

HOUSE BILL No. 5792

September 10, 2014, Introduced by Rep. Lund and referred to the Committee on Insurance.

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

26 Sec. 1311. (1) A person other than the issuer shall not make a
27 tender offer for or a request or invitation for tenders of, or

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

17 ~~—— (2) Until May 1, 2012, if a domestic property and casualty~~
18 ~~insurer has 200 employees or fewer, directly or indirectly through~~
19 ~~an affiliate transacting the insurer's business, any proposal to~~
20 ~~enter into an agreement to merge with or otherwise acquire control~~
21 ~~of the domestic insurer or any person controlling the domestic~~
22 ~~insurer, or, for the purpose of obtaining control, that seeks the~~
23 ~~election of 2 or more members of the board of directors of the~~
24 ~~domestic insurer or any person controlling the domestic insurer,~~
25 ~~shall, in addition to the requirements of subsection (1), require~~
26 ~~the approval of 66.67% of the outstanding voting securities if the~~
27 ~~proposal is not supported by a majority of the domestic insurer's~~

1 ~~board of directors. This subsection only applies to a domestic~~
2 ~~insurer that, on the effective date of the amendatory act that~~
3 ~~added this sentence, generates 100% of its premiums from sales in~~
4 ~~this state.~~

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

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

22 (4) For purposes of this section ~~through section~~ **AND SECTIONS**
23 **1312 TO** 1319, a domestic insurer ~~shall include any~~ **INCLUDES A**
24 person controlling a domestic insurer and any foreign insurer whose
25 written insurance premium in this state for each of the most recent
26 3 years exceeds the premiums written in its state of domicile and
27 whose written premium in this state was 20% or more of its total

1 written premium in each of the most recent 3 years.

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

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

1 conviction of crimes other than minor traffic violations during the
2 past 10 years.

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

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

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

25 (e) The number of shares of any security ~~referred to~~**DESCRIBED**
26 in section 1311 that each acquiring party proposes to acquire, the
27 terms of the offer, request, invitation, agreement, or acquisition

1 ~~referred to~~ **DESCRIBED** in section 1311, and a statement as to how
2 the proposal's fairness was arrived at.

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

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

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

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

27 (j) Copies of all tender offers for, requests or invitations

1 for tenders of, exchange offers for, and agreements to acquire or
2 exchange ~~any securities referred to~~ **A SECURITY DESCRIBED** in section
3 1311 and additional related distributed soliciting material.

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

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

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

19 (A) **FILE THE ANNUAL ENTERPRISE RISK REPORT UNDER SECTION**
20 **1325A, FOR AS LONG AS CONTROL EXISTS.**

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

25 Sec. 1315. (1) The ~~commissioner~~ **DIRECTOR** shall approve ~~any~~ **A**
26 merger or other acquisition of control ~~referred to~~ **DESCRIBED** in
27 section 1311 of a domestic insurer unless the ~~commissioner~~ **DIRECTOR**

1 determines ~~on the basis of~~ **FROM** information furnished to the
2 ~~commissioner~~ **DIRECTOR** on the merger or other acquisition of control
3 1 or more of the following:

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

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

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

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

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

25 (f) The competence, experience, and integrity of ~~these~~ **THE**
26 persons who would control the operation of the insurer are such
27 that it would not be in the interest of the insurer's policyholders

1 or the general public to permit the merger or other acquisition of
2 control.

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

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

23 (3) IN CONNECTION WITH A CHANGE OF CONTROL OF A DOMESTIC
24 INSURER, A DETERMINATION BY THE DIRECTOR THAT THE PERSON ACQUIRING
25 CONTROL OF THE INSURER SHALL BE REQUIRED TO MAINTAIN OR RESTORE THE
26 CAPITAL OF THE INSURER TO THE LEVEL REQUIRED BY THIS ACT SHALL BE
27 MADE NOT LATER THAN 60 DAYS AFTER THE DATE OF NOTIFICATION OF THE

1 **CHANGE OF CONTROL SUBMITTED UNDER SECTION 1311.**

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

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

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

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

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

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

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

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

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

5 (v) All management and service contracts and all cost sharing
6 arrangements.

7 (vi) Reinsurance agreements.

8 (vii) Dividends and other distributions to shareholders.

9 (viii) Consolidated tax allocation agreements.

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

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

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

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

25 (2) If a person ultimately controlling the insurer or
26 intermediately controlling the insurer is registered on a national
27 stock exchange or is otherwise required to make periodic reports to

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

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

26 ~~—— (a) There has not been a change of control of the insurer for~~
27 ~~a minimum of 5 years and the insurer maintains a minimum surplus~~

1 amount of \$25,000,000.00 if the insurer has achieved at least an
 2 "A" rating by the A.M. Best company or maintains a minimum surplus
 3 of \$75,000,000.00 if the insurer has achieved at least an "A"
 4 rating by the A.M. Best company.

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

13 **SEC. 1325A. THE ULTIMATE CONTROLLING PERSON OF AN INSURER**
 14 **SUBJECT TO REGISTRATION UNDER SECTION 1324 SHALL FILE AN ANNUAL**
 15 **ENTERPRISE RISK REPORT WITH THE DIRECTOR OR A JURISDICTION**
 16 **DESIGNATED BY THE DIRECTOR. THE REPORT MUST, TO THE BEST OF THE**
 17 **ULTIMATE CONTROLLING PERSON'S KNOWLEDGE AND BELIEF, IDENTIFY THE**
 18 **MATERIAL RISKS WITHIN THE INSURANCE HOLDING COMPANY SYSTEM THAT**
 19 **COULD POSE ENTERPRISE RISK TO THE INSURER. THE REPORT IS NOT**
 20 **SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN A PRIVATE CIVIL**
 21 **ACTION AND IS NOT SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976**
 22 **PA 442, MCL 15.231 TO 15.246.**

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

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

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

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

13 (c) The expenses incurred and payment received ~~shall~~**MUST** be
14 allocated to the insurer in conformity with customary insurance
15 accounting practices consistently applied.

16 (d) The books, accounts, and records of each party ~~shall~~**MUST**
17 be ~~so~~ maintained ~~as~~ to clearly and accurately disclose the precise
18 nature and details of the transactions including ~~such~~**NECESSARY**
19 accounting information ~~as is necessary~~ to support the
20 reasonableness of the charges or fees to the respective parties.

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

26 (2) The ~~commissioner's~~**DIRECTOR'S** prior approval ~~shall be~~**IS**
27 required for sales, purchases, exchanges, loans, extensions of

1 credit, or investments, involving 5% or more of the insurer's
 2 assets at the immediately preceding year's end, between a domestic
 3 controlled insurer and ~~any~~**A** person in its holding company system.

4 (3) A domestic insurer and ~~any~~**A** person in its holding company
 5 system shall not enter into the following transactions with each
 6 other, **OR MODIFY AN EXISTING TRANSACTION**, unless the insurer ~~has~~
 7 ~~notified~~**NOTIFIES** the ~~commissioner~~**DIRECTOR** in writing of its
 8 intention to enter into the transaction, **OR ITS REASON TO MODIFY AN**
 9 **EXISTING TRANSACTION AND THE MODIFICATION'S FINANCIAL IMPACT ON THE**
 10 **INSURER**, at least 30 days, or a shorter period as the ~~commissioner~~
 11 **DIRECTOR** allows, ~~prior to~~**BEFORE** entering into **OR MODIFYING** the
 12 transaction and the ~~commissioner~~**DIRECTOR** has not disapproved it
 13 within that period:

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

20 (b) ~~Loans or extensions~~**A LOAN OR EXTENSION** of credit to ~~any~~**A**
 21 person who is not an affiliate, ~~where~~**IF** the insurer makes ~~loans~~
 22 **THE LOAN** or ~~extensions of~~**EXTENDS THE** credit with the agreement or
 23 understanding that the proceeds of the ~~transactions,~~**TRANSACTION**,
 24 in whole or in substantial part, ~~are to~~**WILL** be used to make ~~loans~~
 25 **A LOAN** or ~~extensions of~~**EXTEND** credit to, to purchase assets ~~an~~
 26 **ASSET** of, or to ~~make investments~~**INVEST** in, ~~any~~**AN** affiliate of the
 27 insurer making the ~~loans~~**LOAN** or ~~extensions of~~**EXTENDING** credit

1 ~~provided~~ IF the transaction is equal to or greater than the lesser
2 of 3% of the insurer's assets or 25% of capital and surplus as of
3 December 31 of the immediately preceding year.

4 (C) A GUARANTEE THAT IS QUANTIFIABLE AND EXCEEDS THE LESSER OF
5 0.5% OF THE INSURER'S ADMITTED ASSETS OR 10% OF SURPLUS AS OF
6 DECEMBER 31 OF THE IMMEDIATELY PRECEDING YEAR. A GUARANTEE THAT IS
7 NOT QUANTIFIABLE UNDER THIS SUBDIVISION IS SUBJECT TO PRIOR
8 APPROVAL OF THE DIRECTOR.

9 (D) A DIRECT OR INDIRECT ACQUISITION OF, OR INVESTMENT IN, A
10 PERSON THAT CONTROLS THE INSURER OR THAT CONTROLS AN AFFILIATE OF
11 THE INSURER, IF THE AMOUNT OF THE TRANSACTION PLUS THE INSURER'S
12 PRESENT HOLDINGS IN INVESTMENT EXCEEDS 2.5% OF SURPLUS. THIS
13 SUBDIVISION DOES NOT APPLY TO A DIRECT OR INDIRECT ACQUISITION OF,
14 OR INVESTMENTS IN, A SUBSIDIARY ACQUIRED UNDER SECTION 1305 OR ANY
15 OTHER SECTION OF THIS CHAPTER, OR A NONSUBSIDIARY INSURANCE
16 AFFILIATE THAT IS SUBJECT TO THIS ACT.

17 (E) ~~(c) Reinsurance treaties~~ A REINSURANCE TREATY or
18 ~~agreements~~. AGREEMENT.

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

20 (G) A TAX ALLOCATION AGREEMENT.

21 (H) A COST-SHARING AGREEMENT.

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

25 (4) AN INSURER SHALL INFORMALLY NOTIFY THE DIRECTOR OF A
26 TERMINATION OF TRANSACTION UNDER SUBSECTION (3) NO LATER THAN 30
27 DAYS AFTER THE TRANSACTION TERMINATES.

1 (5) ~~(4) Nothing contained in subsection~~ **SUBSECTION** (3) shall
 2 ~~be considered to~~ **DOES NOT** authorize or permit any ~~transactions~~ **A**
 3 **TRANSACTION** that, ~~in the case of~~ **FOR** an insurer **THAT IS** not a
 4 member of the same holding company system, would be otherwise
 5 contrary to law.

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

14 (7) ~~(6)~~ In reviewing a transaction ~~pursuant to~~ **UNDER**
 15 subsection (2), the ~~commissioner~~ **DIRECTOR** shall consider whether
 16 the transaction complies with the standards ~~set forth~~ **DESCRIBED** in
 17 subsection (1) and whether it may otherwise adversely affect the
 18 interests of policyholders, creditors, or the public.

19 (8) ~~(7)~~ The ~~commissioner~~ **A DOMESTIC INSURER** shall ~~be notified~~
 20 **NOTIFY THE DIRECTOR** within 30 days of ~~any investment of the~~
 21 ~~domestic insurer~~ **INSURER'S INVESTMENT** in any 1 corporation if the
 22 **INSURANCE HOLDING COMPANY SYSTEM'S** total investment in the
 23 corporation ~~by the insurance holding company system~~ exceeds 10% of
 24 the corporation's voting securities.

25 Sec. 1343. (1) Each year the ~~commissioner~~ **DIRECTOR** shall
 26 review the ordinary shareholder dividends paid by domestic insurers
 27 to determine whether each insurer's surplus following those

1 dividends is reasonable in relation to the insurer's outstanding
2 liabilities and adequate to its needs so that it continues to
3 comply with section 403. In conducting the review and making the
4 determination, the ~~commissioner~~**DIRECTOR** shall consider **ALL OF** the
5 following factors in addition to ~~the provisions of~~**FACTORS LISTED**
6 **IN** section 436a:

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

9 (b) The quality of the insurer's earnings and the extent to
10 which the reported earnings include extraordinary items, such as
11 surplus relief reinsurance transactions and reserve
12 destrengthening.

13 (c) The quality and liquidity of investments in subsidiaries.
14 The ~~commissioner~~**DIRECTOR** may discount any of those investments or
15 refuse to consider the investment as an asset for purposes of
16 determining the adequacy of surplus as regards policyholders if the
17 investment so warrants.

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

24 (3) Shareholder dividends shall be declared or paid only from
25 earned surplus, unless the ~~commissioner~~**DIRECTOR** approves the
26 dividend ~~prior to~~**BEFORE** payment. The ~~commissioner~~**DIRECTOR** shall
27 consider whether the dividend will be paid from the insurer's net

1 gain from operations if the insurer is a life insurer, or the
2 insurer's net income if the insurer is not a life insurer, for the
3 12-month period ending December 31 of the immediately preceding
4 year. For purposes of this subsection, earned surplus excludes
5 surplus arising from unrealized capital gains or a revaluation of
6 assets.

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

14 (5) An insurer subject to registration under section 1324
15 shall not pay any extraordinary dividend or make any other
16 extraordinary distribution to its shareholders until 30 days after
17 the ~~commissioner~~**DIRECTOR** has received notice of the declaration
18 and has not disapproved or has approved the payment within that
19 period. If the ~~commissioner~~**DIRECTOR**, applying the criteria in
20 subsection (1), determines that the insurer's surplus as regards
21 policyholders is not reasonable in relation to the insurer's
22 outstanding liabilities and is not adequate to its financial needs
23 so that the insurer will not continue to comply with section 403,
24 the ~~commissioner~~**DIRECTOR** may, ~~prior to~~**BEFORE** the expiration of
25 the 30-day period described in this subsection, enter an order
26 prohibiting the payment of the dividend.

27 (6) An extraordinary dividend or distribution includes ~~any~~**A**

1 dividend or distribution of cash or other property, whose fair
2 market value ~~together with that~~ **PLUS THE FAIR MARKET VALUE** of other
3 dividends or distributions made within the preceding 12 months
4 exceeds the greater of 10% of the insurer's surplus as regards
5 policyholders as of December 31 of the immediately preceding year,
6 or the net gain from operations of the insurer, if the insurer is a
7 life insurer, or the net income, if the insurer is not a life
8 insurer, not including realized capital gains, for the 12-month
9 period ending December 31 of the immediately preceding year, but
10 shall not include pro rata distributions of any class of the
11 insurer's own securities.

12 (7) Notwithstanding any other provision of law, an insurer may
13 declare an extraordinary dividend or distribution that is
14 conditional upon the ~~commissioner's~~ **DIRECTOR'S** approval. The
15 declaration ~~shall~~ **DOES NOT** confer ~~no~~ rights upon shareholders until
16 the ~~commissioner~~ **DIRECTOR** has approved or has not disapproved the
17 payment of the dividend or distribution within the 30-day period
18 **DESCRIBED IN SUBSECTION (5)**.

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

23 (9) An insurer aggrieved by the ~~commissioner's~~ **DIRECTOR'S**
24 determination or order under this section is entitled to a
25 contested case hearing ~~pursuant to~~ **UNDER** the administrative
26 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~
27 ~~being sections 24.201 to 24.328 of the Michigan Compiled Laws, to~~

1 1969 PA 306, MCL 24.201 TO 24.328. A HEARING UNDER THIS SUBSECTION
2 MUST be held no later than 10 days after receipt of the insurer's
3 request. The ~~commissioner's~~DIRECTOR'S determination or order shall
4 remain in effect except as modified by the ~~commissioner~~DIRECTOR
5 during the pendency of the hearing and until a final decision by
6 the ~~commissioner~~DIRECTOR. The ~~commissioner~~DIRECTOR shall render
7 a final decision within 30 days after the conclusion of the
8 hearing.

9 Sec. 1351. (1) Subject to the limitation ~~contained~~ in this
10 section and in addition to the powers that the ~~commissioner~~
11 DIRECTOR has under chapters 2 and 4 relating to the examination of
12 insurers, the ~~commissioner~~DIRECTOR may order ~~any~~AN insurer
13 registered under section 1324 to produce records, books, or other
14 information papers in the possession of the insurer or its
15 affiliates as are necessary to ~~ascertain~~DETERMINE the insurer's
16 financial condition, INCLUDING ENTERPRISE RISK TO THE INSURER BY
17 THE ULTIMATE CONTROLLING PARTY, OR BY COMBINATION OF ENTITIES
18 WITHIN THE INSURANCE HOLDING COMPANY SYSTEM, OR BY THE INSURANCE
19 HOLDING COMPANY SYSTEM ON A CONSOLIDATED BASIS, or legality of
20 conduct. If the insurer fails to comply with the order, the
21 ~~commissioner~~DIRECTOR may examine the affiliates to obtain the
22 information. THE DIRECTOR MAY ORDER AN INSURER REGISTERED UNDER
23 SECTION 1324 TO PRODUCE INFORMATION NOT IN THE POSSESSION OF THE
24 INSURER IF THE INSURER CAN OBTAIN ACCESS TO THE INFORMATION UNDER A
25 CONTRACTUAL RELATIONSHIP, STATUTORY OBLIGATION, OR OTHER METHOD. IF
26 THE INSURER CANNOT OBTAIN THE INFORMATION REQUESTED BY THE
27 DIRECTOR, THE INSURER SHALL PROVIDE THE DIRECTOR WITH A DETAILED

1 EXPLANATION OF THE REASON THAT THE INSURER CANNOT OBTAIN THE
2 INFORMATION AND THE IDENTITY OF THE HOLDER OF INFORMATION. IF THE
3 DIRECTOR DETERMINES THE DETAILED EXPLANATION IS WITHOUT MERIT, THE
4 DIRECTOR MAY REQUIRE, AFTER NOTICE AND HEARING, THE INSURER TO PAY
5 A PENALTY OF \$1,000.00 FOR EACH DAY'S DELAY OR MAY SUSPEND OR
6 REVOKE THE INSURER'S LICENSE.

7 (2) The ~~commissioner~~DIRECTOR may retain at the registered
8 insurer's expense attorneys, actuaries, accountants, and other
9 experts not otherwise a part of the ~~commissioner's~~DIRECTOR'S staff
10 as are reasonably necessary to assist in the conduct of the
11 examination under subsection (1). The expense of the attorneys,
12 actuaries, accountants, and other experts shall be certified by the
13 ~~commissioner~~DIRECTOR and paid as ~~prescribed~~PROVIDED in sections
14 216 and 224. The person retained ~~shall be~~IS under the direction
15 and control of the ~~commissioner~~DIRECTOR and shall act in a purely
16 advisory capacity.

17 (3) Each registered insurer producing for examination records,
18 books, and papers ~~pursuant to~~UNDER subsection (1) ~~shall be~~IS
19 liable for and shall pay the expense of the examination ~~in~~
20 ~~accordance with~~UNDER sections 216 and 224.

21 Sec. 1355. (1) ~~All~~EXCEPT AS OTHERWISE PROVIDED IN THIS
22 SUBSECTION, THE information, documents, and copies ~~thereof~~OF
23 DOCUMENTS obtained by or disclosed to the ~~commissioner~~DIRECTOR or
24 any other person in the course of an examination or investigation
25 made ~~pursuant to section~~UNDER SECTIONS 1351 AND 1357 and ~~all~~THE
26 information reported ~~pursuant to~~UNDER sections 1324 to 1333 ~~shall~~
27 ~~be given~~IS confidential, ~~treatment,~~IS NOT SUBJECT TO THE FREEDOM

1 OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, is not
2 subject to subpoena, IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN
3 EVIDENCE IN A PRIVATE CIVIL ACTION, and shall not be made public by
4 the ~~commissioner~~ DIRECTOR or any other person, ~~except to insurance~~
5 ~~departments of other states,~~ without the prior written consent of
6 the insurer to which it pertains. ~~, unless the commissioner,~~ THE
7 DIRECTOR MAY, after giving the insurer and its affiliates who would
8 be affected ~~thereby,~~ BY THE DISCLOSURE notice and opportunity to be
9 heard, DISCLOSE THE INFORMATION IF THE DIRECTOR determines that the
10 interests of policyholders, shareholders, or the public will be
11 served by the publication thereof, ~~in which event he may publish~~
12 ~~all or any part thereof in such manner as he deems appropriate.~~ OF
13 THE INFORMATION. THE DIRECTOR OR A PERSON WHO RECEIVED DOCUMENTS,
14 MATERIALS, OR OTHER INFORMATION WHILE ACTING UNDER THE AUTHORITY OF
15 THE DIRECTOR OR WITH WHOM THE DOCUMENTS, MATERIALS, OR OTHER
16 INFORMATION IS SHARED UNDER THIS ACT SHALL NOT TESTIFY IN A PRIVATE
17 CIVIL ACTION CONCERNING CONFIDENTIAL DOCUMENTS, MATERIALS, OR
18 INFORMATION OBTAINED UNDER SECTIONS 1351 AND 1357 AND INFORMATION
19 REPORTED UNDER SECTIONS 1324 TO 1333.

20 (2) THE DIRECTOR MAY SHARE DOCUMENTS, MATERIALS, OR OTHER
21 INFORMATION, INCLUDING THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS,
22 MATERIALS, OR INFORMATION OBTAINED UNDER SECTIONS 1351 AND 1357 AND
23 INFORMATION REPORTED UNDER SECTIONS 1324 TO 1333 WITH OTHER STATE,
24 FEDERAL, AND INTERNATIONAL REGULATORY AGENCIES; THE NAIC; AND
25 STATE, FEDERAL, AND INTERNATIONAL LAW ENFORCEMENT AUTHORITIES,
26 INCLUDING MEMBERS OF A SUPERVISORY COLLEGE UNDER SECTION 1357, IF
27 THE REGULATOR OR LAW ENFORCEMENT AUTHORITY AGREES IN WRITING TO

1 MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE DOCUMENT,
2 MATERIAL, OR OTHER INFORMATION AND HAS VERIFIED IN WRITING THE
3 LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY. THE DIRECTOR MAY ONLY
4 SHARE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIAL, OR
5 INFORMATION REPORTED UNDER SECTION 1325A WITH COMMISSIONERS OF
6 STATES HAVING STATUTES OR REGULATIONS SUBSTANTIALLY SIMILAR TO
7 SUBSECTION (1) AND WHO HAVE AGREED IN WRITING TO NOT DISCLOSE THE
8 INFORMATION. THE DIRECTOR MAY RECEIVE DOCUMENTS, MATERIALS, OR
9 INFORMATION, INCLUDING OTHERWISE CONFIDENTIAL AND PRIVILEGED
10 DOCUMENTS, MATERIALS, OR INFORMATION FROM THE NAIC AND FROM
11 REGULATORY AND LAW ENFORCEMENT OFFICIALS OF OTHER FOREIGN OR
12 DOMESTIC JURISDICTIONS, AND SHALL MAINTAIN AS CONFIDENTIAL OR
13 PRIVILEGED ANY DOCUMENT, MATERIAL, OR INFORMATION RECEIVED WITH
14 NOTICE OR THE UNDERSTANDING THAT IT IS CONFIDENTIAL OR PRIVILEGED
15 UNDER THE LAWS OF THE JURISDICTION THAT IS THE SOURCE OF THE
16 DOCUMENT, MATERIAL, OR INFORMATION. THE DISCLOSURE OR SHARING OF
17 INFORMATION, A DOCUMENT, OR OTHER MATERIAL TO THE DIRECTOR OR OTHER
18 PERSON UNDER THIS SECTION IS NOT A WAIVER OF AN APPLICABLE
19 PRIVILEGE OR CLAIM OF CONFIDENTIALITY.

20 (3) DOCUMENTS, MATERIALS, OR OTHER INFORMATION IN THE
21 POSSESSION OR CONTROL OF THE NAIC UNDER THIS CHAPTER ARE
22 CONFIDENTIAL AND PRIVILEGED, ARE NOT SUBJECT TO THE FREEDOM OF
23 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, ARE NOT SUBJECT
24 TO SUBPOENA, AND ARE NOT SUBJECT TO DISCOVERY OR ADMISSIBLE AS
25 EVIDENCE IN A PRIVATE CIVIL ACTION. THE DIRECTOR SHALL ENTER INTO
26 WRITTEN AGREEMENTS WITH THE NAIC GOVERNING SHARING AND USE OF
27 INFORMATION PROVIDED UNDER THIS CHAPTER. THE WRITTEN AGREEMENT MUST

1 SPECIFY PROCEDURES AND PROTOCOLS REGARDING THE CONFIDENTIALITY AND
2 SECURITY OF INFORMATION SHARED WITH THE NAIC AND ITS AFFILIATES AND
3 SUBSIDIARIES, INCLUDING PROCEDURES AND PROTOCOLS FOR SHARING BY THE
4 NAIC WITH OTHER STATE, FEDERAL, OR INTERNATIONAL REGULATORS. THE
5 AGREEMENT MUST PROVIDE THAT THE DIRECTOR OWNS THE INFORMATION
6 SHARED WITH THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES AND THAT
7 THE NAIC'S USE OF THE INFORMATION IS SUBJECT TO THE DIRECTION OF
8 THE DIRECTOR. THE AGREEMENT MUST PROVIDE FOR PROMPT NOTICE TO BE
9 GIVEN TO AN INSURER WHOSE CONFIDENTIAL INFORMATION IN POSSESSION OF
10 THE NAIC UNDER THIS CHAPTER IS SUBJECT TO A REQUEST OR SUBPOENA TO
11 THE NAIC FOR DISCLOSURE OR PRODUCTION, AND REQUIRE THE NAIC AND ITS
12 AFFILIATES AND SUBSIDIARIES TO CONSENT TO INTERVENTION BY AN
13 INSURER IN A JUDICIAL OR ADMINISTRATIVE ACTION.

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

19 SEC. 1357. (1) THE DIRECTOR MAY PARTICIPATE IN A SUPERVISORY
20 COLLEGE FOR A DOMESTIC INSURER THAT IS PART OF AN INSURANCE HOLDING
21 COMPANY SYSTEM WITH INTERNATIONAL OPERATIONS TO DETERMINE THE
22 INSURER'S FINANCIAL CONDITION, BUSINESS STRATEGY, RISK MANAGEMENT,
23 RISK EXPOSURES, GOVERNANCE PROCESSES, REGULATORY POSITION, OR
24 LEGALITY OF CONDUCT. THE DIRECTOR MAY PARTICIPATE IN A SUPERVISORY
25 COLLEGE WITH OTHER REGULATORS INCLUDING STATE, FEDERAL, AND
26 INTERNATIONAL REGULATORY AGENCIES, CHARGED WITH THE SUPERVISION OF
27 THE INSURER OR ITS AFFILIATES. THE AUTHORITY OF THE DIRECTOR UNDER

1 THIS SECTION INCLUDES, BUT IS NOT LIMITED TO, INITIATING A
2 SUPERVISORY COLLEGE, CLARIFYING MEMBERSHIP AND PARTICIPATION OF
3 OTHER SUPERVISORS IN THE SUPERVISORY COLLEGE, CLARIFYING THE
4 FUNCTIONS OF THE SUPERVISORY COLLEGE AND ROLES OF OTHER REGULATORS
5 INCLUDING ESTABLISHING A GROUPWIDE SUPERVISOR, COORDINATING ONGOING
6 ACTIVITIES OF THE SUPERVISORY COLLEGE, AND ESTABLISHING A CRISIS
7 MANAGEMENT PLAN.

8 (2) THE INSURER IS LIABLE FOR AND SHALL PAY THE REASONABLE
9 EXPENSES FOR THE DIRECTOR TO PARTICIPATE IN THE SUPERVISORY
10 COLLEGE, INCLUDING REASONABLE TRAVEL EXPENSES, IF THE DIRECTOR
11 CONSIDERS IT APPROPRIATE TO REQUIRE THE INSURER TO PAY THESE COSTS.

12 (3) THE DIRECTOR MAY ENTER INTO AGREEMENTS UNDER SECTION 1355
13 PROVIDING THE BASIS FOR COOPERATION AND SHARING OF CONFIDENTIAL
14 INFORMATION WITH STATE, FEDERAL, AND INTERNATIONAL REGULATORY
15 AGENCIES THAT REGULATE THE DOMESTIC INSURER OR AFFILIATES WITHIN
16 THE INSURANCE HOLDING COMPANY SYSTEM. THIS SECTION DOES NOT
17 DELEGATE TO THE SUPERVISORY COLLEGE THE AUTHORITY OF THE DIRECTOR
18 TO REGULATE OR SUPERVISE THE DOMESTIC INSURER OR ITS AFFILIATES
19 WITHIN ITS JURISDICTION.

20 Sec. 1371. (1) An insurer ~~failing,~~ **THAT DOES NOT**, without just
21 cause, ~~to file a registration statement as required in~~ **UNDER** this
22 chapter shall, ~~be required,~~ after notice and hearing, ~~to pay a~~
23 penalty of \$1,000.00 for each day's delay, up to a maximum of
24 \$50,000.00, to be recovered by the ~~commissioner~~ **DIRECTOR** and paid
25 into the general fund. The ~~commissioner~~ **DIRECTOR** may reduce the
26 penalty if the insurer demonstrates to the ~~commissioner~~ **DIRECTOR**
27 that the ~~imposition of the penalty would constitute a~~ **CAUSE**

1 financial hardship to the insurer.

2 (2) Every director or officer of an insurance holding company
3 system who knowingly violates, knowingly participates in or assents
4 to, or with actual knowledge permits any of the officers or agents
5 of the insurer to engage in material acts, omissions, or
6 transactions or make investments that have not been properly
7 reported or submitted ~~pursuant to~~ **UNDER** section 1324, 1341, or
8 1343, that, with respect to material transactions, violate this
9 chapter, or that result in material false or misleading statements
10 to the ~~commissioner~~ **DIRECTOR** with respect to the financial
11 condition of the insurer or any of its affiliates shall pay, in
12 their individual capacity, a civil forfeiture of not more than
13 \$10,000.00 per violation, after notice and hearing before the
14 ~~commissioner~~ **DIRECTOR**. In determining the amount of the civil
15 forfeiture, the ~~commissioner~~ **DIRECTOR** shall take into account the
16 appropriateness of the forfeiture with respect to the gravity of
17 the violation, the history of previous violations, and other
18 matters as justice requires. In addition, a violation of this
19 subsection ~~shall constitute~~ **IS** grounds for removal of ~~the~~ **A**
20 director or officer from ~~any~~ **A** position of trust or responsibility
21 in ~~any~~ **AN** insurer domiciled in this state in accordance with the
22 procedures established in section 250.

23 (3) If it appears to the ~~commissioner~~ **DIRECTOR** that an insurer
24 subject to this chapter or ~~any~~ **AN** insurer's director, officer,
25 employee, or agent has engaged in ~~any~~ **A** transaction or entered into
26 a contract that is subject to section 1341 or 1344 and that would
27 not have been approved had approval been requested, the

1 ~~commissioner~~**DIRECTOR** may order the insurer to cease and desist
2 immediately any further activity under that transaction or
3 contract. After notice and hearing, the ~~commissioner~~**DIRECTOR** may
4 also order the insurer to void ~~any such~~**THE** contract, transaction,
5 or distribution, and restore the status quo if that action is in
6 the best interest of the policyholders, creditors, or the public.

7 (4) If it appears to the ~~commissioner~~**DIRECTOR** that an insurer
8 or an insurer's director, officer, employee, or agent has committed
9 a willful violation of this chapter, the ~~commissioner~~**DIRECTOR** may
10 ~~cause~~**INSTITUTE** criminal proceedings ~~to be instituted~~ in the
11 circuit court for the county in which the principal office of the
12 insurer is located or, if the insurer ~~has no such~~**DOES NOT HAVE A**
13 **PRINCIPAL** office in ~~the~~**THIS** state, ~~then~~ in the Ingham county
14 circuit court against the insurer or the insurer's responsible
15 director, officer, employee, or agent. An insurer **THAT** willfully
16 ~~violating~~**VIOLATES** this chapter may be fined not more than
17 \$50,000.00. An individual **WHO** willfully ~~violating~~**VIOLATES** this
18 chapter may be fined not more than \$10,000.00 or, if the willful
19 violation involves the deliberate perpetration of a fraud upon the
20 ~~commissioner~~**DIRECTOR**, imprisoned not more than 2 years, or both.

21 (5) An officer, director, or employee of an insurance holding
22 company system who willfully and knowingly subscribes to or makes
23 or causes to be made ~~any~~**A** false statement, false report, or false
24 filing with the intent to deceive the ~~commissioner~~**DIRECTOR** in the
25 performance of his or her duties under this chapter, shall be
26 imprisoned for not more than 2 years, or fined \$10,000.00, or both.
27 ~~Any fines imposed shall be paid by the~~**THE** officer, director, or

1 employee SHALL PAY A FINE in his or her individual capacity.

2 (6) IF THE DIRECTOR DETERMINES THAT A PERSON VIOLATED SECTION
3 1311 AND THE VIOLATION PREVENTS THE FULL UNDERSTANDING OF THE
4 ENTERPRISE RISK OF THE INSURER BY AFFILIATES OR BY THE INSURANCE
5 HOLDING COMPANY SYSTEM, THE VIOLATION MAY SERVE AS AN INDEPENDENT
6 BASIS FOR DISAPPROVING DIVIDENDS OR DISTRIBUTIONS AND FOR PLACING
7 THE INSURER UNDER AN ORDER OF SUPERVISION UNDER CHAPTER 81.