

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2234

By: Mulready of the House and Sparks of the Senate

Title: Insurance; subsidiaries of insurers; requiring confidential notice of proposed divestiture to the Insurance Commissioner to determine whether approval of transaction is required; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its Amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

SENATE CONFEREES

Sparks	_____
Brown	_____
Quinn	_____
Paxton	_____
Newberry	_____
Pederson	_____
Matthews	_____

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2234

By: Mulready of the House

and

Sparks of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to subsidiaries of insurers; defining terms; authorizing insurers to acquire subsidiaries; providing additional investment authority; exempting certain investments from certain restrictions; determining qualification of investment; requiring disposal of investments after cessation of control; requiring filing and statement with Insurance Commissioner for certain agreements, offers of acquisitions and divestitures; requiring information be kept confidential; providing content of statement; providing alternative filing materials; providing conditions under which Commissioner shall approve merger acquisition after public hearing; vesting jurisdiction; requiring consent of service of process; defining terms; providing applicability; requiring preacquisition notification and waiting period; providing competitive standard for acquisitions; authorizing certain order for certain violations; requiring members of an insurance holding company system register with the Commissioner; providing exception for foreign insurers; providing registration form and required information; providing for termination of registration under certain conditions; requiring annual enterprise risk report; prescribing violation; providing standards for transactions within an insurance holding company system; requiring notice and Commissioner approval of certain dividends and distributions to shareholders; providing management standards of certain domestic insurers; determining adequacy of surplus; authorizing Commissioner to examine certain insurer;

1 providing Commissioner access to books and records;
2 authorizing use of certain consultants; compelling
3 production; authorizing Commissioner to participate
4 in certain supervisory college; providing for expense
5 for participation; authorizing Commissioner group-
6 wide supervision of internationally active insurance
7 groups; authorizing other regulatory official to
8 serve as supervisor; providing group-wide supervision
9 activities; authorizing certain agreements;
10 authorizing the promulgation of rules; requiring
11 registered insurer pay for expenses of the
12 Commissioner's participation; requiring confidential
13 treatment of certain information reported or provided
14 to the Insurance Department; barring Commissioner and
15 certain employees from testifying in certain civil
16 actions concerning confidential information;
17 authorizing Commissioner to share and receive certain
18 confidential and privileged information; authorizing
19 promulgation of rules; providing for certain
20 injunctions; prohibiting voting of certain
21 securities; sequestering certain voting securities;
22 providing sanctions and penalties for certain
23 violations; authorizing Commissioner to take
24 possession of certain property and conduct business
for financially impaired domestic insurers; providing
right of recovery after order for liquidation or
rehabilitation; authorizing revocation, suspension or
nonrenewal of insurer's license after certain
violations; providing judicial review and appeal
process for certain aggrieved persons; prescribing
certain powers, remedies and procedures are
additional; repealing 36 O.S. 2011, Sections 1651, as
amended by Section 8, Chapter 269, O.S.L. 2013, 1652,
1653, 1654, as last amended by Section 5, Chapter 73,
O.S.L. 2016, 1655, 1656, Section 1, Chapter 264,
O.S.L. 2015, Section 1, Chapter 269, O.S.L. 2013, as
amended by Section 2, Chapter 264, O.S.L. 2015,
1658.1, 1658.2, 1659.1, 1659.2, 1660, 1661 and 1662
(36 O.S. Supp. 2016, Sections 1651, 1654, 1656.1 and
1657.1), which relate to subsidiaries of insurers;
providing for codification; and declaring an
emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1631 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

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

6 1. "Affiliate of" or person "affiliated with" a specific person
7 means a person that directly, or indirectly through one or more
8 intermediaries, controls, or is controlled by, or is under common
9 control with, the person specified;

10 2. "Commissioner" means the Insurance Commissioner of the State
11 of Oklahoma, the Commissioner's deputies, or the Insurance
12 Department, as appropriate;

13 3. "Control" includes the terms "controlling", "controlled by"
14 and "under common control with" and means the possession, direct or
15 indirect, of the power to direct or cause the direction of the
16 management and policies of a person, whether through the ownership
17 of voting securities, by contract other than a commercial contract
18 for goods or nonmanagement services, or otherwise, unless the power
19 is the result of an official position or corporate office held by
20 the person. Control shall be presumed to exist if any person,
21 directly or indirectly, owns, controls, holds with the power to
22 vote, or holds proxies representing, ten percent (10%) or more of
23 the voting securities of any other person. This presumption may be
24 rebutted by a showing made in the manner provided by subsection K of

1 Section 5 of this act that control does not exist in fact. The
2 Commissioner may determine, after furnishing all persons in interest
3 notice and opportunity to be heard and making specific findings of
4 fact to support the determination that control exists in fact,
5 notwithstanding the absence of a presumption to that effect;

6 4. "Group-wide supervisor" means the regulatory official
7 authorized to engage in conducting and coordinating group-wide
8 supervision activities who is determined or acknowledged by the
9 Commissioner under Section 9 of this act to have sufficient
10 significant contacts with the internationally active insurance
11 group;

12 5. "Insurance holding company system" means an insurance
13 holding company system consisting of two or more affiliated persons,
14 one or more of which is an insurer;

15 6. "Insurer" has the same meaning as set forth in Section 103
16 of Title 36 of the Oklahoma Statutes, except that it shall not
17 include agencies, authorities or instrumentalities of the United
18 States, its possessions and territories, the Commonwealth of Puerto
19 Rico, the District of Columbia, or a state or political subdivision
20 of a state;

21 7. "Internationally active insurance group" means an insurance
22 holding company system that:

- 23 a. includes an insurer registered under Section 5 of this
24 act, and

b. meets the following criteria:

- (1) premiums written in at least three countries,
- (2) the percentage of gross premiums written outside the United States is at least ten percent (10%) of the insurance holding company system's total gross written premiums, and
- (3) based on a three-year rolling average, the total assets of the insurance holding company system are at least Fifty Billion Dollars (\$50,000,000,000.00) or the total gross written premiums of the insurance holding company system are at least Ten Billion Dollars (\$10,000,000,000.00);

8. "Enterprise risk" means any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in the Risk-based Capital for Insurers Act provided in Sections 1521 through 1533 of Title 36 of the Oklahoma Statutes, or would cause the insurer to be in hazardous financial condition pursuant to rules promulgated by the Insurance Department;

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

7 10. "Securityholder" of a specified person means one who owns
8 any security of such person, including common stock, preferred
9 stock, debt obligations and any other security convertible into or
10 evidencing the right to acquire any of the foregoing;

11 11. "Subsidiary" of a specified person means an affiliate
12 controlled by such person directly or indirectly through one or more
13 intermediaries; and

14 12. "Voting security" means any security convertible into or
15 evidencing a right to acquire a voting security.

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1632 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 A. A domestic insurer, either by itself or in cooperation with
20 one or more persons, may organize or acquire one or more
21 subsidiaries. The subsidiaries may conduct any kind of business or
22 businesses and their authority to do so shall not be limited by
23 reason of the fact that they are subsidiaries of a domestic insurer.
24

1 B. In addition to investments in common stock, preferred stock,
2 debt obligations and other securities permitted under all other
3 sections of Title 36 of the Oklahoma Statutes, a domestic insurer
4 may also:

5 1. Invest in common stock, preferred stock, debt obligations
6 and other securities of one or more subsidiaries, amounts which do
7 not exceed the lesser of ten percent (10%) of the insurer's assets
8 or fifty percent (50%) of the insurer's surplus as regards
9 policyholders, provided that after such investments the insurer's
10 surplus as regards policyholders will be reasonable in relation to
11 the insurer's outstanding liabilities and adequate to meet its
12 financial needs. In calculating the amount of such investments,
13 investments in domestic or foreign insurance subsidiaries and any
14 other entity which provides or arranges for the financing or
15 provision of health care services or coverage over which the
16 Commissioner possesses financial solvency and regulatory oversight
17 authority shall be excluded, and there shall be included:

18 a. total net monies or other consideration expended and
19 obligations assumed in the acquisition or formation of
20 a subsidiary, including all organizational expenses
21 and contributions to capital and surplus of the
22 subsidiary whether or not represented by the purchase
23 of capital stock or issuance of other securities, and
24

1 b. all amounts expended in acquiring additional common
2 stock, preferred stock, debt obligations and other
3 securities, and all contributions to the capital or
4 surplus of a subsidiary subsequent to its acquisition
5 or formation;

6 2. Invest any amount in common stock, preferred stock, debt
7 obligations and other securities of one or more subsidiaries engaged
8 or organized to engage exclusively in the ownership and management
9 of assets authorized as investments for the insurer provided that
10 each subsidiary agrees to limit its investments in any asset so that
11 such investments will not cause the amount of the total investment
12 of the insurer to exceed any of the investment limitations specified
13 in paragraph 1 of this subsection or in Sections 1601 through 1629
14 of Title 36 of the Oklahoma Statutes applicable to the insurer. For
15 the purpose of this paragraph, "the total investment of the insurer"
16 shall include:

- 17 a. any direct investment by the insurer in an asset, and
18 b. the insurer's proportionate share of any investment in
19 an asset by any subsidiary of the insurer, which shall
20 be calculated by multiplying the amount of the
21 subsidiary's investment by the percentage of the
22 ownership of the subsidiary; and

23 3. With the approval of the Commissioner, invest any greater
24 amount in common stock, preferred stock, debt obligations or other

1 securities of one or more subsidiaries, provided that after the
2 investment the insurer's surplus as regards policyholders will be
3 reasonable in relation to the insurer's outstanding liabilities and
4 adequate to its financial needs.

5 C. Investments in common stock, preferred stock, debt
6 obligations or other securities of subsidiaries made pursuant to
7 subsection B of this section shall not be subject to any of the
8 otherwise applicable restrictions or prohibitions contained in Title
9 36 of the Oklahoma Statutes applicable to such investments of
10 insurers.

11 D. Whether any investment made pursuant to subsection B of this
12 section meets the requirements of that subsection is to be
13 determined before the investment is made, by calculating the
14 applicable investment limitations as though the investment had
15 already been made, taking into account the then outstanding
16 principal balance on all previous investments in debt obligations,
17 and the value of all previous investments in equity securities as of
18 the day they were made, net of any return of capital invested, not
19 including dividends.

20 E. If an insurer ceases to control a subsidiary, it shall
21 dispose of any investment therein made pursuant to this section
22 within three (3) years from the time of the cessation of control or
23 within such further time as the Commissioner may prescribe, unless
24 at any time after the investment shall have been made, the

1 investment shall have met the requirements for investment under any
2 other section of Title 36 of the Oklahoma Statutes, and the insurer
3 notifies the Commissioner.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1633 of Title 36, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The requirements for filing shall be as follows:

8 1. No person other than the issuer shall make a tender offer
9 for or a request or invitation for tenders of, or enter into any
10 agreement to exchange securities for, seek to acquire, or acquire,
11 in the open market or otherwise, any voting security of a domestic
12 insurer if, after the consummation thereof, such person would,
13 directly or indirectly, or by conversion or by exercise of any right
14 to acquire, be in control of the insurer, and no person shall enter
15 into an agreement to merge with or otherwise to acquire control of a
16 domestic insurer or any person controlling a domestic insurer
17 unless, at the time the offer, request or invitation is made or the
18 agreement is entered into, or prior to the acquisition of the
19 securities if no offer or agreement is involved, such person has
20 filed with the Commissioner and has sent to the insurer, and such
21 insurer has sent to its shareholders, a statement containing the
22 information required by this section and the offer, request,
23 invitation, agreement or acquisition has been approved by the
24 Commissioner in the manner prescribed in this act;

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

15 3. With respect to a transaction subject to this section, the
16 acquiring person must also file a preacquisition notification with
17 the Commissioner, which shall contain the information set forth in
18 paragraph 1 of subsection C of Section 4 of this act. A failure to
19 file the notification may be subject to the penalty specified in
20 paragraph 3 of subsection E of Section 4 of this act; and

21 4. For purposes of this section, a "domestic insurer" shall
22 include any person controlling a domestic insurer unless the person,
23 as determined by the Commissioner, is either directly or through its
24 affiliates primarily engaged in business other than the business of

1 insurance. For the purposes of this section, "person" shall not
2 include any securities broker holding, in the usual and customary
3 broker's function, less than twenty percent (20%) of the voting
4 securities of an insurance company or of any person which controls
5 an insurance company.

6 B. The statement to be filed with the Commissioner shall be
7 made under oath or affirmation and shall contain the following:

8 1. The name and address of each person by whom or on whose
9 behalf the merger or other acquisition of control referred to in
10 subsection A of this section, hereinafter called the "acquiring
11 party", is to be affected; and

12 a. if the person is an individual, his or her principal
13 occupation and all offices and positions held during
14 the past five (5) years, and any conviction of crimes
15 other than minor traffic violations during the past
16 ten (10) years, and

17 b. if the person is not an individual, a report of the
18 nature of its business operations during the past five
19 (5) years or for the lesser period as the person and
20 any predecessors shall have been in existence; an
21 informative description of the business intended to be
22 done by the person and the person's subsidiaries; and
23 a list of all individuals who are or who have been
24 selected to become directors or executive officers of

1 the person, or who perform or will perform functions
2 appropriate to such positions. The list shall include
3 for each individual the information required by
4 subparagraph a of this paragraph;

5 2. The source, nature and amount of the consideration used or
6 to be used in effecting the merger or other acquisition of control,
7 a description of any transaction where funds were or are to be
8 obtained for any such purpose, including any pledge of the insurer's
9 stock or the stock of any of its subsidiaries or controlling
10 affiliates, and the identity of persons furnishing consideration;
11 provided, however, that where a source of consideration is a loan
12 made in the lender's ordinary course of business, the identity of
13 the lender shall remain confidential, if the person filing the
14 statement so requests;

15 3. Fully audited financial information as to the earnings and
16 financial condition of each acquiring party for the preceding five
17 (5) fiscal years of each acquiring party, or for such lesser period
18 as the acquiring party and any predecessors shall have been in
19 existence, and similar unaudited information as of a date not
20 earlier than ninety (90) days prior to the filing of the statement.

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

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

7 6. The amount of each class of any security referred to in
8 subsection A of this section which is beneficially owned or
9 concerning which there is a right to acquire beneficial ownership by
10 each acquiring party;

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

21 8. A description of the purchase of any security referred to in
22 subsection A of this section during the twelve (12) calendar months
23 preceding the filing of the statement by any acquiring party,
24

1 including the dates of purchase, names of the purchasers and
2 consideration paid or agreed to be paid;

3 9. A description of any recommendations to purchase any
4 security referred to in subsection A of this section made during the
5 twelve (12) calendar months preceding the filing of the statement by
6 any acquiring party, or by anyone based upon interviews or at the
7 suggestion of the acquiring party;

8 10. Copies of all tender offers for, requests, or invitations
9 for tenders of, exchange offers for, and agreements to acquire or
10 exchange any securities referred to in subsection A of this section,
11 and, if distributed, additional related soliciting material;

12 11. The term of any agreement, contract or understanding made
13 with or proposed to be made with any broker-dealer as to
14 solicitation of securities referred to in subsection A of this
15 section for tender, and the amount of any fees, commissions or other
16 compensation to be paid to broker-dealers with regard thereto;

17 12. An agreement by the person required to file the statement
18 referred to in subsection A of this section that it will provide the
19 annual report, specified in subsection L of Section 5 of this act,
20 for so long as control exists;

21 13. An acknowledgement by the person required to file the
22 statement referred to in subsection A of this section that the
23 person and all subsidiaries within its control in the insurance
24 holding company system will provide information to the Commissioner

1 upon request as necessary to evaluate enterprise risk to the
2 insurer; and

3 14. Such additional information as the Commissioner may by rule
4 or regulation prescribe as necessary or appropriate for the
5 protection of policyholders of the insurer or in the public
6 interest. If the person required to file the statement referred to
7 in subsection A of this section is a partnership, limited
8 partnership, syndicate or other group, the Commissioner may require
9 that the information required pursuant to paragraphs 1 through 14 of
10 this subsection shall be given with respect to each partner of the
11 partnership or limited partnership, each member of the syndicate or
12 group, and each person who controls the partner or member. If any
13 partner, member or person is a corporation or the person required to
14 file the statement referred to in subsection A of this section is a
15 corporation, the Commissioner may require that the information
16 required pursuant to paragraphs 1 through 14 of this subsection
17 shall be given with respect to the corporation, each officer and
18 director of the corporation, and each person who is directly or
19 indirectly the beneficial owner of more than ten percent (10%) of
20 the outstanding voting securities of the corporation. If any
21 material change occurs in the facts set forth in the statement filed
22 with the Commissioner and sent to the insurer pursuant to this
23 section, an amendment setting forth the change, together with copies
24 of all documents and other material relevant to the change, shall be

1 filed with the Commissioner and sent to the insurer within two (2)
2 business days after the person learns of the change.

3 C. If any offer, request, invitation, agreement or acquisition
4 referred to in subsection A of this section is proposed to be made
5 by means of a registration statement under the Securities Act of
6 1933 or in circumstances requiring the disclosure of similar
7 information under the Securities Exchange Act of 1934, or under a
8 state law requiring similar registration or disclosure, the person
9 required to file the statement referred to in subsection A of this
10 section may utilize the documents in furnishing the information
11 called for by that statement.

12 D. 1. The Commissioner shall approve any merger or other
13 acquisition of control referred to in subsection A of this section
14 unless, after a public hearing, the Commissioner finds that:

- 15 a. after the change of control, the domestic insurer
16 referred to in subsection A of this section would not
17 be able to satisfy the requirements for the issuance
18 of a license to write the line or lines of insurance
19 for which it is presently licensed,
20 b. the effect of the merger or other acquisition of
21 control would be substantially to lessen competition
22 in insurance in this state or tend to create a
23 monopoly. In applying the competitive standard in this
24 subparagraph:

1 (1) the informational requirements of paragraph 1 of
2 subsection C of Section 4 of this act and the
3 standards of paragraph 2 of subsection D of
4 Section 4 of this act shall apply,

5 (2) the merger or other acquisition shall not be
6 disapproved if the Commissioner finds that any of
7 the situations meeting the criteria provided by
8 paragraph 3 of subsection D of Section 4 of this
9 act exist, and

10 (3) the Commissioner may condition the approval of
11 the merger or other acquisition on the removal of
12 the basis of disapproval within a specified
13 period of time,

14 c. the financial condition of any acquiring party is such
15 as might jeopardize the financial stability of the
16 insurer, or prejudice the interest of its
17 policyholders,

18 d. the plans or proposals which the acquiring party has
19 to liquidate the insurer, sell its assets or
20 consolidate or merge it with any person, or to make
21 any other material change in its business or corporate
22 structure or management, are unfair and unreasonable
23 to policyholders of the insurer and not in the public
24 interest,

- 1 e. the competence, experience and integrity of those
2 persons who would control the operation of the insurer
3 are such that it would not be in the interest of
4 policyholders of the insurer and of the public to
5 permit the merger or other acquisition of control, or
6 f. the acquisition is likely to be hazardous or
7 prejudicial to the insurance-buying public.

8 2. The public hearing referred to in paragraph 1 of this
9 subsection shall be held within thirty (30) days after the statement
10 required by subsection A of this section is filed, and at least
11 twenty (20) days' notice shall be given by the Commissioner to the
12 person filing the statement. Not less than fourteen (14) days'
13 notice of the public hearing shall be given by the person filing the
14 statement to the insurer and to such other persons as may be
15 designated by the Commissioner. The insurer shall give notice to
16 its securityholders. The Commissioner shall make a determination
17 within the sixty-day period preceding the effective date of the
18 proposed transaction. At the hearing, the person filing the
19 statement, the insurer, any person to whom notice of hearing was
20 sent, and any other person whose interest may be affected shall have
21 the right to present evidence, examine and cross-examine witnesses,
22 and offer oral and written arguments and in connection therewith
23 shall be entitled to conduct discovery proceedings in the same
24 manner as is presently allowed by subsection A of Section 317 of

1 Title 36 of the Oklahoma Statute. All discovery proceedings shall
2 be concluded not later than three (3) days prior to the commencement
3 of the public hearing.

4 3. If the proposed acquisition of control will require the
5 approval of more than one state's Commissioner, the public hearing
6 referred to in paragraph 2 of this subsection may be held on a
7 consolidated basis upon request of the person filing the statement
8 referred to in subsection A of this section. Such person shall file
9 the statement referred to in subsection A of this section with the
10 National Association of Insurance Commissioners (NAIC) within five
11 (5) days of making the request for a public hearing. The
12 Commissioner may opt out of a consolidated hearing, and shall
13 provide notice to the applicant of the opt-out within ten (10) days
14 of the receipt of the statement referred to in subsection A of this
15 section. A hearing conducted on a consolidated basis shall be
16 public and shall be held within the United States before the
17 Commissioners of the states in which the insurers are domiciled.
18 Such Commissioners shall hear and receive evidence. A Commissioner
19 may attend such hearing, in person or by telecommunication.

20 4. In connection with a change of control of a domestic
21 insurer, any determination by the Commissioner that the person
22 acquiring control of the insurer shall be required to maintain or
23 restore the capital of the insurer to the level required by the laws
24 and regulations of this state shall be made not later than sixty

1 (60) days after the date of notification of the change in control
2 submitted pursuant to paragraph 1 of subsection A of Section 3 of
3 this act.

4 5. The Commissioner may retain at the acquiring person's
5 expense any attorneys, actuaries, accountants and other experts not
6 otherwise a part of the Commissioner's staff as may be reasonably
7 necessary to assist the Commissioner in reviewing the proposed
8 acquisition of control.

9 E. The provisions of this section shall not apply to any offer,
10 request, invitation, agreement or acquisition which the Commissioner
11 by order shall exempt as not having been made or entered into for
12 the purpose and not having the effect of changing or influencing the
13 control of a domestic insurer, or as otherwise not comprehended
14 within the purposes of this section.

15 F. The following shall be violations of this section:

16 1. The failure to file any statement, amendment or other
17 material required to be filed pursuant to subsection A or B of this
18 section; or

19 2. The effectuation or any attempt to effectuate an acquisition
20 of control of, divestiture of, or merger with, a domestic insurer
21 unless the Commissioner has given approval.

22 G. The courts of this state are hereby vested with jurisdiction
23 over every person not resident, domiciled or authorized to do
24 business in this state who files a statement with the Commissioner

1 under this section, and overall actions involving such person
2 arising out of violations of this section, and each such person
3 shall be deemed to have performed acts equivalent to and
4 constituting an appointment by the person of the Commissioner to be
5 his true and lawful attorney upon whom may be served all lawful
6 process in any action, suit or proceeding arising out of violations
7 of this section. Copies of all lawful process shall be served on
8 the Commissioner and transmitted by registered or certified mail by
9 the Commissioner to the person at his or her last-known address.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1634 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 A. The following definitions shall apply for the purposes of
14 this section only:

15 1. "Acquisition" means any agreement, arrangement or activity
16 the consummation of which results in a person acquiring directly or
17 indirectly the control of another person, and includes but is not
18 limited to the acquisition of voting securities, the acquisition of
19 assets, bulk reinsurance and mergers; and

20 2. "Involved insurer" includes an insurer which acquires or is
21 acquired, is affiliated with an acquirer or acquired, or is the
22 result of a merger.
23
24

1 B. 1. Except as exempted in paragraph 2 of this subsection,
2 this section applies to any acquisition in which there is a change
3 in control of an insurer authorized to do business in this state.

4 2. This section shall not apply to the following:

- 5 a. a purchase of securities solely for investment
6 purposes so long as the securities are not used by
7 voting or otherwise to cause or attempt to cause the
8 substantial lessening of competition in any insurance
9 market in this state. If a purchase of securities
10 results in a presumption of control under paragraph 3
11 of Section 1 of this act, it is not solely for
12 investment purposes unless the Commissioner of the
13 insurer's state of domicile accepts a disclaimer of
14 control or affirmatively finds that control does not
15 exist and the disclaimer action or affirmative finding
16 is communicated by the domiciliary Commissioner to the
17 Commissioner of this state, or
- 18 b. the acquisition of a person by another person when
19 both persons are neither directly nor through
20 affiliates primarily engaged in the business of
21 insurance, if preacquisition notification is filed
22 with the Commissioner in accordance with paragraph 1
23 of subsection C of this section thirty (30) days prior
24 to the proposed effective date of the acquisition.

1 However, such preacquisition notification is not
2 required for exclusion from this section if the
3 acquisition would otherwise be excluded from the
4 requirements of this section by any other subparagraph
5 of this paragraph,

6 c. the acquisition of already affiliated persons,

7 d. an acquisition if, as an immediate result of the
8 acquisition,

9 (1) in no market would the combined market share of
10 the involved insurers exceed five percent (5%) of
11 the total market,

12 (2) there would be no increase in any market share,
13 or

14 (3) in no market would:

15 (a) the combined market share of the involved
16 insurers exceed twelve percent (12%) of the
17 total market, and

18 (b) the market share increase by more than two
19 percent (2%) of the total market.

20 For the purpose of this subparagraph, a "market" means
21 direct written insurance premium in this state for a
22 line of business as contained in the annual statement
23 required to be filed by insurers licensed to do
24 business in this state,

1 e. an acquisition for which a preacquisition notification
2 would be required pursuant to this section due solely
3 to the resulting effect on the ocean marine insurance
4 line of business, and

5 f. an acquisition of an insurer whose domiciliary
6 Commissioner affirmatively finds that the insurer is
7 in failing condition; there is a lack of feasible
8 alternative to improving such condition; the public
9 benefits of improving the insurer's condition through
10 the acquisition exceed the public benefits that would
11 arise from not lessening competition; and the findings
12 are communicated by the domiciliary Commissioner to
13 the Commissioner of this state.

14 C. Any acquisition described in subsection B of this section
15 may be subject to an order pursuant to subsection E of this section
16 unless the acquiring person files a preacquisition notification and
17 the waiting period has expired. The acquired person may file a
18 preacquisition notification. The Commissioner shall give
19 confidential treatment to information submitted under this
20 subsection in the same manner as provided in Section 10 of this act.

21 1. The preacquisition notification shall be in such form and
22 contain such information as prescribed by the National Association
23 of Insurance Commissioners (NAIC) relating to those markets which,
24 under subparagraph d of paragraph 2 of subsection B of this section,

1 cause the acquisition not to be exempted from the provisions of this
2 section. The Commissioner may require such additional material and
3 information as deemed necessary to determine whether the proposed
4 acquisition, if consummated, would violate the competitive standard
5 of subsection D of this section. The required information may
6 include an opinion of an economist as to the competitive impact of
7 the acquisition in this state accompanied by a summary of the
8 education and experience of such person indicating his or her
9 ability to render an informed opinion.

10 2. The waiting period required shall begin on the date of
11 receipt of the Commissioner of a preacquisition notification and
12 shall end on the earlier of the thirtieth day after the date of
13 receipt, or termination of the waiting period by the Commissioner.
14 Prior to the end of the waiting period, the Commissioner on a one-
15 time basis may require the submission of additional needed
16 information relevant to the proposed acquisition, in which event the
17 waiting period shall end on the earlier of the thirtieth day after
18 receipt of the additional information by the Commissioner or
19 termination of the waiting period by the Commissioner.

20 D. 1. The Commissioner may enter an order under paragraph 1 of
21 subsection E of this section with respect to an acquisition if there
22 is substantial evidence that the effect of the acquisition may be
23 substantially to lessen competition in any line of insurance in this
24 state or tend to create a monopoly or if the insurer fails to file

1 adequate information in compliance with subsection C of this
2 section.

3 2. In determining whether a proposed acquisition would violate
4 the competitive standard of paragraph 1 of this subsection, the
5 Commissioner shall consider the following:

6 a. any acquisition covered under subsection B of this
7 section involving two or more insurers competing in
8 the same market is evidence of violation of the
9 competitive standards.

10 (1) if the market is highly concentrated and the
11 involved insurers possess the following shares of
12 the market:

13	Insurer A	Insurer B
14	4%	4% or more
15	10%	2% or more
16	15%	1% or more, or

17 (2) if the market is not highly concentrated and the
18 involved insurers possess the following shares of
19 the market:

20	Insurer A	Insurer B
21	5%	5% or more
22	10%	4% or more
23	15%	3% or more
24	19%	1% or more

1 A highly concentrated market, for purposes of this
2 subparagraph, is one in which the share of the four
3 largest insurers is seventy-five percent (75%) or more
4 of the market. Percentages not shown in the tables
5 are interpolated proportionately to the percentages
6 that are shown. If more than two insurers are
7 involved, exceeding the total of the two columns in
8 the table is prima facie evidence of violation of the
9 competitive standard in paragraph 1 of this
10 subsection. For the purpose of this subparagraph, the
11 insurer with the largest share of the market shall be
12 deemed to be Insurer A,

13 b. there is a significant trend toward increased
14 concentration when the aggregate market share of any
15 grouping of the largest insurers in the market, from
16 the two largest to the eight largest, has increased by
17 seven percent (7%) or more of the market over a period
18 of time extending from any base year five (5) to ten
19 (10) years prior to the acquisition up to the time of
20 the acquisition. Any acquisition or merger covered
21 under subsection B of Section 5 of this act involving
22 two or more insurers competing in the same market is
23 evidence of violation of the competitive standard in
24 paragraph 1 of this subsection if:

1 (1) there is a significant trend toward increased
2 concentration in the market,

3 (2) one of the insurers involved is one of the
4 insurers in a grouping of large insurers showing
5 the requisite increase in the market share, and

6 (3) another involved insurer's market is two percent
7 (2%) or more,

8 c. for the purposes of this paragraph:

9 (1) the term "insurer" includes any company or group
10 of companies under common management, ownership
11 or control,

12 (2) the term "market" means the relevant product and
13 geographical markets. In determining the
14 relevant product and geographical markets, the
15 Commissioner shall give due consideration to,
16 among other things, the definitions or
17 guidelines, if any, promulgated by the NAIC and
18 to information, if any, submitted by parties to
19 the acquisition. In the absence of sufficient
20 information to the contrary, the relevant product
21 market is assumed to be the direct written
22 insurance premium for a line of business, such
23 line being that used in the annual statement
24 required to be filed by insurers doing business

1 in this state, and the relevant geographical
2 market is assumed to be this state,

3 (3) the burden of showing prima facie evidence of
4 violation of the competitive standard rests upon
5 the Commissioner, and

6 d. even though an acquisition is not a prima facie
7 violation of the competitive standard under
8 subparagraphs a and b of this paragraph, the
9 Commissioner may establish the requisite
10 anticompetitive effect based upon other substantial
11 evidence. Even though an acquisition is a prima facie
12 violation of the competitive standard under
13 subparagraphs a and b of this paragraph, a party may
14 establish the absence of the requisite anticompetitive
15 effect based upon other substantial evidence.
16 Relevant factors in making a determination under this
17 subparagraph include, but are not limited to, market
18 shares, volatility of ranking of market leaders,
19 number of competitors, concentration, trend of
20 concentration in the industry, and ease of entry and
21 exit into the market.

22 3. An order may not be entered under subsection E of this
23 section if:
24

1 a. the acquisition will yield substantial economies of
2 scale or economies in resource utilization that cannot
3 be feasibly achieved in any other way, and the public
4 benefits which would arise from such economies exceed
5 the public benefits which would arise from not
6 lessening competition, or

7 b. the acquisition will substantially increase the
8 availability of insurance, and the public benefits of
9 the increase exceed the public benefits which would
10 arise from not lessening competition.

11 E. 1. a. If an acquisition violates the standards of this
12 section, the Commissioner may enter an order:

13 (1) requiring an involved insurer to cease and desist
14 from doing business in this state with respect to
15 the line or lines of insurance involved in the
16 violation, or

17 (2) denying the application of an acquired or
18 acquiring insurer for a license to do business in
19 this state.

20 b. The order shall not be entered unless:

21 (1) there is a hearing,

22 (2) notice of the hearing is issued prior to the end
23 of the waiting period and not less than fifteen
24 (15) days prior to the hearing, and

1 (3) the hearing is concluded and the order is issued
2 no later than sixty (60) days after the date of
3 the filing of the preacquisition notification
4 with the Commissioner.

5 c. Every order shall be accompanied by a written decision
6 of the Commissioner setting forth findings of fact and
7 conclusions of law.

8 d. An order pursuant to this paragraph shall not apply if
9 the acquisition is not consummated.

10 2. Any person who violates a cease and desist order of the
11 Commissioner under paragraph 1 of this subsection and while the
12 order is in effect may, after notice and hearing and upon order of
13 the Commissioner, be subject at the discretion of the Commissioner
14 to one or more of the following:

- 15 a. a monetary penalty of not more than Ten Thousand
16 Dollars (\$10,000.00) for every day of violation, or
17 b. suspension or revocation of the person's license.

18 3. Any insurer or other person who fails to make any filing
19 required by this section, and who also fails to demonstrate a good-
20 faith effort to comply with any filing requirement, shall be subject
21 to a fine of not more than Fifty Thousand Dollars (\$50,000.00).

22 F. Subsections B and C of Section 12 of this act and Section 14
23 of this act shall not apply to acquisitions covered under subsection
24 B of this section.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1635 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Every insurer which is authorized to do business in this
5 state and which is a member of an insurance holding company system
6 shall register with the Commissioner, except a foreign insurer
7 subject to registration requirements and standards adopted by
8 statute or regulation in the jurisdiction of its domicile which are
9 substantially similar to those contained in:

10 1. This section;

11 2. Paragraph 1 of subsection A of Section 6 of this act and
12 subsections B and D of Section 6 of this act; and

13 3. Either paragraph 2 of subsection A of Section 6 of this act
14 or a provision such as the following: Each registered insurer shall
15 keep current the information required to be disclosed in its
16 registration statement by reporting all material changes or
17 additions within fifteen (15) days after the end of the month in
18 which it learns of each change or addition; provided, however, that
19 subject to subsection B of Section 1636 of Title 36 of the Oklahoma
20 Statutes, each registered insurer shall so report all dividends and
21 other distributions to shareholders within two (2) business days
22 following the declaration thereof.

23 Any insurer which is subject to registration under this section
24 shall register within fifteen (15) days after it becomes subject to

1 registration, and annually thereafter by May 1 of each year for the
2 previous calendar year, unless the Commissioner for good cause shown
3 extends the time for registration, and then within the extended
4 time. The Commissioner may require any insurer authorized to do
5 business in the state which is a member of an insurance holding
6 company system, and which is not subject to registration under this
7 section, to furnish a copy of the registration statement, the
8 summary specified in subsection C of this section or other
9 information filed by the insurance company with the insurance
10 regulatory authority of its domiciliary jurisdiction.

11 B. Every insurer subject to registration shall file the
12 registration statement with the Commissioner on a form and in a
13 format prescribed by the National Association of Insurance
14 Commissioners, which shall contain the following current
15 information:

16 1. The capital structure, general financial condition,
17 ownership and management of the insurer and any person controlling
18 the insurer;

19 2. The identity and relationship of every member of the
20 insurance holding company system;

21 3. The following agreements in force, and transactions
22 currently outstanding or which have occurred during the last
23 calendar year between the insurer and its affiliates:

24

- a. loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates,
- b. purchases, sales or exchange of assets,
- c. transactions not in the ordinary course of business,
- d. guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business,
- e. all management agreements, service contracts and all cost-sharing arrangements,
- f. reinsurance agreements,
- g. dividends and other distributions to shareholders, and
- h. consolidated tax allocation agreements;

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

5. If requested by the Commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange

1 Act of 1934, as amended. An insurer required to file financial
2 statements pursuant to this paragraph may satisfy the request by
3 providing the Commissioner with the most recently filed parent
4 corporation financial statements that have been filed with the SEC;

5 6. Other matters concerning transactions between registered
6 insurers and any affiliates as may be included from time to time in
7 any registration forms adopted or approved by the Commissioner;

8 7. Statements that the insurer's board of directors oversees
9 corporate governance and internal controls and that the insurer's
10 officers or senior management have approved, implemented and
11 continue to maintain and monitor corporate governance and internal
12 control procedures; and

13 8. Any other information required by the Commissioner by rule
14 or regulation.

15 C. All registration statements shall contain a summary
16 outlining all items in the current registration statement
17 representing changes from the prior registration statement.

18 D. No information need be disclosed on the registration
19 statement filed pursuant to subsection B of this section if the
20 information is not material for the purposes of this section.
21 Unless the Commissioner by rule, regulation or order provides
22 otherwise, sales, purchases, exchanges, loans or extensions of
23 credit, investments, or guarantees involving one-half of one percent
24

1 (.5%) or less of an insurer's admitted assets as of December 31 next
2 preceding shall not be deemed material for purposes of this section.

3 E. Subject to subsection B of Section 6 of this act, each
4 registered insurer shall report to the Commissioner all dividends
5 and other distributions to shareholders within fifteen (15) business
6 days following the declaration thereof.

7 F. Any person within an insurance holding company system
8 subject to registration shall be required to provide complete and
9 accurate information to an insurer, where the information is
10 reasonably necessary to enable the insurer to comply with the
11 provisions of this act.

12 G. The Commissioner shall terminate the registration of any
13 insurer which demonstrates that it no longer is a member of an
14 insurance holding company system.

15 H. The Commissioner may require or allow two or more affiliated
16 insurers subject to registration to file a consolidated registration
17 statement.

18 I. The Commissioner may allow an insurer which is authorized to
19 do business in this state and which is part of an insurance holding
20 company system to register on behalf of any affiliated insurer which
21 is required to register under subsection A of this section and to
22 file all information and material required to be filed under this
23 section.

1 J. The provisions of this section shall not apply to any
2 insurer, information or transaction if and to the extent that the
3 Commissioner by rule, regulation or order shall exempt the same from
4 the provisions of this section.

5 K. Any person may file with the Commissioner a disclaimer of
6 affiliation with any authorized insurer or a disclaimer may be filed
7 by the insurer or any member of an insurance holding company system.
8 The disclaimer shall fully disclose all material relationships and
9 bases for affiliation between the person and the insurer as well as
10 the basis for disclaiming the affiliation. A disclaimer of
11 affiliation shall be deemed to have been granted unless the
12 Commissioner, within thirty (30) days following receipt of a
13 complete disclaimer, notifies the filing party the disclaimer is
14 disallowed. In the event of disallowance, the disclaiming party may
15 request an administrative hearing, which shall be granted. The
16 disclaiming party shall be relieved of its duty to register under
17 this section if approval of the disclaimer has been granted by the
18 Commissioner, or if the disclaimer is deemed to have been approved.

19 L. The ultimate controlling person of every insurer subject to
20 registration shall also file an annual enterprise risk report. The
21 report shall, to the best of the ultimate controlling person's
22 knowledge and belief, identify the material risks within the
23 insurance holding company system that could pose enterprise risk to
24 the insurer. The report shall be filed with the lead state

1 Commissioner of the insurance holding company system as determined
2 by the procedures within the Financial Analysis Handbook adopted by
3 the National Association of Insurance Commissioners.

4 M. The failure to file a registration statement or any summary
5 of the registration statement or enterprise risk filing required by
6 this section within the time specified for filing shall be a
7 violation of this section.

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1636 of Title 36, unless there
10 is created a duplication in numbering, reads as follows:

11 A. 1. Transactions within an insurance holding company system
12 to which an insurer subject to registration is a party shall be
13 subject to the following standards:

- 14 a. the terms shall be fair and reasonable,
- 15 b. agreements for cost-sharing services and management
16 shall include such provisions as required by rule and
17 regulation issued by the Commissioner,
- 18 c. charges or fees for services performed shall be
19 reasonable,
- 20 d. expenses incurred and payment received shall be
21 allocated to the insurer in conformity with customary
22 insurance accounting practices consistently applied,
- 23 e. the books, accounts and records of each party to all
24 such transactions shall be so maintained as to clearly

1 and accurately disclose the nature and details of the
2 transactions including such accounting information as
3 is necessary to support the reasonableness of the
4 charges or fees to the respective parties, and

5 f. the insurer's surplus as regards policyholders
6 following any dividends or distributions to
7 shareholder affiliates shall be reasonable in relation
8 to the insurer's outstanding liabilities and adequate
9 to meet its financial needs.

10 2. The following transactions involving a domestic insurer and
11 any person in its insurance holding company system, including
12 amendments or modifications of affiliate agreements previously filed
13 pursuant to this section, which are subject to any materiality
14 standards contained in subparagraphs a through g of this paragraph,
15 shall not be entered into unless the insurer has notified the
16 Commissioner in writing of its intention to enter into the
17 transaction at least thirty (30) days prior thereto, or such shorter
18 period as the Commissioner may permit, and the Commissioner has not
19 disapproved it within that period. The notice for amendments or
20 modifications shall include the reasons for the change and the
21 financial impact on the domestic insurer. Informal notice shall be
22 reported, within thirty (30) days after a termination of a
23 previously filed agreement, to the Commissioner for determination of
24 the type of filing required, if any:

1 a. sales, purchases, exchanges, loans, extensions of
2 credit, or investments, provided the transactions are
3 equal to or exceed:

4 (1) with respect to nonlife insurers, the lesser of
5 three percent (3%) of the insurer's admitted
6 assets or twenty-five percent (25%) of surplus as
7 regards policyholders as of the 31st day of
8 December next preceding,

9 (2) with respect to life insurers, three percent (3%)
10 of the insurer's admitted assets as of the 31st
11 day of December next preceding,

12 b. loans or extensions of credit to any person who is not
13 an affiliate, where the insurer makes loans or
14 extensions of credit with the agreement or
15 understanding that the proceeds of the transactions,
16 in whole or in substantial part, are to be used to
17 make loans or extensions of credit to, to purchase
18 assets of, or to make investments in, any affiliate of
19 the insurer making the loans or extensions of credit
20 provided the transactions are equal to or exceed:

21 (1) with respect to nonlife insurers, the lesser of
22 three percent (3%) of the insurer's admitted
23 assets or twenty-five percent (25%) of surplus as
24

1 regards policyholders as of the 31st day of
2 December next preceding, and

3 (2) with respect to life insurers, three percent (3%)
4 of the insurer's admitted assets as of the 31st
5 day of December next preceding,

6 c. reinsurance agreements or modifications thereto,
7 including:

8 (1) all reinsurance pooling agreements,

9 (2) agreements in which the reinsurance premium or a
10 change in the insurer's liabilities, or the
11 projected reinsurance premium or a change in the
12 insurer's liabilities in any of the next three
13 (3) years, equals or exceeds five percent (5%) of
14 the insurer's surplus as regards policyholders,
15 as of the 31st day of December next preceding,
16 including those agreements which may require as
17 consideration the transfer of assets from an
18 insurer to a nonaffiliate, if an agreement or
19 understanding exists between the insurer and
20 nonaffiliate that any portion of the assets will
21 be transferred to one or more affiliates of the
22 insurer,

- d. all management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements,
- e. guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (.5%) of the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of the 31st day of December next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph,
- f. direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Section 2 of this act (or authorized under any other section of this title), or in nonsubsidiary insurance affiliates that are subject to the provisions of this act, are exempt from this requirement, and

1 g. any material transactions, specified by regulation,
2 which the Commissioner determines may adversely affect
3 the interests of the insurer's policyholders.

4 Nothing in this paragraph shall be deemed to authorize or permit
5 any transactions which, in the case of an insurer not a member of
6 the same insurance holding company system, would be otherwise
7 contrary to law.

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

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

21 5. The Commissioner shall be notified within thirty (30) days
22 of any investment of the domestic insurer in any one corporation if
23 the total investment in the corporation by the insurance holding
24

1 company system exceeds ten percent (10%) of the corporation's voting
2 securities.

3 B. No domestic insurer shall pay any extraordinary dividend or
4 make any other extraordinary distribution to its shareholders until
5 thirty (30) days after the Commissioner has received notice of the
6 declaration thereof and has not within that period disapproved the
7 payment, or until the Commissioner has approved the payment within
8 the thirty-day period. For purposes of this section, an
9 extraordinary dividend or distribution includes any dividend or
10 distribution of cash or other property whose fair market value
11 together with that of other dividends or distributions made within
12 the preceding twelve (12) months exceeds the greater of:

13 1. Ten percent (10%) of the insurer's surplus as regards
14 policyholders as of the 31st day of December next preceding; or

15 2. The net gain from operations of the insurer, if the insurer
16 is a life insurer, or the net income, if the insurer is not a life
17 insurer, not including realized capital gains, for the twelve-month
18 period ending the 31st day of December next preceding, but shall not
19 include pro rata distributions of any class of the insurer's own
20 securities.

21 In determining whether a dividend or distribution is
22 extraordinary, an insurer other than a life insurer may carry
23 forward net income from the previous two (2) calendar years that has
24 not already been paid out as dividends. This carry-forward shall be

1 computed by taking the net income from the second and third
2 preceding calendar years, not including realized capital gains, less
3 dividends paid in the second and immediate preceding calendar years.

4 Notwithstanding any other provision of law, an insurer may
5 declare an extraordinary dividend or distribution which is
6 conditional upon the Commissioner's approval, and the declaration
7 shall confer no rights upon shareholders until (1) the Commissioner
8 has approved the payment of the dividend or distribution or (2) the
9 Commissioner has not disapproved payment within the thirty-day
10 period.

11 C. 1. Notwithstanding the control of a domestic insurer by any
12 person, the officers and directors of the insurer shall not thereby
13 be relieved of any obligation or liability to which they would
14 otherwise be subject by law, and the insurer shall be managed so as
15 to assure its separate operating identity consistent with this act.

16 2. Nothing in this section shall preclude a domestic insurer
17 from having or sharing a common management or cooperative or joint
18 use of personnel, property or services with one or more other
19 persons under arrangements meeting the standards of paragraph 1 of
20 subsection A of this section.

21 3. Not less than one-third (1/3) of the directors of a domestic
22 insurer, and not less than one-third (1/3) of the members of each
23 committee of the board of directors of any domestic insurer, shall
24 be persons who are not officers or employees of the insurer or of

1 any entity controlling, controlled by, or under common control with
2 the insurer and who are not beneficial owners of a controlling
3 interest in the voting stock of the insurer or entity. At least one
4 such person must be included in any quorum for the transaction of
5 business at any meeting of the board of directors or any committee
6 thereof.

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

18 5. The provisions of paragraphs 3 and 4 of this subsection
19 shall not apply to a domestic insurer if the person controlling the
20 insurer, such as an insurer, a mutual insurance holding company, or
21 a publicly held corporation, has a board of directors and committees
22 thereof that meet the requirements of paragraphs 3 and 4 of this
23 subsection with respect to such controlling entity.

24

1 6. An insurer may make application to the Commissioner for a
2 waiver from the requirements of this subsection, if the insurer's
3 annual direct written and assumed premium, excluding premiums
4 reinsured with the Federal Crop Insurance Corporation and Federal
5 Flood Program, is less than Three Hundred Million Dollars
6 (\$300,000,000.00). An insurer may also make application to the
7 Commissioner for a waiver from the requirements of this subsection
8 based upon unique circumstances. The Commissioner may consider
9 various factors including, but not limited to, the type of business
10 entity, volume of business written, availability of qualified board
11 members, or the ownership or organizational structure of the entity.

12 D. For purposes of this act, in determining whether an
13 insurer's surplus as regards policyholders is reasonable in relation
14 to the insurer's outstanding liabilities and adequate to meet its
15 financial needs, the following factors, among others, shall be
16 considered:

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

20 2. The extent to which the insurer's business is diversified
21 among several lines of insurance;

22 3. The number and size of risks insured in each line of
23 business;

1 4. The extent of the geographical dispersion of the insurer's
2 insured risks;

3 5. The nature and extent of the insurer's reinsurance program;

4 6. The quality, diversification and liquidity of the insurer's
5 investment portfolio;

6 7. The recent past and projected future trend in the size of
7 the insurer's investment portfolio;

8 8. The surplus as regards policyholders maintained by other
9 comparable insurers;

10 9. The adequacy of the insurer's reserves; and

11 10. The quality and liquidity of investments in affiliates.

12 The Commissioner may treat any such investment as a disallowed asset
13 for purposes of determining the adequacy of surplus as regards
14 policyholders whenever in the judgment of the Commissioner the
15 investment so warrants.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1637 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 A. Subject to the limitation contained in this section and in
20 addition to the powers which the Commissioner has under Sections
21 309.1 through 309.7 of Title 36 of the Oklahoma Statutes relating to
22 the examination of insurers, the Commissioner shall have the power
23 to examine any insurer registered under Section 5 of this act and
24 its affiliates to ascertain the financial condition of the insurer,

1 including the enterprise risk to the insurer by the ultimate
2 controlling party, or by any entity or combination of entities
3 within the insurance holding company system, or by the insurance
4 holding company system on a consolidated basis.

5 B. 1. The Commissioner may order any insurer registered under
6 Section 5 of this act to produce such records, books or other
7 information papers in the possession of the insurer or its
8 affiliates as are reasonably necessary to determine compliance with
9 Title 36 of the Oklahoma Statutes.

10 2. To determine compliance with Title 36 of the Oklahoma
11 Statutes, the Commissioner may order any insurer registered under
12 Section 5 of this act to produce information not in the possession
13 of the insurer if the insurer can obtain access to such information
14 pursuant to contractual relationships, statutory obligations or
15 other method. In the event the insurer cannot obtain the
16 information requested by the Commissioner, the insurer shall provide
17 the Commissioner a detailed explanation of the reason that the
18 insurer cannot obtain the information and the identity of the holder
19 of the information. Whenever it appears to the Commissioner that
20 the detailed explanation is without merit, the Commissioner may
21 require, after notice and hearing, the insurer to pay a penalty of
22 Five Hundred Dollars (\$500.00) for each day's delay, or may suspend
23 or revoke the insurer's license.

1 C. The Commissioner may retain at the registered insurer's
2 expense such attorneys, actuaries, accountants and other experts not
3 otherwise a part of the Commissioner's staff as shall be reasonably
4 necessary to assist in the conduct of the examination under
5 subsection A of this section. Any persons so retained shall be
6 under the direction and control of the Commissioner and shall act in
7 a purely advisory capacity.

8 D. Each registered insurer producing for examination records,
9 books and papers pursuant to subsection A of this section shall be
10 liable for and shall pay the expense of examination in accordance
11 with Section 309.6 of Title 36 of the Oklahoma Statutes.

12 E. In the event the insurer fails to comply with an order, the
13 Commissioner shall have the power to examine the affiliates to
14 obtain the information. The Commissioner shall also have the power
15 to issue subpoenas, to administer oaths, and to examine under oath
16 any person for purposes of determining compliance with this section.
17 Upon the failure or refusal of any person to obey a subpoena, the
18 Commissioner may petition a court of competent jurisdiction, and
19 upon proper showing, the court may enter an order compelling the
20 witness to appear and testify or produce documentary evidence.
21 Failure to obey the court order shall be punishable as contempt of
22 court. Every person shall be obliged to attend as a witness at the
23 place specified in the subpoena, when subpoenaed, anywhere within
24 the state. He or she shall be entitled to the fees and mileage, if

1 claimed, as provided for witness fees pursuant to Section 81 of
2 Title 28 of the Oklahoma Statutes, and such expense shall be
3 itemized and charged against, and be paid by, the company being
4 examined.

5 SECTION 8. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1638 of Title 36, unless there
7 is created a duplication in numbering, reads as follows:

8 A. With respect to any insurer registered under Section 5 of
9 this act, and in accordance with subsection C of this section, the
10 Commissioner shall also have the power to participate in a
11 supervisory college for any domestic insurer that is part of an
12 insurance holding company system with international operations in
13 order to determine compliance by the insurer with Title 36 of the
14 Oklahoma Statutes. The powers of the Commissioner with respect to
15 supervisory colleges include, but are not limited to, the following:

- 16 1. Initiating the establishment of a supervisory college;
- 17 2. Clarifying the membership and participation of other
18 supervisors in the supervisory college;
- 19 3. Clarifying the functions of the supervisory college and the
20 role of other regulators, including the establishment of a group-
21 wide supervisor;
- 22 4. Coordinating the ongoing activities of the supervisory
23 college, including planning meetings, supervisory activities, and
24 processes for information sharing; and

1 5. Establishing a crisis management plan.

2 B. Each registered insurer subject to this section shall be
3 liable for and shall pay the reasonable expenses of the
4 Commissioner's participation in a supervisory college in accordance
5 with subsection C of this section, including reasonable travel
6 expenses. For purposes of this section, a supervisory college may
7 be convened as either a temporary or permanent forum for
8 communication and cooperation between the regulators charged with
9 the supervision of the insurer or its affiliates, and the
10 Commissioner may establish a regular assessment to the insurer for
11 the payment of these expenses.

12 C. In order to assess the business strategy, financial
13 position, legal and regulatory position, risk exposure, risk
14 management and governance processes, and as part of the examination
15 of individual insurers in accordance with Section 7 of this act, the
16 Commissioner may participate in a supervisory college with other
17 regulators charged with supervision of the insurer or its
18 affiliates, including other state, federal and international
19 regulatory agencies. The Commissioner may enter into agreements in
20 accordance with subsection C of Section 10 of this act providing the
21 basis for cooperation between the Commissioner and the other
22 regulatory agencies, and the activities of the supervisory college.
23 Nothing in this section shall delegate to the supervisory college
24

1 the authority of the Commissioner to regulate or supervise the
2 insurer or its affiliates within its jurisdiction.

3 SECTION 9. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1639 of Title 36, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The Commissioner is authorized to act as the group-wide
7 supervisor for any internationally active insurance group in
8 accordance with the provisions of this section. However, the
9 Commissioner may otherwise acknowledge another regulatory official
10 as the group-wide supervisor where the internationally active
11 insurance group:

12 1. Does not have substantial insurance operations in the United
13 States;

14 2. Has substantial insurance operations in the United States,
15 but not in this state; or

16 3. Has substantial insurance operations in the United States
17 and this state, but the Commissioner has determined pursuant to the
18 factors set forth in subsections B and F of this section that the
19 other regulatory official is the appropriate group-wide supervisor.
20 An insurance holding company system that does not otherwise qualify
21 as an internationally active insurance group may request that the
22 Commissioner make a determination or acknowledgment as to a group-
23 wide supervisor pursuant to this section.

1 B. In cooperation with other state, federal and international
2 regulatory agencies, the Commissioner will identify a single group-
3 wide supervisor for an internationally active insurance group. The
4 Commissioner may determine that the Commissioner is the appropriate
5 group-wide supervisor for an internationally active insurance group
6 that conducts substantial insurance operations concentrated in this
7 state. However, the Commissioner may acknowledge that a regulatory
8 official from another jurisdiction is the appropriate group-wide
9 supervisor for the internationally active insurance group. The
10 Commissioner shall consider the following factors when making a
11 determination or acknowledgment under this subsection:

12 1. The place of domicile of the insurers within the
13 internationally active insurance group that hold the largest share
14 of the group's written premiums, assets or liabilities;

15 2. The place of domicile of the top-tiered insurer or insurers
16 in the insurance holding company system of the internationally
17 active insurance group;

18 3. The location of the executive offices or largest operational
19 offices of the internationally active insurance group;

20 4. Whether another regulatory official is acting or is seeking
21 to act as the group-wide supervisor under a regulatory system that
22 the Commissioner determines to be:

23 a. substantially similar to the system of regulation
24 provided under the laws of this state, or

1 b. otherwise sufficient in terms of providing for group-
2 wide supervision, enterprise risk analysis, and
3 cooperation with other regulatory officials; and

4 5. Whether another regulatory official acting or seeking to act
5 as the group-wide supervisor provides the Commissioner with
6 reasonably reciprocal recognition and cooperation. However, a
7 Commissioner identified under this section as the group-wide
8 supervisor may determine that it is appropriate to acknowledge
9 another supervisor to serve as the group-wide supervisor. The
10 acknowledgment of the group-wide supervisor shall be made after
11 consideration of the factors listed in this paragraph and paragraphs
12 1 through 4 of this subsection, and shall be made in cooperation
13 with and subject to the acknowledgment of other regulatory officials
14 involved with supervision of members of the internationally active
15 insurance group, and in consultation with the internationally active
16 insurance group.

17 C. Notwithstanding any other provision of law, when another
18 regulatory official is acting as the group-wide supervisor of an
19 internationally active insurance group, the Commissioner shall
20 acknowledge that regulatory official as the group-wide supervisor.
21 However, in the event of a material change in the internationally
22 active insurance group that results in:

1 1. The internationally active insurance group's insurers
2 domiciled in this state holding the largest share of the group's
3 premiums, assets or liabilities; or

4 2. This state being the place of domicile of the top-tiered
5 insurer or insurers in the insurance holding company system of the
6 internationally active insurance group,
7 the Commissioner shall make a determination or acknowledgment as to
8 the appropriate group-wide supervisor for such an internationally
9 active insurance group pursuant to subsection B of this section.

10 D. Pursuant to Section 7 of this act, the Commissioner is
11 authorized to collect from any insurer registered pursuant to
12 Section 5 of this act all information necessary to determine whether
13 the Commissioner may act as the group-wide supervisor of an
14 internationally active insurance group or if the Commissioner may
15 acknowledge another regulatory official to act as the group-wide
16 supervisor. Prior to issuing a determination that an
17 internationally active insurance group is subject to group-wide
18 supervision by the Commissioner, the Commissioner shall notify the
19 insurer registered pursuant to Section 5 and the ultimate
20 controlling person within the internationally active insurance
21 group. The internationally active insurance group shall have not
22 less than thirty (30) days to provide the Commissioner with
23 additional information pertinent to the pending determination. The
24 Commissioner shall publish on its Internet website the identity of

1 internationally active insurance groups that the Commissioner has
2 determined are subject to group-wide supervision by the
3 Commissioner.

4 E. If the Commissioner is the group-wide supervisor for an
5 internationally active insurance group, the Commissioner is
6 authorized to engage in any of the following group-wide supervision
7 activities:

8 1. Assess the enterprise risks within the internationally
9 active insurance group to ensure that:

- 10 a. the material financial condition and liquidity risks
11 to the members of the internationally active insurance
12 group that are engaged in the business of insurance
13 are identified by management, and
14 b. reasonable and effective mitigation measures are in
15 place;

16 2. Request, from any member of an internationally active
17 insurance group subject to the Commissioner's supervision,
18 information necessary and appropriate to assess enterprise risk,
19 including, but not limited to, information about the members of the
20 internationally active insurance group regarding:

- 21 a. governance, risk assessment and management,
22 b. capital adequacy, and
23 c. material intercompany transactions;
24

1 3. Coordinate and, through the authority of the regulatory
2 officials of the jurisdictions where members of the internationally
3 active insurance group are domiciled, compel development and
4 implementation of reasonable measures designed to ensure that the
5 internationally active insurance group is able to timely recognize
6 and mitigate enterprise risks to members of such internationally
7 active insurance group that are engaged in the business of
8 insurance;

9 4. Communicate with other state, federal and international
10 regulatory agencies for members within the internationally active
11 insurance group and share relevant information subject to the
12 confidentiality provisions of Section 10 of this act, through
13 supervisory colleges as set forth in Section 8 of this act or
14 otherwise;

15 5. Enter into agreements with or obtain documentation from any
16 insurer registered under Section 5 of this act, any member of the
17 internationally active insurance group, and any other state, federal
18 and international regulatory agencies for members of the
19 internationally active insurance group, providing the basis for or
20 otherwise clarifying the Commissioner's role as group-wide
21 supervisor, including provisions for resolving disputes with other
22 regulatory officials. Such agreements or documentation shall not
23 serve as evidence in any proceeding that any insurer or person
24 within an insurance holding company system not domiciled or

1 incorporated in this state is doing business in this state or is
2 otherwise subject to jurisdiction in this state; and

3 6. Other group-wide supervision activities, consistent with the
4 authorities and purposes enumerated above, as considered necessary
5 by the Commissioner.

6 F. If the Commissioner acknowledges that another regulatory
7 official from a jurisdiction that is not accredited by the National
8 Association of Insurance Commissioners is the group-wide supervisor,
9 the Commissioner is authorized to reasonably cooperate, through
10 supervisory colleges or otherwise, with group-wide supervision
11 undertaken by the group-wide supervisor, provided that:

12 1. The Commissioner's cooperation is in compliance with the
13 laws of this state; and

14 2. The regulatory official acknowledged as the group-wide
15 supervisor also recognizes and cooperates with the Commissioner's
16 activities as a group-wide supervisor for other internationally
17 active insurance groups where applicable. Where such recognition
18 and cooperation is not reasonably reciprocal, the Commissioner is
19 authorized to refuse recognition and cooperation.

20 G. The Commissioner is authorized to enter into agreements with
21 or obtain documentation from any insurer registered under Section 5
22 of this act, any affiliate of the insurer, and other state, federal
23 and international regulatory agencies for members of the
24 internationally active insurance group, that provide the basis for

1 or otherwise clarify a regulatory official's role as group-wide
2 supervisor.

3 H. The Commissioner may promulgate regulations necessary for
4 the administration of this section.

5 I. A registered insurer subject to this section shall be liable
6 for and shall pay the reasonable expenses of the Commissioner's
7 participation in the administration of this section, including the
8 engagement of attorneys, actuaries and any other professionals and
9 all reasonable travel expenses.

10 SECTION 10. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1640 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Documents, materials or other information in the possession
14 or control of the Insurance Department that are obtained by or
15 disclosed to the Commissioner or any other person in the course of
16 an examination or investigation made pursuant to Section 7 of this
17 act and all information reported or provided to the Insurance
18 Department pursuant to paragraphs 12 and 13 of subsection B of
19 Section 3 of this act, Section 5 of this act, Section 6 of this act
20 and Section 11 of this act shall be confidential by law and
21 privileged, shall not be subject to open records, or freedom of
22 information, shall not be subject to subpoena, and shall not be
23 subject to discovery or admissible in evidence in any private civil
24 action. However, the Commissioner is authorized to use the

1 documents, materials or other information in the furtherance of any
2 regulatory or legal action brought as a part of the Commissioner's
3 official duties. The Commissioner shall not otherwise make the
4 documents, materials or other information public without the prior
5 written consent of the insurer to which it pertains unless the
6 Commissioner, after giving the insurer and its affiliates who would
7 be affected thereby notice and opportunity to be heard, determines
8 that the interest of policyholders, shareholders or the public will
9 be served by the publication thereof, in which event the
10 Commissioner may publish all or any part in such manner as may be
11 deemed appropriate.

12 B. Neither the Commissioner nor any person who received
13 documents, materials or other information while acting under the
14 authority of the Commissioner or with whom such documents, materials
15 or other information are shared pursuant to this act shall be
16 permitted or required to testify in any private civil action
17 concerning any confidential documents, materials or information
18 subject to subsection A of this section.

19 C. In order to assist in the performance of the Commissioner's
20 duties, the Commissioner:

21 1. May share documents, materials or other information,
22 including the confidential and privileged documents, materials or
23 information subject to subsection A of this section, with other
24 state, federal and international regulatory agencies, with the

1 National Association of Insurance Commissioners (NAIC) and its
2 affiliates and subsidiaries, and with state, federal and
3 international law enforcement authorities, including members of any
4 supervisory college described in Section 8 of this act, provided
5 that the recipient agrees in writing to maintain the confidentiality
6 and privileged status of the document, material or other
7 information, and has verified in writing the legal authority to
8 maintain confidentiality;

9 2. Notwithstanding paragraph 1 of this subsection, may only
10 share confidential and privileged documents, material or information
11 reported pursuant to subsection L of Section 5 of this act with
12 Commissioners of states having statutes or regulations substantially
13 similar to subsection A of this section and who have agreed in
14 writing not to disclose such information;

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

1 4. Shall enter into written agreements with the NAIC governing
2 sharing and use of information provided pursuant to this act
3 consistent with this subsection that shall:

- 4 a. specify procedures and protocols regarding the
5 confidentiality and security of information shared
6 with the NAIC and its affiliates and subsidiaries
7 pursuant to this act, including procedures and
8 protocols for sharing by the NAIC with other state,
9 federal or international regulators,
- 10 b. specify that ownership of information shared with the
11 NAIC and its affiliates and subsidiaries pursuant to
12 this act remains with the Commissioner and the NAIC's
13 use of the information is subject to the direction of
14 the Commissioner,
- 15 c. require prompt notice to be given to an insurer whose
16 confidential information in the possession of the NAIC
17 pursuant to this act is subject to a request or
18 subpoena to the NAIC for disclosure or production, and
- 19 d. require the NAIC and its affiliates and subsidiaries
20 to consent to intervention by an insurer in any
21 judicial or administrative action in which the NAIC
22 and its affiliates and subsidiaries may be required to
23 disclose confidential information about the insurer

1 shared with the NAIC and its affiliates and
2 subsidiaries pursuant to this act.

3 D. The sharing of information by the Commissioner pursuant to
4 this act shall not constitute a delegation of regulatory authority
5 or rulemaking, and the Commissioner is solely responsible for the
6 administration, execution and enforcement of the provisions of this
7 act.

8 E. No waiver of any applicable privilege or claim of
9 confidentiality in the documents, materials or information shall
10 occur as a result of disclosure to the Commissioner under this
11 section or as a result of sharing as authorized in subsection C of
12 this section.

13 F. Documents, materials or other information in the possession
14 or control of the NAIC pursuant to this act shall be confidential by
15 law and privileged, shall not be subject to open records or freedom
16 of information, shall not be subject to subpoena, and shall not be
17 subject to discovery or admissible in evidence in any private civil
18 action.

19 SECTION 11. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1641 of Title 36, unless there
21 is created a duplication in numbering, reads as follows:

22 The Commissioner may, upon notice and opportunity for all
23 interested persons to be heard, issue such rules, regulations and
24

1 orders as shall be necessary to carry out the provisions of this
2 act.

3 SECTION 12. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1642 of Title 36, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Whenever it appears to the Commissioner that any insurer or
7 any director, officer, employee or agent thereof has committed or is
8 about to commit a violation of this act or of any rule, regulation
9 or order issued by the Commissioner hereunder, the Commissioner may
10 apply to the district court for the county in which the principal
11 office of the insurer is located or if the insurer has no office in
12 this state then to the district court for Oklahoma County for an
13 order enjoining the insurer or director, officer, employee or agent
14 thereof from violating or continuing to violate this act or any
15 rule, regulation or order, and for such other equitable relief as
16 the nature of the case and the interest of the insurer's
17 policyholders, creditors and shareholders or the public may require.

18 B. No security which is the subject of any agreement or
19 arrangement regarding acquisition, or which is acquired or to be
20 acquired, in contravention of the provisions of this act or of any
21 rule, regulation or order issued by the Commissioner hereunder may
22 be voted at any shareholder's meeting, or may be counted for quorum
23 purposes, and any action of shareholders requiring the affirmative
24 vote of a percentage of shares may be taken as though the securities

1 were not issued and outstanding; but no action taken at any such
2 meeting shall be invalidated by the voting of the securities, unless
3 the action would materially affect control of the insurer or unless
4 the courts of this state have so ordered. If an insurer or the
5 Commissioner has reason to believe that any security of the insurer
6 has been or is about to be acquired in contravention of the
7 provisions of this act or of any rule, regulation or order issued by
8 the Commissioner hereunder, the insurer or the Commissioner may
9 apply to the district court for the county in which the insurer has
10 its principle place of business to enjoin any offer, request,
11 invitation, agreement or acquisition made in contravention of
12 Section 3 of this act or any rule, regulation or order issued by the
13 Commissioner thereunder to enjoin the voting of any security so
14 acquired, to void any vote of the security already cast at any
15 meeting of shareholders and for such other equitable relief as the
16 nature of the case and the interest of the insurer's policyholders,
17 creditor and shareholders or the public may require.

18 C. In any case where a person has acquired or is proposing to
19 acquire any voting securities in violation of this act or any rule,
20 regulation or order issued by the Commissioner hereunder, the
21 district court for Oklahoma County or the district court for the
22 county in which the insurer has its principal place of business may,
23 on such notice as the court deems appropriate, upon the application
24 of the insurer or the Commissioner, seize or sequester any voting

1 securities of the insurer owned directly or indirectly by the
2 person, and issue such order as may be appropriate to effectuate the
3 provisions of this act. For the purposes of this act the situs of
4 the ownership of the securities of domestic insurers shall be deemed
5 to be in this state.

6 SECTION 13. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1643 of Title 36, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Any insurer failing, without just cause, to file any
10 registration statement as required in this act shall be required,
11 after notice and hearing, to pay a penalty of Five Hundred Dollars
12 (\$500.00) for each day's delay, to be recovered by the Insurance
13 Commissioner and the penalty so recovered shall be paid as provided
14 in Section 307.5 of Title 36 of the Oklahoma Statutes. The maximum
15 penalty under this section is One Hundred Thousand Dollars
16 (\$100,000.00). The Commissioner may reduce the penalty if the
17 insurer demonstrates to the Commissioner that the imposition of the
18 penalty would constitute a financial hardship to the insurer.

19 B. Every director or officer of an insurance holding company
20 system who knowingly violates, participates in or assents to, or who
21 knowingly shall permit any of the officers or agents of the insurer
22 to engage in, transactions or make investments which have not been
23 properly reported or submitted pursuant to subsection A of Section 5
24 of this act, paragraph 2 of subsection A of Section 6 of this act or

1 subsection B of Section 6 of this act, or which violate this act,
2 shall pay, in their individual capacity, a civil forfeiture of not
3 more than Twenty-five Thousand Dollars (\$25,000.00) per violation,
4 after notice and hearing before the Commissioner. In determining
5 the amount of the civil forfeiture, the Commissioner shall take into
6 account the appropriateness of the forfeiture with respect to the
7 gravity of the violation, the history of previous violations, and
8 such other matters as justice may require.

9 C. Whenever it appears to the Commissioner that any insurer
10 subject to this act or any director, officer, employee or agent
11 thereof has engaged in any transaction or entered into a contract
12 which is subject to Section 6 of this act and which would not have
13 been approved had the approval been requested, the Commissioner may
14 order the insurer to cease and desist immediately any further
15 activity under that transaction or contract. After notice and
16 hearing the Commissioner may also order the insurer to void any
17 contracts and restore the status quo if the action is in the best
18 interest of the policyholders, creditors or the public.

19 D. Whenever it appears to the Commissioner that any insurer or
20 any director, officer, employee or agent thereof has committed a
21 willful violation of this act, the Commissioner may submit such
22 information to the district attorney for Oklahoma County for
23 appropriate action against the insurer or the responsible director,
24 officer, employee or agent thereof. Any insurer which willfully

1 violates this act may be fined not more than One Hundred Thousand
2 Dollars (\$100,000.00). Any individual who willfully violates this
3 act may be fined in his or her individual capacity not more than
4 Fifty Thousand Dollars (\$50,000.00) or be imprisoned for not more
5 than one (1) to three (3) years or both.

6 E. Any officer, director or employee of an insurance holding
7 company system who willfully and knowingly subscribes to or makes or
8 causes to be made any false statements or false reports or false
9 filings with the intent to deceive the Commissioner in the
10 performance of his or her duties under this act, upon conviction
11 shall be imprisoned for not more than five (5) years or fined One
12 Hundred Fifty Thousand Dollars (\$150,000.00) or both. Any fines
13 imposed shall be paid by the officer, director or employee in his or
14 her individual capacity.

15 F. Whenever it appears to the Commissioner that any person has
16 committed a violation of Section 3 of this act which prevents the
17 full understanding of the enterprise risk to the insurer by
18 affiliates or by the insurance holding company system, the violation
19 may serve as an independent basis for disapproving dividends or
20 distributions and for placing the insurer under an order of
21 supervision in accordance with Article 18 of Title 36 of the
22 Oklahoma Statutes.

1 SECTION 14. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1644 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 Whenever it appears to the Commissioner that any person has
5 committed a violation of this act which so impairs the financial
6 condition of a domestic insurer as to threaten insolvency or make
7 the further transaction of business by it hazardous to its
8 policyholders, creditors, shareholders or the public, then the
9 Commissioner may proceed as provided in Articles 18 and 19 of Title
10 36 of the Oklahoma Statutes to take possession of the property of
11 the domestic insurer and to conduct its business.

12 SECTION 15. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1645 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 A. If an order for liquidation or rehabilitation of a domestic
16 insurer has been entered, the receiver appointed under the order
17 shall have a right to recover on behalf of the insurer:

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

22 2. Any payment in the form of a bonus, termination settlement
23 or extraordinary lump-sum salary adjustment made by the insurer or
24 its subsidiary, to a director, officer or employee,

1 where the distribution or payment pursuant to paragraph 1 or 2 of
2 this subsection is made at any time during the one (1) year
3 preceding the petition for liquidation, conservation or
4 rehabilitation, as the case may be, subject to the limitations of
5 subsections B, C and D of this section.

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

11 C. Any person who was a parent corporation or holding company
12 or a person who otherwise controlled the insurer or affiliate at the
13 time the distributions were paid shall be liable up to the amount of
14 distributions or payments under subsection A of this section which
15 the person received. Any person who otherwise controlled the
16 insurer at the time the distributions were declared shall be liable
17 up to the amount of distributions that would have been received if
18 they had been paid immediately. If two or more persons are liable
19 with respect to the same distributions, they shall be jointly and
20 severally liable.

21 D. The maximum amount recoverable under this section shall be
22 the amount needed in excess of all other available assets of the
23 impaired or insolvent insurer to pay the contractual obligations of
24

1 the impaired or insolvent insurer and to reimburse any guaranty
2 funds.

3 E. To the extent that any person liable under subsection C of
4 this section is insolvent or otherwise fails to pay claims due from
5 it, its parent corporation or holding company or person who
6 otherwise controlled it at the time the distribution was paid shall
7 be jointly and severally liable for any resulting deficiency in the
8 amount recovered from the parent corporation or holding company or
9 person who otherwise controlled it.

10 SECTION 16. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1646 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

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

22 SECTION 17. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1647 of Title 36, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Any person aggrieved by any act, determination, rule,
2 regulation or order or any other action of the Commissioner pursuant
3 to this act may appeal to the district court for Oklahoma County.
4 The court shall conduct its review without a jury and by trial de
5 novo, except that if all parties, including the Commissioner, so
6 stipulate, the review shall be confined to the record. Portions of
7 the record may be introduced by stipulation into evidence in a trial
8 de novo as to those parties so stipulating.

9 B. The filing of an appeal pursuant to this section shall stay
10 the application of any rule, regulation, order or other action of
11 the Commissioner to the appealing party unless the court, after
12 giving the party notice and an opportunity to be heard, determines
13 that a stay would be detrimental to the interest of policyholders,
14 shareholders, creditors or the public.

15 C. Any person aggrieved by any failure of the Commissioner to
16 act or make a determination required by this act may petition the
17 district court for Oklahoma County for a writ in the nature of a
18 mandamus or a peremptory mandamus directing the Commissioner to act
19 or make a determination.

20 SECTION 18. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1648 of Title 36, unless there
22 is created a duplication in numbering, reads as follows:
23
24

1 The powers, remedies, procedures and penalties provided in this
2 act shall be in addition to, and not in limitation of, any other
3 powers, remedies, procedures and penalties provided by law.

4 SECTION 19. REPEALER 36 O.S. 2011, Sections 1651, as
5 amended by Section 8, Chapter 269, O.S.L. 2013, 1652, 1653, 1654, as
6 last amended by Section 5, Chapter 73, O.S.L. 2016, 1655, 1656,
7 Section 1, Chapter 264, O.S.L. 2015, Section 1, Chapter 269, O.S.L.
8 2013, as amended by Section 2, Chapter 264, O.S.L. 2015, 1658.1,
9 1658.2, 1659.1, 1659.2, 1660, 1661 and 1662 (36 O.S. Supp. 2016,
10 Sections 1651, 1654, 1656.1 and 1657.1), are hereby repealed.

11 SECTION 20. It being immediately necessary for the preservation
12 of the public peace, health or safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

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