

IC 27-1-23

Chapter 23. Regulation of Insurance Holding Company Systems

IC 27-1-23-1

Definitions

Sec. 1. As used in this chapter, the following terms shall have the respective meanings set forth in this section, unless the context shall otherwise require:

(a) An "acquiring party" is the specific person by whom an acquisition of control of a domestic insurer or of any corporation controlling a domestic insurer is to be effected, and each person who directly, or indirectly through one (1) or more intermediaries, controls the person specified.

(b) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(c) A "beneficial owner" of a voting security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, revocable or irrevocable proxy, or otherwise has or shares:

(1) voting power including the power to vote, or to direct the voting of, the security; or

(2) investment power which includes the power to dispose, or to direct the disposition, of the security.

(d) "Commissioner" means the insurance commissioner of this state.

(e) "Control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the beneficial 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. Control shall be presumed to exist if any person beneficially owns ten percent (10%) or more of the voting securities of any other person. The commissioner may determine this presumption has been rebutted only by a showing made in the manner provided by section 3(k) of this chapter that control does not exist in fact, after giving all interested persons notice and an opportunity to be heard. Control shall be presumed again to exist upon the acquisition of beneficial ownership of each additional five percent (5%) or more of the voting securities of the other person. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(f) "Department" means the department of insurance created by IC 27-1-1-1.

(g) A "domestic insurer" is an insurer organized under the laws of

this state.

(h) "Earned surplus" means an amount equal to the unassigned funds of an insurer as set forth in the most recent annual statement of an insurer that is submitted to the commissioner, excluding surplus arising from unrealized capital gains or revaluation of assets.

(i) "Enterprise risk" means an activity, circumstance, event, or series of events that involves at least one (1) affiliate 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 the insurer's insurance holding company system as a whole, including an activity, circumstance, event, or series of events that would cause the:

- (1) insurer's risk based capital to fall into company action level under IC 27-1-36; or
- (2) insurer to be in hazardous financial condition subject to IC 27-1-3-7 and rules adopted under IC 27-1-3-7.

(j) An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer.

(k) "Insurer" has the same meaning as set forth in IC 27-1-2-3, except that it does not include:

- (1) 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; or
- (2) nonprofit medical and hospital service associations.

The term includes a health maintenance organization (as defined in IC 27-13-1-19) and a limited service health maintenance organization (as defined in IC 27-13-1-27).

(l) "NAIC" refers to the National Association of Insurance Commissioners.

(m) "Supervisory college" means a temporary or permanent forum:

- (1) comprised of regulators, including other state, federal, and international regulators, responsible for the supervision of:
 - (A) a domestic insurer that is part of an insurance holding company system that has international operations;
 - (B) an insurance holding company system described in clause (A); or
 - (C) an affiliate of:
 - (i) a domestic insurer described in clause (A); or
 - (ii) an insurance holding company system described in clause (B); and
- (2) established to facilitate communication and cooperation between the regulators described in subdivision (1).

(n) A "person" is 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 securities broker performing no more than the usual and customary broker's function.

(o) A "policyholder" of a domestic insurer includes any person who owns an insurance policy or annuity contract issued by the domestic insurer, any person reinsured by the domestic insurer under a reinsurance contract or treaty between the person and the domestic insurer, and any health maintenance organization with which the domestic insurer has contracted to provide services or protection against the cost of care.

(p) A "subsidiary" of a specified person is an affiliate controlled by that person directly or indirectly through one or more intermediaries.

(q) "Surplus" means the total of gross paid in and contributed surplus, special surplus funds, and unassigned surplus, less treasury stock at cost.

(r) "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

(Formerly: Acts 1971, P.L.387, SEC.1.) As amended by Acts 1981, P.L.244, SEC.1; P.L.26-1991, SEC.8; P.L.8-1993, SEC.416; P.L.130-1994, SEC.28; P.L.116-1994, SEC.38; P.L.26-1994, SEC.9; P.L.2-1995, SEC.100; P.L.203-2001, SEC.5; P.L.81-2012, SEC.12.

IC 27-1-23-1.5

Dividend payments; notice; content

Sec. 1.5. (a) A domestic insurer that is a member of an insurance holding company system may not pay a dividend unless the insurer notifies the department of the dividend and the department receives the notice from the insurer:

- (1) not more than five (5) business days after the declaration of the dividend or distribution; and
- (2) at least ten (10) days before the payment of the dividend or distribution.

(b) A notice provided by an insurer under subsection (a) must contain information indicating that the surplus of the insurer as regards policyholders will be:

- (1) reasonable in relation to the outstanding liabilities of the insurer; and
- (2) adequate to the financial needs of the insurer;

following the payment of the dividend.

(c) After receiving a notice from an insurer under this section, the department shall promptly consider the information set forth in the notice under subsection (b). In the department's consideration of the information, the department shall apply the factors set forth in section 4(f) of this chapter.

As added by P.L.130-1994, SEC.29 and P.L.116-1994, SEC.39.

IC 27-1-23-2

Acquisition of domestic insurance company; statement to commissioner; hearings; notice; approval; exceptions; process

Sec. 2. (a) No person other than the issuer shall commence a tender offer for or a request or invitation for tenders of, or enter into any agreement to purchase or exchange securities for, or otherwise

seek to acquire, or acquire, in the open market or otherwise, or solicit proxies relating to, any voting security of a domestic insurer or of any corporation controlling a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of such insurer, and no person shall enter into an agreement to acquire control of a domestic insurer or of any corporation controlling a domestic insurer unless, at the time any such offer, request, or invitation is commenced or any such agreement is entered into, or any such solicitation is begun, or prior to the acquisition of such securities if no offer or agreement is involved:

- (1) each acquiring party has filed with the commissioner and has sent to such insurer and any such controlling corporation a statement containing the information required by this section;
- (2) the offer, request, invitation, agreement, solicitation, or acquisition has been approved by the commissioner; and
- (3) two (2) business days have elapsed following the commissioner's determination approving the offer, request, invitation, agreement, solicitation, or acquisition;

all in the manner prescribed in this section.

(b) Unless a statement described in subsection (a) is otherwise filed, the following apply to an acquisition or a divestiture of a person's controlling interest in a domestic insurer:

- (1) If a controlling person of a domestic insurer seeks to divest the person's controlling interest, the person shall:
 - (A) file with the commissioner a confidential notice of the person's proposed divestiture at least thirty (30) days before the person ceases control; and
 - (B) send a copy of the filing required by clause (A) to the insurer.
- (2) The commissioner shall determine whether a person:
 - (A) described in subdivision (1); or
 - (B) that seeks to acquire a controlling interest in a domestic insurer;

is required to obtain from the commissioner approval of the divestiture or acquisition.

- (3) Information obtained by the commissioner under this subsection is confidential until the conclusion of the divestiture or acquisition unless the commissioner determines that maintaining confidentiality of the information interferes with enforcement of this section.

(c) A statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:

- (1) The name and address of the acquiring party.
- (2) If the acquiring party is an individual, the individual's principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years.
- (3) If the acquiring party is not an individual, a report of the

nature of its business operations during the past five (5) years or for such lesser period as the acquiring party and any predecessors thereof shall have been in existence, including, but not limited to:

- (A) information relating to the acquisition or disposition of control by the acquiring party of any other person and any subsequent material change in the financial condition, management, organization, or operations of such other person;
 - (B) an informative description of the business intended to be done by the acquiring party and its affiliates;
 - (C) any plans or proposals for the conduct of the business or employment of the assets and surplus of the domestic insurer and any corporation controlling such insurer;
 - (D) an informative description of any transaction in which the acquiring party received, employed, or used any affiliate's assets;
 - (E) an informative description of any transaction or presently proposed transaction between the acquiring party and any of its affiliates in which either such acquiring party or such affiliate has a direct or indirect material interest; however, no information need be given as to any such transaction where the amount involved in the transaction or series of similar transactions, including all periodic payments or installments in the case of any lease or agreement providing for periodic payments or installments, does not or would not exceed one hundred thousand dollars (\$100,000); and
 - (F) a list of all individuals who are or who have been selected to become directors or officers of the acquiring party, or who perform or will perform functions appropriate to such positions, such list to include for each such individual the information required by subdivision (2).
- (4) The source, nature, and amount of the consideration to be used in effecting the acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of the insurer's subsidiaries or controlling affiliates), all documents evidencing, supporting, referring to, or relating to any such transaction and the identity of persons who are furnishing or who will furnish such consideration.
- (5) Fully audited financial information as to the earnings and financial condition of the acquiring party for its preceding five (5) fiscal years (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.
- (6) Any plans or proposals which the acquiring party may have to liquidate such domestic insurer or such controlling corporation, to sell its assets or merge or consolidate it with any

person, or to make any other material change in its investment policy, business, corporate structure, or management.

(7) The number of shares of any security referred to in subsection (a) which the acquiring party proposes to acquire, the terms of the proposed offer, request, invitation, agreement, or acquisition referred to in subsection (a), and a statement as to the method by which the terms of the proposal were arrived at.

(8) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the acquiring party.

(9) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) in which the acquiring party proposes to be or 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. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been or will be entered into.

(10) A description of the purchase of any security referred to in subsection (a) during the twelve (12) calendar months preceding the filing of the statement by the acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(11) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve (12) calendar months preceding the filing of the statement by the acquiring party, or by anyone, based upon interviews or at the suggestion of such acquiring party.

(12) Copies of the proposed forms 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), and of the proposed form of additional soliciting material relating thereto.

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

(14) A full description of any existing or proposed contracts, arrangements, or understandings between the acquiring party and any present or former director, officer, or employee of the domestic insurer or of any corporation controlling such insurer. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been or will be entered into.

(15) Copies of all studies, analyses, and reports which were prepared by or for the acquiring party or any affiliate of the acquiring party for the purpose of evaluating or analyzing the proposed acquisition of control with respect to market shares, competition, competitors, markets, and potential for growth or expansion into product or geographic markets.

(16) If the acquiring party or any affiliate of the acquiring party is an insurer:

(A) the amount of any premiums, deposits, or annuity considerations received by the insurer during each of the last five (5) fiscal years (calculated on an accrual basis) for each line of insurance business conducted in any section of this state, and copies of annual statements for each of the last five (5) fiscal years filed by any such insurer with the insurance regulatory authority of its domiciliary jurisdiction;

(B) a full and complete description of any direct or indirect reinsurance relationship between the acquiring party or any affiliate of the acquiring party and the domestic insurer or any affiliate of the domestic insurer, together with copies of any treaties or contracts relating to that relationship; and

(C) such additional information as the commissioner may by rule or order prescribe as necessary or appropriate to enable the commissioner to make the determination required by subsection (f)(2).

(17) An agreement that a person required to obtain the commissioner's approval of a statement described in subsection (a) will file an annual enterprise risk report described in section 3(1) of this chapter as long as the person continues to hold a controlling interest in the domestic insurer.

(18) An acknowledgment that:

(A) a person described in subdivision (17); and

(B) any subsidiary in the insurance holding company system that is within the person's control;

will, upon the commissioner's request, provide to the commissioner information that the commissioner considers necessary to evaluate enterprise risk to the domestic insurer.

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

If any material change occurs in the facts set forth in a statement filed with the commissioner and sent to the insurer and any controlling corporation under this section, an amendment made under oath or affirmation 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 and any controlling corporation within two (2) business days after any acquiring party learns of this change.

(d) If any acquiring party is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subsection (c)(1) through (c)(19) shall be

given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, person, or acquiring party is a corporation, the commissioner may require that the information called for by subsection (c)(1) through (c)(19) shall be given with respect to all individuals who are or have been selected to become directors or officers of any such corporation or who perform or will perform functions appropriate to these positions.

(e) If the proposed acquisition of control referred to in subsection (a) requires the filing of a registration statement under the federal Securities Act of 1933 (15 U.S.C. 77a-15 U.S.C. 77aa) or requires the disclosure of similar information under the federal Securities Exchange Act of 1934 (15 U.S.C. 78a-15 U.S.C. 78kk) or under a state law requiring similar registration or disclosure, an acquiring party may utilize such documents in furnishing the information called for by the statement.

(f) The commissioner shall hold a public hearing on the proposed acquisition of control referred to in subsection (a) and shall thereafter approve such acquisition of control only if the commissioner finds, by a preponderance of the evidence, that:

(1) the acquisition of control would not tend to affect adversely the contractual obligations of the domestic insurer or its ability and tendency to render service in the future to its policyholders and the public;

(2) the effect of the acquisition of control would not be substantially to lessen competition in any line of insurance business in any section of this state or tend to create a monopoly therein;

(3) the financial condition of any acquiring party is not such as might jeopardize the financial stability of the domestic insurer or of any corporation controlling such insurer, or prejudice the interest of its policyholders;

(4) the plans or proposals which any acquiring party has to liquidate the domestic insurer or any such controlling corporation, sell its assets or consolidate or merge it with any person, or to make any other material change in its investment policy, business, corporate structure, or management are fair and reasonable to policyholders of the domestic insurer and in the public interest; and

(5) the competence, experience, and integrity of those persons who would control the operation of the domestic insurer are such that the acquisition of control would not tend to affect adversely the general capacity or intention of the domestic insurer to transact the business of insurance in a safe and prudent manner.

(g) For the purposes of the commissioner's application of the competitive standard set forth in subsection (f)(2) to a proposed acquisition:

(1) the acquiring person must file a pre-acquisition notification

that meets the requirements set forth in section 2.5(e) of this chapter;

(2) the commissioner shall apply the provisions of section 2.5(h) of this chapter; and

(3) the commissioner may not disapprove the acquisition based upon the application of subsection (f)(2) if the commissioner finds that either of the conditions set forth in section 2.5(i) of this chapter applies to the proposed acquisition.

(h) The public hearing referred to in subsection (f) shall be held within sixty (60) days after all statements required by subsection (a) are filed, or within such longer period after the statements are filed as the commissioner determines upon a showing of good cause therefor, in the city of Indianapolis at such place, date, and time as the commissioner shall specify. At least thirty (30) days written notice of the hearing shall be given by the commissioner to each acquiring party, the domestic insurer, any corporation controlling such insurer, and to other persons as the commissioner may designate. In the event that an amendment to any such statement is filed, the hearing shall be postponed for a further period not to exceed sixty (60) days after the filing of such amendment, or for such longer period after the amendment is filed as the commissioner determines upon a showing of good cause therefor. If the proposed acquisition of control requires the approval of the commissioners of more than one (1) state, the public hearing may be held on a consolidated basis upon the request of the person that files the statement described in subsection (a). The person shall file the statement with the NAIC not more than five (5) days after the person makes the request for a public hearing. The commissioner of a state may opt out of a consolidated hearing by notifying the person not more than ten (10) days after receiving the statement described in subsection (a). A hearing conducted on a consolidated basis must be public and held in the United States before the commissioners of the domiciliary states of the insurers. The commissioners shall hear and receive evidence and may attend in person or by telecommunication.

(i) The commissioner shall give notice of the hearing by publication in a newspaper of general circulation in the city of Indianapolis, and in the city wherein is located the principal office of the domestic insurer, and in such other city or cities as the commissioner may deem appropriate. Any policyholder of the domestic insurer who makes a written request to the commissioner is entitled to a copy of all statements, amendments, or other material filed with the commissioner by any acquiring party.

(j) The commissioner may retain at the acquiring party'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. All hearing expenses, including transcript costs, expenses of publication and of preparing and mailing material to policyholders, shall be borne equally by each acquiring party. As security for the payment of such expenses, each acquiring party shall file with the

commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(k) At such hearing, each acquiring party, the domestic insurer, any corporation controlling such insurer, policyholders of the domestic insurer, and any other person whose interests may be affected by the proposed acquisition of control shall have the right to appear and become party to the proceeding. Each such person 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 provided in the Indiana Rules of Trial Procedure. The commissioner may employ any sanction or power granted courts in the Indiana Rules of Trial Procedure, excluding the power of contempt, to enforce the commissioner's discovery rulings or orders. The commissioner shall make a determination within thirty (30) days after the conclusion of such hearing and shall immediately upon making that determination notify all persons who appeared and became parties to the proceeding of that determination. To permit an aggrieved party to perfect an appeal under IC 27-1-23-12, no offer, request, invitation, agreement, or acquisition referred to in subsection (a) may be commenced, entered into, or consummated until two (2) business days have elapsed following the commissioner's determination approving an acquisition of control.

(l) If the commissioner determines that a person acquiring control of a domestic insurer is required to maintain or restore the capital of the insurer to the level required by Indiana law, the person shall, not later than sixty (60) days after the closing date of the acquisition, file with the commissioner evidence that the capital has been maintained or restored to that level.

(m) Except as otherwise provided in this section, the hearing and the determination made therein shall be subject to IC 4-21.5-3.

(n) The provisions of this section shall not apply to the following:

(1) Any transaction to be undertaken under a statutory procedure for the purchase of dissenting shareholder's stock.

(2) Any transaction to be undertaken under a judicially approved reorganization.

(3) Any offer, request, invitation, agreement, solicitation, or acquisition respecting any security of a domestic insurer or of any corporation controlling such insurer if any acquiring party, immediately prior to such offer, request, invitation, agreement, solicitation, or acquisition being commenced, entered into, begun, or consummated, beneficially owns more than fifty percent (50%) of all the outstanding voting securities of such domestic insurer or corporation controlling such insurer.

(4) Any solicitation of proxies respecting any security of a domestic insurer or of any corporation controlling a domestic insurer that is undertaken by the management or the board of directors of the issuer of the security for purposes other than effecting, directly or indirectly, a transaction that would otherwise be subject to the requirements of this section.

(5) Any offer, request, invitation, agreement, solicitation, or acquisition respecting a security of a non-insurance corporation controlling one (1) or more domestic insurers if all of the following conditions are met:

(A) the offer, request, invitation, agreement, solicitation, or acquisition has been approved by the insurance regulatory authority of any state or territory of the United States of America other than Indiana, and the insurance regulatory authority of the state or territory has been accredited by the National Association of Insurance Commissioners;

(B) the domestic insurer or insurers meet all of the following conditions, determined in accordance with generally accepted accounting principles:

(i) the investments in and advances to the domestic insurer or insurers by the controlling non-insurance corporation and its other subsidiaries equal less than ten percent (10%) of the total assets of the controlling non-insurance corporation and all of its subsidiaries consolidated as of the end of the most recently completed fiscal year;

(ii) the proportionate share of the controlling non-insurance corporation and its other subsidiaries in the total assets (after intercompany eliminations) of the domestic insurer or insurers equals less than ten percent (10%) of the total assets of the controlling non-insurance corporation and all of its subsidiaries consolidated as of the end of the most recently completed fiscal year; and

(iii) the equity of the controlling non-insurance corporation and its other subsidiaries in the income from continuing operations before income taxes, extraordinary items, and the cumulative effect of a change in accounting principle of the domestic insurer or insurers is less than ten percent (10%) of the income of that corporation and all of its subsidiaries consolidated for the end of the most recently completed fiscal year; and

(C) the commissioner has not determined that the application of this section to the offer, request, invitation, agreement, solicitation, or acquisition is necessary or appropriate for the protection of policyholders of the domestic insurer or insurers.

(6) Any acquisition of stock of a former mutual by a parent company, as those terms are defined in IC 27-15-1, that occurs in connection with the conversion of a mutual insurance company to a stock insurance company under IC 27-15, provided that no person acquires control of the parent company.

(o) The courts of this state are hereby vested with jurisdiction over every acquiring party not resident, domiciled, or authorized to do business in this state, and over all actions involving each such acquiring party arising out of violations of this section, and each such acquiring party shall be deemed to have performed acts equivalent to and constituting an appointment by the acquiring party of the

commissioner to be the acquiring party's true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such acquiring party at the acquiring party's last known address.

(Formerly: Acts 1971, P.L.387, SEC.1.) As amended by Acts 1979, P.L.252, SEC.1; Acts 1981, P.L.244, SEC.2; P.L.2-1987, SEC.38; P.L.26-1991, SEC.9; P.L.130-1994, SEC.30; P.L.116-1994, SEC.40; P.L.94-1999, SEC.2; P.L.81-2012, SEC.13.

IC 27-1-23-2.5

Acquisitions in which there is a change in control of an insurer; preacquisition notification; waiting period; competitive standards; violations; order; penalties

Sec. 2.5. (a) The following definitions apply throughout this section:

(1) "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person. The term includes the acquisition of voting securities, and the acquisition of assets, assumption reinsurance, and mergers.

(2) "Involved insurer" includes an insurer that:

- (A) acquires;
- (B) is acquired;
- (C) is affiliated with an acquirer;
- (D) is affiliated with an acquired; or
- (E) is the result of a merger.

(b) Except as provided in subsection (c), this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in Indiana.

(c) This section does not apply to the following:

- (1) An acquisition subject to approval or disapproval by the commissioner under section 2 of this chapter.
- (2) A purchase of securities solely for investment purposes, so long as those securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under section 1(e) of this chapter, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and this disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of Indiana.
- (3) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if a pre-acquisition notification is filed with the commissioner in accordance with subsection (d) at least thirty (30) days before the proposed

effective date of the acquisition. However, a pre-acquisition notification is not required for an exclusion from this section if the acquisition would otherwise be excluded from this section by any other subdivision of this subsection.

(4) The acquisition of persons already affiliated with the acquirer.

(5) An acquisition if, as an immediate result of the acquisition:

(A) in no market would the combined market share of the involved insurers exceed five percent (5%) of the total market;

(B) there would be no increase in any market share; or

(C) in no market would the combined market share of the involved insurers:

(i) exceed twelve percent (12%) of the total market; or

(ii) increase by more than two percent (2%) of the total market.

(6) An acquisition for which a pre-acquisition notification would be required under this section due solely to the resulting effect on the ocean marine insurance line of business.

(7) An acquisition of an insurer, if:

(A) the domiciliary commissioner of the insurer affirmatively finds that:

(i) the insurer is in failing condition;

(ii) there is a lack of feasible alternatives to improving that condition; and

(iii) the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and

(B) those findings are communicated by the domiciliary commissioner to the commissioner of Indiana.

For the purposes of this subsection, a "market" means the total direct written insurance premium of all insurers providing insurance in Indiana for a particular line of business, as reported in the annual statements required to be filed by insurers licensed to do business in Indiana.

(d) An order pursuant to subsection (j) may be entered with respect to an acquisition to which this section applies unless the acquiring person files a pre-acquisition notification with respect to the acquisition and the waiting period referred to in subsection (f) has expired. An acquired person may also file a pre-acquisition notification with respect to an acquisition. Information in pre-acquisition notifications filed under this section is confidential and protected from disclosure under section 6 of this chapter.

(e) A pre-acquisition notification filed under this section must be in the form and must contain the information prescribed by the National Association of Insurance Commissioners with respect to markets that meet the description set forth in subsection (c)(5), causing an acquisition not to be exempted from the provisions of this section. The commissioner may require additional material and

information that the commissioner considers necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard set forth in subsection (g). The required information may include an opinion of an economist as to the competitive impact of the acquisition in Indiana, accompanied by a summary of the education and experience of the economist, indicating the economist's ability to render an informed opinion.

(f) The waiting period required with respect to a proposed acquisition begins on the day when the commissioner receives a pre-acquisition notification and ends:

- (1) on the thirtieth day after the day the commissioner receives the notification; or
- (2) upon the commissioner's termination of the waiting period, if earlier.

Before the end of the waiting period, the commissioner, on a one-time basis, may require the submission of additional needed information relevant to the proposed acquisition. If the commissioner requests additional information under this subsection, the waiting period ends on the earlier of the thirtieth day after receipt of the additional information by the commissioner or the termination of the waiting period by the commissioner.

(g) The commissioner may enter an order under subsection (j) with respect to an acquisition if:

- (1) there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in Indiana or to tend to create a monopoly in any line of insurance in Indiana; or
- (2) the insurer fails to file adequate information in compliance with subsections (d) and (e).

(h) In determining whether a proposed acquisition to which this section applies would violate the competitive standard set forth in subsection (g), the commissioner shall consider the following:

(1) An acquisition to which this section applies that involves two (2) or more insurers competing in the same market is prima facie evidence of a violation of the competitive standard:

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

- (i) Insurer A a share of four percent (4%) and insurer B a share of 4% or more.
- (ii) Insurer A a share of ten percent (10%) and insurer B a share of two percent (2%) or more.
- (iii) Insurer A a share of fifteen percent (15%) and insurer B a share of one percent (1%) or more.

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

- (i) Insurer A a share of five percent (5%) and insurer B a share of five percent (5%) or more.
- (ii) Insurer A a share of ten percent (10%) and insurer B a share of four percent (4%) or more.
- (iii) Insurer A a share of fifteen percent (15%) and insurer

B a share of three percent (3%) or more.

(iv) Insurer A a share of nineteen percent (19%) and insurer B a share of one percent (1%) or more.

For the purposes of this subdivision, a highly concentrated market is a market in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not referred to in this subdivision must be interpolated proportionately to the percentages that are referred to in this subdivision. If more than two (2) insurers are involved in a proposed acquisition, exceeding the total of the two (2) figures set forth for insurer A and insurer B in an item set forth in this subdivision is prima facie evidence of violation of the competitive standard set forth in subsection (g). For the purpose of this subdivision, the insurer with the largest share of the market shall be considered to be insurer A.

(2) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years before the acquisition up to the time of the acquisition. Any acquisition or merger to which this section applies involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standard set forth in subsection (g) if:

(A) there is a significant trend toward increased concentration in the market;

(B) one (1) of the insurers involved is one (1) of the insurers in a grouping of those large insurers showing the requisite increase in the market share; and

(C) the market share of another involved insurer is two percent (2%) or more.

(3) For the purposes of this subsection:

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

(B) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets with respect to an acquisition, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners, and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business that is used in the annual statement required to be filed by insurers doing business in Indiana, and the relevant geographical market is assumed to be Indiana.

(C) The burden of showing prima facie evidence of a

violation of the competitive standard rests upon the commissioner.

(4) Even though an acquisition is not prima facie violative of the competitive standard under subdivisions (1) and (2), the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under subdivisions (1) and (2), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subdivision include, but are not limited to, the following:

- (A) Market shares.
- (B) Volatility of ranking of market leaders.
- (C) Number of competitors.
- (D) Concentration and trend of concentration in the industry.
- (E) Ease of entry into and exit from the market.

(i) An order may not be entered under subsection (j) if:

- (1) the acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits that would arise from those economies exceed the public benefits that would arise from not lessening competition; or
- (2) the acquisition will substantially increase the availability of insurance, and the public benefits of that increase exceed the public benefits that would arise from not lessening competition.

(j) If an acquisition violates the standards set forth in this section, the commissioner may enter an order:

- (1) requiring an involved insurer to cease and desist from doing business in Indiana with respect to the line or lines of insurance involved in the violation; or
- (2) denying the application of an acquired or acquiring insurer for a license to do business in Indiana.

(k) An order may not be entered under subsection (j) unless:

- (1) there is a hearing;
- (2) notice of the hearing is issued before the end of the waiting period and not less than fifteen (15) days before the hearing; and
- (3) the hearing is concluded and the order is issued not more than sixty (60) days after the end of the waiting period.

Every order shall be accompanied by a written decision of the commissioner setting forth the commissioner's findings of fact and conclusions of law.

(l) An order entered under subsection (j) shall not become final less than thirty (30) days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon that plan or other information, the commissioner shall specify the conditions, if any, under which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the

order vacated or modified, and the time period within which those aspects would have to remedied.

(m) An order entered under subsection (j) does not apply if the acquisition to which the order applies is not consummated.

(n) A person who violates a cease and desist order issued by the commissioner under subsection (j) while that order is in effect may, after notice and hearing under IC 4-21.5 and upon order of the commissioner, be subject at the discretion of the commissioner to any one (1) or more of the following:

(1) A civil penalty of not more than ten thousand dollars (\$10,000) for each day of violation.

(2) The suspension or revocation of the person's license.

(3) Both a monetary penalty under subdivision (1) and the suspension or revocation of the person's license under subdivision (2).

(o) An insurer or other person who fails to make any filing required by this section and also fails to demonstrate a good faith effort to comply with that filing requirement is subject to a civil penalty of not more than fifty thousand dollars (\$50,000).

(p) Sections 8(b), 8(c), and 10 of this chapter do not apply to an acquisition to which this section applies.

As added by P.L.26-1991, SEC.10.

IC 27-1-23-2.6

Primary and subsidiary companies

Sec. 2.6. (a) As used in this section, "entity" means:

- (1) a sole proprietorship;
- (2) a corporation;
- (3) a limited liability company;
- (4) a partnership;
- (5) an association;
- (6) a joint stock company;
- (7) a mutual fund;
- (8) a joint venture;
- (9) a trust;
- (10) a joint tenancy;
- (11) an unincorporated organization; or
- (12) a similar entity.

(b) As used in this section, "primary company" means a domestic insurance company that beneficially owns more than fifty percent (50%) of one (1) or more subsidiary companies.

(c) As used in this section, "subsidiary company" means an entity of which more than fifty percent (50%) is beneficially owned by an insurance company.

(d) As used in this section, "total investment of the primary company" means the total of:

- (1) a direct investment by a primary company in an asset; plus
- (2) the primary company's proportionate share of an investment made by a subsidiary company of the primary company.

The primary company's proportionate share must be determined by

multiplying the amount of the subsidiary company's investment by the percentage of the primary company's ownership interest in the subsidiary company.

(e) A primary company may, independently or in cooperation with another person, organize or acquire one (1) or more subsidiary companies.

(f) A subsidiary company of a primary company may conduct business of any kind, and the authority to conduct the business is not limited because of the status of the subsidiary company as a subsidiary company of the primary company.

(g) In addition to investments in common stock, preferred stock, debt obligations, and other securities as permitted under IC 27-1-12-2 or IC 27-1-13-3, a primary company to which this section applies may, directly or through one (1) or more subsidiary companies, also do the following:

(1) Invest in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiary companies, amounts that in total do not exceed the lesser of ten percent (10%) of the primary company's admitted assets or fifty percent (50%) of the primary company's surplus as regards policyholders, if, after the investments, the primary company's surplus as regards policyholders is reasonable in relation to the primary company's outstanding liabilities and adequate to the primary company's financial needs. In calculating the amount of investments permitted under this subdivision:

(A) investments, whether made directly or through one (1) or more subsidiary companies, in domestic or foreign insurance subsidiary companies and health maintenance organizations must be excluded; and

(B) to the extent that expenditures relate to an investment other than an investment described in clause (A), the following must be included:

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

(ii) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary company subsequent to the subsidiary company's acquisition or formation.

(2) Notwithstanding subdivision (1), invest an amount in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiary companies engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the primary company, if the subsidiary company agrees to limit the subsidiary company's investment in an asset so that, when

combined with the investments of the primary company, the total investment of the primary company will not exceed the investment limitations described in subdivision (1) or in any applicable provision of IC 27-1-12-2 or IC 27-1-13-3.

(3) Notwithstanding subdivision (1), with the prior approval of the commissioner, invest a greater amount in common stock, preferred stock, debt obligations, or other securities of one (1) or more subsidiary companies, if, after the investment, the primary company's surplus as regards policyholders is reasonable in relation to the primary company's outstanding liabilities and adequate to the primary company's financial needs.

(h) Investments that are made under this section in common stock, preferred stock, debt obligations, or other securities of a subsidiary company are not subject to restrictions or prohibitions under IC 27-1-12-2 or IC 27-1-13-3 that otherwise apply to investments of primary companies.

(i) Before a primary company to which this section applies makes an investment described in subsection (g), a primary company shall make a determination regarding whether the proposed investment meets the applicable requirements by determining the applicable investment limitations as though the investment has been made, considering:

(1) the currently outstanding principal balance on previous investments in debt obligations; and

(2) the value of previous investments in equity securities as of the day that the investments in equity securities were made;

net of any return of capital invested.

(j) If a primary company ceases to control a subsidiary company, the primary company shall dispose of any investment in the subsidiary company made under this section not more than:

(1) three (3) years from the time of the cessation of control; or

(2) the period determined appropriate by the commissioner;

unless the investment meets the requirements for investment under any applicable provision of IC 27-1-12-2 or IC 27-1-13-3 and the primary company has notified the commissioner that the investment meets the requirements.

(k) A primary company, at the time of establishing a subsidiary company, must possess:

(1) assets of not less than twenty-five million dollars (\$25,000,000); or

(2) not less than three million five hundred thousand dollars (\$3,500,000) of:

(A) combined capital and surplus in the case of a stock company; and

(B) surplus in the case of a mutual company.

(l) The department has the power to:

(1) conduct periodic examinations of a subsidiary company;

(2) require reports that reflect the effect of the condition and operation of a subsidiary company on the financial condition of

a primary company; and

(3) make additional examinations or require other reports with respect to a subsidiary company that are necessary to carry out the purposes of this section.

A noninsurance subsidiary company shall annually furnish the department financial statements that are prepared under generally accepted accounting principles and certified by an independent certified public accountant and the department may rely on the statements. If a subsidiary company conducts the business of the subsidiary company in a manner that clearly tends to impair the capital or surplus fund of the primary company, or otherwise makes the operation of the primary company financially unsafe, the department may act under IC 27-1-3-19 with respect to the primary company.

(m) A primary company and a subsidiary company shall, in all respects, stand before the law as separate and distinct companies and neither company is liable to the creditors, policyholders, or stockholders of the other company, acts or omissions of an officer, director, stockholder, or member of either company notwithstanding.

(n) The board of directors and officers of a primary company and a subsidiary company may be identical. However, the affairs of each company shall be carried on separate and distinct from the other company.

(o) A foreign subsidiary company shall be treated in the same manner as other foreign companies, except that the treatment may be withheld or suspended with respect to a subsidiary company that is domiciled in a state that does not treat a:

(1) primary company; or

(2) subsidiary company;

that is domiciled in Indiana in a manner equal to a foreign or domestic company doing business in the other state.

(p) Interests in a subsidiary company that are owned by a primary company must be registered in the name of the primary company except for shares that are required under Indiana law to be registered in the name of another person.

As added by P.L.126-2001, SEC.3.

IC 27-1-23-3

Registration statement; amendments; termination; disclaimer of affiliation; enterprise risk reports; civil penalty

Sec. 3. (a) 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 in:

(1) this section;

(2) section 4(a) and 4(c) of this chapter; and

(3) section 4(b) of this chapter 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 fifteen (15) days after the end of the month in which it learns of each such change or addition.

Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by March 15 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of an insurance holding company system but not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(b) Every insurer subject to registration shall file a registration statement on a form prescribed by the commissioner, which shall contain current information about all of the following:

(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 that are currently outstanding or that have occurred during the last calendar year between such insurer and its affiliates:

(i) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) 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;

(v) all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles; and

(vi) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding insurer;

(vii) dividends and other distributions to shareholders; and

(viii) 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 the insurance holding company system, the parent corporation of the insurer, or all affiliates, including annual audited financial statements filed with the federal Securities and Exchange

Commission under the Securities Act of 1933 or the federal Securities Exchange Act of 1934, both as amended.

(6) Statements reflecting that the insurer's:

(A) board of directors oversees corporate governance and internal controls; and

(B) officers or senior management have approved and implemented and maintain and monitor corporate governance and internal control procedures.

(7) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms prescribed by the commissioner.

(8) Other information that the commissioner requires under rules adopted under IC 4-22-2.

(c) Every registration statement must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one per cent (1%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(e) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms prescribed by the commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition.

(f) A person within an insurance holding company system subject to registration under this chapter shall provide complete and accurate information to an insurer when that information is reasonably necessary to enable the insurer to comply with this chapter.

(g) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is subject to the provisions of this section.

(h) The commissioner may require or allow two (2) or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

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

(j) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of this section.

(k) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such disclaimer. A disclaimer of affiliation is considered to have been granted unless the commissioner, less than thirty (30) days after receiving a disclaimer, notifies the person filing the disclaimer that the disclaimer is disallowed. The commissioner shall disallow such disclaimer only after furnishing all parties in interest with notice and opportunity to be heard.

(l) The person that ultimately controls an insurer that is subject to registration shall file with the lead state commissioner of the insurance holding company system (as determined by the procedures in the Financial Analysis Handbook adopted by the NAIC) an annual enterprise risk report that identifies, to the best of the person's knowledge, the material risks within the insurance holding company system that could pose enterprise risk to the insurer.

(m) The commissioner may impose on a person a civil penalty of one hundred dollars (\$100) per day that the person fails to file, within the period specified, a:

(1) registration statement; or

(2) summary of a registration statement or enterprise risk filing; required by this section. The commissioner shall deposit a civil penalty collected under this subsection in the department of insurance fund established by IC 27-1-3-28.

(Formerly: Acts 1971, P.L.387, SEC.1.) As amended by Acts 1981, P.L.244, SEC.3; P.L.26-1991, SEC.11; P.L.81-2012, SEC.14.

IC 27-1-23-4

Material transactions; standards; prohibitions; review; notice; financial status; payment of extraordinary dividends; shareholder distributions; civil penalty

Sec. 4. (a) Material transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(1) The terms shall be fair and reasonable.

(2) Agreements concerning cost sharing services and management must include provisions required by the commissioner in rules adopted under IC 4-22-2.

(3) The charges or fees for services performed shall be reasonable.

(4) The expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(5) The books, accounts, and records of each party as to all

transactions described in this subsection shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including accounting information necessary to support the reasonableness of the charges or fees to the respective parties.

(6) The insurer's surplus as regards policyholders following any transactions with affiliates or shareholder dividend shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in its insurance holding company system (including amendments or modifications to affiliate agreements previously filed under this chapter) that are subject to any materiality standards described in subdivisions (1) through (5) may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period:

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided those transactions are equal to or exceed:

(A) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and

(B) with respect to life insurers, three percent (3%) of the insurer's admitted assets;

each as of December 31 next preceding.

(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes those 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, provided those transactions are equal to or exceed:

(A) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and

(B) with respect to life insurers, three percent (3%) of the insurer's admitted assets;

each as of December 31 next preceding.

(3) Reinsurance agreements or modifications thereto, including:

(A) reinsurance pooling agreements; and

(B) agreements under which:

(i) a reinsurance premium;

(ii) a change in the insurer's liabilities; or

(iii) the projected reinsurance premium;

in any of the immediately succeeding three (3) years equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next preceding,

including those agreements that 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 (1) or more affiliates of the insurer.

(4) Management agreements, service contracts, cost-sharing arrangements, lease agreements, and tax allocation agreements.

(5) Material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

This subsection does not authorize or permit any transactions that, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law. Notice concerning amendments or modifications of a transaction must include the reasons for the change and the financial impact on the domestic insurer. Not more than thirty (30) days after an agreement that was previously filed under this section is terminated, the domestic insurer shall send written notice of the termination to the commissioner. The commissioner shall determine whether a filing concerning the termination is required and shall notify the domestic insurer of the commissioner's determination.

(c) A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the insurance 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.

(d) The commissioner, in reviewing transactions pursuant to subsection (b), shall consider whether the transactions comply with the standards set forth in subsection (a) and whether the transactions may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in that corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

(f) For purposes of this chapter, in determining whether an insurer's surplus 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 as regards policyholders maintained by other comparable insurers in respect of the factors described in subdivisions (1) through (7).

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

(10) The quality and liquidity of investments in subsidiaries, except that the commissioner may discount or treat any such investment in subsidiaries as a disallowed asset for purposes of determining the adequacy of surplus whenever in the commissioner's judgment such investment so warrants.

(11) The quality of the earnings of the insurer and the extent to which the reported earnings of the insurer include extraordinary items.

(g) No domestic insurer subject to registration under section 3 of this chapter shall pay an extraordinary dividend or make any other extraordinary distribution to its security holders until:

(1) thirty (30) days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment; or

(2) the commissioner shall have approved such payment within such thirty (30) day period.

(h) For purposes of subsection (g), an extraordinary dividend or distribution is any dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions made within the twelve (12) consecutive months ending on the date on which the proposed dividend or distribution is scheduled to be made, exceeds the greater of:

(1) ten percent (10%) of such insurer's surplus as regards policyholders as of the most recently preceding December 31; or

(2) 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, for the twelve (12) month period ending on the most recently preceding December 31.

(i) Notwithstanding any other provision of law, a domestic insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, but such a declaration shall confer no rights upon shareholders until:

(1) the commissioner has approved the payment of such dividend or distribution; or

(2) the commissioner has not disapproved the payment within the thirty (30) day period referred to in subsection (g).

(j) The commissioner may impose a civil penalty of five thousand dollars (\$5,000) on a person who fails to file a transaction as required by this section. The commissioner shall deposit a civil penalty collected under this subsection in the department of insurance fund established by IC 27-1-3-28.

(Formerly: Acts 1971, P.L.387, SEC.1.) As amended by Acts 1981,

P.L.244, SEC.4; P.L.26-1991, SEC.12; P.L.130-1994, SEC.31; P.L.116-1994, SEC.41; P.L.11-2011, SEC.17; P.L.81-2012, SEC.15.

IC 27-1-23-5

Examination of registered insurer records; liability for expenses; noncompliance

Sec. 5. (a) Subject to the limitations contained in this section and in addition to the powers which the commissioner has under the insurance laws of this state relating to the examination of insurers, the commissioner shall have the power to do the following:

(1) Examine an insurer registered under section 3 of this chapter, and affiliates of the insurer, to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by:

- (A) the person who ultimately controls the insurer;
- (B) one (1) or more other persons within the insurance holding company system; or
- (C) the insurance holding company system;

on a consolidated basis.

(2) Order any insurer registered under section 3 of this chapter to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner shall have the power to examine such insurer or affiliates to obtain such information.

(b) The commissioner shall exercise the commissioner's power under subsection (a) only if the examination of the insurer under the insurance laws of this state is deemed inadequate for the purposes of this chapter or if the interests of the policyholders of such insurer may be adversely affected.

(c) The commissioner may order an insurer registered under section 3 of this chapter to produce information that is not in the possession of the insurer if the insurer is able to obtain the information under contractual relationships, statutory obligations, or another method. If the insurer is unable to obtain the information, the insurer shall provide to the commissioner a detailed explanation of the reason for the insurer's inability and the identity of the person that holds the information. If the commissioner determines that the detailed explanation is without merit, the commissioner may:

- (1) after notice and hearing, impose on the insurer a civil penalty of not more than one thousand dollars (\$1,000) for each day that the insurer does not produce the information; or
- (2) suspend or revoke the insurer's certificate of authority.

The commissioner shall deposit a civil penalty collected under this subsection in the department of insurance fund established by IC 27-1-3-28.

(d) The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be reasonably

necessary to assist in the conduct of the examination under subsection (a). Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(e) Each registered insurer producing for examination records, books, and papers pursuant to subsection (a) shall be liable for and shall pay the expense of such examination.

(f) If an insurer fails to comply with an order under this section, the commissioner may:

- (1) examine affiliates of the insurer to obtain information;
- (2) issue subpoenas;
- (3) administer oaths; and
- (4) examine under oath any person;

to determine compliance with this section. The commissioner may petition a court with jurisdiction for an order to compel a person that refuses to comply with a subpoena to testify or produce evidence. A witness who testifies under this section is entitled to the same compensation as the compensation to which a witness is entitled under IC 34, which must be paid by the insurer that is under examination.

(Formerly: Acts 1971, P.L.387, SEC.1.) As amended by Acts 1981, P.L.244, SEC.5; P.L.26-1991, SEC.13; P.L.81-2012, SEC.16.

IC 27-1-23-5.1

Supervisory college

Sec. 5.1. (a) The commissioner may participate in a supervisory college for a domestic insurer that is part of an insurance holding company system that has international operations, and any affiliate of the insurer, to do the following:

- (1) Determine whether the insurer or affiliate is in compliance with this chapter.
- (2) Assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes that apply to the insurer or affiliate.
- (3) Examine the insurer or affiliate.

(b) The powers of the commissioner under subsection (a) include the following:

- (1) Initiation of the establishment of the supervisory college.
- (2) Clarification of the membership and participation of other supervisors in the supervisory college.
- (3) Clarification of the functions of the supervisory college and the role of other regulators, including the establishment of a group supervisor.
- (4) Coordination of the activities of the supervisory college, including planning meetings and information sharing procedures.
- (5) Establishment of a crisis management plan.

(c) An insurer that is described in subsection (a) shall pay the commissioner's reasonable expenses of participation in a supervisory college, including travel expenses. The commissioner may establish

a regular assessment to the insurer for payment of the expenses.

(d) The commissioner may enter into agreements in accordance with the requirements that apply to an agreement entered into with the NAIC under section 6 of this chapter to specify the activities of the commissioner and other regulators participating in the supervisory college.

(e) This section does not delegate to a supervisory college a commissioner's authority to regulate or supervise the insurer described in subsection (a) or the insurer's affiliates within the commissioner's jurisdiction.

As added by P.L.81-2012, SEC.17.

IC 27-1-23-6

Confidential and privileged information; sharing of information; requirements

Sec. 6. (a) Documents, materials, and 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 section 5 of this chapter and all information reported pursuant to sections 2(c)(17), 2(c)(18), 3, and 4 of this chapter are confidential and privileged and shall not be subject to subpoena, discoverable, or admissible in evidence in a private civil action. However, the commissioner may use the documents, materials, and other information in the performance of the commissioner's duties as described in subsections (c) and (d). The commissioner shall not make the materials, documents, 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 who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as the commissioner considers appropriate.

(b) The commissioner and any other person:

- (1) who receives documents, materials, or other information while acting under the authority of the commissioner; or
- (2) with whom the documents, materials, or other information are shared;

under this chapter is not permitted or required to testify in a private civil action concerning any documents, materials, or other information that is confidential under subsection (a).

(c) The commissioner may do the following:

- (1) Except as provided in subdivision (2), share documents, materials, and other information described in this section with the following if the recipient agrees in writing, and provides written verification that the recipient has the legal authority, to maintain the confidential and privileged status of the documents, materials, and other information:

- (A) Other state, federal, and international regulatory

agencies.

(B) The NAIC and affiliates and subsidiaries of the NAIC.

(C) State, federal, and international law enforcement authorities.

(D) Members of a supervisory college described in section 5.1 of this chapter.

(2) With respect to confidential and privileged documents, materials, and other information reported under section 3(l) of this chapter, share the documents, materials, and other information with commissioners who:

(A) regulate insurance in states with a law that is substantially similar to subsection (a); and

(B) have agreed in writing not to disclose the documents, materials, or other information.

(3) Receive documents, materials, or other information from:

(A) the NAIC and affiliates and subsidiaries of the NAIC;

(B) regulatory and law enforcement officials of domestic or foreign jurisdictions;

if the commissioner maintains the confidential or privileged status of the documents, materials, and other information that are received with notice or the understanding that the documents, materials, and other information are confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, and other information.

(d) The commissioner shall enter into written agreements with the NAIC governing sharing and use of information provided under this chapter, including the following:

(1) Procedures and protocols concerning the confidentiality and security of information shared:

(A) with the NAIC and affiliates and subsidiaries of the NAIC under this chapter; and

(B) by the NAIC with other state, federal, and international regulators.

(2) A statement that, with respect to information shared with and used by the NAIC and affiliates and subsidiaries of the NAIC under this chapter:

(A) the commissioner maintains ownership of the information; and

(B) the use of the information is subject to the direction of the commissioner.

(3) A requirement that, if confidential information of an insurer that is in the possession of the NAIC under this chapter is subject to a request or subpoena to the NAIC for production or disclosure, the NAIC will provide prompt notice to the insurer.

(4) A requirement that the NAIC and affiliates and subsidiaries of the NAIC will allow intervention by an insurer in a judicial or administrative action under which the NAIC or affiliates or subsidiaries of the NAIC may be required to disclose confidential information concerning the insurer that has been shared with the NAIC or affiliates or subsidiaries of the NAIC

under this chapter.

(e) The sharing of information by the commissioner under this chapter is not considered to be a delegation of regulatory authority. The commissioner is solely responsible for the administration, implementation, and enforcement of this chapter.

(f) Disclosure to or sharing by the commissioner of documents, materials, or other information under this chapter is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information.

(g) Documents, materials, and other information in the possession or control of the NAIC under this section are:

- (1) confidential;
- (2) privileged;
- (3) not subject to subpoena; and
- (4) not discoverable or admissible in evidence in a private civil action.

(Formerly: Acts 1971, P.L.387, SEC.1.) As amended by Acts 1981, P.L.244, SEC.6; P.L.26-1991, SEC.14; P.L.81-2012, SEC.18.

IC 27-1-23-7

Rules and orders

Sec. 7. The commissioner may adopt, under IC 4-22-2, such rules and orders as are necessary to carry out this chapter, including emergency rules under IC 4-22-2-37.1.

(Formerly: Acts 1971, P.L.387, SEC.1.) As amended by Acts 1981, P.L.244, SEC.7; P.L.26-1991, SEC.15.

IC 27-1-23-8

Enjoining violations; seizure or sequestration of securities

Sec. 8. (a) Whenever it appears to the commissioner that any person has committed or is about to commit a violation of this chapter or of any rule or order issued by the commissioner hereunder, the commissioner may apply to the circuit court for the county in which such person resides or, in the case of a corporation or other entity, has its principal office, or if such person has no such residence or office in this state then to the circuit court of Marion County, for an order enjoining such person from violating or continuing to violate this chapter or any such rule or order, and for such other equitable relief as the nature of the case and the interests of policyholders or the public may require.

(b) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of a domestic insurer or any

corporation controlling such insurer or unless the courts of this state have so ordered. If a domestic insurer, any corporation controlling such insurer or the commissioner has reason to believe that any security of the domestic insurer or any corporation controlling such insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule or order issued by the commissioner hereunder, the domestic insurer, any corporation controlling such insurer or the commissioner may apply to the circuit court of Marion County or to the circuit court of the county in which the domestic insurer or corporation controlling such insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition commenced, entered into, or consummated in contravention of this chapter or any rule or order issued by the commissioner under this chapter, to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the domestic insurer's policyholders or the public may require.

(c) In any case where a person has acquired or is proposing to acquire securities in violation of this chapter or any rule or order issued by the commissioner hereunder, the circuit court of Marion County or the circuit court of the county in which the domestic insurer or any corporation controlling such insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the domestic insurer, any corporation controlling such insurer or the commissioner, seize or sequester any such securities owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this chapter. Notwithstanding any other provision of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers and corporations controlling such insurers shall be deemed to be in this state.

(d) Violation of this chapter or any rule or order issued by the commissioner under this chapter shall be deemed to be irreparable harm for the purpose of obtaining any form of equitable relief.

(Formerly: Acts 1971, P.L.387, SEC.1.) As amended by Acts 1981, P.L.244, SEC.8.

IC 27-1-23-9

Repealed

(Repealed by Acts 1981, P.L.244, SEC.12.)

IC 27-1-23-10

Seizure of property of domestic insurer

Sec. 10. Whenever it appears to the commissioner that any person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders or the public, the commissioner may proceed as provided in the insurance laws of this state to take possession of the

property of such domestic insurer and to conduct the business thereof. A determination made under this section must be accompanied by specific findings of fact and conclusions of law. (Formerly: Acts 1971, P.L.387, SEC.1.) As amended by Acts 1981, P.L.244, SEC.9; P.L.26-1991, SEC.16.

IC 27-1-23-10.5

Receiver's right to recover upon liquidation or rehabilitation

Sec. 10.5. (a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer:

- (1) from any parent corporation or holding company or person or affiliate that otherwise controlled the insurer, the amount of distributions other than distributions of shares of the same class of stock paid by the insurer on the insurer's capital stock; or
- (2) any payment in the form of a bonus, a termination settlement, or an extraordinary lump sum salary adjustment made by the insurer or the insurer's subsidiaries to a director, an officer, or an employee;

if the distribution or payment described in subdivision (1) or (2) is made at any time during the one (1) year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (b), (c), and (d).

(b) A distribution is not recoverable if the parent or affiliate shows that, when paid, the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill the insurer's contractual obligations.

(c) Any person that was a parent corporation or holding company or a person that otherwise controlled the insurer or affiliate at the time distributions described in subsection (a) were paid shall be liable up to the amount of distributions or payments under subsection (a) that the person received. Any person that otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions the person would have received if the distributions had been paid immediately. If at least two (2) persons are liable with respect to the same distributions, they are jointly and severally liable.

(d) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(e) To the extent that any person liable under subsection (c) is insolvent or otherwise fails to pay claims due from the person, the person's parent corporation or holding company or the person that otherwise controlled the person at the time the distribution was paid is jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person that otherwise controlled the person.

As added by P.L.130-1994, SEC.32 and P.L.116-1994, SEC.42.

IC 27-1-23-11

Denial, suspension, or revocation of license or authority to do business

Sec. 11. Whenever it appears to the commissioner that any person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public.

(Formerly: Acts 1971, P.L.387, SEC.1.)

IC 27-1-23-12

Review of actions of commissioner; stay; mandamus

Sec. 12. (a) Any person aggrieved by any agency action of the commissioner pursuant to this chapter may petition for judicial review thereof in accordance, so far as practical, with IC 4-21.5-5.

(b) Notwithstanding IC 4-21.5-5, the filing of a petition for review of the commissioner's determination approving an acquisition of control under section 2 of this chapter shall stay the application of any such determination or other action of the commissioner unless the court to which the petition is directed, after giving the petitioner notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders or the public.

(c) Any person aggrieved by any failure of the commissioner to act or make a determination required by this chapter may bring an action for mandate in the circuit court of Marion County to compel the commissioner to act or make such determination forthwith.

(Formerly: Acts 1971, P.L.387, SEC.1.) As amended by Acts 1981, P.L.244, SEC.10; P.L.7-1987, SEC.141.

IC 27-1-23-13

Application of chapter

Sec. 13. This chapter, while independent in its enactment of any other law, shall be supplemental to the Indiana Insurance Law (IC 27-1-2 through IC 27-1-20). All provisions of IC 27-1-2 through IC 27-1-20 shall be fully and completely applicable to this chapter in the same manner as if the provisions of this chapter had been an original part of IC 27-1-2 through IC 27-1-20. This chapter shall be controlling in the event there exists any conflict between this chapter and IC 27-1-2 through IC 27-1-20.

(Formerly: Acts 1971, P.L.387, SEC.1.) As amended by Acts 1981, P.L.244, SEC.11.