information need be disclosed on the
registration statement filed pursuant to subsection (b) of this Code section if the
information is not material for the purposes of this Code section. Unless the Commissioner
by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans,
extensions of credit, or investments involving one-half of 1 percent or less of an insurer's
admitted assets as of December 31 of the preceding year shall not be deemed material for
purposes of this Code section. The definition of materiality provided in this subsection shall not apply for purposes of the group capital calculation or the NAIC Liquidity Stress Test Framework.

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

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

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

(h) **Filing of consolidated registration.** The Commissioner may require or allow two or more affiliated insurers subject to registration under this Code section to file a consolidated registration statement.

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

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

(k) **Filing of disclaimer.** Any person may file with the Commissioner a disclaimer of affiliation with any authorized insurer or the disclaimer may be filed by the insurer or any
member of an insurance holding company system. The disclaimer shall fully disclose all
material relationships and bases for affiliation between the persons and the insurer as well
as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to
have been granted unless the Commissioner, within 30 days following receipt of a
complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of
disallowance, the disclaiming party may request an administrative hearing, which shall be
granted. The disclaiming party shall be relieved of its duty to register under this Code
section if approval of the disclaimer has been granted by the Commissioner, or if the
disclaimer is deemed to have been approved.

(l)(1) Enterprise risk filing. The ultimate controlling person of every insurer subject
to registration shall also file an annual enterprise risk report. The report shall, to the best
of the ultimate controlling person's knowledge and belief, identify the material risks
within the insurance holding company system that could pose enterprise risk to the
insurer. The report shall be filed with the lead state commissioner of the insurance
holding system as determined by the procedures within the Financial Analysis Handbook
adopted by the National Association of Insurance Commissioners NAIC and adopted by
regulation promulgated by the Commissioner or as otherwise prescribed by regulation
promulgated by the Commissioner.

(2) Group capital calculation. Except as provided below, the ultimate controlling
person of every insurer subject to registration shall concurrently file with the registration
an annual group capital calculation as directed by the lead state commissioner. The
report shall be completed in accordance with the NAIC group capital calculation
instructions, which may permit the lead state commissioner to allow a controlling person
that is not the ultimate controlling person to file the group capital calculation. The report
shall be filed with the lead state commissioner of the insurance holding company system
as determined by the Commissioner in accordance with the procedures within the
described below are exempt from filing the group capital calculation:

(A) An insurance holding company system that has only one insurer within its holding company structure, that only writes business and is only licensed in its domestic state, and assumes no business for any other insurer;

(B) An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board. The lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing;

(C) An insurance holding company system whose non-United States group-wide supervisor is located within a reciprocal jurisdiction as described in division (a)(6)(A)(i) of Code Section 33-7-14 that recognizes the United States state regulatory approach to group supervision and group capital;

(D) An insurance holding company system:

(i) That provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC Financial Analysis Handbook; and

(ii) Whose non-United States group-wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified by the Commissioner in regulation, the group capital calculation as the world-wide group capital assessment for United States insurance groups who operate in that jurisdiction;

(E) Notwithstanding the provisions of subparagraphs (C) and (D) of this paragraph, a lead state commissioner shall require the group capital calculation for United States
operations of any non-United States based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace;

(F) Notwithstanding the provisions of subparagraphs (A) and (D) of this paragraph, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in regulation; and

(G) If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this subsection, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.

(3) Liquidity stress test. The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific year's liquidity stress test. The filing shall be made to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC:

(A)(i) The NAIC Liquidity Stress Test Framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the NAIC Financial Stability Task Force or its successor. Any change to the NAIC Liquidity Stress Test Framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when such changes are adopted.

(ii) Insurers meeting at least one threshold of the scope criteria are considered scoped into the NAIC Liquidity Stress Test Framework for the specified data year unless the
lead state insurance commissioner, in consultation with the NAIC Financial Stability
Task Force or its successor, determines the insurer should not be scoped into such
framework for that data year.

(iii) Insurers that do not trigger at least one threshold of the scope criteria are
considered scoped out of the NAIC Liquidity Stress Test Framework for the specified
data year, unless the lead state insurance commissioner, in consultation with the
NAIC Financial Stability Task Force or its successor, determines the insurer should
be scoped into such framework for that data year.

(iv) The lead state insurance commissioner, in consultation with the NAIC Financial
Stability Task Force or its successor, will assess the concern that state regulators wish
to avoid having insurers scoped in and out of the NAIC Liquidity Stress Test
Framework on a frequent basis as part of the determination for an insurer; and

(B) The performance of, and filing of the results from, a specific year's liquidity stress
test shall comply with the NAIC Liquidity Stress Test Framework's instructions and
reporting templates for that year and any lead state insurance commissioner
determinations, in consultation with the NAIC Financial Stability Task Force or its
successor, provided within such framework.

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

SECTION 4.

Said chapter is further amended by revising Code Section 33-13-5, relating to the standards
governing transactions by registered insurers with affiliates generally, extraordinary
distributions, and adequacy of surplus, as follows:
"33-13-5.

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

(A) The terms shall be fair and reasonable;

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

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

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

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

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

(G)(i) If an insurer subject to this article is deemed by the Commissioner to be in a hazardous financial condition based upon standards prescribed by the Commissioner's rules and regulations or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, then the Commissioner may require the insurer to secure and maintain either a deposit, held by the Commissioner, or a bond, as determined by the insurer at the insurer's discretion, for the protection of the insurer for the duration of any contracts or agreements or the existence of the condition for which the Commissioner required the deposit or the bond.

(ii) In determining whether a deposit or a bond is required, the Commissioner should consider whether concerns exist with respect to the affiliated person's ability to fulfill any contracts or agreements if the insurer were to be put into liquidation. Once the
insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, and a deposit or bond is necessary, the Commissioner has discretion to determine the amount of the deposit or bond, not to exceed the value of the contracts or agreements in any one year, and whether such deposit or bond should be required for a single contract, multiple contracts, or a contract only with a specified person or persons;

(H)(i) All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to control of the insurer, are identifiable, and are segregated or readily capable of segregation, at no additional cost to the insurer, for all other persons' records and data. This includes all records and data that are otherwise the property of the insurer, in whatever form maintained, including but not limited to: claims and claims files; policyholder lists; application files; litigation files; premium records; rate books; underwriting manuals; personnel records; financial records; and similar records within the possession, custody, or control of the affiliate.

(ii) At the request of the insurer, the affiliate shall provide that the receiver can: obtain a complete set of all records of any type that pertain to the insurer's business; obtain access to the operational systems on which the data is maintained; obtain the software that runs those systems either through assumption of licensing agreements or otherwise; and restrict the use of the data by the affiliate if it is not operating the insurer's business. The affiliate shall provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliates' default under a lease other agreement; and

(I) Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. Any right of offset in the event an insurer is placed into receivership shall be subjected to Chapter 37 of this title.
(2) The following transactions involving a domestic insurer and any person in its holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this Code section, which are subject to any materiality standards contained in subparagraphs (A) through (G) of this paragraph, may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into such transaction at least 30 days prior thereto, or such shorter period as the Commissioner may permit, and the Commissioner has not disapproved it within such period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within 30 days after a termination of a previously filed agreement, to the Commissioner for determination of the type of filing required, if any:

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

(B) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the insurer making such loans or extensions of credit to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit, provided such transactions are equal to or exceed: with respect to nonlife insurers, the lesser of 3 percent of the insurer's admitted assets or 25 percent of surplus with regard to policyholders; or with respect to life insurers, 3 percent of the insurer's admitted assets; each as of December 31 next preceding;
(C) Reinsurance agreements or modifications thereto, including:

(i) All reinsurance pooling agreements; and

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

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

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

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

(G) Any material transactions, specified by regulation, which the Commissioner determines may adversely affect the interests of the insurer's policyholders.
Nothing contained in this paragraph shall be deemed to authorize or permit any transactions which, in the case of an insurer that is not a member of the same holding company system, would be otherwise contrary to law.

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

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

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

(6)(A) Any affiliate that is party to an agreement or contract with a domestic insurer that is subject to subparagraph (a)(2)(D) of this Code section shall be subject to the jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed pursuant to Chapter 37 of this title for the purpose of interpreting, enforcing, and overseeing the affiliates' obligations under the agreement or contract to perform services for the insurer that:

(i) Are an integral part of the insurer's operations, including but not limited to: management; administration; accounting; data processing; marketing; underwriting; claims handling; investment; and any other similar functions; or
(ii) Are essential to the insurer's ability to fulfill its obligations under insurance 
policies.

(B) The Commissioner may require that an agreement or contract pursuant to 
subparagraph (a)(2)(D) of this Code section for the provision of services described in 
divisions (i) and (ii) of subparagraph (A) of this paragraph specify that the affiliate 
consents to the jurisdiction as set forth in this paragraph.

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

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

(3) In determining whether a dividend or distribution is extraordinary, an insurer other 
than a life insurer may carry forward net income from the previous two calendar years 
that has not already been paid out as dividends. This carry-forward shall be computed 
by taking the net income from the second and third preceding calendar years, not 
including realized capital gains, less dividends paid in the second and immediate 
preceding calendar years.
(4) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until the Commissioner has approved the payment of such a dividend or distribution or the Commissioner has not disapproved such payment within the 30 day period referred to in paragraph (1) of this subsection.

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

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

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

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

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

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

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

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

(8) The surplus with regard to policyholders maintained by other comparable insurers;

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

(10) The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus with regard to policyholders whenever in the judgment of the Commissioner the investment so warrants.”
SECTION 5.

699 Said chapter is further amended by revising Code Section 33-13-8, relating to confidentiality of information and documents obtained during examinations or investigations, sharing certain information, not delegation of regulatory authority or rule making, and responsibility for enforcement, as follows:

701 "33-13-8.

(a)(1) Documents, materials, or other information in the possession or control of the department that are obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation made pursuant to Code Section 33-13-6 and all information reported or provided to the department pursuant to paragraphs (12) and (13) of subsection (b) of Code Section 33-13-3 and Code Sections 33-13-4, 33-13-5, and 33-13-7.1 are recognized by this state as being proprietary and to contain trade secrets, and shall be confidential by law and privileged, shall not be subject to public disclosure under Article 4 of Chapter 18 of Title 50, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the Commissioner, after giving the insurer and its affiliates that would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event the Commissioner may publish all or any part in such manner as may be deemed appropriate.

(2) For purposes of the information reported and provided to the department pursuant to paragraph (2) of subsection (l) of Code Section 33-13-4, the Commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within

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the calculation and any group capital information received from an insurance holding
company supervised by the Federal Reserve Board or any United States group-wide
supervisor.

(3) For purposes of the information reported and provided to the department pursuant to
paragraph (3) of subsection (l) of Code Section 33-13-4, the Commissioner shall maintain
the confidentiality of the liquidity stress test results and supporting disclosures and any
liquidity stress test information received from an insurance holding company supervised
by the Federal Reserve Board and non-United States group-wide supervisors.

(b) Neither the Commissioner nor any person who received documents, materials, or other
information while acting under the authority of the Commissioner or with whom such
documents, materials, or other information are shared pursuant to this article shall be
permitted or required to testify in any private civil action concerning any confidential
documents, materials, or other information subject to subsection (a) of this Code section.

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

(1) May share documents, materials, or other information, including the confidential and
privileged documents, materials, or other information subject to subsection (a) of this
Code section, and including proprietary and trade secret documents and materials, with
other state, federal, and international regulatory agencies, with the National Association
of Insurance Commissioners and its affiliates and subsidiaries, and with NAIC, any
third-party consultant designated by the Commissioner, and state, federal, and
international law enforcement authorities, including members of any supervisory college
described in Code Section 33-13-7, provided that the recipient agrees in writing to
maintain the confidentiality and privileged status of the document, material, or other
information and has verified in writing the legal authority to maintain confidentiality;

(2) Notwithstanding paragraph (1) of this subsection, may only share confidential and
privileged documents, materials, or other information reported pursuant to paragraph (1)
of subsection (l) of Code Section 33-13-4 with commissioners of states having statutes
or regulations substantially similar to subsection (a) of this Code section and who have agreed in writing not to disclose such information;

(3) May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries including proprietary and trade secret information from the NAIC and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information; and

(4) Shall enter into written agreements with the National Association of Insurance Commissioners NAIC and any third-party consultant designated by the Commissioner governing sharing and use of information provided pursuant to this article consistent with this subsection that shall:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries NAIC or a third-party consultant designated by the Commissioner pursuant to this article, including procedures and protocols for sharing by the National Association of Insurance Commissioners NAIC with other state, federal, and international regulatory agencies. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain such confidentiality;

(B) Specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries NAIC or a third-party consultant designated by the Commissioner pursuant to this article remains with the Commissioner and that the National Association of Insurance Commissioners' NAIC's
or designated third-party consultant's use of the information is subject to the direction of the Commissioner;

(C) Excluding documents, materials, or information reported pursuant to paragraph (3) of subsection (I) of Code Section 33-13-4, prohibit the NAIC or a third-party consultant designated by the Commissioner from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;

(D)(E) Require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners NAIC or a third-party consultant designated by the Commissioner pursuant to this article is subject to a request or subpoena to the National Association of Insurance Commissioners NAIC or a third-party consultant designated by the Commissioner for disclosure or production; and

(D)(E) Require the National Association of Insurance Commissioners and its affiliates and subsidiaries NAIC or a third-party consultant designated by the Commissioner to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners and its affiliates and subsidiaries NAIC or a third-party consultant designated by the Commissioner may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries NAIC or a third-party consultant designated by the Commissioner pursuant to this article; and

(F) For documents, materials, or information reporting pursuant to paragraph (3) of subsection (I) of Code Section 33-13-4, in the case of an agreement with a third-party consultant designated by the Commissioner, provide for notification of the identity of the consultant to the applicable insurers.

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

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

(f) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners NAIC or a third-party consultant designated by the Commissioner pursuant to this article shall be confidential by law and privileged, shall not be subject to the open records laws, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(g) The group capital calculation and resulting group capital ratio required under paragraph (2) of subsection (l) of Code Section 33-13-4 and the liquidity stress test along with its results and supporting disclosures required under paragraph (3) of subsection (l) of Code Section 33-13-4 are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance company systems generally. Therefore, except as otherwise may be required under the provisions of this article, the making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be
misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the Commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement."

SECTION 6.

This Act shall become effective on July 1, 2022.

SECTION 7.

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