

**HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 177**

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending sections 1301, 1311, 1312, 1315, 1325, 1333, 1341,  
1343, 1351, 1355, and 1371 (MCL 500.1301, 500.1311, 500.1312,  
500.1315, 500.1325, 500.1333, 500.1341, 500.1343, 500.1351,  
500.1355, and 500.1371), 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. 1301. As used in this chapter:  
2       (A) "ENTERPRISE RISK" MEANS AN ACTIVITY, CIRCUMSTANCE, EVENT,  
3       OR SERIES OF EVENTS INVOLVING 1 OR MORE AFFILIATES OF AN INSURER

1 THAT, IF NOT REMEDIED PROMPTLY, IS LIKELY TO HAVE A MATERIAL  
2 ADVERSE EFFECT ON THE FINANCIAL CONDITION OR LIQUIDITY OF THE  
3 INSURER OR ITS INSURANCE HOLDING COMPANY SYSTEM AS A WHOLE,  
4 INCLUDING, BUT NOT LIMITED TO, ANYTHING THAT WOULD CAUSE THE  
5 INSURER TO BE HAZARDOUS TO POLICYHOLDERS, CREDITORS, AND THE  
6 PUBLIC.

7 (B) ~~(a)~~-"Insurer" means that term as defined in section 106 ~~7~~  
8 ~~except that it~~ AND INCLUDES A NONPROFIT DENTAL CARE CORPORATION  
9 OPERATING UNDER 1963 PA 125, MCL 550.351 TO 550.373. INSURER does  
10 not include agencies, authorities, or instrumentalities of the  
11 United States, its possessions and territories, the commonwealth of  
12 Puerto Rico, the District of Columbia or a state or political  
13 subdivision of a state, fraternal benefit societies, or nonprofit  
14 health care corporations.

15 (C) "NAIC" MEANS THE NATIONAL ASSOCIATION OF INSURANCE  
16 COMMISSIONERS.

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

22 Sec. 1311. (1) A person other than the issuer shall not make a  
23 tender offer for or a request or invitation for tenders of, or  
24 enter into ~~any~~ AN agreement to exchange securities for, seek to  
25 acquire, or acquire, in the open market or otherwise, ~~any~~ A voting  
26 security of a domestic insurer if, after the consummation thereof,  
27 the person directly or indirectly, or by conversion or by exercise

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

13 ~~—— (2) Until May 1, 2012, if a domestic property and casualty~~  
14 ~~insurer has 200 employees or fewer, directly or indirectly through~~  
15 ~~an affiliate transacting the insurer's business, any proposal to~~  
16 ~~enter into an agreement to merge with or otherwise acquire control~~  
17 ~~of the domestic insurer or any person controlling the domestic~~  
18 ~~insurer, or, for the purpose of obtaining control, that seeks the~~  
19 ~~election of 2 or more members of the board of directors of the~~  
20 ~~domestic insurer or any person controlling the domestic insurer,~~  
21 ~~shall, in addition to the requirements of subsection (1), require~~  
22 ~~the approval of 66.67% of the outstanding voting securities if the~~  
23 ~~proposal is not supported by a majority of the domestic insurer's~~  
24 ~~board of directors. This subsection only applies to a domestic~~  
25 ~~insurer that, on the effective date of the amendatory act that~~  
26 ~~added this sentence, generates 100% of its premiums from sales in~~  
27 ~~this state.~~

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

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

18           (4) For purposes of this section ~~through section~~**AND SECTIONS**  
19 **1312 TO 1319**, a domestic insurer ~~shall include any~~**INCLUDES A**  
20 person controlling a domestic insurer and any foreign insurer whose  
21 written insurance premium in this state for each of the most recent  
22 3 years exceeds the premiums written in its state of domicile and  
23 whose written premium in this state was 20% or more of its total  
24 written premium in each of the most recent 3 years.

25           Sec. 1312. (1) The statement ~~to be filed~~ with the ~~commissioner~~  
26 **DIRECTOR UNDER SECTION 1311(1)** shall be made under oath or  
27 affirmation and ~~shall~~**MUST** contain **ALL OF** the following

1 information:

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

26 (b) The source, nature, and amount of the consideration used  
27 or to be used in effecting the merger or other acquisition of

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

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

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

21 (e) The number of shares of any security ~~referred to~~ **DESCRIBED**  
22 in section 1311 that each acquiring party proposes to acquire, the  
23 terms of the offer, request, invitation, agreement, or acquisition  
24 ~~referred to~~ **DESCRIBED** in section 1311, and a statement as to how  
25 the proposal's fairness was arrived at.

26 (f) The amount of each class of ~~any~~ **A** security ~~referred to~~  
27 **DESCRIBED** in section 1311 that is beneficially owned or concerning

1 which there is a right to acquire beneficial ownership by each  
2 acquiring party.

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

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

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

23 (j) Copies of all tender offers for, requests or invitations  
24 for tenders of, exchange offers for, and agreements to acquire or  
25 exchange ~~any securities referred to A~~ **SECURITY DESCRIBED** in section  
26 1311 and additional related distributed soliciting material.

27 (k) The terms of ~~any AN~~ agreement, contract, or understanding

1 made with or proposed to be made with ~~any~~ **A** broker-dealer as to  
 2 solicitation of securities ~~referred to~~ **DESCRIBED** in section 1311  
 3 for tender, and the amount of ~~any fees, commissions,~~ **A FEE,**  
 4 **COMMISSION,** or other compensation to be paid to ~~broker-dealers.~~ **A**  
 5 **BROKER-DEALER.**

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

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

15 **(A) FILE THE ANNUAL ENTERPRISE RISK REPORT UNDER SECTION**  
 16 **1325A, FOR AS LONG AS CONTROL EXISTS.**

17 **(B) PROVIDE, AND ENSURE THAT ALL SUBSIDIARIES WITHIN ITS**  
 18 **CONTROL IN THE INSURANCE HOLDING COMPANY SYSTEM WILL PROVIDE,**  
 19 **INFORMATION TO THE DIRECTOR ON REQUEST AS NECESSARY TO EVALUATE**  
 20 **ENTERPRISE RISK TO THE INSURER.**

21 **Sec. 1315. (1) The ~~commissioner~~ DIRECTOR shall approve any** ~~A~~  
 22 **merger or other acquisition of control ~~referred to~~ DESCRIBED in**  
 23 **section 1311 of a domestic insurer unless the ~~commissioner~~ DIRECTOR**  
 24 **determines ~~on the basis of~~ FROM information furnished to the**  
 25 **~~commissioner~~ DIRECTOR on the merger or other acquisition of control**  
 26 **1 or more of the following:**

27 **(a) After the change of control, the domestic insurer ~~referred~~**

1 ~~to~~ **DESCRIBED** in section 1311 would not be able to satisfy the  
2 requirements for the issuance of a certificate of authority to  
3 write the types of insurance for which it is presently authorized.

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

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

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

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

21 (f) The competence, experience, and integrity of ~~these~~ **THE**  
22 persons who would control the operation of the insurer are such  
23 that it would not be in the interest of the insurer's policyholders  
24 or the general public to permit the merger or other acquisition of  
25 control.

26 (G) **THE ACQUISITION IS LIKELY TO BE HAZARDOUS OR PREJUDICIAL**  
27 **TO THE INSURANCE-BUYING PUBLIC.**

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

19           (3) IN CONNECTION WITH A CHANGE OF CONTROL OF A DOMESTIC  
20 INSURER, A DETERMINATION BY THE DIRECTOR THAT THE PERSON ACQUIRING  
21 CONTROL OF THE INSURER SHALL BE REQUIRED TO MAINTAIN OR RESTORE THE  
22 CAPITAL OF THE INSURER TO THE LEVEL REQUIRED BY THIS ACT SHALL BE  
23 MADE NOT LATER THAN 60 DAYS AFTER THE DATE OF NOTIFICATION OF THE  
24 CHANGE OF CONTROL SUBMITTED UNDER SECTION 1311.

25           (4) ~~(2)~~ A person aggrieved by the ~~commissioner's~~ DIRECTOR'S  
26 order under this section ~~shall be~~ IS entitled to a contested case  
27 hearing before the ~~commissioner~~ pursuant to DIRECTOR UNDER the

1 administrative procedures act of 1969, ~~Act No. 306 of the Public~~  
2 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~  
3 ~~Compiled Laws. 1969 PA 306, MCL 24.201 TO 24.328.~~ The ~~commissioner~~  
4 **DIRECTOR** shall make a final decision within 30 days after the  
5 conclusion of the hearing.

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

10 (a) The capital structure, comprehensive financial condition,  
11 ownership, and management of the insurer and ~~any~~**A** person  
12 controlling the insurer.

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

15 (c) The following agreements in force, relationships  
16 subsisting, and transactions currently outstanding or that have  
17 occurred during the last calendar year between the insurer and its  
18 affiliates:

19 (i) Loans, other investments or purchases, sales, or exchanges  
20 of securities of the affiliates by the insurer or of the insurer by  
21 its affiliates.

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

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

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

1 (v) All management and service contracts and all cost sharing  
2 arrangements.

3 (vi) Reinsurance agreements.

4 (vii) Dividends and other distributions to shareholders.

5 (viii) Consolidated tax allocation agreements.

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

9 (e) A summary outlining all items in the current registration  
10 statement representing changes from the prior registration  
11 statement.

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

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

21 (2) If a person ultimately controlling the insurer or  
22 intermediately controlling the insurer is registered on a national  
23 stock exchange or is otherwise required to make periodic reports to  
24 the United States ~~securities and exchange commission~~ **SECURITIES AND**  
25 **EXCHANGE COMMISSION** or other instrumentality of a state or the  
26 government of the United States or of ~~any-A~~ foreign nation or  
27 jurisdiction regulating the financial conduct of that person, the

1 insurer shall file such ~~THE~~ reports with the ~~commissioner~~ **DIRECTOR**  
2 in addition to other information required by the  
3 ~~commissioner~~ **DIRECTOR**. **IF REQUESTED BY THE DIRECTOR, THE INSURER**  
4 **MUST INCLUDE FINANCIAL STATEMENTS OF OR WITHIN AN INSURANCE HOLDING**  
5 **COMPANY SYSTEM, INCLUDING ALL AFFILIATES. THE INSURER MAY SATISFY**  
6 **THE REQUEST BY PROVIDING THE DIRECTOR THE MOST RECENTLY FILED**  
7 **PARENT CORPORATION FINANCIAL STATEMENTS THAT HAVE BEEN FILED WITH**  
8 **THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION.**

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

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

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

9       SEC. 1325A. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
10 (2), THE ULTIMATE CONTROLLING PERSON OF AN INSURER SUBJECT TO  
11 REGISTRATION UNDER SECTION 1324 SHALL FILE AN ANNUAL ENTERPRISE  
12 RISK REPORT WITH THE DIRECTOR OR A JURISDICTION DESIGNATED BY THE  
13 DIRECTOR. THE REPORT MUST BE APPROPRIATE TO THE NATURE, SCALE, AND  
14 COMPLEXITY OF THE OPERATIONS OF THE INSURANCE HOLDING COMPANY  
15 SYSTEM AND MUST, TO THE BEST OF THE ULTIMATE CONTROLLING PERSON'S  
16 KNOWLEDGE AND BELIEF, IDENTIFY THE MATERIAL RISKS WITHIN THE  
17 INSURANCE HOLDING COMPANY SYSTEM THAT COULD POSE ENTERPRISE RISK TO  
18 THE INSURER. THE REPORT IS NOT SUBJECT TO SUBPOENA OR DISCOVERY, IS  
19 NOT ADMISSIBLE IN EVIDENCE IN A PRIVATE CIVIL OR ADMINISTRATIVE  
20 ACTION, AND IS NOT SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976  
21 PA 442, MCL 15.231 TO 15.246. THE ULTIMATE CONTROLLING PERSON OF AN  
22 INSURER SUBJECT TO REGISTRATION UNDER SECTION 1324 MAY REQUEST AN  
23 EXEMPTION FROM THIS SECTION. THE ULTIMATE CONTROLLING PERSON OF THE  
24 INSURER SHALL FILE WITH THE DIRECTOR A WRITTEN STATEMENT DISCUSSING  
25 THE REASONS WHY THE ULTIMATE CONTROLLING PERSON OF THE INSURER  
26 SHOULD BE EXEMPT. THE DIRECTOR MAY GRANT THE EXEMPTION IF AFTER  
27 REVIEW OF THE STATEMENT THE DIRECTOR FINDS THAT COMPLIANCE WITH

1 THIS SECTION WOULD CREATE AN UNDUE FINANCIAL OR ORGANIZATIONAL  
2 HARDSHIP ON THE ULTIMATE CONTROLLING PERSON.

3 (2) THE ULTIMATE CONTROLLING PERSON OF AN INSURANCE HOLDING  
4 COMPANY SYSTEM SUBJECT TO REGISTRATION UNDER SECTION 1324 THAT  
5 MEETS THE REQUIREMENTS OF THIS SUBSECTION ON OR BEFORE THE  
6 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION IS NOT  
7 REQUIRED TO FILE AN ANNUAL ENTERPRISE RISK REPORT UNDER SUBSECTION

8 (1) IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

9 (A) THE ULTIMATE CONTROLLING PERSON IS EXEMPT FROM TAXATION  
10 UNDER SECTION 501(C) (5) OF THE INTERNAL REVENUE CODE OF 1986, 26  
11 USC 501.

12 (B) THE ULTIMATE CONTROLLING PERSON WAS ORGANIZED UNDER THE  
13 LAWS OF THIS STATE BEFORE JANUARY 1, 1921.

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

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

19 (i) IS REGISTERED UNDER SECTION 1324.

20 (ii) IS A WHOLLY DOMESTIC INSURER WITH NO MORE THAN 10% OF ITS  
21 WRITTEN PREMIUM COVERING RISKS OUTSIDE OF THIS STATE AND HAS NOT  
22 ISSUED POLICIES DIRECTLY INSURING ANY RISK LOCATED OUTSIDE OF THIS  
23 STATE.

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

1 violation of this chapter.

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

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

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

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

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

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

27       (2) The ~~commissioner's~~**DIRECTOR'S** prior approval ~~shall be~~**IS**

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

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

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

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

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

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

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

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

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

21 (G) A TAX ALLOCATION AGREEMENT.

22 (H) A COST-SHARING AGREEMENT.

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

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

1 **DAYS AFTER THE TRANSACTION TERMINATES.**

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

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

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

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

26 Sec. 1343. (1) Each year the ~~commissioner~~ **DIRECTOR** shall  
 27 review the ordinary shareholder dividends paid by domestic insurers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Sec. 1355. (1) ~~All~~EXCEPT AS OTHERWISE PROVIDED IN THIS  
23 SUBSECTION, THE information, documents, and copies ~~thereof~~OF  
24 DOCUMENTS obtained by or disclosed to the ~~commissioner~~DIRECTOR or  
25 any other person in the course of an examination or investigation  
26 made ~~pursuant to section~~UNDER SECTIONS 1351 AND 1357 and ~~all~~THE  
27 information reported ~~pursuant to~~UNDER sections 1324 to 1333 shall

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

22 (2) THE DIRECTOR MAY SHARE DOCUMENTS, MATERIALS, OR OTHER  
23 INFORMATION, INCLUDING THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS,  
24 MATERIALS, OR INFORMATION OBTAINED UNDER SECTIONS 1351 AND 1357 AND  
25 INFORMATION REPORTED UNDER SECTIONS 1324 TO 1333 WITH OTHER STATE,  
26 FEDERAL, AND INTERNATIONAL REGULATORY AGENCIES; THE NAIC; AND  
27 STATE, FEDERAL, AND INTERNATIONAL LAW ENFORCEMENT AUTHORITIES,

1 INCLUDING MEMBERS OF A SUPERVISORY COLLEGE UNDER SECTION 1357, IF  
2 THE REGULATOR, THE NAIC, OR LAW ENFORCEMENT AUTHORITY AGREES IN  
3 WRITING TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF  
4 THE DOCUMENT, MATERIAL, OR OTHER INFORMATION AND HAS VERIFIED IN  
5 WRITING THE LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY. THE  
6 DIRECTOR MAY ONLY SHARE CONFIDENTIAL AND PRIVILEGED DOCUMENTS,  
7 MATERIAL, OR INFORMATION REPORTED UNDER SECTION 1325A WITH  
8 COMMISSIONERS OF STATES HAVING STATUTES OR REGULATIONS  
9 SUBSTANTIALLY SIMILAR TO SUBSECTION (1) AND WHO HAVE AGREED IN  
10 WRITING TO NOT DISCLOSE THE INFORMATION. THE DIRECTOR MAY RECEIVE  
11 DOCUMENTS, MATERIALS, OR INFORMATION, INCLUDING OTHERWISE  
12 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION  
13 FROM THE NAIC AND FROM REGULATORY AND LAW ENFORCEMENT OFFICIALS OF  
14 OTHER FOREIGN OR DOMESTIC JURISDICTIONS, AND SHALL MAINTAIN AS  
15 CONFIDENTIAL OR PRIVILEGED ANY DOCUMENT, MATERIAL, OR INFORMATION  
16 RECEIVED WITH NOTICE OR THE UNDERSTANDING THAT IT IS CONFIDENTIAL  
17 OR PRIVILEGED UNDER THE LAWS OF THE JURISDICTION THAT IS THE SOURCE  
18 OF THE DOCUMENT, MATERIAL, OR INFORMATION. THE DISCLOSURE OR  
19 SHARING OF INFORMATION, A DOCUMENT, OR OTHER MATERIAL TO THE  
20 DIRECTOR OR OTHER PERSON UNDER THIS SECTION IS NOT A WAIVER OF AN  
21 APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY.

22 (3) DOCUMENTS, MATERIALS, OR OTHER INFORMATION IN THE  
23 POSSESSION OR CONTROL OF THE DEPARTMENT OR THE NAIC UNDER THIS  
24 CHAPTER ARE CONFIDENTIAL AND PRIVILEGED, ARE NOT SUBJECT TO THE  
25 FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, ARE  
26 NOT SUBJECT TO SUBPOENA, AND ARE NOT SUBJECT TO DISCOVERY OR  
27 ADMISSIBLE AS EVIDENCE IN A PRIVATE CIVIL OR ADMINISTRATIVE ACTION.

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

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

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

1 INTERNATIONAL REGULATORY AGENCIES, CHARGED WITH THE SUPERVISION OF  
2 THE INSURER OR ITS AFFILIATES. THE AUTHORITY OF THE DIRECTOR UNDER  
3 THIS SECTION INCLUDES, BUT IS NOT LIMITED TO, INITIATING A  
4 SUPERVISORY COLLEGE, CLARIFYING MEMBERSHIP AND PARTICIPATION OF  
5 OTHER SUPERVISORS IN THE SUPERVISORY COLLEGE, CLARIFYING THE  
6 FUNCTIONS OF THE SUPERVISORY COLLEGE AND ROLES OF OTHER REGULATORS  
7 INCLUDING ESTABLISHING A GROUPWIDE SUPERVISOR, COORDINATING ONGOING  
8 ACTIVITIES OF THE SUPERVISORY COLLEGE, AND ESTABLISHING A CRISIS  
9 MANAGEMENT PLAN.

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

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

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

1 reduce the penalty if the insurer demonstrates to the ~~commissioner~~  
2 **DIRECTOR** that the ~~imposition of the penalty~~ **CIVIL FINE** would  
3 ~~constitute a~~ **CAUSE** financial hardship to the insurer.

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

25 (3) If it appears to the ~~commissioner~~ **DIRECTOR** that an insurer  
26 subject to this chapter or ~~any~~ **AN** insurer's director, officer,  
27 employee, or agent has engaged in ~~any~~ **A** transaction or entered into

1 a contract that is subject to section 1341 or 1344 and that would  
2 not have been approved had approval been requested, the  
3 ~~commissioner~~**DIRECTOR** may order the insurer to cease and desist  
4 immediately any further activity under that transaction or  
5 contract. After notice and hearing, the ~~commissioner~~**DIRECTOR** may  
6 also order the insurer to void ~~any such~~**THE** contract, transaction,  
7 or distribution, and restore the status quo if that action is in  
8 the best interest of the policyholders, creditors, or the public.

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

23 (5) An officer, director, or employee of an insurance holding  
24 company system who willfully and knowingly subscribes to or makes  
25 or causes to be made ~~any~~**A** false statement, false report, or false  
26 filing with the intent to deceive the ~~commissioner~~**DIRECTOR** in the  
27 performance of his or her duties under this chapter, shall be

1 imprisoned for not more than 2 years, or fined \$10,000.00, or both.  
2 ~~Any fines imposed shall be paid by the~~ **THE** officer, director, or  
3 employee **SHALL PAY A FINE** in his or her individual capacity.

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