

FIRST REGULAR SESSION

SENATE BILL NO. 205

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PARSON.

Read 1st time January 7, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0598S.011

AN ACT

To repeal sections 382.010, 382.040, 382.050, 382.060, 382.080, 382.095, 382.110, 382.160, 382.170, 382.180, 382.190, 382.195, 382.220, and 382.230, RSMo, and to enact in lieu thereof seventeen new sections relating to insurance holding companies, with a penalty provision.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 382.010, 382.040, 382.050, 382.060, 382.080, 382.095, 382.110, 382.160, 382.170, 382.180, 382.190, 382.195, 382.220, and 382.230, RSMo, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 382.010, 382.040, 382.050, 382.060, 382.080, 382.095, 382.110, 382.160, 382.170, 382.175, 382.180, 382.190, 382.195, 382.220, 382.225, 382.230, and 382.277, to read as follows:

382.010. As used in sections 382.010 to 382.300, the following words and terms have the meanings indicated unless the context clearly requires otherwise:

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

(2) [The term] "Control", [including the terms] "controlling", "controlled by" [and], **or** "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 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 with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with power to vote, or holds

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 proxies representing, ten percent or more of the voting securities of any other
15 person. This presumption may be rebutted by a showing made in the manner
16 provided by section 382.170 that control does not exist in fact. The director may
17 determine, after furnishing all persons in interest notice and opportunity to be
18 heard and making specific findings of fact to support such determination, that
19 control exists in fact, notwithstanding the absence of a presumption to that effect;

20 (3) [The term] "Director" [means], the director of the department of
21 insurance, financial institutions and professional registration, his **or her**
22 deputies, or the department of insurance, financial institutions and professional
23 registration, as appropriate;

24 (4) **"Enterprise risk", any activity, circumstance, event, or series**
25 **of events involving one or more affiliates of an insurer that, if not**
26 **remedied promptly, is likely to have a material adverse effect upon the**
27 **financial condition or liquidity of the insurer or its insurance holding**
28 **company system as a whole including, but not limited to, anything that**
29 **would cause the insurer's risk-based capital to fall into company action**
30 **level as set forth in section 375.1255 or would cause the insurer to be**
31 **in hazardous financial condition as set forth in section 375.539;**

32 (5) [An] "Insurance holding company system" [consists of] , two or more
33 affiliated persons, one or more of which is an insurer;

34 [(5) The term] (6) "Insurer" [means], an insurance company as defined
35 in section 375.012, including a reciprocal or interinsurance exchange, and which
36 is qualified and licensed by the department of insurance, financial institutions
37 and professional registration of Missouri to transact the business of insurance in
38 this state; but it shall not include any company organized and doing business
39 under [chapters] **chapter 377, 378 or 380, agencies, authorities, or**
40 **instrumentalities of the United States, its possessions and territories,**
41 **the Commonwealth of Puerto Rico, the District of Columbia, or a state**
42 **or political subdivision of a state;**

43 [(6) A] (7) "Person" [is], an individual, corporation, **limited liability**
44 **company**, partnership, association, joint stock company, [business] trust,
45 unincorporated organization, or any similar entity, or any combination of the
46 foregoing acting in concert, but [is not any securities broker performing no more
47 than the usual and customary broker's function] **shall not include any joint**
48 **venture partnership exclusively engaged in owning, managing, leasing,**
49 **or developing real or tangible personal property;**

50 [(7)] (8) A "securityholder" of a specified person is one who owns any

51 security of that person, including common stock, preferred stock, debt obligations,
52 and any other security convertible into or evidencing the right to acquire any of
53 the foregoing;

54 ~~[(8)]~~ **(9)** A "subsidiary" of a specified person is an affiliate controlled by
55 that person directly, or indirectly through one or more intermediaries;

56 ~~[(9)]~~ **(10)** The term "voting security" includes any security convertible
57 into or evidencing a right to acquire a voting security.

382.040. **1.** No person other than the issuer shall commence a tender
2 offer for or a request or invitation for tenders of, or enter into any agreement to
3 exchange securities for, seek to acquire, or acquire, in the open market or
4 otherwise, any voting security of a domestic insurer if, after the consummation
5 thereof, he **or she** would, directly or indirectly, or by conversion or by exercise
6 of any right to acquire, be in control of the insurer, and no person shall enter into
7 an agreement to merge with or otherwise to acquire control of a domestic insurer
8 unless, at the time the offer, request, or invitation is commenced or the
9 agreement is entered into, or prior to the acquisition of the securities if no offer
10 or agreement is involved, he **or she** has filed with the director and has sent to
11 the insurer a statement containing the information required by section 382.050
12 and the offer, request, invitation, agreement or acquisition has been approved by
13 the director in the manner prescribed by sections 382.010 to 382.300.

14 **2. For purposes of sections 382.040 to 382.090, any controlling**
15 **person of a domestic insurer seeking to divest its controlling interest**
16 **in the domestic insurer in any manner shall file with the director, with**
17 **a copy to the insurer, confidential notice of its proposed divestiture at**
18 **least thirty days prior to the cessation of control. The director shall**
19 **determine those instances in which the party or parties seeking to**
20 **divest or to acquire a controlling interest in an insurer shall be**
21 **required to file for and obtain approval of the transaction. The**
22 **information shall remain confidential until the conclusion of the**
23 **transaction. If the statement referred to in subsection 1 of this section**
24 **is otherwise filed, the provisions of this subsection shall not apply.**

25 **3. With respect to a transaction subject to this section, the**
26 **acquiring person shall also file a preacquisition notification with the**
27 **director which shall contain the information set forth in subsection 3**
28 **of section 382.095. A failure to file the notification may be subject to**
29 **the penalties specified in subsection 7 of section 382.095.**

30 **4. For purposes of this section, a domestic insurer shall include any**

31 person controlling a domestic insurer unless such person, as determined by the
32 director, is either directly or through its affiliates primarily engaged in business
33 other than the business of insurance; however, such person shall file a
34 preacquisition notification with the director containing the information set forth
35 in section 382.095 thirty days prior to the proposed effective date of the
36 acquisition. Any person who fails to file the preacquisition notification required
37 by this section shall be subject to the penalties provided in subsection 5 of section
38 382.095. For the purposes of sections 382.040, 382.050, 382.060, 382.070, 382.080
39 and 382.090, "person" shall not include any securities broker holding, in the usual
40 and customary broker's function, less than twenty percent of the voting securities
41 of an insurance company or of any person which controls an insurance company.

382.050. 1. The statement to be filed with the director shall be made
2 under oath or affirmation and shall contain the following [information]:

3 (1) The name and address of each person hereinafter called "acquiring
4 party" by whom or on whose behalf the merger or other acquisition of control
5 referred to in section 382.040 is to be effected, and

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

9 (b) If that person is not an individual, a report of the nature of its
10 business operations during the past five years or for such lesser period as that
11 person and any predecessors thereof have been in existence;

12 (c) An informative description of the business intended to be done by that
13 person and its subsidiaries; and

14 (d) A list of all individuals who are or who have been selected to become
15 directors or executive officers of such person, or who perform or will perform
16 functions appropriate to such positions. The list shall include for each such
17 individual the information required by paragraph (a) of subdivision (1) of
18 subsection 1 of this section;

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

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

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

37 (5) The number of shares of any security referred to in section 382.040
38 which each acquiring party proposes to acquire;

39 (6) The terms of the proposed offer, request, invitation, agreement, or
40 acquisition referred to in section 382.040, and a statement as to the method by
41 which the fairness of the proposal was arrived at;

42 (7) The amount of each class of any security referred to in section 382.040
43 which is beneficially owned or concerning which there is a right to acquire
44 beneficial ownership by each acquiring party;

45 (8) A full description of any contracts, arrangements or understandings
46 with respect to any security referred to in section 382.040 in which any acquiring
47 party proposes to be or is involved, including but not limited to transfer of any
48 of the securities, joint ventures, loan or option arrangements, puts or calls,
49 guarantees of loans, guarantees against loss or guarantees of profits, division of
50 losses or profits, or the giving or withholding of proxies. Such description shall
51 identify the persons with whom such contracts, arrangements or understandings
52 have been or will be entered into;

53 (9) A description of the purchase of any security referred to in section
54 382.040 during the twelve calendar months preceding the filing of the statement
55 by any acquiring party, including the dates of purchase, names of the purchasers,
56 and consideration paid or agreed to be paid therefor;

57 (10) A description of any recommendations to purchase any security
58 referred to in section 382.040 made during the twelve calendar months preceding
59 the filing of the statement by any acquiring party, or by anyone based upon
60 interviews or at the suggestion of such acquiring party;

61 (11) Copies of the form of all tender offers for, requests or invitations for
62 tenders of, exchange offers for, and agreements to acquire or exchange any
63 securities referred to in section 382.040, and of the form of additional soliciting

64 material, if distributed, relating thereto;

65 (12) The terms of any agreement, contract or understanding made with
66 or proposed to be made with any broker-dealer as to solicitation of securities
67 referred to in section 382.040 for tender, and the amount of any fees, commissions
68 or other compensation to be paid to broker-dealers with regard thereto; [and]

69 (13) **An agreement by the person required to file the statement**
70 **referred to in section 382.040 that the annual report specified in section**
71 **382.175 will be provided for so long as control exists;**

72 (14) **An acknowledgment by the person required to file the**
73 **statement referred to in section 382.040 that such person and all**
74 **subsidiaries within its control in the insurance holding company**
75 **system shall provide information to the director upon request as**
76 **necessary to evaluate enterprise risk to the insurer; and**

77 (15) Such additional information as the director may by rule or regulation
78 prescribe as necessary or appropriate for the protection of policyholders of the
79 insurer or in the public interest.

80 2. If the person required to file the statement referred to in section
81 382.040 is a partnership, limited partnership, syndicate or other group, the
82 director may require that the information called for by subdivisions (1) to [(13)]
83 (15) of subsection 1 of this section shall be given with respect to each partner of
84 such partnership or limited partnership, each member of such syndicate or group,
85 and each person who controls such partner or member. If any such partner,
86 member or person is a corporation or the person required to file the statement
87 referred to in section 382.040 is a corporation, the director may require that the
88 information called for by subdivisions (1) to [(13)] (15) of subsection 1 of this
89 section shall be given with respect to the corporation, each officer and director of
90 the corporation, and each person who is directly or indirectly the beneficial owner
91 of more than ten percent of the outstanding voting securities of the corporation.

92 3. If any material change occurs in the facts set forth in the statement
93 filed with the director and sent to the insurer pursuant to this section, an
94 amendment setting forth the change, together with copies of all documents and
95 other material relevant to the change, shall be filed with the director and shall
96 be sent to the insurer within two business days after the person learns of the
97 change.

98 4. If any offer, request, invitation, agreement or acquisition referred to in
99 section 382.040 is proposed to be made by means of a registration statement
100 under the Securities Act of 1933 or in circumstances requiring the disclosure of

101 similar information under the Securities Exchange Act of 1934, or under a state
102 law requiring similar registration or disclosure, the person required to file the
103 statement referred to in section 382.040 may utilize such documents in furnishing
104 the information called for by that statement.

382.060. 1. The director shall [hold a public hearing on the proposed]
2 **approve any** merger or other acquisition of control referred to in section 382.040
3 [and shall thereafter approve such merger or acquisition of control unless he
4 finds by a preponderance of the evidence] **unless after a public hearing the**
5 **director finds** that:

6 (1) After the change of control the domestic insurer referred to in section
7 382.040 would not be able to satisfy the requirements for the issuance of a license
8 to write the line or lines of insurance for which it is presently licensed;

9 (2) The effect of the merger or other acquisition of control would be
10 substantially to lessen competition in insurance in this state or tend to create a
11 monopoly therein. In applying the competitive standard in this subdivision:

12 (a) The informational requirements of subsection 3 of section 382.095 and
13 the standards of subsection 4 of section 382.095 shall apply;

14 (b) The merger or other acquisition of control shall not be disapproved if
15 the director finds that any of the situations meeting the criteria provided by
16 subsection 4 of section 382.095 exist; and

17 (c) The director may condition the approval of the merger or other
18 acquisition on the removal of the basis of disapproval within a specified period
19 of time;

20 (3) The financial condition of any acquiring party is such as might
21 jeopardize the financial stability of the insurer, or prejudice the interest of its
22 policyholders;

23 (4) The plans or proposals which the acquiring party has to liquidate the
24 insurer, to sell its assets or to consolidate or merge it with any person, or to make
25 any other material change in its business or corporate structure or management
26 are unfair and unreasonable to policyholders of the insurer and contrary to the
27 public interest;

28 (5) The competence, experience or integrity of those persons who would
29 control the operation of the insurer are such that it would be contrary to the
30 interest of policyholders of the insurer and of the public to permit the merger or
31 other acquisition of control; or

32 (6) The acquisition is likely to be hazardous or prejudicial to the
33 insurance buying public.

34 2. Any disapproval made by the director shall be in writing and shall
35 contain specific findings of fact supporting it.

36 3. The public hearing referred to above in this section shall be held within
37 thirty days after the statement required by section 382.040 is filed, and at least
38 twenty days' notice thereof shall be given by the director to the person filing the
39 statement. Not less than seven days' notice of the public hearing shall be given
40 by the person filing the statement to the insurer and to such other persons and
41 in such manner as may be designated by the director. The director shall make
42 a determination within thirty days after the conclusion of the hearing. At the
43 hearing, the person filing the statement, the insurer, any person to whom notice
44 of hearing was sent, and any other person whose interests may be affected
45 thereby shall have the right to present evidence, examine and cross-examine
46 witnesses, and offer oral and written arguments and in connection therewith may
47 conduct discovery proceedings in the same manner as is presently allowed in the
48 circuit courts of this state. All discovery proceedings shall be concluded not later
49 than three days prior to the commencement of the public hearing.

50 4. **If the proposed acquisition of control requires the approval of**
51 **more than one state insurance commissioner, the public hearing**
52 **referred to in subsection 3 of this section may be held on a consolidated**
53 **basis upon request of the person filing the statement referred to in**
54 **section 382.040. Such person shall file the statement referred to in**
55 **section 382.040 with the National Association of Insurance**
56 **Commissioners within five days of making the request for a public**
57 **hearing. A state insurance commissioner may opt out of a consolidated**
58 **hearing and shall provide notice to the applicant of the opt out within**
59 **ten days of the receipt of the statement referred to in section 382.040.**
60 **A hearing conducted on a consolidated basis shall be public and shall**
61 **be held within the United States before the insurance commissioners**
62 **of the states in which the insurers are domiciled. Such commissioners**
63 **shall hear and receive evidence. A state insurance commissioner may**
64 **attend such hearing in person or by telecommunication.**

65 5. **In connection with a change of control of a domestic insurer,**
66 **any determination by the director that the person acquiring control of**
67 **the insurer shall be required to maintain or restore the capital of the**
68 **insurer to the level required by the laws and regulations of this state**
69 **shall be made not later than sixty days after the date of notification of**
70 **the change of control submitted under subsection 1 of section 382.040.**

71 **6.** The director may retain at the acquiring party's expense any attorneys,
72 actuaries, accountants and other experts not otherwise a part of the director's
73 staff as may be reasonably necessary to assist the director in reviewing the
74 proposed acquisition of control.

 382.080. The following shall be violations of sections [382.010 to 382.300]

2 **382.040 to 382.090:**

3 (1) The failure to file any statement, amendment, or other material
4 required to be filed pursuant to section 382.040 or 382.050; or

5 (2) The effectuation or any attempt to effectuate an acquisition of control
6 of, **divestiture of**, or merger with[,] a domestic insurer covered by sections
7 [382.010 to 382.300, within the thirty-day period referred to in section 382.060,
8 without approval by the director or after disapproval by the director] **382.040 to**
9 **382.090, unless the director has given approval.**

 382.095. 1. As used in this section, the following terms mean:

2 (1) "Acquisition", any agreement, arrangement or activity the
3 consummation of which results in a person acquiring directly or indirectly the
4 control of another person, and includes but is not limited to the acquisition of
5 voting securities, the acquisition of assets, bulk reinsurance and mergers;

6 (2) "Involved insurer" includes an insurer which either acquires or is
7 acquired, is affiliated with an acquirer or acquired or is the result of a merger.

8 2. Except as provided in this subsection, this section applies to any
9 acquisition in which there is a change in control of an insurer authorized to do
10 business in this state. This section shall not apply to the following [as provided
11 in section 382.060]:

12 (1) [An acquisition subject to approval or disapproval by the director;

13 (2)] A purchase of securities solely for investment purposes so long as
14 such securities are not used by voting or otherwise to cause or attempt to cause
15 the substantial lessening of competition in any insurance market in this state. If
16 a purchase of securities results in a presumption of control under subdivision (2)
17 of section 382.010, it is not solely for investment purposes unless the
18 commissioner of insurance or other appropriate person of the insurer's state of
19 domicile accepts a disclaimer of control or affirmatively finds that control does not
20 exist and such disclaimer action or affirmative finding is communicated by such
21 person to the director;

22 [(3)] **(2)** The acquisition of a person by another person when both persons
23 are neither directly nor through affiliates primarily engaged in the business of
24 insurance, if preacquisition notification is filed with the director in accordance

25 with subsection 3 of this section thirty days prior to the proposed effective date
26 of the acquisition; however, such preacquisition notification is not required for
27 exclusion from this section if the acquisition would otherwise be excluded from
28 this section by any other subdivision of this subsection;

29 [(4)] **(3)** The acquisition of already affiliated persons;

30 [(5)] **(4)** An acquisition if, as an immediate result of the acquisition:

31 (a) In no market would the combined market share of the involved
32 insurers exceed five percent of the total market;

33 (b) There would be no increase in any market share; or

34 (c) In no market would the combined market share of the involved
35 insurers exceed twelve percent of the total market, and the market share of the
36 involved insurer after the acquisition would increase by two percent of the total
37 market or less. For the purpose of this subdivision, a "market" means direct
38 written insurance premium in this state for a line of business as contained in the
39 annual statement required to be filed by insurers licensed to do business in this
40 state;

41 [(6)] **(5)** An acquisition for which a preacquisition notification would be
42 required pursuant to this section due solely to the resulting effect on the ocean
43 marine insurance line of business;

44 [(7)] **(6)** An acquisition of an insurer whose domiciliary commissioner or
45 other appropriate person affirmatively finds that such insurer is in failing
46 condition; there is a lack of feasible alternative to improving such condition; the
47 public benefits of improving such insurer's condition through the acquisition
48 exceed the public benefits that would arise from not lessening competition; and
49 such findings are communicated by such person to the director.

50 3. An acquisition covered by [subdivisions (1) to (7) of] subsection 2 of this
51 section may be subject to an order pursuant to subsection [5] **6** of this section,
52 unless the acquiring person files a preacquisition notification and the waiting
53 period described in this subsection has expired. The acquired person or acquiring
54 person may file a preacquisition notification. The director shall give confidential
55 treatment to information submitted under this subsection. The preacquisition
56 notification shall be in such form and contain such information as prescribed by
57 the National Association of Insurance Commissioners relating to those markets
58 which, under subdivision [(5)] **(4)** of subsection 2 of this section cause the
59 acquisition not to be exempted from the provisions of this section. The director
60 may require such additional material and information as he **or she** deems
61 necessary to determine whether the proposed acquisition, if consummated, would

62 violate the competitive standard of subsection 4 of this section. The required
 63 information may include an opinion of an economist as to the competitive impact
 64 of the acquisition in this state accompanied by a summary of the education and
 65 experience of such person indicating his **or her** ability to render an informed
 66 opinion. The waiting period required shall begin on the date of receipt by the
 67 director of a preacquisition notification and shall end on the earlier of the
 68 thirtieth day after the date of such receipt, or termination of the waiting period
 69 by the director. Prior to the end of the waiting period, the director on a one-time
 70 basis may require the submission of additional needed information relevant to the
 71 proposed acquisition, in which event the waiting period shall end on the earlier
 72 of the thirtieth day after receipt of such additional information by the director or
 73 termination of the waiting period by the director.

74 4. (1) The director may enter an order under subsection 5 of this section
 75 with respect to an acquisition if there is substantial evidence that the effect of the
 76 acquisition may be substantially to lessen competition in any line of insurance in
 77 this state or tend to create a monopoly therein or if the insurer fails to file
 78 adequate information in compliance with subsection 3 of this section.

79 (2) In determining whether a proposed acquisition would violate the
 80 competitive standard of subdivision (1) of this subsection, the director shall
 81 consider the following:

82 (a) Any acquisition covered under subsection 2 of this section involving
 83 two or more insurers competing in the same market is prima facie evidence of
 84 violation of the competitive standards:

85 a. If the market is highly concentrated and the involved insurers possess
 86 the following share of the market:

	Insurer A	Insurer B
87		
88	4%	4% or more
89	10%	2% or more
90	15%	1% or more; or

91 b. If the market is not highly concentrated and the involved insurers
 92 possess the following share of the market:

	Insurer A	Insurer B
93		
94	5%	5% or more
95	10%	4% or more
96	15%	3% or more
97	19%	1% or more

98 A highly concentrated market is one in which the share of the four largest

99 insurers is seventy-five percent or more of the market. Percentages not shown
100 in the tables are to be interpolated proportionately to the percentages that are
101 shown. If more than two insurers are involved, exceeding the total of the two
102 columns in the table is prima facie evidence of violation of the competitive
103 standard in subdivision (1) of this subsection. For the purpose of this
104 subdivision, the insurer with the largest share of the market shall be deemed to
105 be insurer A;

106 (b) There is a significant trend toward increased concentration when the
107 aggregate market share of any grouping of the largest insurers in the market,
108 from the two largest to the eight largest, has increased by seven percent or more
109 of the market over a period of time extending from any base year five to ten years
110 prior to the acquisition up to the time of the acquisition. Any acquisition or
111 merger covered under subsection 2 of this section involving two or more insurers
112 competing in the same market is prima facie evidence of violation of the
113 competitive standard in subdivision (1) of this subsection if:

114 a. There is a significant trend toward increased concentration in the
115 market;

116 b. One of the insurers involved is one of the insurers in a grouping of such
117 large insurers showing the requisite seven percent or more increase in the market
118 share; and

119 c. Another involved insurer's market is two percent or more.

120 (3) For the purposes of subdivision (2) of this subsection:

121 (a) The term "insurer" includes any company or group of companies under
122 common management, ownership or control;

123 (b) The term "market" means the relevant product and geographical
124 markets. In determining the relevant product and geographical markets, the
125 director shall give due consideration to, among other things, the definitions or
126 guidelines, if any, promulgated by the National Association of Insurance
127 Commissioners and to information, if any, submitted by parties to the acquisition.
128 In the absence of sufficient information to the contrary, the relevant product
129 market is assumed to be the direct written insurance premium for a line of
130 business, such line being that used in the annual statement required to be filed
131 by insurers doing business in this state, and the relevant geographical market is
132 assumed to be this state;

133 (c) The burden of showing prima facie evidence of violation of the
134 competitive standard rests upon the director.

135 (4) Even though an acquisition is not prima facie violative of the

136 competitive standard under subdivision (2) of this subsection, the director may
137 establish that the requisite anticompetitive effect exists based upon other
138 substantial evidence. Even though an acquisition is prima facie violative of the
139 competitive standard under subdivision (2) of this subsection, a party may
140 establish the absence of the requisite anticompetitive effect, based upon other
141 substantial evidence. Relevant factors in making a determination under this
142 subdivision include, but are not limited to, the following: market shares,
143 volatility of ranking of market leaders, number of competitors, concentration,
144 trend of concentration in the industry, and ease of entry and exit into the market.

145 (5) An order [may] **shall** not be entered under subsection 5 of this section
146 if:

147 (a) The acquisition will yield substantial economies of scale or economies
148 in resource use that cannot be feasibly achieved in any other way, and the public
149 benefits which would arise from such economies exceed the public benefits which
150 would arise from not lessening competition; or

151 (b) The acquisition will substantially increase the availability of
152 insurance, and the public benefits of such increase exceed the public benefits
153 which would arise from not lessening competition.

154 5. If an acquisition violates the standards of this section, the director may
155 enter an order:

156 (1) Requiring an involved insurer to cease and desist from doing business
157 in this state with respect to the line or lines of insurance involved in the
158 violation; or

159 (2) Denying the application of an acquired or acquiring insurer for a
160 license to do business in this state. Such an order shall not be entered unless
161 there is a hearing, notice of such hearing is issued prior to the end of the waiting
162 period and not less than fifteen days prior to the hearing, and the hearing is
163 concluded and the order is issued no later than sixty days after the end of the
164 waiting period. Every order shall be accompanied by a written decision of the
165 director setting forth his **or her** findings of fact and conclusions of law. An order
166 entered under this subsection shall not become final earlier than thirty days after
167 it is issued, during which time any involved insurer may submit a plan to remedy
168 the anticompetitive impact of the acquisition within a reasonable time. Based
169 upon such plan or other information, the director shall specify the conditions, if
170 any, under the time period during which the aspects of the acquisition causing
171 a violation of the standards of this section would be remedied and the order
172 vacated or modified. An order issued pursuant to this subsection shall not apply

173 if the acquisition is not consummated.

174 6. Any person who violates a cease and desist order of the director under
175 subsection 5 of this section, and while such order is in effect, may, after notice
176 and hearing and upon order of the director, be subject at the discretion of the
177 director to any one or more of the following:

178 (1) A monetary penalty of not more than ten thousand dollars for every
179 day of violation; or

180 (2) Suspension or revocation of such person's license.

181 7. Any insurer or other person who fails to make any filing required by
182 this section and who also fails to demonstrate a good faith effort to comply with
183 any such filing requirement shall be subject to a fine of not more than fifty
184 thousand dollars.

185 8. Sections 382.260 and 382.280 do not apply to acquisitions covered by
186 subsection 2 of this section.

 382.110. 1. Every insurer subject to registration shall file a registration
2 statement on a form provided by the director containing current information
3 about:

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

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

8 (3) The following agreements in force, relationships subsisting, and
9 transactions currently outstanding between the insurer and its affiliates:

10 (a) Loans, other investments, or purchases, sales or exchanges of
11 securities of the affiliates by the insurer or of the insurer by its affiliates;

12 (b) Purchases, sales, or exchanges of assets;

13 (c) Transactions not in the ordinary course of business;

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

17 (e) All management and service contracts and all cost-sharing
18 arrangements; and

19 (f) Reinsurance agreements;

20 (g) Dividends and other distributions to shareholders; and

21 (h) Consolidated tax allocation agreements;

22 (4) Any pledge of the insurer's stock, including stock of any subsidiary or
23 controlling affiliate, for a loan made to any member of the insurance holding

24 company system; [and]

25 (5) **Financial statements of or within an insurance holding**
26 **company system, including all affiliates, if requested by the**
27 **director. Financial statements may include, but are not limited to,**
28 **annual audited financial statements filed with the United States**
29 **Securities and Exchange Commission (SEC) under the Securities Act of**
30 **1933, as amended, or the Securities Exchange Act of 1934, as amended.**
31 **An insurer required to file financial statements under this subdivision**
32 **may satisfy such requirement by providing the director with the most**
33 **recently filed parent corporation financial statements that have been**
34 **filed with the SEC;**

35 (6) **Statements that the insurer's board of directors oversees**
36 **corporate governance and internal controls and that the insurer's**
37 **officers or senior management have approved, implemented, and**
38 **continue to maintain and monitor corporate governance and internal**
39 **control procedures;**

40 (7) **Other matters concerning transactions between registered insurers**
41 **and any affiliates as may be included from time to time in any registration forms**
42 **adopted or approved by the director; and**

43 (8) **Any other information required by the director by rule.**

44 2. All registration statements shall contain a summary outlining all items
45 in the current registration statement representing changes from the prior
46 registration statement.

47 3. No information need be disclosed on the registration statement filed
48 pursuant to subsection 1 of this section if such information is not material for the
49 purposes of that subsection. Unless the director by rule, regulation or order
50 provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or
51 investments, involving one-half of one percent or less of an insurer's admitted
52 assets as of the thirty-first day of December next preceding shall not be deemed
53 material for purposes of subsection 1 of this section.

54 4. Any person within an insurance holding company system subject to
55 registration shall be required to provide complete and accurate information to an
56 insurer, where such information is reasonably necessary to enable the insurer to
57 comply with the provisions of sections 382.010 to 382.300.

382.160. The provisions of sections 382.100 [and 382.110] **to 382.180**
2 shall not apply to any insurer, information or transaction if and to the extent that
3 the director by rule, regulation, or order shall exempt the same from such

4 provisions.

382.170. Any person may file with the director a disclaimer of affiliation
2 with any authorized insurer or the disclaimer may be filed by the insurer or any
3 member of an insurance holding company system. The disclaimer shall fully
4 disclose all material relationships and bases for affiliation between such person
5 and such insurer as well as the basis for disclaiming such affiliation. [After a
6 disclaimer has been filed, the insurer shall be relieved of any duty to register or
7 report under section 382.110 which may arise out of the insurer's relationship
8 with such person unless and until the director disallows the disclaimer. The
9 director shall disallow the disclaimer only after furnishing all parties in interest
10 with notice and opportunity to be heard and after making specific findings of fact
11 to support the disallowance.] **A disclaimer of affiliation shall be deemed to
12 have been granted unless the director, within thirty days following
13 receipt of a complete disclaimer, notifies the filing party that the
14 disclaimer is disallowed. In the event of disallowance, the disclaiming
15 party may request an administrative hearing, which shall be
16 granted. The disclaiming party shall be relieved of its duty to register
17 under this section if approval of the disclaimer has been granted by the
18 director or if the disclaimer is deemed to have been approved.**

382.175. Upon request of the director, the ultimate controlling
2 person of every insurer subject to registration shall file an annual
3 enterprise risk report. The report shall be appropriate to the nature,
4 scale, and complexity of the operations of the insurance holding
5 company and shall, to the best of the ultimate controlling person's
6 knowledge and belief, identify the material risks within the insurance
7 holding company system, if any, that could pose enterprise risk to the
8 insurer. The report shall be filed with the lead state insurance
9 commissioner of the insurance holding company system as determined
10 by procedures within the Financial Analysis Handbook adopted by the
11 National Association of Insurance Commissioners. The first enterprise
12 risk report shall be due and filed no later than May 1, 2016, and
13 annually thereafter by the first day of May each year, unless the lead
14 state insurance commissioner extends the time for filing for good cause
15 shown.

382.180. The failure to file a registration statement [or any amendment
2 thereto], **summary of the registration statement, or enterprise risk filing
3 required under sections 382.100 to 382.180** within the time specified for the

4 filing is a violation of sections [382.010 to 382.300] **382.100 to 382.180.**

382.190. Material transactions by registered insurers with their affiliates
2 are subject to the following standards:

3 (1) The terms shall be fair and reasonable;

4 (2) Charges or fees for services shall be reasonable;

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

8 (4) The books, accounts and records of each party shall be maintained so
9 as to clearly and accurately disclose the precise nature and details of the
10 transactions **including such accounting information as is necessary to**
11 **support the reasonableness of the charges or fees to the respective**
12 **parties; [and]**

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

16 **(6) Agreements for cost-sharing services and management shall**
17 **include such provisions as required by the director by rule.**

382.195. 1. The following transactions involving a domestic insurer and
2 any person in its holding company system [may], **including amendments or**
3 **modifications of affiliate agreements previously filed under this section**
4 **that are subject to any materiality standards contained in subdivisions**
5 **(1) to (7) of this subsection, shall** not be entered into unless the insurer has
6 notified the director in writing of its intention to enter into such transaction at
7 least thirty days prior thereto, or such shorter period as the director may permit,
8 and the director has not disapproved it within such period:

9 (1) Sales, purchases, exchanges, loans [or], extensions of credit,
10 [guarantees,] or investments if such transactions are equal to or exceed, with
11 respect to nonlife insurers, the lesser of three percent of the insurer's admitted
12 assets or twenty-five percent of surplus as regards policyholders, or with respect
13 to life insurers, three percent of the insurer's admitted assets, each as of the
14 thirty-first day of December of the preceding year;

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

20 extensions of credit provided such transactions are equal to or exceed, with
21 respect to nonlife insurers, the lesser of three percent of the insurer's admitted
22 assets or twenty-five percent of surplus as regards policyholders, or with respect
23 to life insurers, three percent of the insurer's admitted assets; each as of the
24 thirty-first day of December of the preceding year;

25 (3) Reinsurance agreements or modifications thereto, **including:**

26 (a) **All reinsurance pooling agreements;**

27 (b) **Agreements** in which the reinsurance premium or a change in the
28 insurer's liabilities, **or the projected reinsurance premium or a change in**
29 **the insurer's liabilities in any of the next three years** equals or exceeds
30 five percent of the insurer's surplus as regards policyholders, as of the thirty-first
31 day of December of the preceding year, including those agreements which may
32 require as consideration the transfer of assets from an insurer to a nonaffiliate,
33 if an agreement or understanding exists between the insurer and nonaffiliate that
34 any portion of such assets will be transferred to one or more affiliates of the
35 insurer;

36 (4) All management agreements, **tax allocation agreements**, service
37 contracts, and all cost-sharing arrangements; [and]

38 (5) **Guarantees when made by a domestic insurer; provided,**
39 **however, that a guarantee which is quantifiable as to amount is not**
40 **subject to the notice requirements of this subdivision unless it exceeds**
41 **the lesser of one-half of one percent of the insurer's admitted assets or**
42 **ten percent of surplus as regards policyholders as of the thirty-first day**
43 **of December next preceding. Further, all guarantees which are not**
44 **quantifiable as to amount are subject to the notice requirements of this**
45 **subdivision;**

46 (6) **Direct or indirect acquisitions or investments in a person**
47 **that controls the insurer or in an affiliate of the insurer in an amount**
48 **which, together with its present holding in such investments, exceeds**
49 **two and one-half percent of the insurer's surplus to**
50 **policyholders. Direct or indirect acquisitions or investments in**
51 **subsidiaries acquired under section 382.020 or authorized under any**
52 **other provision of this chapter or in nonsubsidiary insurance affiliates**
53 **that are subject to the provisions of this chapter are exempt from such**
54 **requirement; and**

55 (7) Any material transactions, specified by regulation, which the director
56 determines may adversely affect the interests of the insurer's policyholders.

57 **The notice for amendments or modifications shall include the reasons**
58 **for the change and the financial impact on the domestic insurer.**

59 **2.** The provisions of **subsection 1** of this section shall not be deemed to
60 authorize or permit any transactions which, in the case of an insurer not a
61 member of the same holding company system, would be otherwise contrary to law.

62 **[2.] 3.** A domestic insurer **[may]** **shall** not enter into transactions which
63 are part of a plan or series of like transactions with persons within the
64 **insurance** holding company system if the purpose of those separate transactions
65 is to avoid the statutory threshold amount and thus avoid the review that would
66 occur otherwise. If the director determines that such separate transactions were
67 entered into over any twelve-month period for such purpose, **[he] the director**
68 may exercise his **or her** authority under section 382.265.

69 **4.** In reviewing transactions under subsection 1 of this section,
70 **the director shall consider whether the transactions comply with the**
71 **standards set forth in section 382.190 and whether they may adversely**
72 **affect the interest of policyholders.**

73 **5.** The director shall be notified within thirty days of any
74 investment of the domestic insurer in any one corporation if the total
75 investment in the corporation by the insurance holding company
76 system exceeds ten percent of the corporation's voting securities.

382.220. 1. Subject to the limitation contained in this section and in
2 addition to all the other powers with which the director is vested by law relating
3 to the examination of insurers, the director may **[order]** **examine** any insurer
4 registered under the provisions of sections **[382.010 to 382.300]** **382.100 to**
5 **382.180 and its affiliates to ascertain the financial condition of the**
6 **insurer including the enterprise risk to the insurer by the ultimate**
7 **controlling party, by any entity or combination of entities within the**
8 **insurance holding company system, or by the insurance company**
9 **system on a consolidated basis.**

10 **2.** The director may order any insurer registered under sections
11 **382.100 to 382.180** to produce such records, books, or other information papers
12 in the possession of the insurer or its affiliates as **[shall be]** **are reasonably**
13 necessary to **[ascertain the financial condition or legality of conduct of the**
14 **insurer. In the event the insurer fails to comply with the order, the director may**
15 **examine such affiliates to obtain such information]** **determine compliance**
16 **with this chapter.**

17 **3.** To determine compliance with this chapter, the director may

18 **order any insurer registered under sections 382.100 to 382.180 to**
19 **produce information not in the possession of the insurer if the insurer**
20 **is able to obtain access to such information under contractual**
21 **relationships, statutory obligations, or other methods. In the event the**
22 **insurer is unable to obtain the information requested by the director,**
23 **the insurer shall provide the director with a detailed explanation of the**
24 **reason that the insurer is unable to obtain the information and the**
25 **identity of the holder of such information. Whenever it appears to the**
26 **director that the detailed explanation is without merit, the director**
27 **shall have the power to examine the insurer to determine compliance**
28 **with this section pursuant to the director's authority under section**
29 **374.205 and this section.**

30 [2.] 4. The director may retain at the registered insurer's expense such
31 attorneys, actuaries, accountants and other experts not otherwise a part of the
32 director's staff as shall be reasonably necessary to assist in the conduct of the
33 examination under this section. Any persons so retained shall be under the
34 direction and control of the director and shall act in a purely advisory capacity.

35 [3.] 5. Each registered insurer producing for examination records, books
36 and papers pursuant to this section shall be liable for and shall pay the expense
37 of such examination in accordance with the provisions of section 374.220.

38 6. In the event the insurer fails to comply with an order, the
39 director shall have the power to examine the affiliates to obtain the
40 information. The director shall have the power to issue subpoenas,
41 administer oaths, and examine under oath any person for purposes of
42 determining compliance with this section. Upon the failure or refusal
43 of any person to obey a subpoena, the director may petition a court of
44 competent jurisdiction, and upon proper showing, the court may enter
45 an order compelling the witness to appear and testify or produce
46 documentary evidence. Failure to obey the court order shall be
47 punishable as contempt of court. Every person shall be obligated to
48 attend as a witness at the place specified in the subpoena, when
49 subpoenaed, anywhere within the state. He or she shall be entitled to
50 the same fees and mileage, if claimed, as a witness in section 491.280,
51 which fees, mileage, and actual expense, if any, necessarily incurred in
52 securing the attendance of witnesses and their testimony, shall be
53 itemized, charged against, and paid by the company being examined.

382.225. 1. With respect to any insurer registered under sections

2 382.100 to 382.180 and in accordance with subsection 3 of this section,
3 the director shall also have the power to participate in a supervisory
4 college for any domestic insurer that is part of an insurance holding
5 company system with international operations in order to determine
6 compliance by the insurer with this chapter. The powers of the
7 director with respect to supervisory colleges include, but are not
8 limited to, the following:

- 9 (1) Initiating the establishment of a supervisory college;
- 10 (2) Clarifying the membership and participation of other
11 supervisors in the supervisory college;
- 12 (3) Clarifying the functions of the supervisory college and the
13 role of other regulators including the establishment of a group-wide
14 supervisor or host, who may be the director;
- 15 (4) Coordinating the ongoing activities of the supervisory
16 college, including planning meetings, supervisory activities, and
17 processes for information sharing; and
- 18 (5) Establishing a crisis management plan.

19 2. Each registered insurer subject to this section shall be liable
20 for and shall pay the reasonable expenses of the director's participation
21 in a supervisory college in accordance with subsection 3 of this section
22 including reasonable travel expenses. For purposes of this section, a
23 supervisory college may be convened as either a temporary or
24 permanent forum for communication and cooperation between the
25 regulators charged with the supervision of the insurer or its affiliates,
26 and the director may establish a regular assessment to the insurer for
27 the payment of such expenses.

28 3. In order to assess the business strategy, financial position,
29 legal and regulatory position, risk exposure, risk management and
30 governance processes, and as part of the examination of individual
31 insurers in accordance with section 382.220, the director may
32 participate in a supervisory college with other regulators charged with
33 supervision of the insurer or its affiliates including other state, federal,
34 and international regulatory agencies. The director may enter into
35 agreements in accordance with subsection 3 of section 382.230
36 providing the basis for cooperation between the director and the other
37 regulatory agencies and the activities of the supervisory
38 college. Nothing in this section shall delegate to the supervisory

39 **college the authority of the director to regulate or supervise the**
40 **insurer or its affiliates within the director's jurisdiction.**

382.230. 1. All information, documents and copies thereof obtained by or
2 disclosed to the director or any other person in the course of an examination or
3 investigation made [pursuant to] **under** section 382.220 and all information
4 reported [pursuant to section] **under subdivisions (13) and (14) of**
5 **subsection 1 of section 382.050 and sections 382.100 to 382.210** shall be
6 given confidential treatment and **privileges; shall not be subject to the**
7 **provisions of chapter 610;** shall not be subject to subpoena [and]; shall not be
8 made public by the director, the National Association of Insurance
9 Commissioners, or any other person, except to the chief insurance regulatory
10 official of other states[.]; **and shall not be subject to discovery or**
11 **admissible as evidence in any private civil action. However, the**
12 **director is authorized to use the documents, materials, or other**
13 **information in furtherance of any regulatory or legal action brought as**
14 **a part of the director's official duties. The director shall not otherwise**
15 **make the documents, materials, or other information public** without the
16 prior written consent of the insurer to which it pertains unless the director, after
17 giving the insurer and its affiliates who would be affected thereby, notice and
18 opportunity to be heard, determines that the interests of policyholders,
19 shareholders or the public will be served by the publication thereof, in which
20 event [he] **the director** may publish all or any part thereof in such manner as
21 he **or she** may deem appropriate.

22 **2. Neither the director nor any person who receives documents,**
23 **materials, or other information while acting under the authority of the**
24 **director or with whom such documents, materials, or other information**
25 **is shared under sections 382.010 to 382.300 shall be permitted or**
26 **required to testify in any private civil action concerning any**
27 **confidential documents, materials, or other information subject to**
28 **subsection 1 of this section.**

29 **3. In order to assist in the performance of the director's duties,**
30 **the director:**

31 **(1) May share documents, materials, or other information**
32 **including the confidential and privileged documents, materials, or**
33 **other information subject to subsection 1 of this section with other**
34 **state, federal, and international financial regulatory agencies, with the**
35 **National Association of Insurance Commissioners and its affiliates and**

36 subsidiaries, and with state, federal, and international law enforcement
37 authorities including members of any supervisory college described in
38 section 382.225; provided that the recipient agrees in writing to
39 maintain the confidentiality and privileged status of such documents,
40 materials, or other information, and has verified in writing the legal
41 authority to maintain confidentiality;

42 (2) Notwithstanding the provisions of subsection 1 of this section
43 and subdivision (1) of this subsection, may share confidential and
44 privileged documents, materials, or other information reported under
45 section 382.175 only with the directors of states having statutes or
46 regulations substantially similar to subsection 1 of this section and who
47 have agreed in writing not to disclose such information;

48 (3) May receive documents, materials, or other information
49 including otherwise confidential and privileged documents, materials,
50 or information from the National Association of Insurance
51 Commissioners and its affiliates and subsidiaries and from regulatory
52 and law enforcement officials of other foreign or domestic jurisdictions,
53 and shall maintain as confidential or privileged any documents,
54 materials, or other information received with notice or the
55 understanding that it is confidential or privileged under the laws of the
56 jurisdiction that is the source of the document, material, or other
57 information; and

58 (4) Shall enter into a written agreement with the National
59 Association of Insurance Commissioners governing sharing and use of
60 information provided under sections 382.010 to 382.300 consistent with
61 this subsection that shall:

62 (a) Specify procedures and protocols regarding the
63 confidentiality and security of information shared with the National
64 Association of Insurance Commissioners and its affiliates and
65 subsidiaries under sections 382.010 to 382.300 including procedures and
66 protocols for sharing by the National Association of Insurance
67 Commissioners with other state, federal, and international regulators;

68 (b) Specify that ownership of information shared with the
69 National Association of Insurance Commissioners and its affiliates and
70 subsidiaries under sections 382.010 to 382.300 remains with the director
71 and that the National Association of Insurance Commissioner's use of
72 such information is subject to the direction of the director;

73 (c) Require prompt notice to be given to an insurer whose
74 confidential information in the possession of the National Association
75 of Insurance Commissioners under sections 382.010 to 382.300 is subject
76 to a request or subpoena to the National Association of Insurance
77 Commissioners for disclosure or production; and

78 (d) Require the National Association of Insurance Commissioners
79 and its affiliates and subsidiaries to consent to intervention by an
80 insurer in any judicial or administrative action in which the National
81 Association of Insurance Commissioners and its affiliates and
82 subsidiaries may be required to disclose confidential information about
83 the insurer shared with the National Association of Insurance
84 Commissioners and its affiliates and subsidiaries under sections 382.010
85 to 382.300.

86 4. The sharing of information by the director under sections
87 382.010 to 382.300 shall not constitute a delegation of regulatory or
88 rulemaking authority, and the director is solely responsible for the
89 administration, execution, and enforcement of the provisions of
90 sections 382.010 to 382.300.

91 5. No waiver of any applicable privilege or claim of
92 confidentiality in the documents, materials, or other information shall
93 occur as a result of disclosure of such documents, materials, or other
94 information to the director under this section or as a result of sharing
95 as authorized in sections 382.010 to 382.300.

96 6. Documents, materials, or other information in the possession
97 or control of the National Association of Insurance Commissioners
98 under sections 382.010 to 382.300 shall be confidential by law and
99 privileged, shall not be subject to disclosure under chapter 610, shall
100 not be subject to subpoena, and shall not be subject to discovery or
101 admissible in evidence in any private civil action.

382.277. Whenever it appears to the director that any person has
2 committed a violation of sections 382.040 to 382.090 and the violation
3 prevents the full understanding of the enterprise risk to the insurer by
4 affiliates or by the insurance holding company system, the violation
5 may serve as an independent basis for disapproving dividends or
6 distributions and for placing the insurer under an order of suspension
7 in accordance with section 375.1160.

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