

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 537

AN ACT

To repeal sections 382.010, 382.020, 382.040, 382.050, 382.060, 382.080, 382.095, 382.110, 382.170, 382.180, 382.190, 382.195, 382.220, and 382.230, RSMo, and to enact in lieu thereof seventeen new sections relating to regulating the business of insurance, with penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 382.010, 382.020, 382.040, 382.050,
2 382.060, 382.080, 382.095, 382.110, 382.170, 382.180, 382.190,
3 382.195, 382.220, and 382.230, RSMo, are repealed and seventeen
4 new sections enacted in lieu thereof, to be known as sections
5 382.010, 382.020, 382.040, 382.050, 382.060, 382.080, 382.095,
6 382.110, 382.170, 382.175, 382.180, 382.190, 382.195, 382.220,
7 382.225, 382.230, and 382.277, to read as follows:

8 382.010. As used in sections 382.010 to 382.300, the
9 following words and terms have the meanings indicated unless the
10 context clearly requires otherwise:

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

15 (2) The term "control", including the terms "controlling",
16 "controlled by" and "under common control with", means the
17 possession, direct or indirect, of the power to direct or cause

1 the direction of the management and policies of a person, whether
2 through the ownership of voting securities, by contract other
3 than a commercial contract for goods or nonmanagement services,
4 or otherwise, unless the power is the result of an official
5 position with or corporate office held by the person. Control
6 shall be presumed to exist if any person, directly or indirectly,
7 owns, controls, holds with power to vote, or holds proxies
8 representing, ten percent or more of the voting securities of any
9 other person. This presumption may be rebutted by a showing made
10 in the manner provided by section 382.170 that control does not
11 exist in fact. The director may determine, after furnishing all
12 persons in interest notice and opportunity to be heard and making
13 specific findings of fact to support such determination, that
14 control exists in fact, notwithstanding the absence of a
15 presumption to that effect;

16 (3) The term "director" means the director of the
17 department of insurance, financial institutions and professional
18 registration, his deputies, or the department of insurance,
19 financial institutions and professional registration, as
20 appropriate;

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

1 to be in hazardous financial condition as set forth in section
2 375.539;

3 (5) An "insurance holding company system" consists of two
4 or more affiliated persons, one or more of which is an insurer;

5 ~~[(5)]~~ (6) The term "insurer" means an insurance company as
6 defined in section 375.012, including a reciprocal or
7 interinsurance exchange, and which is qualified and licensed by
8 the department of insurance, financial institutions and
9 professional registration of Missouri to transact the business of
10 insurance in this state; but it shall not include any company
11 organized and doing business under chapters 377, 378 or 380,
12 agencies, authorities, or instrumentalities of the United States,
13 its possessions and territories, the Commonwealth of Puerto Rico,
14 the District of Columbia, or a state or political subdivision of
15 a state;

16 ~~[(6)]~~ (7) A "person" is an individual, corporation, limited
17 liability company, partnership, association, joint stock company,
18 ~~[business]~~ trust, unincorporated organization, or any similar
19 entity, or any combination of the foregoing acting in concert,
20 but ~~[is not any securities broker performing no more than the~~
21 ~~usual and customary broker's function]~~ shall not include any
22 joint venture partnership exclusively engaged in owning,
23 managing, leasing, or developing real or tangible personal
24 property;

25 ~~[(7)]~~ (8) A "securityholder" of a specified person is one
26 who owns any security of that person, including common stock,
27 preferred stock, debt obligations, and any other security
28 convertible into or evidencing the right to acquire any of the

1 foregoing;

2 [(8)] (9) A "subsidiary" of a specified person is an
3 affiliate controlled by that person directly, or indirectly
4 through one or more intermediaries;

5 [(9)] (10) The term "voting security" includes any security
6 convertible into or evidencing a right to acquire a voting
7 security.

8 382.020. 1. Any domestic insurer, either by itself or in
9 cooperation with one or more persons, may invest in, otherwise
10 acquire or operate one or more subsidiaries engaged or registered
11 to engage in one or more of the following businesses:

12 (1) Any kind of insurance business authorized by the laws
13 of the state of Missouri;

14 (2) Investing, reinvesting or trading in securities for its
15 own account, that of its parent, any subsidiary of its parent, or
16 any affiliate or subsidiary;

17 (3) Rendering other services including, but not limited to,
18 actuarial, loss prevention, safety engineering, marketing, data
19 processing, accounting, claims, appraisal and collection
20 services, if such services relate to the operations of the
21 insurance business of the insurer; provided, however, that such
22 services shall not include services of salvage of motor vehicles,
23 the mechanical, body or other repair of motor vehicles and the
24 towing or retrieval of motor vehicles;

25 (4) Ownership and management of the kinds of assets which
26 the parent corporation could itself own or manage;

27 (5) Acting as administrative agent for a governmental
28 instrumentality which is performing an insurance function;

1 (6) Financing of insurance premiums;

2 (7) Any other business activity determined by the director
3 to be reasonably ancillary to the insurance business of the
4 insurer;

5 (8) Owning a corporation or corporations engaged in or
6 organized to engage exclusively in one or more of the businesses
7 specified in this section;

8 (9) Acting as an insurance broker or as an insurance agent
9 for its parent or for any of its parent's insurer subsidiaries;

10 (10) Management of any investment company subject to or
11 registered pursuant to the federal Investment Company Act of
12 1940, as amended, including related sales and services;

13 (11) Acting as a broker-dealer subject to or registered
14 pursuant to the federal Securities Exchange Act of 1934, as
15 amended; and

16 (12) Rendering investment advice to governments, government
17 agencies, corporations or other organizations or groups.

18 2. In addition, a domestic insurance company may, if it
19 maintains books and records which separately account for such
20 business, engage directly in any business referred to in
21 subdivisions (3), (4), (5), (6) and (7) of subsection 1 of this
22 section, either to the extent necessarily or properly incidental
23 to the insurance business the insurer is authorized to do in this
24 state or to the extent approved by the director and subject to
25 any limitations the director may prescribe for the protection of
26 the interests of the policyholders of the insurer after taking
27 into account the effect of such business on the insurer's
28 existing insurance business and its surplus, the proposed

1 allocation of the estimated costs of such business and the risks
2 inherent in such business as well as the relative advantages to
3 the insurer and its policyholders of conducting such business
4 directly instead of through a subsidiary. Nothing in sections
5 382.010 to 382.300 shall be deemed to limit the powers of a
6 domestic insurance company existing prior to September 28, 1971.

7 3. In addition to investments in common stock, preferred
8 stock, debt obligations and other securities permitted domestic
9 insurers, a domestic insurer may also do one or more of the
10 following:

11 (1) Invest in common stock, preferred stock, debt
12 obligations, and other securities of one or more subsidiaries,
13 amounts which do not exceed the lesser of ~~[five]~~ ten percent of
14 such insurer's assets or fifty percent of such insurer's surplus
15 as regards policyholders, if after such investments the insurer's
16 surplus as regards policyholders will be reasonable in relation
17 to the insurer's outstanding liabilities and adequate to its
18 financial needs. In calculating the amount of such investment,
19 investments in domestic or foreign insurance subsidiaries shall
20 be excluded, and there shall be included:

21 (a) Total net moneys or other consideration expended and
22 obligations assumed in the acquisition or formation of a
23 subsidiary, including all organizational expenses and
24 contributions to capital and surplus of such subsidiary whether
25 or not represented by the purchase of capital stock or issuance
26 of other securities; and

27 (b) All amounts expended in acquiring additional common
28 stock, preferred stock, debt obligations, and other securities

1 and all contributions to the capital or surplus of a subsidiary
2 subsequent to its acquisition or formation;

3 (2) With the approval of the director, invest any greater
4 amount in common stock, preferred stock, debt obligations, or
5 other securities of one or more subsidiaries, if after such
6 investment the insurer's surplus as regards policyholders will be
7 reasonable in relation to the insurer's outstanding liabilities
8 and adequate to its financial needs;

9 (3) Invest any amount in common stock, preferred stock,
10 debt obligations and other securities of one or more subsidiaries
11 engaged or organized to engage exclusively in the ownership and
12 management of assets authorized as investments for the insurer,
13 provided that each such subsidiary agrees to limit its
14 investments in any asset so that such investments will not cause
15 the amount of the total investment of the insurer to exceed any
16 of the investment limitations specified in subdivision (1) of
17 this subsection or in other insurance laws applicable to the
18 insurer. For the purpose of this subdivision, the total
19 investment of the insurer shall include:

20 (a) Any direct investment by the insurer in an asset; and

21 (b) The insurer's proportionate share of any investment in
22 an asset by any subsidiary of the insurer, which shall be
23 calculated by multiplying the amount of the subsidiary's
24 investment by the percentage of the ownership of such subsidiary.

25 4. Investments in common stock, preferred stock, debt
26 obligations or other securities made pursuant to subsection 3 of
27 this section shall be made as provided by the statutes of this
28 state.

1 5. Whether any investment pursuant to subsections 3 and 4
2 of this section meets the applicable requirements thereof is to
3 be determined immediately after such investment is made, taking
4 into account the then outstanding principal balance on all
5 previous investments in debt obligations, and the value of all
6 previous investments in equity securities as of the date they are
7 made.

8 382.040. 1. No person other than the issuer shall commence
9 a tender offer for or a request or invitation for tenders of, or
10 enter into any agreement to exchange securities for, seek to
11 acquire, or acquire, in the open market or otherwise, any voting
12 security of a domestic insurer if, after the consummation
13 thereof, he would, directly or indirectly, or by conversion or by
14 exercise of any right to acquire, be in control of the insurer,
15 and no person shall enter into an agreement to merge with or
16 otherwise to acquire control of a domestic insurer unless, at the
17 time the offer, request, or invitation is commenced or the
18 agreement is entered into, or prior to the acquisition of the
19 securities if no offer or agreement is involved, he has filed
20 with the director and has sent to the insurer a statement
21 containing the information required by section 382.050 and the
22 offer, request, invitation, agreement or acquisition has been
23 approved by the director in the manner prescribed by sections
24 382.010 to 382.300.

25 2. For purposes of sections 382.040 to 382.090, any
26 controlling person of a domestic insurer seeking to divest its
27 controlling interest in the domestic insurer, in any manner,
28 shall file with the director, with a copy to the insurer,

1 confidential notice of its proposed divestiture at least thirty
2 days prior to the cessation of control. The director shall
3 determine those instances in which the party or parties seeking
4 to divest or to acquire a controlling interest in an insurer,
5 shall be required to file for and obtain approval of the
6 transaction. The information shall remain confidential until the
7 conclusion of the transaction. If the statement referred to in
8 subsection 1 of this section is otherwise filed, the provisions
9 of this subsection shall not apply.

10 3. With respect to a transaction subject to this section,
11 the acquiring person shall file a pre-acquisition notification
12 with the director, which shall contain the information set forth
13 in subsection 3 of section 382.095. A failure to file the
14 notification may be subject to penalties specified in subsection
15 7 of section 382.095.

16 4. For purposes of this section, a domestic insurer shall
17 include any person controlling a domestic insurer unless such
18 person, as determined by the director, is either directly or
19 through its affiliates primarily engaged in business other than
20 the business of insurance[; however, such person shall file a
21 preacquisition notification with the director containing the
22 information set forth in section 382.095 thirty days prior to the
23 proposed effective date of the acquisition. Any person who fails
24 to file the preacquisition notification required by this section
25 shall be subject to the penalties provided in subsection 5 of
26 section 382.095]. For the purposes of sections 382.040, 382.050,
27 382.060, 382.070, 382.080 and 382.090, "person" shall not include
28 any securities broker holding, in the usual and customary

1 broker's function, less than twenty percent of the voting
2 securities of an insurance company or of any person which
3 controls an insurance company.

4 382.050. 1. The statement to be filed with the director
5 shall be made under oath or affirmation and shall contain the
6 following [information]:

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

11 (a) If that person is an individual, his principal
12 occupation and all offices and positions held during the past
13 five years, and any conviction of crimes other than minor traffic
14 violations during the past ten years; and

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

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

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

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

1 a description of any transaction wherein funds were or are to be
2 obtained for any such purpose, including any pledge of the
3 insurer's stock or the stock of any subsidiaries or controlling
4 affiliates, and the identity of persons furnishing such
5 consideration, but, where a source of the consideration is a loan
6 made in the lender's ordinary course of business, the identity of
7 the lender shall remain confidential, if the person filing the
8 statement so requests;

9 (3) Fully audited financial information as to the earnings
10 and financial condition of each acquiring party for the preceding
11 five fiscal years of each such acquiring party, or for such
12 lesser period as such acquiring party and any predecessors
13 thereof shall have been in existence, and similar unaudited
14 information as of a date not earlier than ninety days prior to
15 the filing of the statement;

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

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

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

26 (7) The amount of each class of any security referred to in
27 section 382.040 which is beneficially owned or concerning which
28 there is a right to acquire beneficial ownership by each

1 acquiring party;

2 (8) A full description of any contracts, arrangements or
3 understandings with respect to any security referred to in
4 section 382.040 in which any acquiring party proposes to be or is
5 involved, including but not limited to transfer of any of the
6 securities, joint ventures, loan or option arrangements, puts or
7 calls, guarantees of loans, guarantees against loss or guarantees
8 of profits, division of losses or profits, or the giving or
9 withholding of proxies. Such description shall identify the
10 persons with whom such contracts, arrangements or understandings
11 have been or will be entered into;

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

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

22 (11) Copies of the form of all tender offers for, requests
23 or invitations for tenders of, exchange offers for, and
24 agreements to acquire or exchange any securities referred to in
25 section 382.040, and of the form of additional soliciting
26 material, if distributed, relating thereto;

27

28 (12) The terms of any agreement, contract or understanding

1 made with or proposed to be made with any broker-dealer as to
2 solicitation of securities referred to in section 382.040 for
3 tender, and the amount of any fees, commissions or other
4 compensation to be paid to broker-dealers with regard thereto;
5 **[and]**

6 (13) An agreement by the person required to file the
7 statement referred to in section 382.040 that it shall provide
8 the annual report, specified in section 382.175, for so long as
9 control exists;

10 (14) An acknowledgment by the person required to file the
11 statement referred to in section 382.040 that the person and all
12 subsidiaries within its control in the insurance holding company
13 system shall provide information to the director upon request as
14 necessary to evaluate enterprise risk to the insurer; and

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

19 2. If the person required to file the statement referred to
20 in section 382.040 is a partnership, limited partnership,
21 syndicate or other group, the director may require that the
22 information called for by subdivisions (1) to ~~[(13)]~~ (15) of
23 subsection 1 of this section shall be given with respect to each
24 partner of such partnership or limited partnership, each member
25 of such syndicate or group, and each person who controls such
26 partner or member. If any such partner, member or person is a
27 corporation or the person required to file the statement referred
28 to in section 382.040 is a corporation, the director may require

1 that the information called for by subdivisions (1) to [(13)]
2 (15) of subsection 1 of this section shall be given with respect
3 to the corporation, each officer and director of the corporation,
4 and each person who is directly or indirectly the beneficial
5 owner of more than ten percent of the outstanding voting
6 securities of the corporation.

7 3. If any material change occurs in the facts set forth in
8 the statement filed with the director and sent to the insurer
9 pursuant to this section, an amendment setting forth the change,
10 together with copies of all documents and other material relevant
11 to the change, shall be filed with the director and shall be sent
12 to the insurer within two business days after the person learns
13 of the change.

14 4. If any offer, request, invitation, agreement or
15 acquisition referred to in section 382.040 is proposed to be made
16 by means of a registration statement under the Securities Act of
17 1933 or in circumstances requiring the disclosure of similar
18 information under the Securities Exchange Act of 1934, or under a
19 state law requiring similar registration or disclosure, the
20 person required to file the statement referred to in section
21 382.040 may utilize such documents in furnishing the information
22 called for by that statement.

23 382.060. 1. The director shall [hold a public hearing on
24 the proposed] approve any merger or other acquisition of control
25 referred to in section 382.040 [and shall thereafter approve such
26 merger or acquisition of control] unless [he], after a public
27 hearing, the director finds [by a preponderance of the evidence]
28 that:

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

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

9 (a) The informational requirements of subsection 3 of
10 section 382.095 and the standards of subsection 4 of section
11 382.095 shall apply;

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

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

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

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

28 (5) The competence, experience or integrity of those

1 persons who would control the operation of the insurer are such
2 that it would be contrary to the interest of policyholders of the
3 insurer and of the public to permit the merger or other
4 acquisition of control; or

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

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

9 3. The public hearing referred to above in this section
10 shall be held within thirty days after the statement required by
11 section 382.040 is filed, and at least twenty days' notice
12 thereof shall be given by the director to the person filing the
13 statement. Not less than seven days' notice of the public
14 hearing shall be given by the person filing the statement to the
15 insurer and to such other persons and in such manner as may be
16 designated by the director. The director shall make a
17 determination within thirty days after the conclusion of the
18 hearing. At the hearing, the person filing the statement, the
19 insurer, any person to whom notice of hearing was sent, and any
20 other person whose interests may be affected thereby shall have
21 the right to present evidence, examine and cross-examine
22 witnesses, and offer oral and written arguments and in connection
23 therewith may conduct discovery proceedings in the same manner as
24 is presently allowed in the circuit courts of this state. All
25 discovery proceedings shall be concluded not later than three
26 days prior to the commencement of the public hearing.

27 4. If the proposed acquisition of control will require the
28 approval of more than one state insurance commissioner, the

1 public hearing referred to in subsection 3 of this section may be
2 held on a consolidated basis upon request of the person filing
3 the statement referred to in section 382.040. Such person shall
4 file the statement referred to in section 382.040 with the
5 National Association of Insurance Commissioners within five days
6 of making the request for a public hearing. A state insurance
7 commissioner may opt out of a consolidated hearing, and shall
8 provide notice to the applicant of the opt-out within ten days of
9 the receipt of the statement referred to in section 382.040. A
10 hearing conducted on a consolidated basis shall be public and
11 shall be held within the United States before the insurance
12 commissioners of the states in which the insurers are domiciled.
13 Such commissioners shall hear and receive evidence. A state
14 insurance commissioner may attend such hearing, in person or by
15 telecommunication.

16 5. In connection with a change of control of a domestic
17 insurer, any determination by the director that the person
18 acquiring control of the insurer shall be required to maintain or
19 restore the capital of the insurer to the level required by the
20 laws and regulations of this state shall be made not later than
21 sixty days after the date of notification of the change in
22 control submitted pursuant to subsection 1 of section 382.040.

23 6. The director may retain at the acquiring party's expense
24 any attorneys, actuaries, accountants and other experts not
25 otherwise a part of the director's staff as may be reasonably
26 necessary to assist the director in reviewing the proposed
27 acquisition of control.

28 382.080. The following shall be violations of sections

1 [382.010 to 382.300] 382.040 to 382.090:

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

5 (2) The effectuation or any attempt to effectuate an
6 acquisition of control of, divestiture of, or merger with, a
7 domestic insurer covered by sections [382.010 to 382.300, within
8 the thirty-day period referred to in section 382.060, without
9 approval by the director or after disapproval by the director]
10 382.040 to 382.090, unless the director has given approval.

11 382.095. 1. As used in this section, the following terms
12 mean:

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

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

21 2. Except as provided in this subsection, this section
22 applies to any acquisition in which there is a change in control
23 of an insurer authorized to do business in this state. This
24 section shall not apply to the following [as provided in section
25 382.060]:

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

28 (2)] A purchase of securities solely for investment

1 purposes so long as such securities are not used by voting or
2 otherwise to cause or attempt to cause the substantial lessening
3 of competition in any insurance market in this state. If a
4 purchase of securities results in a presumption of control under
5 subdivision (2) of section 382.010, it is not solely for
6 investment purposes unless the commissioner of insurance or other
7 appropriate person of the insurer's state of domicile accepts a
8 disclaimer of control or affirmatively finds that control does
9 not exist and such disclaimer action or affirmative finding is
10 communicated by such person to the director;

11 [(3)] (2) The acquisition of a person by another person
12 when both persons are neither directly nor through affiliates
13 primarily engaged in the business of insurance, if preacquisition
14 notification is filed with the director in accordance with
15 subsection 3 of this section thirty days prior to the proposed
16 effective date of the acquisition; however, such preacquisition
17 notification is not required for exclusion from this section if
18 the acquisition would otherwise be excluded from this section by
19 any other subdivision of this subsection;

20 [(4)] (3) The acquisition of already affiliated persons;

21 [(5)] (4) An acquisition if, as an immediate result of the
22 acquisition:

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

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

26 (c) In no market would the combined market share of the
27 involved insurers exceed twelve percent of the total market, and
28 the market share of the involved insurer after the acquisition

1 would increase by two percent of the total market or less. For
2 the purpose of this subdivision, a "market" means direct written
3 insurance premium in this state for a line of business as
4 contained in the annual statement required to be filed by
5 insurers licensed to do business in this state;

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

10 [(7)] (6) An acquisition of an insurer whose domiciliary
11 commissioner or other appropriate person affirmatively finds that
12 such insurer is in failing condition; there is a lack of feasible
13 alternative to improving such condition; the public benefits of
14 improving such insurer's condition through the acquisition exceed
15 the public benefits that would arise from not lessening
16 competition; and such findings are communicated by such person to
17 the director.

18 3. An acquisition covered by [subdivisions (1) to (7) of]
19 subsection 2 of this section may be subject to an order pursuant
20 to subsection 5 of this section, unless the acquiring person
21 files a preacquisition notification and the waiting period
22 described in this subsection has expired. The acquired person or
23 acquiring person may file a preacquisition notification. The
24 director shall give confidential treatment to information
25 submitted under this subsection. The preacquisition notification
26 shall be in such form and contain such information as prescribed
27 by the National Association of Insurance Commissioners relating
28 to those markets which, under subdivision [(5)] (4) of subsection

1 2 of this section cause the acquisition not to be exempted from
2 the provisions of this section. The director may require such
3 additional material and information as he deems necessary to
4 determine whether the proposed acquisition, if consummated, would
5 violate the competitive standard of subsection 4 of this section.
6 The required information may include an opinion of an economist
7 as to the competitive impact of the acquisition in this state
8 accompanied by a summary of the education and experience of such
9 person indicating his ability to render an informed opinion. The
10 waiting period required shall begin on the date of receipt by the
11 director of a preacquisition notification and shall end on the
12 earlier of the thirtieth day after the date of such receipt, or
13 termination of the waiting period by the director. Prior to the
14 end of the waiting period, the director on a one-time basis may
15 require the submission of additional needed information relevant
16 to the proposed acquisition, in which event the waiting period
17 shall end on the earlier of the thirtieth day after receipt of
18 such additional information by the director or termination of the
19 waiting period by the director.

20 4. (1) The director may enter an order under subsection 5
21 of this section with respect to an acquisition if there is
22 substantial evidence that the effect of the acquisition may be
23 substantially to lessen competition in any line of insurance in
24 this state or tend to create a monopoly therein or if the insurer
25 fails to file adequate information in compliance with subsection
26 3 of this section.

27 (2) In determining whether a proposed acquisition would
28 violate the competitive standard of subdivision (1) of this

1 subsection, the director shall consider the following:

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

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

8 Insurer A	Insurer B
9 4%	4% or more
10 10%	2% or more
11 15%	1% or more; or

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

14 Insurer A	Insurer B
15 5%	5% or more
16 10%	4% or more
17 15%	3% or more
18 19%	1% or more

19 A highly concentrated market is one in which the share of the
20 four largest insurers is seventy-five percent or more of the
21 market. Percentages not shown in the tables are to be
22 interpolated proportionately to the percentages that are shown.
23 If more than two insurers are involved, exceeding the total of
24 the two columns in the table is prima facie evidence of violation
25 of the competitive standard in subdivision (1) of this
26 subsection. For the purpose of this subdivision, the insurer
27 with the largest share of the market shall be deemed to be
28 insurer A;

1 (b) There is a significant trend toward increased
2 concentration when the aggregate market share of any grouping of
3 the largest insurers in the market, from the two largest to the
4 eight largest, has increased by seven percent or more of the
5 market over a period of time extending from any base year five to
6 ten years prior to the acquisition up to the time of the
7 acquisition. Any acquisition or merger covered under subsection
8 2 of this section involving two or more insurers competing in the
9 same market is prima facie evidence of violation of the
10 competitive standard in subdivision (1) of this subsection if:

11 a. There is a significant trend toward increased
12 concentration in the market;

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

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

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

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

21 (b) The term "market" means the relevant product and
22 geographical markets. In determining the relevant product and
23 geographical markets, the director shall give due consideration
24 to, among other things, the definitions or guidelines, if any,
25 promulgated by the National Association of Insurance
26 Commissioners and to information, if any, submitted by parties to
27 the acquisition. In the absence of sufficient information to the
28 contrary, the relevant product market is assumed to be the direct

1 written insurance premium for a line of business, such line being
2 that used in the annual statement required to be filed by
3 insurers doing business in this state, and the relevant
4 geographical market is assumed to be this state;

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

7 (4) Even though an acquisition is not prima facie violative
8 of the competitive standard under subdivision (2) of this
9 subsection, the director may establish that the requisite
10 anticompetitive effect exists based upon other substantial
11 evidence. Even though an acquisition is prima facie violative of
12 the competitive standard under subdivision (2) of this
13 subsection, a party may establish the absence of the requisite
14 anticompetitive effect, based upon other substantial evidence.
15 Relevant factors in making a determination under this subdivision
16 include, but are not limited to, the following: market shares,
17 volatility of ranking of market leaders, number of competitors,
18 concentration, trend of concentration in the industry, and ease
19 of entry and exit into the market.

20 (5) An order may not be entered under subsection 5 of this
21 section if:

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

27 (b) The acquisition will substantially increase the
28 availability of insurance, and the public benefits of such

1 increase exceed the public benefits which would arise from not
2 lessening competition.

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

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

8 (2) Denying the application of an acquired or acquiring
9 insurer for a license to do business in this state. Such an
10 order shall not be entered unless there is a hearing, notice of
11 such hearing is issued prior to the end of the waiting period and
12 not less than fifteen days prior to the hearing, and the hearing
13 is concluded and the order is issued no later than sixty days
14 after the end of the waiting period. Every order shall be
15 accompanied by a written decision of the director setting forth
16 his findings of fact and conclusions of law. An order entered
17 under this subsection shall not become final earlier than thirty
18 days after it is issued, during which time any involved insurer
19 may submit a plan to remedy the anticompetitive impact of the
20 acquisition within a reasonable time. Based upon such plan or
21 other information, the director shall specify the conditions, if
22 any, under the time period during which the aspects of the
23 acquisition causing a violation of the standards of this section
24 would be remedied and the order vacated or modified. An order
25 issued pursuant to this subsection shall not apply if the
26 acquisition is not consummated.

27 6. Any person who violates a cease and desist order of the
28 director under subsection 5 of this section, and while such order

1 is in effect, may, after notice and hearing and upon order of the
2 director, be subject at the discretion of the director to any one
3 or more of the following:

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

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

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

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

13 382.110. 1. Every insurer subject to registration shall
14 file a registration statement on a form provided by the director
15 containing current information about:

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

19 (2) The identity of every member of the insurance holding
20 company system;

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

24 (a) Loans, other investments, or purchases, sales or
25 exchanges of securities of the affiliates by the insurer or of
26 the insurer by its affiliates;

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

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

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

5 (e) All management and service contracts and all
6 cost-sharing arrangements; and

7 (f) Reinsurance agreements;

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

9 (h) Consolidated tax allocation agreements;

10 (4) Any pledge of the insurer's stock, including stock of
11 any subsidiary or controlling affiliate, for a loan made to any
12 member of the insurance holding company system; [and]

13 (5) Financial statements of or within an insurance holding
14 company system, including all affiliates, if requested by the
15 director. Financial statements may include, but are not limited
16 to, annual audited financial statements filed with the United
17 States Securities and Exchange Commission (SEC) pursuant to the
18 Securities Act of 1933, as amended, or the Securities Exchange
19 Act of 1934, as amended. An insurer required to file financial
20 statements pursuant to this subdivision may satisfy the request
21 by providing the director with the most recently filed parent
22 corporation financial statements that have been filed with the
23 SEC;

24 (6) Statements that the insurer's board of directors
25 oversees corporate governance and internal controls and that the
26 insurer's officers or senior management have approved,
27 implemented, and continue to maintain and monitor corporate
28 governance and internal control procedures;

1 (7) Other matters concerning transactions between
2 registered insurers and any affiliates as may be included from
3 time to time in any registration forms adopted or approved by the
4 director; and

5 (8) Any other information required by the director by
6 regulation.

7 2. All registration statements shall contain a summary
8 outlining all items in the current registration statement
9 representing changes from the prior registration statement.

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

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

24 382.170. Any person may file with the director a disclaimer
25 of affiliation with any authorized insurer or the disclaimer may
26 be filed by the insurer or any member of an insurance holding
27 company system. The disclaimer shall fully disclose all material
28 relationships and bases for affiliation between such person and

1 such insurer as well as the basis for disclaiming such
2 affiliation. [After a disclaimer has been filed, the insurer
3 shall be relieved of any duty to register or report under section
4 382.110 which may arise out of the insurer's relationship with
5 such person unless and until the director disallows the
6 disclaimer. The director shall disallow the disclaimer only
7 after furnishing all parties in interest with notice and
8 opportunity to be heard and after making specific findings of
9 fact to support the disallowance.] A disclaimer of affiliation
10 shall be deemed to have been granted unless the director, within
11 thirty days following receipt of a complete disclaimer, notifies
12 the filing party the disclaimer is disallowed. In the event of
13 disallowance, the disclaiming party may request an administrative
14 hearing, which shall be granted. The disclaiming party shall be
15 relieved of its duty to register under section 382.100 if
16 approval of the disclaimer has been granted by the director, or
17 if the disclaimer is deemed to have been approved.

18 382.175. Upon request of the director, the ultimate
19 controlling person of every insurer subject to registration shall
20 file an annual enterprise risk report. The report shall be
21 appropriate to the nature, scale, and complexity of the
22 operations of the insurance holding company and shall, to the
23 best of the ultimate controlling person's knowledge and belief,
24 identify the material risks within the insurance holding company
25 system, if any, that could pose enterprise risk to the insurer.
26 The report shall be filed with the lead state insurance
27 commissioner of the insurance holding company system as
28 determined by procedures within the Financial Analysis Handbook

1 adopted by the National Association of Insurance Commissioners.
2 The first enterprise risk report shall be due and filed no later
3 than May 1, 2015, and annually thereafter by the first day of May
4 each year, unless the lead state insurance commissioner extends
5 the time for filing for good cause shown.

6 382.180. The failure to file a registration statement or
7 any ~~[amendment thereto]~~ summary of the registration statement or
8 enterprise risk filing required by sections 382.100 to 382.180
9 within the time specified for the filing ~~[is]~~ shall be a
10 violation of sections ~~[382.010 to 382.300]~~ 382.100 to 382.180.

11 382.190. Material transactions by registered insurers with
12 their affiliates are subject to the following standards:

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

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

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

18 (4) The books, accounts and records of each party shall be
19 maintained so as to clearly and accurately disclose the precise
20 nature and details of the transactions including such accounting
21 information as is necessary to support the reasonableness of the
22 charges or fees to the respective parties; [and]

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

27 (6) Agreements for cost sharing services and management
28 shall include such provisions as required by rule and regulation

1 issued by the director.

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

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

20 (2) Loans or extensions of credit to any person who is not
21 an affiliate, where the insurer makes such loans or extensions of
22 credit with agreement or understanding that the proceeds of such
23 transactions, in whole or in substantial part, are to be used to
24 make loans or extensions of credit to, to purchase assets of, or
25 to make investments in, any affiliate of the insurer making such
26 loans or extensions of credit provided such transactions are
27 equal to or exceed, with respect to nonlife insurers, the lesser
28 of three percent of the insurer's admitted assets or twenty-five

1 percent of surplus as regards policyholders, or with respect to
2 life insurers, three percent of the insurer's admitted assets;
3 each as of the thirty-first day of December of the preceding
4 year;

5 (3) Reinsurance agreements or modifications thereto,
6 including:

7 (a) All reinsurance pooling agreements;

8 (b) Agreements in which the reinsurance premium or a change
9 in the insurer's liabilities, or the projected reinsurance
10 premium or a change in the insurer's liabilities in any of the
11 next three years, equals or exceeds five percent of the insurer's
12 surplus as regards policyholders, as of the thirty-first day of
13 December of the preceding year, including those agreements which
14 may require as consideration the transfer of assets from an
15 insurer to a nonaffiliate, if an agreement or understanding
16 exists between the insurer and nonaffiliate that any portion of
17 such assets will be transferred to one or more affiliates of the
18 insurer;

19 (4) All management agreements, service contracts, tax
20 allocation agreements, guarantees, and all cost-sharing
21 arrangements; [and]

22 (5) Guarantees when made by a domestic insurer, provided,
23 however, that a guarantee which is quantifiable as to amount is
24 not subject to the notice requirements of this subsection unless
25 it exceeds the lesser of one-half of one percent of the insurer's
26 admitted assets or ten percent of surplus as regards
27 policyholders as of the thirty-first day of December next
28 preceding. Further, all guarantees which are not quantifiable as

1 to amount are subject to the notice requirements of this
2 subsection;

3 (6) Direct or indirect acquisitions or investments in a
4 person that controls the insurer or in an affiliate of the
5 insurer in an amount which, together with its present holdings in
6 such investments, exceeds two and one-half percent of the
7 insurer's surplus to policyholders. Direct or indirect
8 acquisitions or investments in subsidiaries acquired pursuant to
9 section 382.020, or authorized under any other section of this
10 chapter, or in nonsubsidiary insurance affiliates that are
11 subject to the provisions of this chapter, are exempt from such
12 requirement; and

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

16
17 The notice for amendments or modifications shall include the
18 reasons for the change and the financial impact on the domestic
19 insurer.

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

24 [2.] 3. A domestic insurer [may] shall not enter into
25 transactions which are part of a plan or series of like
26 transactions with persons within the insurance holding company
27 system if the purpose of those separate transactions is to avoid
28 the statutory threshold amount and thus avoid the review that

1 would occur otherwise. If the director determines that such
2 separate transactions were entered into over any twelve-month
3 period for such purpose, he may exercise his authority under
4 section 382.265.

5 4. In reviewing transactions pursuant to subsection 1 of
6 this section, the director shall consider whether the
7 transactions comply with the standards set forth in section
8 382.190 and whether they may adversely affect the interests of
9 policyholders.

10 5. The director shall be notified within thirty days of any
11 investment of the domestic insurer in any one corporation if the
12 total investment in the corporation by the insurance holding
13 company system exceeds ten percent of the corporation's voting
14 securities.

15 382.220. 1. Subject to the limitation contained in this
16 section and in addition to all the other powers with which the
17 director is vested by law relating to the examination of
18 insurers, the director may [order] examine any insurer registered
19 under the provisions of sections [382.010 to 382.300] 382.100 to
20 382.180 and its affiliates to ascertain the financial condition
21 of the insurer, including the enterprise risk to the insurer by
22 the ultimate controlling party, or by any entity or combination
23 of entities within the insurance holding company system, or by
24 the insurance company system on a consolidated basis.

25 2. The director may order any insurer registered under
26 sections 382.100 to 382.180 to produce such records, books, or
27 other information papers in the possession of the insurer or its
28 affiliates as [shall be] are reasonably necessary to [ascertain

1 the financial condition or legality of conduct of the insurer.
2 In the event the insurer fails to comply with the order, the
3 director may examine such affiliates to obtain such information]
4 determine compliance with this chapter.

5 [2.] 3. To determine compliance with this chapter, the
6 director may order any insurer registered under sections 382.100
7 to 382.180 to produce information not in the possession of the
8 insurer if the insurer can obtain access to such information
9 pursuant to contractual relationships, statutory obligations, or
10 other methods. In the event the insurer cannot obtain the
11 information requested by the director, the insurer shall provide
12 the director a detailed explanation of the reason that the
13 insurer cannot obtain the information and the identity of the
14 holder of the information. Whenever it appears to the director
15 that the detailed explanation is without merit, the director may
16 examine the insurer to determine compliance with this section
17 pursuant to the director's authority under this section and
18 section 374.205.

19 4. The director may retain at the registered insurer's
20 expense such attorneys, actuaries, accountants and other experts
21 not otherwise a part of the director's staff as shall be
22 reasonably necessary to assist in the conduct of the examination
23 under this section. Any persons so retained shall be under the
24 direction and control of the director and shall act in a purely
25 advisory capacity.

26 [3.] 5. Each registered insurer producing for examination
27 records, books and papers pursuant to this section shall be
28 liable for and shall pay the expense of such examination in

1 accordance with the provisions of section 374.220.

2 6. In the event the insurer fails to comply with an order,
3 the director shall have the power to examine the affiliates to
4 obtain the information. The director shall have the power to
5 issue subpoenas, to administer oaths, and to examine under oath
6 any person for purposes of determining compliance with this
7 section. Upon the failure or refusal of any person to obey a
8 subpoena, the director may petition a court of competent
9 jurisdiction, and upon proper showing, the court may enter an
10 order compelling the witness to appear and testify or produce
11 documentary evidence. Failure to obey the court order shall be
12 punishable as contempt of court. Every person shall be obliged
13 to attend as a witness at the place specified in the subpoena,
14 when subpoenaed, anywhere within the state. He or she shall be
15 entitled to the same fees and mileage, if claimed, as a witness
16 in section 491.280, which fees, mileage, and actual expense, if
17 any, necessarily incurred in securing the attendance of witnesses
18 and their testimony, shall be itemized and charged against, and
19 be paid by, the company being examined.

20 382.225. 1. With respect to any insurer registered under
21 sections 382.100 to 382.180, and in accordance with subsection 3
22 of this section, the director shall have the power to participate
23 in a supervisory college for any domestic insurer that is part of
24 an insurance holding company system with international operations
25 in order to determine compliance by the insurer with this
26 chapter. The powers of the director with respect to supervisory
27 colleges include, but are not limited to, the following:

28 (1) Initiating the establishment of a supervisory college;

1 (2) Clarifying the membership and participation of other
2 supervisors in the supervisory college;

3 (3) Clarifying the functions of the supervisory college and
4 the role of other regulators, including the establishment of a
5 group-wide supervisor or host, who may be the director;

6 (4) Coordinating the ongoing activities of the supervisory
7 college, including planning meetings, supervisory activities, and
8 processes for information sharing; and

9 (5) Establishing a crisis management plan.

10 2. Each registered insurer subject to this section shall be
11 liable for and shall pay the reasonable expenses of the
12 director's participation in a supervisory college in accordance
13 with subsection 3 of this section, including reasonable travel
14 expenses. For purposes of this section, a supervisory college
15 may be convened as either a temporary or permanent forum for
16 communication and cooperation between the regulators charged with
17 the supervision of the insurer or its affiliates, and the
18 director may establish a regular assessment to the insurer for
19 the payment of these expenses.

20 3. In order to assess the business strategy, financial
21 position, legal and regulatory position, risk exposure, risk
22 management and governance processes, and as part of the
23 examination of individual insurers in accordance with section
24 382.220, the director may participate in a supervisory college
25 with other regulators charged with supervision of the insurer or
26 its affiliates, including other state, federal, and international
27 regulatory agencies. The director may enter into agreements in
28 accordance with subsection 3 of section 382.230 providing the

1 basis for cooperation between the director and the other
2 regulatory agencies, and the activities of the supervisory
3 college. Nothing in this section shall delegate to the
4 supervisory college the authority of the director to regulate or
5 supervise the insurer or its affiliates within the director's
6 jurisdiction.

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

1 event [he] the director may publish all or any part thereof in
2 such manner as he may deem appropriate.

3 2. Neither the director nor any person who received
4 documents, materials, or other information while acting under the
5 authority of the director or with whom such documents, materials,
6 or other information are shared pursuant to sections 382.010 to
7 382.300 shall be permitted or required to testify in any private
8 civil action concerning any confidential documents, materials, or
9 other information subject to subsection 1 of this section.

10 3. In order to assist in the performance of the director's
11 duties, the director:

12 (1) May share documents, materials, or other information,
13 including the confidential and privileged documents, materials,
14 or information subject to subsection 1 of this section, with
15 other state, federal, and international regulatory agencies, with
16 the National Association of Insurance Commissioners and its
17 affiliates and subsidiaries, and with state, federal, and
18 international law enforcement authorities, including members of
19 any supervisory college described in section 382.225, provided
20 that the recipient agrees in writing to maintain the
21 confidentiality and privileged status of the document, material,
22 or other information and has verified in writing the legal
23 authority to maintain confidentiality;

24 (2) Notwithstanding subdivision (1) of this subsection, the
25 director may only share confidential and privileged documents,
26 material, or information reported pursuant to section 382.175
27 with directors of states having statutes or regulations
28 substantially similar to subsection 1 of this section and who

1 have agreed in writing not to disclose such information;

2 (3) May receive documents, materials, or other information,
3 including otherwise confidential and privileged documents,
4 materials, or information from the National Association of
5 Insurance Commissioners and its affiliates and subsidiaries and
6 from regulatory and law enforcement officials of other foreign or
7 domestic jurisdictions, and shall maintain as confidential or
8 privileged any document, material, or information received with
9 notice or the understanding that it is confidential or privileged
10 under the laws of the jurisdiction that is the source of the
11 document, material, or information; and

12 (4) Shall enter into written agreements with the National
13 Association of Insurance Commissioners governing sharing and use
14 of information provided pursuant to sections 382.010 to 382.300
15 consistent with this subsection that shall:

16 (a) Specify procedures and protocols regarding the
17 confidentiality and security of information shared with the
18 National Association of Insurance Commissioners and its
19 affiliates and subsidiaries pursuant to sections 382.010 to
20 382.300, including procedures and protocols for sharing by the
21 National Association of Insurance Commissioners with other state,
22 federal, or international regulators;

23 (b) Specify that ownership of information shared with the
24 National Association of Insurance Commissioners and its
25 affiliates and subsidiaries pursuant to sections 382.010 to
26 382.300 remains with the director and the National Association of
27 Insurance Commissioners' use of the information is subject to the
28 direction of the director;

1 (c) Require prompt notice to be given to an insurer whose
2 confidential information in the possession of the National
3 Association of Insurance Commissioners pursuant to sections
4 382.010 to 382.300 is subject to a request or subpoena to the
5 National Association of Insurance Commissioners for disclosure or
6 production; and

7 (d) Require the National Association of Insurance
8 Commissioners and its affiliates and subsidiaries to consent to
9 intervention by an insurer in any judicial or administrative
10 action in which the National Association of Insurance
11 Commissioners and its affiliates and subsidiaries may be required
12 to disclose confidential information about the insurer shared
13 with the National Association of Insurance Commissioners and its
14 affiliates and subsidiaries pursuant to sections 382.010 to
15 382.300.

16 4. The sharing of information by the director pursuant to
17 sections 382.010 to 382.300 shall not constitute a delegation of
18 regulatory authority or rulemaking, and the director is solely
19 responsible for the administration, execution, and enforcement of
20 the provisions of sections 382.010 to 382.300.

21 5. No waiver of any applicable privilege or claim of
22 confidentiality in the documents, materials, or other information
23 shall occur as a result of disclosure to the director under this
24 section or as a result of sharing as authorized in subsection 3
25 of this section.

26 6. Documents, materials, or other information in the
27 possession or control of the National Association of Insurance
28 Commissioners pursuant to sections 382.010 to 382.300 shall be

1 confidential by law and privileged, shall not be a public record
2 under chapter 610, shall not be subject to subpoena, and shall
3 not be subject to discovery or admissible in evidence in any
4 private civil action.

5 7. In addition to the specific provisions of this section,
6 any recipient of documents, materials, or other information
7 described in this section shall be subject to the provisions of
8 section 374.071 as to the confidentiality of such documents,
9 materials, or other information.

10 382.277. Whenever it appears to the director that any
11 person has committed a violation of any provision of sections
12 382.040 to 382.090 and the violation prevents the full
13 understanding of the enterprise risk to the insurer by affiliates
14 or by the insurance holding company system, the violation may
15 serve as an independent basis for disapproving dividends or
16 distributions and for placing the insurer under an order of
17 supervision in accordance with section 375.1160.