

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5792**

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 102, 1301, 1311, 1312, 1315, 1325, 1333, 1341,
1343, 1351, 1355, and 1371 (MCL 500.102, 500.1301, 500.1311,
500.1312, 500.1315, 500.1325, 500.1333, 500.1341, 500.1343,
500.1351, 500.1355, and 500.1371), section 102 as amended by 2000
PA 252, sections 1301, 1312, 1315, 1351, and 1371 as amended by
1992 PA 182, section 1311 as amended by 2010 PA 61, section 1325 as
amended by 1994 PA 227, section 1341 as amended by 1994 PA 443, and
section 1343 as amended by 1995 PA 219, and by adding sections
1325a and 1357.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 102. ~~(1) "Commissioner" as~~ **AS** used in this act:
- 2 **(A) "COMMISSIONER"** means the ~~commissioner of the office of~~
- 3 ~~financial and insurance services.~~ **DIRECTOR.**

1 (B) ~~(2)~~ "Department" ~~as used in this act~~ means the office of
2 ~~financial and insurance services.~~ **DEPARTMENT OF INSURANCE AND**
3 **FINANCIAL SERVICES.**

4 (C) "DIRECTOR" MEANS, UNLESS THE CONTEXT CLEARLY IMPLIES A
5 DIFFERENT MEANING, THE DIRECTOR OF THE DEPARTMENT.

6 Sec. 1301. As used in this chapter:

7 (A) "ENTERPRISE RISK" MEANS AN ACTIVITY, CIRCUMSTANCE, EVENT,
8 OR SERIES OF EVENTS INVOLVING 1 OR MORE AFFILIATES OF AN INSURER
9 THAT, IF NOT REMEDIED PROMPTLY, IS LIKELY TO HAVE A MATERIAL
10 ADVERSE EFFECT UPON THE FINANCIAL CONDITION OR LIQUIDITY OF THE
11 INSURER OR ITS INSURANCE HOLDING COMPANY SYSTEM AS A WHOLE,
12 INCLUDING, BUT NOT LIMITED TO, ANYTHING THAT WOULD CAUSE THE
13 INSURER TO BE HAZARDOUS TO POLICYHOLDERS, CREDITORS, AND THE
14 PUBLIC.

15 (B) ~~(a)~~ "Insurer" means that term as defined in section 106,
16 except that it does not include agencies, authorities, or
17 instrumentalities of the United States, its possessions and
18 territories, the commonwealth of Puerto Rico, the District of
19 Columbia or a state or political subdivision of a state, fraternal
20 benefit societies, or nonprofit health care corporations.

21 (C) "NAIC" MEANS THE NATIONAL ASSOCIATION OF INSURANCE
22 COMMISSIONERS.

23 (D) ~~(b)~~ "Person" means that term as defined in section 114,
24 except that it does not include ~~any~~ **A** securities broker performing
25 no more than the usual and customary broker's function, so long as
26 the securities broker holds less than 10% of the voting securities
27 of an insurer or of any person that controls an insurer.

1 Sec. 1311. (1) A person other than the issuer shall not make a
 2 tender offer for or a request or invitation for tenders of, or
 3 enter into ~~any~~**AN** agreement to exchange securities for, seek to
 4 acquire, or acquire, in the open market or otherwise, ~~any~~**A** voting
 5 security of a domestic insurer if, after the consummation thereof,
 6 the person directly or indirectly, or by conversion or by exercise
 7 of ~~any~~**A** right to acquire, would be in control of the insurer. A
 8 person shall not enter into an agreement to merge with or otherwise
 9 to acquire control of a domestic insurer or any person controlling
 10 a domestic insurer unless, at the time an offer, request, or
 11 invitation is made or an agreement is entered into, or ~~prior to~~
 12 **BEFORE** the acquisition of the securities if no offer or agreement
 13 is involved, the person has filed with the ~~commissioner~~**DIRECTOR**
 14 and has sent to the insurer, which has sent to its shareholders, a
 15 statement containing the information required by this chapter and
 16 the offer, request, invitation, agreement, or acquisition has been
 17 approved by the ~~commissioner~~**DIRECTOR** in the manner prescribed in
 18 this chapter.

19 ~~—— (2) Until May 1, 2012, if a domestic property and casualty~~
 20 ~~insurer has 200 employees or fewer, directly or indirectly through~~
 21 ~~an affiliate transacting the insurer's business, any proposal to~~
 22 ~~enter into an agreement to merge with or otherwise acquire control~~
 23 ~~of the domestic insurer or any person controlling the domestic~~
 24 ~~insurer, or, for the purpose of obtaining control, that seeks the~~
 25 ~~election of 2 or more members of the board of directors of the~~
 26 ~~domestic insurer or any person controlling the domestic insurer,~~
 27 ~~shall, in addition to the requirements of subsection (1), require~~

~~the approval of 66.67% of the outstanding voting securities if the proposal is not supported by a majority of the domestic insurer's board of directors. This subsection only applies to a domestic insurer that, on the effective date of the amendatory act that added this sentence, generates 100% of its premiums from sales in this state.~~

(2) IF A PERSON HAS NOT FILED A STATEMENT UNDER SUBSECTION (1), A CONTROLLING PERSON OF A DOMESTIC INSURER SEEKING TO DIVEST ITS CONTROLLING INTEREST IN THE DOMESTIC INSURER, IN ANY MANNER, SHALL FILE WITH THE DIRECTOR, WITH A COPY TO THE INSURER, A CONFIDENTIAL NOTICE OF ITS PROPOSED DIVESTITURE AT LEAST 30 DAYS BEFORE THE CESSATION OF CONTROL. THE DIRECTOR SHALL DETERMINE THOSE INSTANCES IN WHICH THE PERSON OR PERSONS SEEKING TO DIVEST OR TO ACQUIRE A CONTROLLING INTEREST IN AN INSURER ARE REQUIRED TO FILE TO OBTAIN APPROVAL OF THE TRANSACTION. THE INFORMATION MUST REMAIN CONFIDENTIAL UNTIL THE CONCLUSION OF THE TRANSACTION UNLESS THE DIRECTOR DETERMINES THAT CONFIDENTIAL TREATMENT WILL INTERFERE WITH ENFORCEMENT OF THIS SECTION.

(3) The person who proposes to enter into an agreement to merge with or otherwise acquire control of a domestic insurer shall file a ~~notification~~ NOTICE with the ~~commissioner~~, DIRECTOR, in such A form and containing the information prescribed by applicable rule promulgated or order issued by the ~~commissioner~~.DIRECTOR.

(4) For purposes of this section ~~through section~~ AND SECTIONS 1312 TO 1319, a domestic insurer ~~shall include any~~ INCLUDES A person controlling a domestic insurer and any foreign insurer whose written insurance premium in this state for each of the most recent

1 3 years exceeds the premiums written in its state of domicile and
2 whose written premium in this state was 20% or more of its total
3 written premium in each of the most recent 3 years.

4 Sec. 1312. (1) The statement ~~to be~~ filed with the ~~commissioner~~
5 **DIRECTOR UNDER SECTION 1311(1)** shall be made under oath or
6 affirmation and ~~shall~~ **MUST** contain **ALL OF** the following
7 information:

8 (a) The name and address of each person by whom or on whose
9 behalf the merger or other acquisition of control ~~referred to~~
10 **DESCRIBED** in section 1311 ~~is to~~ **WILL** be effected, hereinafter
11 ~~called~~ **REFERRED TO IN THIS SECTION AND SECTION 1315 AS** the
12 acquiring party. If the person is an individual, his or her
13 principal occupation, all offices and positions held during the
14 past 5 years, any civil judgments against the person for \$25,000.00
15 or more in civil fines or penalties or injunctive or other
16 equitable relief, and any conviction of crimes other than minor
17 traffic violations during the past 10 years. If the person is not
18 an individual, a report of the nature of its business operations
19 during the past 5 years or for ~~such a~~ **IN WHICH** the
20 person and any predecessors of the person have been in existence,
21 an informative description of the business intended to be done by
22 the person and the person's subsidiaries, and a list of all
23 individuals who are or who have been selected to become directors
24 or executive officers of the person or who perform or will perform
25 functions appropriate to those positions. The list ~~shall~~ **MUST**
26 include for each individual the individual's principal occupation,
27 all offices and positions held during the past 5 years, any civil

1 judgments against the person for \$25,000.00 or more in civil fines
2 or penalties or injunctive or other equitable relief, and any
3 conviction of crimes other than minor traffic violations during the
4 past 10 years.

5 (b) The source, nature, and amount of the consideration used
6 or to be used in effecting the merger or other acquisition of
7 control, a description of any transaction ~~where~~**IN WHICH** funds were
8 or are to be obtained for ~~such purpose,~~**THE MERGER OR OTHER**
9 **ACQUISITION**, including any pledge of the insurer's stock, or the
10 stock of any of its subsidiaries or controlling affiliates, and the
11 identity of persons furnishing the consideration. If a source of
12 the consideration is a loan made in the lender's ordinary course of
13 business, the identity of the lender ~~shall~~**MUST** be disclosed but
14 remain confidential if the person filing the statement so requests.

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

21 (d) Any plans or proposals that each acquiring party may have
22 under consideration concerning the insurer's business operations,
23 including, but not limited to, plans or proposals to liquidate the
24 insurer, to sell its assets, to merge or consolidate it with any
25 person, or to make any other material change in its business or
26 corporate structure or management.

27 (e) The number of shares of any security ~~referred to~~**DESCRIBED**

1 in section 1311 that each acquiring party proposes to acquire, the
2 terms of the offer, request, invitation, agreement, or acquisition
3 ~~referred to DESCRIBED~~ in section 1311, and a statement as to how
4 the proposal's fairness was arrived at.

5 (f) The amount of each class of ~~any-A security referred to~~
6 **DESCRIBED** in section 1311 that is beneficially owned or concerning
7 which there is a right to acquire beneficial ownership by each
8 acquiring party.

9 (g) A full description of ~~any contracts, arrangements, A~~
10 **CONTRACT, ARRANGEMENT**, or understanding concerning ~~any-A security~~
11 ~~referred to DESCRIBED~~ in section 1311 in which ~~any-AN~~ acquiring
12 party is involved, including but not limited to transfer of any of
13 the securities, joint ventures, loan or option arrangements, puts
14 or calls, guarantees of loans, guarantees against loss or
15 guarantees of profits, division of losses or profits, or the giving
16 or withholding of proxies. The description ~~shall~~ **MUST** identify the
17 persons with whom the contracts, arrangements, or ~~understanding~~
18 **UNDERSTANDINGS** have been entered into.

19 (h) A description of the purchase of ~~any-A security referred~~
20 ~~to DESCRIBED~~ in section 1311 during the 12 calendar months
21 preceding the filing of the statement, by ~~any-AN~~ acquiring party,
22 including the dates of purchase, names of the purchasers, and
23 consideration paid or agreed to be paid for the security.

24 (i) A description of ~~any recommendations-A RECOMMENDATION~~ to
25 purchase ~~any-A security referred to DESCRIBED~~ in section 1311 made
26 during the 12 calendar months preceding the filing of the
27 statement, by ~~any-AN~~ acquiring party or by ~~anyone~~ **ANOTHER PERSON**

1 based upon interviews or at the suggestion of the acquiring party.

2 (j) Copies of all tender offers for, requests or invitations
3 for tenders of, exchange offers for, and agreements to acquire or
4 exchange ~~any securities referred to~~ **A SECURITY DESCRIBED** in section
5 1311 and additional related distributed soliciting material.

6 (k) The terms of ~~any~~ **AN** agreement, contract, or understanding
7 made with or proposed to be made with ~~any~~ **A** broker-dealer as to
8 solicitation of securities ~~referred to~~ **DESCRIBED** in section 1311
9 for tender, and the amount of ~~any fees, commissions,~~ **A FEE,**
10 **COMMISSION**, or other compensation to be paid to ~~broker-dealers.~~ **A**
11 **BROKER-DEALER.**

12 (l) ~~Such additional information as the commissioner prescribes~~
13 ~~by order or rule as necessary or appropriate for the protection of~~
14 ~~the insurer's policyholders and securityholders or in the public~~
15 ~~interest.~~ **ADDITIONAL INFORMATION THAT THE DIRECTOR PRESCRIBES BY**
16 **ORDER OR RULE AS NECESSARY OR APPROPRIATE FOR THE PROTECTION OF THE**
17 **INSURER'S POLICYHOLDERS AND SECURITYHOLDERS OR IN THE PUBLIC**
18 **INTEREST.**

19 (2) A PERSON REQUIRED TO FILE THE STATEMENT DESCRIBED IN
20 SECTION 1311 SHALL DO ALL OF THE FOLLOWING:

21 (A) FILE THE ANNUAL ENTERPRISE RISK REPORT UNDER SECTION
22 1325A, FOR AS LONG AS CONTROL EXISTS.

23 (B) PROVIDE, AND ENSURE THAT ALL SUBSIDIARIES WITHIN ITS
24 CONTROL IN THE INSURANCE HOLDING COMPANY SYSTEM WILL PROVIDE,
25 INFORMATION TO THE DIRECTOR UPON REQUEST AS NECESSARY TO EVALUATE
26 ENTERPRISE RISK TO THE INSURER.

27 Sec. 1315. (1) The ~~commissioner~~ **DIRECTOR** shall approve ~~any~~ **A**

1 merger or other acquisition of control ~~referred to~~ **DESCRIBED** in
 2 section 1311 of a domestic insurer unless the ~~commissioner~~ **DIRECTOR**
 3 determines ~~on the basis of~~ **FROM** information furnished to the
 4 ~~commissioner~~ **DIRECTOR** on the merger or other acquisition of control
 5 1 or more of the following:

6 (a) After the change of control, the domestic insurer ~~referred~~
 7 ~~to~~ **DESCRIBED** in section 1311 would not be able to satisfy the
 8 requirements for the issuance of a certificate of authority to
 9 write the types of insurance for which it is presently authorized.

10 (b) The ~~effect of the~~ merger or other acquisition of control
 11 would ~~be~~ substantially ~~to~~ lessen competition in insurance in this
 12 state or tend to create a monopoly in this state.

13 (c) The financial condition of ~~any~~ **AN** acquiring party ~~is such~~
 14 ~~as~~ might jeopardize the financial stability of the insurer, or
 15 prejudice the interest of its policyholders or the interests of ~~any~~
 16 **A** remaining ~~securityholders~~ **SECURITYHOLDER** who ~~are~~ **IS** unaffiliated
 17 with the acquiring party.

18 (d) The terms of the offer, request, invitation, agreement, or
 19 acquisition ~~referred to~~ **DESCRIBED** in section 1311 are unfair and
 20 unreasonable to the insurer's policyholders or securityholders.

21 (e) The ~~plans or proposals that the~~ acquiring party has
 22 **PARTY'S PLAN OR PROPOSAL** to liquidate the insurer, sell its assets,
 23 consolidate or merge ~~it~~ **THE INSURER** with ~~any~~ **A** person, or to make
 24 any other material change in its business or corporate structure or
 25 management, ~~are~~ **IS** unfair and unreasonable to the insurer's
 26 policyholders, and not in the public interest.

27 (f) The competence, experience, and integrity of ~~those~~ **THE**

1 persons who would control the operation of the insurer are such
2 that it would not be in the interest of the insurer's policyholders
3 or the general public to permit the merger or other acquisition of
4 control.

5 (G) THE ACQUISITION IS LIKELY TO BE HAZARDOUS OR PREJUDICIAL
6 TO THE INSURANCE-BUYING PUBLIC.

7 (2) THE DIRECTOR MAY HOLD A PUBLIC HEARING TO RECEIVE EVIDENCE
8 AND TO HEAR PARTIES AFFECTED BY THE MERGER OR ACQUISITION. A
9 HEARING UNDER THIS SUBSECTION MUST BE HELD WITHIN 30 DAYS AFTER THE
10 FILING OF A STATEMENT UNDER SECTION 1311. THE DIRECTOR SHALL
11 PROVIDE NOTICE OF THE HEARING TO THE PERSON FILING THE STATEMENT AT
12 LEAST 20 DAYS BEFORE THE HEARING. NOT LESS THAN 7 DAYS' NOTICE OF
13 THE PUBLIC HEARING SHALL BE GIVEN BY THE PERSON FILING THE
14 STATEMENT TO THE INSURER AND TO ANY OTHER PERSONS DESIGNATED BY THE
15 DIRECTOR. IF THE PROPOSED ACQUISITION OF CONTROL WILL REQUIRE THE
16 APPROVAL OF MORE THAN 1 INSURANCE COMMISSIONER, THE PUBLIC HEARING
17 MAY BE HELD ON A CONSOLIDATED BASIS UPON REQUEST OF THE PERSON
18 FILING THE STATEMENT OR AS DETERMINED BY THE DIRECTOR. THE DIRECTOR
19 MAY OPT OUT OF A CONSOLIDATED HEARING AND SHALL PROVIDE NOTICE TO
20 THE PERSON WHO FILED THE STATEMENT UNDER SECTION 1311 OF THE OPT-
21 OUT WITHIN 10 DAYS AFTER THE RECEIPT OF THE STATEMENT REQUIRED BY
22 SECTION 1311. A HEARING CONDUCTED ON A CONSOLIDATED BASIS MUST BE
23 HELD WITHIN THE UNITED STATES BEFORE THE COMMISSIONERS OF THE
24 STATES IN WHICH THE INSURERS ARE DOMICILED.

25 (3) IN CONNECTION WITH A CHANGE OF CONTROL OF A DOMESTIC
26 INSURER, A DETERMINATION BY THE DIRECTOR THAT THE PERSON ACQUIRING
27 CONTROL OF THE INSURER SHALL BE REQUIRED TO MAINTAIN OR RESTORE THE

1 CAPITAL OF THE INSURER TO THE LEVEL REQUIRED BY THIS ACT SHALL BE
 2 MADE NOT LATER THAN 60 DAYS AFTER THE DATE OF NOTIFICATION OF THE
 3 CHANGE OF CONTROL SUBMITTED UNDER SECTION 1311.

4 (4) ~~(2)~~ A person aggrieved by the ~~commissioner's~~ DIRECTOR'S
 5 order under this section ~~shall be~~ IS entitled to a contested case
 6 hearing before the ~~commissioner pursuant to~~ DIRECTOR UNDER the
 7 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
 8 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
 9 ~~Compiled Laws. 1969 PA 306, MCL 24.201 TO 24.328.~~ The ~~commissioner~~
 10 DIRECTOR shall make a final decision within 30 days after the
 11 conclusion of the hearing.

12 Sec. 1325. (1) An insurer subject to registration UNDER
 13 SECTION 1324 shall file a registration statement on a form provided
 14 by the ~~commissioner~~ DIRECTOR containing the following current
 15 information:

16 (a) The capital structure, comprehensive financial condition,
 17 ownership, and management of the insurer and ~~any~~ A person
 18 controlling the insurer.

19 (b) The identity and relationship of every member of the
 20 insurance holding company system.

21 (c) The following agreements in force, relationships
 22 subsisting, and transactions currently outstanding or that have
 23 occurred during the last calendar year between the insurer and its
 24 affiliates:

25 (i) Loans, other investments or purchases, sales, or exchanges
 26 of securities of the affiliates by the insurer or of the insurer by
 27 its affiliates.

1 (ii) Purchases, sales, or exchanges of assets.

2 (iii) Transactions not in the ordinary course of business.

3 (iv) Guarantees or undertakings for the benefit of an affiliate
4 that result in an actual contingent exposure of the insurer's
5 assets to liability, other than insurance contracts entered into in
6 the ordinary course of the insurer's business.

7 (v) All management and service contracts and all cost sharing
8 arrangements.

9 (vi) Reinsurance agreements.

10 (vii) Dividends and other distributions to shareholders.

11 (viii) Consolidated tax allocation agreements.

12 (d) ~~Any-A~~ pledge of the insurer's stock, including stock of
13 ~~any-A~~ subsidiary or controlling affiliate for a loan made to ~~any-A~~
14 member of the insurance holding system.

15 (e) A summary outlining all items in the current registration
16 statement representing changes from the prior registration
17 statement.

18 (f) Other matters concerning transactions between registered
19 insurers and any affiliates as ~~may be included from time to time in~~
20 any registration forms adopted or approved by the
21 ~~commissioner.DIRECTOR.~~

22 (G) STATEMENTS THAT THE INSURER'S BOARD OF DIRECTORS OVERSEES
23 CORPORATE GOVERNANCE AND INTERNAL CONTROLS AND THAT THE INSURER'S
24 OFFICERS AND SENIOR MANAGEMENT HAVE APPROVED, IMPLEMENTED, AND
25 CONTINUE TO MAINTAIN AND MONITOR CORPORATE GOVERNANCE AND INTERNAL
26 CONTROL PROCEDURES.

27 (2) If a person ultimately controlling the insurer or

1 intermediately controlling the insurer is registered on a national
2 stock exchange or is otherwise required to make periodic reports to
3 the United States securities and exchange commission or other
4 instrumentality of a state or the government of the United States
5 or of ~~any~~ **A** foreign nation or jurisdiction regulating the financial
6 conduct of that person, the insurer shall file ~~such~~ **THE** reports
7 with the ~~commissioner~~ **DIRECTOR** in addition to other information
8 required by the ~~commissioner~~ **DIRECTOR**. **IF REQUESTED BY THE**
9 **DIRECTOR, THE INSURER MUST INCLUDE FINANCIAL STATEMENTS OF OR**
10 **WITHIN AN INSURANCE HOLDING COMPANY SYSTEM, INCLUDING ALL**
11 **AFFILIATES. THE INSURER MAY SATISFY THE REQUEST BY PROVIDING THE**
12 **DIRECTOR THE MOST RECENTLY FILED PARENT CORPORATION FINANCIAL**
13 **STATEMENTS THAT HAVE BEEN FILED WITH THE UNITED STATES SECURITIES**
14 **AND EXCHANGE COMMISSION.**

15 ~~—— (3) If the person or persons ultimately controlling the~~
16 ~~insurer is an individual or group of individuals or is a person not~~
17 ~~required to make reports described in subsection (2), that person~~
18 ~~shall be required to file under oath with the commissioner on a~~
19 ~~form provided by the commissioner information disclosing the~~
20 ~~financial position of that person. A person who knowingly~~
21 ~~misrepresents the financial information provided to the~~
22 ~~commissioner shall be guilty of a felony and, upon conviction,~~
23 ~~shall be punished by a fine not to exceed \$5,000.00 or by~~
24 ~~imprisonment for a term not to exceed 5 years, or by both such fine~~
25 ~~and imprisonment in the discretion of the court. The ultimate~~
26 ~~controlling person or persons shall not be required to file a~~
27 ~~financial position form if either:~~

1 ~~—— (a) There has not been a change of control of the insurer for~~
2 ~~a minimum of 5 years and the insurer maintains a minimum surplus~~
3 ~~amount of \$25,000,000.00 if the insurer has achieved at least an~~
4 ~~"A" rating by the A.M. Best company or maintains a minimum surplus~~
5 ~~of \$75,000,000.00 if the insurer has achieved at least an "A "~~
6 ~~rating by the A.M. Best company.~~

7 ~~—— (b) The commissioner accepts the filing made by the ultimate~~
8 ~~controlling person of the periodic reports that are filed by a~~
9 ~~person who is an intermediary member within the insurance holding~~
10 ~~company system between the insurer and the individual or group of~~
11 ~~individuals controlling the insurer, with the United States~~
12 ~~securities and exchange commission or other instrumentality of a~~
13 ~~state or the government of the United States or any foreign nation~~
14 ~~or jurisdiction regulating the financial conduct of that person.~~

15 SEC. 1325A. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
16 (2), THE ULTIMATE CONTROLLING PERSON OF AN INSURER SUBJECT TO
17 REGISTRATION UNDER SECTION 1324 SHALL FILE AN ANNUAL ENTERPRISE
18 RISK REPORT WITH THE DIRECTOR OR A JURISDICTION DESIGNATED BY THE
19 DIRECTOR. THE REPORT MUST BE APPROPRIATE TO THE NATURE, SCALE, AND
20 COMPLEXITY OF THE OPERATIONS OF THE INSURANCE HOLDING COMPANY
21 SYSTEM AND MUST, 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 IS NOT SUBJECT TO SUBPOENA OR DISCOVERY, IS
25 NOT ADMISSIBLE IN EVIDENCE IN A PRIVATE CIVIL OR ADMINISTRATIVE
26 ACTION, AND IS NOT SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976
27 PA 442, MCL 15.231 TO 15.246. THE ULTIMATE CONTROLLING PERSON OF AN

1 INSURER SUBJECT TO REGISTRATION UNDER SECTION 1324 MAY REQUEST AN
2 EXEMPTION FROM THIS SECTION. THE ULTIMATE CONTROLLING PERSON OF THE
3 INSURER SHALL FILE WITH THE DIRECTOR A WRITTEN STATEMENT DISCUSSING
4 THE REASONS WHY THE ULTIMATE CONTROLLING PERSON OF THE INSURER
5 SHOULD BE EXEMPT. THE DIRECTOR MAY GRANT THE EXEMPTION IF AFTER
6 REVIEW OF THE STATEMENT THE DIRECTOR FINDS THAT COMPLIANCE WITH
7 THIS SECTION WOULD CREATE AN UNDUE FINANCIAL OR ORGANIZATIONAL
8 HARDSHIP ON THE ULTIMATE CONTROLLING PERSON.

9 (2) THE ULTIMATE CONTROLLING PERSON OF AN INSURANCE HOLDING
10 COMPANY SYSTEM SUBJECT TO REGISTRATION UNDER SECTION 1324 IS NOT
11 REQUIRED TO FILE AN ANNUAL ENTERPRISE RISK REPORT UNDER SUBSECTION
12 (1) IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

13 (A) THE ULTIMATE CONTROLLING PERSON MEETS ALL OF THE FOLLOWING
14 REQUIREMENTS:

15 (i) THE ULTIMATE CONTROLLING PERSON HAS OWNED A CONTROLLING
16 INTEREST IN THE VOTING SECURITIES OF AN INSURER SINCE JANUARY 1,
17 2000.

18 (ii) THE ULTIMATE CONTROLLING PERSON MEETS ANY OF THE FOLLOWING
19 REQUIREMENTS:

20 (A) THE ULTIMATE CONTROLLING PERSON IS EXEMPT FROM TAXATION
21 UNDER SECTION 501(C)(3), 501(C)(5), OR 501(C)(8) OF THE INTERNAL
22 REVENUE CODE OF 1986, 26 USC 501.

23 (B) THE ULTIMATE CONTROLLING PERSON IS ORGANIZED AS A
24 CHARITABLE PURPOSE CORPORATION UNDER THE NONPROFIT CORPORATION ACT,
25 1982 PA 162, MCL 450.2101 TO 450.3192.

26 (C) THE ULTIMATE CONTROLLING PERSON IS A CHARITABLE TRUST
27 REGISTERED UNDER THE SUPERVISION OF TRUSTEES FOR CHARITABLE

PURPOSES ACT, 1961 PA 101, MCL 14.251 TO 14.266.

(iii) THE DIRECTOR HAS NOT APPROVED THE CONTROLLING PERSON'S PETITION FOR DISCLAIMER OF AFFILIATION OR HAS DISALLOWED A DISCLAIMER OF AFFILIATION UNDER SECTION 1332.

(B) THE INSURER IN WHICH THE ULTIMATE CONTROLLING PERSON OWNS A CONTROLLING INTEREST MEETS BOTH OF THE FOLLOWING REQUIREMENTS:

(i) IS REGISTERED UNDER SECTION 1324.

(ii) IS A WHOLLY DOMESTIC INSURER WITH NO MORE THAN 10% OF ITS WRITTEN PREMIUM COVERING RISKS OUTSIDE OF THIS STATE.

Sec. 1333. The failure to file a registration statement, ~~or any~~ ~~AN~~ amendment thereto ~~TO OR SUMMARY OF THE REGISTRATION STATEMENT, OR AN ENTERPRISE RISK REPORT~~ required by sections 1324 to ~~1333~~ ~~1332~~ within the time specified for ~~such~~ ~~THE~~ filing is a violation of this chapter.

Sec. 1341. (1) Transactions within a holding company system to which an insurer domiciled in this state or ~~any~~ ~~A~~ foreign insurer whose written insurance premium in this state for each of the most recent 3 years exceeds the premiums written in its state of domicile and whose written premium in this state was 20% or more of its total written premium in each of the most recent 3 years is a party or with respect to which the assets or liabilities of these insurers are affected are subject to all of the following standards:

(a) The terms ~~shall~~ ~~MUST~~ be fair and reasonable.

(b) The charges or fees for services performed ~~shall~~ ~~MUST~~ be reasonable.

(c) The expenses incurred and payment received ~~shall~~ ~~MUST~~ be

1 allocated to the insurer in conformity with customary insurance
2 accounting practices consistently applied.

3 (d) The books, accounts, and records of each party ~~shall~~**MUST**
4 be ~~se~~-maintained ~~as~~-to clearly and accurately disclose the precise
5 nature and details of the transactions including ~~such~~**NECESSARY**
6 accounting information ~~as is necessary~~-to support the
7 reasonableness of the charges or fees to the respective parties.

8 (e) The insurer's surplus as regards policyholders following
9 any dividends or distributions to shareholder affiliates ~~shall~~**MUST**
10 be reasonable in relation to the insurer's outstanding liabilities
11 and adequate to its financial needs so that the insurer continues
12 to comply with section 403.

13 (2) The ~~commissioner's~~**DIRECTOR'S** prior approval ~~shall be~~**IS**
14 required for sales, purchases, exchanges, loans, extensions of
15 credit, or investments, involving 5% or more of the insurer's
16 assets at the immediately preceding year's end, between a domestic
17 controlled insurer and ~~any~~**A** person in its holding company system.

18 (3) A domestic insurer and ~~any~~**A** person in its holding company
19 system shall not enter into the following transactions with each
20 other, **OR MODIFY AN EXISTING TRANSACTION**, unless the insurer ~~has~~
21 ~~notified~~**NOTIFIES** the ~~commissioner~~**DIRECTOR** in writing of its
22 intention to enter into the transaction, **OR ITS REASON TO MODIFY AN**
23 **EXISTING TRANSACTION AND THE MODIFICATION'S FINANCIAL IMPACT ON THE**
24 **INSURER**, at least 30 days, or a shorter period as the ~~commissioner~~
25 **DIRECTOR** allows, ~~prior to~~**BEFORE** entering into **OR MODIFYING** the
26 transaction and the ~~commissioner~~**DIRECTOR** has not disapproved it
27 within that period:

1 (a) ~~Sales, purchases, exchanges, loans, extensions of credit,~~
2 ~~or investments, provided the~~ **A SALE, PURCHASE, EXCHANGE, LOAN,**
3 **EXTENSION OF CREDIT, OR INVESTMENT, IF THE** transaction is equal to
4 or greater than the lesser of 3% of the insurer's assets or 25% of
5 capital and surplus as of December 31 of the immediately preceding
6 year.

7 (b) ~~Loans or extensions~~ **A LOAN OR EXTENSION** of credit to any ~~A~~
8 person who is not an affiliate, ~~where~~ **IF** the insurer makes ~~loans~~
9 **THE LOAN** or ~~extensions of~~ **EXTENDS THE** credit with the agreement or
10 understanding that the proceeds of the ~~transactions,~~ **TRANSACTION,**
11 in whole or in substantial part, ~~are to~~ **WILL** be used to make ~~loans~~
12 **A LOAN** or ~~extensions of~~ **EXTEND** credit to, to purchase assets ~~AN~~
13 **ASSET** of, or to make ~~investments~~ **INVEST** in, any ~~AN~~ affiliate of the
14 insurer making the ~~loans~~ **LOAN** or ~~extensions of~~ **EXTENDING** credit
15 ~~provided~~ **IF** the transaction is equal to or greater than the lesser
16 of 3% of the insurer's assets or 25% of capital and surplus as of
17 December 31 of the immediately preceding year.

18 (c) **A GUARANTEE THAT IS QUANTIFIABLE AND EXCEEDS THE LESSER OF**
19 **0.5% OF THE INSURER'S ADMITTED ASSETS OR 10% OF SURPLUS AS OF**
20 **DECEMBER 31 OF THE IMMEDIATELY PRECEDING YEAR. A GUARANTEE THAT IS**
21 **NOT QUANTIFIABLE UNDER THIS SUBDIVISION IS SUBJECT TO PRIOR**
22 **APPROVAL OF THE DIRECTOR.**

23 (d) **A DIRECT OR INDIRECT ACQUISITION OF, OR INVESTMENT IN, A**
24 **PERSON THAT CONTROLS THE INSURER OR THAT CONTROLS AN AFFILIATE OF**
25 **THE INSURER, IF THE AMOUNT OF THE TRANSACTION PLUS THE INSURER'S**
26 **PRESENT HOLDINGS IN INVESTMENT EXCEEDS 2.5% OF SURPLUS. THIS**
27 **SUBDIVISION DOES NOT APPLY TO A DIRECT OR INDIRECT ACQUISITION OF,**

1 OR INVESTMENTS IN, A SUBSIDIARY ACQUIRED UNDER SECTION 1305 OR ANY
 2 OTHER SECTION OF THIS CHAPTER, OR A NONSUBSIDIARY INSURANCE
 3 AFFILIATE THAT IS SUBJECT TO THIS ACT.

4 (E) ~~(e) Reinsurance treaties~~ **A REINSURANCE TREATY** or
 5 ~~agreements~~ **AGREEMENT**.

6 (F) ~~(d)~~ Rendering of services on a regular systematic basis.

7 (G) **A TAX ALLOCATION AGREEMENT**.

8 (H) **A COST-SHARING AGREEMENT**.

9 (I) ~~(e) Any~~ **A material transactions, TRANSACTION**, specified by
 10 regulation, that the ~~commissioner~~ **DIRECTOR** determines may adversely
 11 affect the interests of the insurer's policyholders.

12 (4) **AN INSURER SHALL INFORMALLY NOTIFY THE DIRECTOR OF A**
 13 **TERMINATION OF TRANSACTION UNDER SUBSECTION (3) NO LATER THAN 30**
 14 **DAYS AFTER THE TRANSACTION TERMINATES.**

15 (5) ~~(4) Nothing contained in subsection~~ **SUBSECTION (3) shall**
 16 ~~be considered to~~ **DOES NOT** authorize or permit ~~any transactions~~ **A**
 17 **TRANSACTION** that, ~~in the case of~~ **FOR** an insurer **THAT IS** not a
 18 member of the same holding company system, would be otherwise
 19 contrary to law.

20 (6) ~~(5)~~ A domestic insurer shall not enter into transactions
 21 that are part of a plan or series of like transactions with persons
 22 within the holding company system if the purpose of those separate
 23 transactions is to avoid the ~~statutory~~ threshold amount **UNDER THIS**
 24 **CHAPTER** and thus avoid the review that would otherwise occur. If
 25 the ~~commissioner~~ **DIRECTOR** determines that the separate transactions
 26 were entered into over any relevant period for that purpose, he or
 27 she may exercise his or her authority under section 1371.

1 (7) ~~(6)~~ In reviewing a transaction pursuant to ~~UNDER~~
 2 subsection (2), the ~~commissioner~~ **DIRECTOR** shall consider whether
 3 the transaction complies with the standards ~~set forth~~ **DESCRIBED** in
 4 subsection (1) and whether it may otherwise adversely affect the
 5 interests of policyholders, creditors, or the public.

6 (8) ~~(7)~~ The ~~commissioner~~ **A DOMESTIC INSURER** shall be notified
 7 **NOTIFY THE DIRECTOR** within 30 days of ~~any investment of the~~
 8 domestic ~~insurer~~ **INSURER'S INVESTMENT** in any 1 corporation if the
 9 **INSURANCE HOLDING COMPANY SYSTEM'S** total investment in the
 10 corporation ~~by the insurance holding company system~~ exceeds 10% of
 11 the corporation's voting securities.

12 Sec. 1343. (1) Each year the ~~commissioner~~ **DIRECTOR** shall
 13 review the ordinary shareholder dividends paid by domestic insurers
 14 to determine whether each insurer's surplus following those
 15 dividends is reasonable in relation to the insurer's outstanding
 16 liabilities and adequate to its needs so that it continues to
 17 comply with section 403. In conducting the review and making the
 18 determination, the ~~commissioner~~ **DIRECTOR** shall consider **ALL OF** the
 19 following factors in addition to ~~the provisions of~~ **FACTORS LISTED**
 20 **IN** section 436a:

21 (a) The adequacy of the level of surplus as regards
 22 policyholders remaining after the dividend payment or payments.

23 (b) The quality of the insurer's earnings and the extent to
 24 which the reported earnings include extraordinary items, such as
 25 surplus relief reinsurance transactions and reserve
 26 destrengthening.

27 (c) The quality and liquidity of investments in subsidiaries.

1 The ~~commissioner~~**DIRECTOR** may discount any of those investments or
2 refuse to consider the investment as an asset for purposes of
3 determining the adequacy of surplus as regards policyholders if the
4 investment so warrants.

5 (2) If the ~~commissioner~~**DIRECTOR** determines that an insurer's
6 surplus as regards policyholders is not reasonable in relation to
7 the insurer's outstanding liabilities and is not adequate to its
8 financial needs so that the insurer will not continue to comply
9 with section 403, the ~~commissioner~~**DIRECTOR** shall limit or disallow
10 the payment of shareholder dividends.

11 (3) Shareholder dividends shall be declared or paid only from
12 earned surplus, unless the ~~commissioner~~**DIRECTOR** approves the
13 dividend ~~prior to~~**BEFORE** payment. The ~~commissioner~~**DIRECTOR** shall
14 consider whether the dividend will be paid from the insurer's net
15 gain from operations if the insurer is a life insurer, or the
16 insurer's net income if the insurer is not a life insurer, for the
17 12-month period ending December 31 of the immediately preceding
18 year. For purposes of this subsection, earned surplus excludes
19 surplus arising from unrealized capital gains or a revaluation of
20 assets.

21 (4) ~~Any~~**A** domestic insurer that is a member of an insurance
22 holding company system and declares a shareholder dividend shall
23 report the dividend to the ~~commissioner~~**DIRECTOR** within 5 business
24 days after declaring the dividend. ~~and at least 10 business days~~
25 ~~beginning from the date of receipt by the commissioner before the~~
26 ~~payment.~~**THE INSURER SHALL NOT PAY THE DIVIDEND UNTIL 10 DAYS AFTER**
27 **THE DIRECTOR RECEIVES A REPORT UNDER THIS SUBSECTION.**

1 (5) An insurer subject to registration under section 1324
2 shall not pay any extraordinary dividend or make any other
3 extraordinary distribution to its shareholders until 30 days after
4 the ~~commissioner~~**DIRECTOR** has received notice of the declaration
5 and has not disapproved or has approved the payment within that
6 period. If the ~~commissioner~~**DIRECTOR**, applying the criteria in
7 subsection (1), determines that the insurer's surplus as regards
8 policyholders is not reasonable in relation to the insurer's
9 outstanding liabilities and is not adequate to its financial needs
10 so that the insurer will not continue to comply with section 403,
11 the ~~commissioner~~**DIRECTOR** may, ~~prior to~~**BEFORE** the expiration of
12 the 30-day period described in this subsection, enter an order
13 prohibiting the payment of the dividend.

14 (6) An extraordinary dividend or distribution includes ~~any~~**A**
15 dividend or distribution of cash or other property, whose fair
16 market value ~~together with that~~**PLUS THE FAIR MARKET VALUE** of other
17 dividends or distributions made within the preceding 12 months
18 exceeds the greater of 10% of the insurer's surplus as regards
19 policyholders as of December 31 of the immediately preceding year,
20 or the net gain from operations of the insurer, if the insurer is a
21 life insurer, or the net income, if the insurer is not a life
22 insurer, not including realized capital gains, for the 12-month
23 period ending December 31 of the immediately preceding year, but
24 shall not include pro rata distributions of any class of the
25 insurer's own securities.

26 (7) Notwithstanding any other provision of law, an insurer may
27 declare an extraordinary dividend or distribution that is

1 conditional upon the ~~commissioner's~~**DIRECTOR'S** approval. The
 2 declaration ~~shall~~**DOES NOT** confer ~~no~~ rights upon shareholders until
 3 the ~~commissioner~~**DIRECTOR** has approved or has not disapproved the
 4 payment of the dividend or distribution within the 30-day period
 5 **DESCRIBED IN SUBSECTION (5)**.

6 (8) Notwithstanding subsections (5) through (7), a dividend
 7 shall not be declared and paid by an insurer to an affiliate if
 8 after the payment the insurer could not satisfy the standards ~~set~~
 9 ~~forth~~**DESCRIBED** in section 403.

10 (9) An insurer aggrieved by the ~~commissioner's~~**DIRECTOR'S**
 11 determination or order under this section is entitled to a
 12 contested case hearing ~~pursuant to~~**UNDER** the administrative
 13 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~
 14 ~~being sections 24.201 to 24.328 of the Michigan Compiled Laws, to~~
 15 **1969 PA 306, MCL 24.201 TO 24.328. A HEARING UNDER THIS SUBSECTION**
 16 **MUST** be held no later than 10 days after receipt of the insurer's
 17 request. The ~~commissioner's~~**DIRECTOR'S** determination or order shall
 18 remain in effect except as modified by the ~~commissioner~~**DIRECTOR**
 19 during the pendency of the hearing and until a final decision by
 20 the ~~commissioner~~**DIRECTOR**. The ~~commissioner~~**DIRECTOR** shall render
 21 a final decision within 30 days after the conclusion of the
 22 hearing.

23 Sec. 1351. (1) Subject to the limitation ~~contained in this~~
 24 section and in addition to the powers that the ~~commissioner~~
 25 **DIRECTOR** has under chapters 2 and 4 relating to the examination of
 26 insurers, the ~~commissioner~~**DIRECTOR** may order ~~any~~**AN** insurer
 27 registered under section 1324 to produce records, books, or other

1 information papers in the possession of the insurer or its
2 affiliates as are necessary to ~~ascertain~~**DETERMINE** the insurer's
3 financial condition, **INCLUDING ENTERPRISE RISK TO THE INSURER BY**
4 **THE ULTIMATE CONTROLLING PARTY, OR BY COMBINATION OF ENTITIES**
5 **WITHIN THE INSURANCE HOLDING COMPANY SYSTEM, OR BY THE INSURANCE**
6 **HOLDING COMPANY SYSTEM ON A CONSOLIDATED BASIS,** or legality of
7 conduct. If the insurer fails to comply with the order, the
8 ~~commissioner~~**DIRECTOR** may examine the affiliates to obtain the
9 information. **THE DIRECTOR MAY ORDER AN INSURER REGISTERED UNDER**
10 **SECTION 1324 TO PRODUCE INFORMATION NOT IN THE POSSESSION OF THE**
11 **INSURER IF THE INSURER CAN OBTAIN ACCESS TO THE INFORMATION UNDER A**
12 **CONTRACTUAL RELATIONSHIP, STATUTORY OBLIGATION, OR OTHER METHOD. IF**
13 **THE INSURER CANNOT OBTAIN THE INFORMATION REQUESTED BY THE**
14 **DIRECTOR, THE INSURER SHALL PROVIDE THE DIRECTOR WITH A DETAILED**
15 **EXPLANATION OF THE REASON THAT THE INSURER CANNOT OBTAIN THE**
16 **INFORMATION AND THE IDENTITY OF THE HOLDER OF INFORMATION. IF THE**
17 **DIRECTOR DETERMINES THE DETAILED EXPLANATION IS WITHOUT MERIT, THE**
18 **DIRECTOR MAY REQUIRE, AFTER NOTICE AND HEARING, THE INSURER TO PAY**
19 **A CIVIL FINE OF \$1,000.00 FOR EACH DAY'S DELAY OR MAY SUSPEND OR**
20 **REVOKE THE INSURER'S LICENSE.**

21 (2) The ~~commissioner~~**DIRECTOR** may retain at the registered
22 insurer's expense attorneys, actuaries, accountants, and other
23 experts not otherwise a part of the ~~commissioner's~~**DIRECTOR'S** staff
24 as are reasonably necessary to assist in the conduct of the
25 examination under subsection (1). The expense of the attorneys,
26 actuaries, accountants, and other experts shall be certified by the
27 ~~commissioner~~**DIRECTOR** and paid as ~~prescribed~~**PROVIDED** in sections

1 216 and 224. The person retained ~~shall be~~ **IS** under the direction
 2 and control of the ~~commissioner~~ **DIRECTOR** and shall act in a purely
 3 advisory capacity.

4 (3) Each registered insurer producing for examination records,
 5 books, and papers ~~pursuant to~~ **UNDER** subsection (1) ~~shall be~~ **IS**
 6 liable for and shall pay the expense of the examination ~~in~~
 7 ~~accordance with~~ **UNDER** sections 216 and 224.

8 Sec. 1355. (1) ~~All~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS**
 9 **SUBSECTION, THE** information, documents, and copies thereof ~~OF~~
 10 **DOCUMENTS** obtained by or disclosed to the ~~commissioner~~ **DIRECTOR** or
 11 any other person in the course of an examination or investigation
 12 made ~~pursuant to section~~ **UNDER SECTIONS 1351 AND 1357** and all ~~THE~~
 13 information reported ~~pursuant to~~ **UNDER** sections 1324 to 1333 ~~shall~~
 14 ~~be given~~ **IS** confidential, ~~treatment,~~ **IS NOT SUBJECT TO THE FREEDOM**
 15 **OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246,** is not
 16 subject to subpoena, **IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN**
 17 **EVIDENCE IN A PRIVATE CIVIL OR ADMINISTRATIVE ACTION,** and shall not
 18 be made public by the ~~commissioner~~ **DIRECTOR** or any other person,
 19 ~~except to insurance departments of other states,~~ without the prior
 20 written consent of the insurer to which it pertains. ~~, unless the~~
 21 ~~commissioner,~~ **THE DIRECTOR MAY,** after giving the insurer and its
 22 affiliates who would be affected thereby, **BY THE DISCLOSURE** notice
 23 and opportunity to be heard, **DISCLOSE THE INFORMATION IF THE**
 24 **DIRECTOR** determines that the interests of policyholders,
 25 shareholders, or the public will be served by the publication
 26 thereof, ~~in which event he may publish all or any part thereof in~~
 27 ~~such manner as he deems appropriate.~~ **OF THE INFORMATION. THE**

1 DIRECTOR OR A PERSON WHO RECEIVED DOCUMENTS, MATERIALS, OR OTHER
2 INFORMATION WHILE ACTING UNDER THE AUTHORITY OF THE DIRECTOR OR
3 WITH WHOM THE DOCUMENTS, MATERIALS, OR OTHER INFORMATION IS SHARED
4 UNDER THIS ACT SHALL NOT TESTIFY IN A PRIVATE CIVIL OR
5 ADMINISTRATIVE ACTION CONCERNING CONFIDENTIAL DOCUMENTS, MATERIALS,
6 OR INFORMATION OBTAINED UNDER SECTIONS 1351 AND 1357 AND
7 INFORMATION REPORTED UNDER SECTIONS 1324 TO 1333.

8 (2) THE DIRECTOR MAY SHARE DOCUMENTS, MATERIALS, OR OTHER
9 INFORMATION, INCLUDING THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS,
10 MATERIALS, OR INFORMATION OBTAINED UNDER SECTIONS 1351 AND 1357 AND
11 INFORMATION REPORTED UNDER SECTIONS 1324 TO 1333 WITH OTHER STATE,
12 FEDERAL, AND INTERNATIONAL REGULATORY AGENCIES; THE NAIC; AND
13 STATE, FEDERAL, AND INTERNATIONAL LAW ENFORCEMENT AUTHORITIES,
14 INCLUDING MEMBERS OF A SUPERVISORY COLLEGE UNDER SECTION 1357, IF
15 THE REGULATOR, THE NAIC, OR LAW ENFORCEMENT AUTHORITY AGREES IN
16 WRITING TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF
17 THE DOCUMENT, MATERIAL, OR OTHER INFORMATION AND HAS VERIFIED IN
18 WRITING THE LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY. THE
19 DIRECTOR MAY ONLY SHARE CONFIDENTIAL AND PRIVILEGED DOCUMENTS,
20 MATERIAL, OR INFORMATION REPORTED UNDER SECTION 1325A WITH
21 COMMISSIONERS OF STATES HAVING STATUTES OR REGULATIONS
22 SUBSTANTIALLY SIMILAR TO SUBSECTION (1) AND WHO HAVE AGREED IN
23 WRITING TO NOT DISCLOSE THE INFORMATION. THE DIRECTOR MAY RECEIVE
24 DOCUMENTS, MATERIALS, OR INFORMATION, INCLUDING OTHERWISE
25 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION
26 FROM THE NAIC AND FROM REGULATORY AND LAW ENFORCEMENT OFFICIALS OF
27 OTHER FOREIGN OR DOMESTIC JURISDICTIONS, AND SHALL MAINTAIN AS

1 CONFIDENTIAL OR PRIVILEGED ANY DOCUMENT, MATERIAL, OR INFORMATION
2 RECEIVED WITH NOTICE OR THE UNDERSTANDING THAT IT IS CONFIDENTIAL
3 OR PRIVILEGED UNDER THE LAWS OF THE JURISDICTION THAT IS THE SOURCE
4 OF THE DOCUMENT, MATERIAL, OR INFORMATION. THE DISCLOSURE OR
5 SHARING OF INFORMATION, A DOCUMENT, OR OTHER MATERIAL TO THE
6 DIRECTOR OR OTHER PERSON UNDER THIS SECTION IS NOT A WAIVER OF AN
7 APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY.

8 (3) DOCUMENTS, MATERIALS, OR OTHER INFORMATION IN THE
9 POSSESSION OR CONTROL OF THE DEPARTMENT OR THE NAIC UNDER THIS
10 CHAPTER ARE CONFIDENTIAL AND PRIVILEGED, ARE NOT SUBJECT TO THE
11 FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, ARE
12 NOT SUBJECT TO SUBPOENA, AND ARE NOT SUBJECT TO DISCOVERY OR
13 ADMISSIBLE AS EVIDENCE IN A PRIVATE CIVIL OR ADMINISTRATIVE ACTION.
14 THE DIRECTOR SHALL ENTER INTO WRITTEN AGREEMENTS WITH THE NAIC
15 GOVERNING SHARING AND USE OF INFORMATION PROVIDED UNDER THIS
16 CHAPTER. THE WRITTEN AGREEMENT MUST SPECIFY PROCEDURES AND
17 PROTOCOLS REGARDING THE CONFIDENTIALITY AND SECURITY OF INFORMATION
18 SHARED WITH THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES, INCLUDING
19 PROCEDURES AND PROTOCOLS FOR SHARING BY THE NAIC WITH OTHER STATE,
20 FEDERAL, OR INTERNATIONAL REGULATORS. THE AGREEMENT MUST PROVIDE
21 THAT THE DIRECTOR OWNS THE INFORMATION SHARED WITH THE NAIC AND ITS
22 AFFILIATES AND SUBSIDIARIES AND THAT THE NAIC'S USE OF THE
23 INFORMATION IS SUBJECT TO THE DIRECTION OF THE DIRECTOR. THE
24 AGREEMENT MUST PROVIDE FOR PROMPT NOTICE TO BE GIVEN TO AN INSURER
25 WHOSE CONFIDENTIAL INFORMATION IN POSSESSION OF THE NAIC UNDER THIS
26 CHAPTER IS SUBJECT TO A REQUEST OR SUBPOENA TO THE NAIC FOR
27 DISCLOSURE OR PRODUCTION, AND REQUIRE THE NAIC AND ITS AFFILIATES

1 AND SUBSIDIARIES TO CONSENT TO INTERVENTION BY AN INSURER IN A
2 JUDICIAL OR ADMINISTRATIVE ACTION.

3 (4) THE SHARING OF INFORMATION BY THE DIRECTOR UNDER THIS
4 CHAPTER IS NOT A DELEGATION OF REGULATORY AUTHORITY OR RULE-MAKING,
5 AND THE DIRECTOR IS SOLELY RESPONSIBLE FOR THE ADMINISTRATION,
6 EXECUTION, AND ENFORCEMENT OF THE PROVISIONS OF THIS CHAPTER.

7 SEC. 1357. (1) THE DIRECTOR MAY PARTICIPATE IN A SUPERVISORY
8 COLLEGE FOR A DOMESTIC INSURER THAT IS PART OF AN INSURANCE HOLDING
9 COMPANY SYSTEM WITH INTERNATIONAL OPERATIONS TO DETERMINE THE
10 INSURER'S FINANCIAL CONDITION, BUSINESS STRATEGY, RISK MANAGEMENT,
11 RISK EXPOSURES, GOVERNANCE PROCESSES, REGULATORY POSITION, OR
12 LEGALITY OF CONDUCT. THE DIRECTOR MAY PARTICIPATE IN A SUPERVISORY
13 COLLEGE WITH OTHER REGULATORS INCLUDING STATE, FEDERAL, AND
14 INTERNATIONAL REGULATORY AGENCIES, CHARGED WITH THE SUPERVISION OF
15 THE INSURER OR ITS AFFILIATES. THE AUTHORITY OF THE DIRECTOR UNDER
16 THIS SECTION INCLUDES, BUT IS NOT LIMITED TO, INITIATING A
17 SUPERVISORY COLLEGE, CLARIFYING MEMBERSHIP AND PARTICIPATION OF
18 OTHER SUPERVISORS IN THE SUPERVISORY COLLEGE, CLARIFYING THE
19 FUNCTIONS OF THE SUPERVISORY COLLEGE AND ROLES OF OTHER REGULATORS
20 INCLUDING ESTABLISHING A GROUPWIDE SUPERVISOR, COORDINATING ONGOING
21 ACTIVITIES OF THE SUPERVISORY COLLEGE, AND ESTABLISHING A CRISIS
22 MANAGEMENT PLAN.

23 (2) THE INSURER IS LIABLE FOR AND SHALL PAY THE REASONABLE
24 EXPENSES FOR THE DIRECTOR TO PARTICIPATE IN THE SUPERVISORY
25 COLLEGE, INCLUDING REASONABLE TRAVEL EXPENSES, IF THE DIRECTOR
26 CONSIDERS IT APPROPRIATE TO REQUIRE THE INSURER TO PAY THESE COSTS.

27 (3) THE DIRECTOR MAY ENTER INTO AGREEMENTS UNDER SECTION 1355

1 PROVIDING THE BASIS FOR COOPERATION AND SHARING OF CONFIDENTIAL
 2 INFORMATION WITH STATE, FEDERAL, AND INTERNATIONAL REGULATORY
 3 AGENCIES THAT REGULATE THE DOMESTIC INSURER OR AFFILIATES WITHIN
 4 THE INSURANCE HOLDING COMPANY SYSTEM. THIS SECTION DOES NOT
 5 DELEGATE TO THE SUPERVISORY COLLEGE THE AUTHORITY OF THE DIRECTOR
 6 TO REGULATE OR SUPERVISE THE DOMESTIC INSURER OR ITS AFFILIATES
 7 WITHIN ITS JURISDICTION.

8 Sec. 1371. (1) An insurer ~~failing,~~ **THAT DOES NOT**, without just
 9 cause, ~~to file a registration statement as required in~~ **UNDER** this
 10 chapter shall, ~~be required,~~ after notice and hearing, ~~to pay a~~
 11 ~~penalty~~ **CIVIL FINE** of \$1,000.00 for each day's delay, up to a
 12 maximum of \$50,000.00, to be recovered by the ~~commissioner~~ **DIRECTOR**
 13 and paid into the general fund. The ~~commissioner~~ **DIRECTOR** may
 14 reduce the penalty if the insurer demonstrates to the ~~commissioner~~
 15 **DIRECTOR** that the ~~imposition of the penalty~~ **CIVIL FINE** would
 16 ~~constitute a~~ **CAUSE** financial hardship to the insurer.

17 (2) Every director or officer of an insurance holding company
 18 system who knowingly violates, knowingly participates in or assents
 19 to, or with actual knowledge permits any of the officers or agents
 20 of the insurer to engage in material acts, omissions, or
 21 transactions or make investments that have not been properly
 22 reported or submitted ~~pursuant to~~ **UNDER** section 1324, 1341, or
 23 1343, that, with respect to material transactions, violate this
 24 chapter, or that result in material false or misleading statements
 25 to the ~~commissioner~~ **DIRECTOR** with respect to the financial
 26 condition of the insurer or any of its affiliates shall pay, in
 27 their individual capacity, a civil forfeiture of not more than

1 \$10,000.00 per violation, after notice and hearing before the
 2 ~~commissioner~~-**DIRECTOR**. In determining the amount of the civil
 3 forfeiture, the ~~commissioner~~-**DIRECTOR** shall take into account the
 4 appropriateness of the forfeiture with respect to the gravity of
 5 the violation, the history of previous violations, and other
 6 matters as justice requires. In addition, a violation of this
 7 subsection ~~shall constitute~~-**IS** grounds for removal of ~~the~~-**A**
 8 director or officer from ~~any~~-**A** position of trust or responsibility
 9 in ~~any~~-**AN** insurer domiciled in this state in accordance with the
 10 procedures established in section 250.

11 (3) If it appears to the ~~commissioner~~-**DIRECTOR** that an insurer
 12 subject to this chapter or ~~any~~-**AN** insurer's director, officer,
 13 employee, or agent has engaged in ~~any~~-**A** transaction or entered into
 14 a contract that is subject to section 1341 or 1344 and that would
 15 not have been approved had approval been requested, the
 16 ~~commissioner~~-**DIRECTOR** may order the insurer to cease and desist
 17 immediately any further activity under that transaction or
 18 contract. After notice and hearing, the ~~commissioner~~-**DIRECTOR** may
 19 also order the insurer to void ~~any such~~-**THE** contract, transaction,
 20 or distribution, and restore the status quo if that action is in
 21 the best interest of the policyholders, creditors, or the public.

22 (4) If it appears to the ~~commissioner~~-**DIRECTOR** that an insurer
 23 or an insurer's director, officer, employee, or agent has committed
 24 a willful violation of this chapter, the ~~commissioner~~-**DIRECTOR** may
 25 ~~cause~~-**INSTITUTE** criminal proceedings ~~to be instituted~~ in the
 26 circuit court for the county in which the principal office of the
 27 insurer is located or, if the insurer ~~has no such~~-**DOES NOT HAVE A**

House Bill No. 5792 as amended December 18, 2014

1 **PRINCIPAL** office in ~~the~~**THIS** state, ~~then~~ in the Ingham county
 2 circuit court against the insurer or the insurer's responsible
 3 director, officer, employee, or agent. An insurer **THAT** willfully
 4 ~~violating~~**VIOLATES** this chapter may be fined not more than
 5 \$50,000.00. An individual **WHO** willfully ~~violating~~**VIOLATES** this
 6 chapter may be fined not more than \$10,000.00 or, if the willful
 7 violation involves the deliberate perpetration of a fraud upon the
 8 ~~commissioner~~**DIRECTOR**, imprisoned not more than 2 years, or both.

9 (5) An officer, director, or employee of an insurance holding
 10 company system who willfully and knowingly subscribes to or makes
 11 or causes to be made ~~any~~**A** false statement, false report, or false
 12 filing with the intent to deceive the ~~commissioner~~**DIRECTOR** in the
 13 performance of his or her duties under this chapter, shall be
 14 imprisoned for not more than 2 years, or fined \$10,000.00, or both.
 15 ~~Any fines imposed shall be paid by the~~**THE** officer, director, or
 16 employee **SHALL PAY A FINE** in his or her individual capacity.

17 (6) IF THE DIRECTOR DETERMINES THAT A PERSON VIOLATED SECTION
 18 1311 AND THE VIOLATION PREVENTS THE FULL UNDERSTANDING OF THE
 19 ENTERPRISE RISK OF THE INSURER BY AFFILIATES OR BY THE INSURANCE
 20 HOLDING COMPANY SYSTEM, THE VIOLATION MAY SERVE AS AN INDEPENDENT
 21 BASIS FOR DISAPPROVING DIVIDENDS OR DISTRIBUTIONS AND FOR PLACING
 22 THE INSURER UNDER AN ORDER OF SUPERVISION UNDER CHAPTER 81.

<<Enacting section 1. This amendatory act takes effect
 January 1, 2015.

Enacting section 2. This amendatory act does not take
 effect unless House Bill No. 5823 of the 97th Legislature is
 enacted into law.>>