

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 50

98TH GENERAL ASSEMBLY

0136H.03P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 382.010, 382.040, 382.050, 382.060, 382.080, 382.095, 382.110, 382.160, 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 insurance holding companies, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 382.010, 382.040, 382.050, 382.060, 382.080, 382.095, 382.110, 2 382.160, 382.170, 382.180, 382.190, 382.195, 382.220, and 382.230, RSMo, are repealed and 3 seventeen new sections enacted in lieu thereof, to be known as sections 382.010, 382.040, 4 382.050, 382.060, 382.080, 382.095, 382.110, 382.160, 382.170, 382.175, 382.180, 382.190, 5 382.195, 382.220, 382.225, 382.230, and 382.277, to read as follows:

382.010. As used in sections 382.010 to 382.300, the following words and terms have 2 the meanings indicated unless the context clearly requires otherwise:

3 (1) An "affiliate" of, or person "affiliated" with, a specific person, is a person that 4 directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is 5 under common control with, the person specified;

6 (2) [The term] "Control", [including the terms] "controlling", "controlled by" [and] , **or** 7 "under common control with", [means] the possession, direct or indirect, of the power to direct 8 or cause the direction of the management and policies of a person, whether through the 9 ownership of voting securities, by contract other than a commercial contract for goods or 10 nonmanagement services, or otherwise, unless the power is the result of an official position with 11 or corporate office held by the person. Control shall be presumed to exist if any person, directly 12 or indirectly, owns, controls, holds with power to vote, or holds proxies representing, ten percent

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 or more of the voting securities of any other person. This presumption may be rebutted by a
14 showing made in the manner provided by section 382.170 that control does not exist in fact. The
15 director may determine, after furnishing all persons in interest notice and opportunity to be heard
16 and making specific findings of fact to support such determination, that control exists in fact,
17 notwithstanding the absence of a presumption to that effect;

18 (3) [The term] "Director" [means] , the director of the department of insurance, financial
19 institutions and professional registration, his **or her** deputies, or the department of insurance,
20 financial institutions and professional registration, as appropriate;

21 (4) **"Enterprise risk", any activity, circumstance, event, or series of events involving**
22 **one or more affiliates of an insurer that, if not remedied promptly, is likely to have a**
23 **materially adverse effect upon the financial condition or liquidity of the insurer or its**
24 **insurance holding company system as a whole including, but not limited to, anything that**
25 **would cause the insurer's risk-based capital to fall into company action level as set forth**
26 **in section 375.1255 or would cause the insurer to be in hazardous financial condition as set**
27 **forth in section 375.539;**

28 (5) [An] "Insurance holding company system" [consists of] , two or more affiliated
29 persons, one or more of which is an insurer;

30 [(5) The term] (6) "Insurer" [means] , an insurance company as defined in section
31 375.012, including a reciprocal or interinsurance exchange, and which is qualified and licensed
32 by the department of insurance, financial institutions and professional registration of Missouri
33 to transact the business of insurance in this state; but it shall not include any company organized
34 and doing business under [chapters] **chapter 377, 378, or 380, agencies, authorities, or**
35 **instrumentalities of the United States, its possessions and territories, the Commonwealth**
36 **of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;**

37 [(6) A] (7) "Person" [is] , an individual, corporation, **limited liability company,**
38 **partnership, association, joint stock company, [business] trust, unincorporated organization, or**
39 **any similar entity, or any combination of the foregoing acting in concert, but [is not any**
40 **securities broker performing no more than the usual and customary broker's function] shall not**
41 **include any joint venture partnership exclusively engaged in owning, managing, leasing,**
42 **or developing real or tangible personal property;**

43 [(7)] (8) A "securityholder" of a specified person is one who owns any security of that
44 person, including common stock, preferred stock, debt obligations, and any other security
45 convertible into or evidencing the right to acquire any of the foregoing;

46 [(8)] (9) A "subsidiary" of a specified person is an affiliate controlled by that person
47 directly, or indirectly through one or more intermediaries;

48 [(9)] (10) The term "voting security" includes any security convertible into or evidencing
49 a right to acquire a voting security.

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

12 **2. For purposes of sections 382.040 to 382.090, any controlling person of a domestic**
13 **insurer seeking to divest its controlling interest in the domestic insurer in any manner shall**
14 **file with the director, with a copy to the insurer, confidential notice of its proposed**
15 **divestiture at least thirty days prior to the cessation of control. The director shall**
16 **determine those instances in which the party or parties seeking to divest or to acquire a**
17 **controlling interest in an insurer shall be required to file for and obtain approval of the**
18 **transaction. The information shall remain confidential until the conclusion of the**
19 **transaction. If the statement referred to in subsection 1 of this section is otherwise filed,**
20 **the provisions of this subsection shall not apply.**

21 **3. With respect to a transaction subject to this section, the acquiring person shall**
22 **also file a preacquisition notification with the director which shall contain the information**
23 **set forth in subsection 3 of section 382.095. A failure to file the notification may be subject**
24 **to the penalties specified in subsection 7 of section 382.095.**

25 4. For purposes of this section, a domestic insurer shall include any person controlling
26 a domestic insurer unless such person, as determined by the director, is either directly or through
27 its affiliates primarily engaged in business other than the business of insurance; however, such
28 person shall file a preacquisition notification with the director containing the information set
29 forth in section 382.095 thirty days prior to the proposed effective date of the acquisition. Any
30 person who fails to file the preacquisition notification required by this section shall be subject
31 to the penalties provided in subsection 5 of section 382.095. For the purposes of sections
32 382.040, 382.050, 382.060, 382.070, 382.080 and 382.090, "person" shall not include any
33 securities broker holding, in the usual and customary broker's function, less than twenty percent

34 of the voting securities of an insurance company or of any person which controls an insurance
35 company.

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

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

6 (a) If that person is an individual, his **or her** principal occupation and all offices and
7 positions held during the past five years, and any conviction of crimes other than minor traffic
8 violations during the past ten years; and

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

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

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

18 (2) The source, nature and amount of the consideration to be used in effecting the merger
19 or other acquisition of control, a description of any transaction wherein funds were or are to be
20 obtained for any such purpose, including any pledge of the insurer's stock or the stock of any
21 subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration,
22 but, where a source of the consideration is a loan made in the lender's ordinary course of
23 business, the identity of the lender shall remain confidential, if the person filing the statement
24 so requests;

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

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

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

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

38 (7) The amount of each class of any security referred to in section 382.040 which is
39 beneficially owned or concerning which there is a right to acquire beneficial ownership by each
40 acquiring party;

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

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

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

56 (11) Copies of the form of all tender offers for, requests or invitations for tenders of,
57 exchange offers for, and agreements to acquire or exchange any securities referred to in section
58 382.040, and of the form of additional soliciting material, if distributed, relating thereto;

59 (12) The terms of any agreement, contract or understanding made with or proposed to
60 be made with any broker-dealer as to solicitation of securities referred to in section 382.040 for
61 tender, and the amount of any fees, commissions or other compensation to be paid to
62 broker-dealers with regard thereto; [and]

63 (13) **An agreement by the person required to file the statement referred to in section**
64 **382.040 that the annual report specified in section 382.175 will be provided for so long as**
65 **control exists;**

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

70 **(15)** Such additional information as the director may by rule or regulation prescribe as
71 necessary or appropriate for the protection of policyholders of the insurer or in the public
72 interest.

73 2. If the person required to file the statement referred to in section 382.040 is a
74 partnership, limited partnership, syndicate or other group, the director may require that the
75 information called for by subdivisions (1) to ~~[(13)]~~ **(15)** of subsection 1 of this section shall be
76 given with respect to each partner of such partnership or limited partnership, each member of
77 such syndicate or group, and each person who controls such partner or member. If any such
78 partner, member or person is a corporation or the person required to file the statement referred
79 to in section 382.040 is a corporation, the director may require that the information called for by
80 subdivisions (1) to ~~[(13)]~~ **(15)** of subsection 1 of this section shall be given with respect to the
81 corporation, each officer and director of the corporation, and each person who is directly or
82 indirectly the beneficial owner of more than ten percent of the outstanding voting securities of
83 the corporation.

84 3. If any material change occurs in the facts set forth in the statement filed with the
85 director and sent to the insurer pursuant to this section, an amendment setting forth the change,
86 together with copies of all documents and other material relevant to the change, shall be filed
87 with the director and shall be sent to the insurer within two business days after the person learns
88 of the change.

89 4. If any offer, request, invitation, agreement or acquisition referred to in section 382.040
90 is proposed to be made by means of a registration statement under the Securities Act of 1933 or
91 in circumstances requiring the disclosure of similar information under the Securities Exchange
92 Act of 1934, or under a state law requiring similar registration or disclosure, the person required
93 to file the statement referred to in section 382.040 may utilize such documents in furnishing the
94 information called for by that statement.

 382.060. 1. The director shall ~~[hold a public hearing on the proposed]~~ **approve any**
2 merger or other acquisition of control referred to in section 382.040 ~~[and shall thereafter approve~~
3 such merger or acquisition of control unless he finds by a preponderance of the evidence] **unless**
4 **after a public hearing the director finds** that:

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

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

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

13 (b) The merger or other acquisition of control shall not be disapproved if the director
14 finds that any of the situations 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 or other acquisition on the
17 removal of the basis of disapproval within a specified period of time;

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

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

24 (5) The competence, experience or integrity of those persons who would control the
25 operation of the insurer are such that it would be contrary to the interest of policyholders of the
26 insurer and of the public to permit the merger or other acquisition of control; or

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

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

30 3. The public hearing referred to above in this section shall be held within thirty days
31 after the statement required by section 382.040 is filed, and at least twenty days' notice thereof
32 shall be given by the director to the person filing the statement. Not less than seven days' notice
33 of the public hearing shall be given by the person filing the statement to the insurer and to such
34 other persons and in such manner as may be designated by the director. The director shall make
35 a determination within thirty days after the conclusion of the hearing. At the hearing, the person
36 filing the statement, the insurer, any person to whom notice of hearing was sent, and any other
37 person whose interests may be affected thereby shall have the right to present evidence, examine
38 and cross-examine witnesses, and offer oral and written arguments and in connection therewith
39 may conduct discovery proceedings in the same manner as is presently allowed in the circuit
40 courts of this state. All discovery proceedings shall be concluded not later than three days prior
41 to the commencement of the public hearing.

42 4. **If the proposed acquisition of control requires the approval of more than one**
43 **state insurance commissioner, the public hearing referred to in subsection 3 of this section**
44 **may be held on a consolidated basis upon request of the person filing the statement**
45 **referred to in section 382.040. Such person shall file the statement referred to in section**
46 **382.040 with the National Association of Insurance Commissioners within five days of**

47 **making the request for a public hearing. A state insurance commissioner may opt out of**
48 **a consolidated hearing and shall provide notice to the applicant of the opt out within ten**
49 **days of the receipt of the statement referred to in section 382.040. A hearing conducted on**
50 **a consolidated basis shall be public and shall be held within the United States before the**
51 **insurance commissioners of the states in which the insurers are domiciled. Such**
52 **commissioners shall hear and receive evidence. A state insurance commissioner may**
53 **attend such hearing in person or by telecommunication.**

54 **5. In connection with a change of control of a domestic insurer, any determination**
55 **by the director that the person acquiring control of the insurer shall be required to**
56 **maintain or restore the capital of the insurer to the level required by the laws and**
57 **regulations of this state shall be made not later than sixty days after the date of notification**
58 **of the change of control submitted under subsection 1 of section 382.040.**

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

382.080. The following shall be violations of sections [382.010 to 382.300] **382.040 to**
2 **382.090:**

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

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

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

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

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

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

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

12 (2)] A purchase of securities solely for investment purposes so long as such securities
13 are not used by voting or otherwise to cause or attempt to cause the substantial lessening of

14 competition in any insurance market in this state. If a purchase of securities results in a
15 presumption of control under subdivision (2) of section 382.010, it is not solely for investment
16 purposes unless the commissioner of insurance or other appropriate person of the insurer's state
17 of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and
18 such disclaimer action or affirmative finding is communicated by such person to the director;

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

25 ~~[(4)]~~ **(3)** The acquisition of already affiliated persons;

26 ~~[(5)]~~ **(4)** An acquisition if, as an immediate result of the acquisition:

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

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

30 (c) In no market would the combined market share of the involved insurers exceed
31 twelve percent of the total market, and the market share of the involved insurer after the
32 acquisition would increase by two percent of the total market or less. For the purpose of this
33 subdivision, a "market" means direct written insurance premium in this state for a line of
34 business as contained in the annual statement required to be filed by insurers licensed to do
35 business in this state;

36 ~~[(6)]~~ **(5)** An acquisition for which a preacquisition notification would be required
37 pursuant to this section due solely to the resulting effect on the ocean marine insurance line of
38 business;

39 ~~[(7)]~~ **(6)** An acquisition of an insurer whose domiciliary commissioner or other
40 appropriate person affirmatively finds that such insurer is in failing condition; there is a lack of
41 feasible alternative to improving such condition; the public benefits of improving such insurer's
42 condition through the acquisition exceed the public benefits that would arise from not lessening
43 competition; and such findings are communicated by such person to the director.

44 3. An acquisition covered by [subdivisions (1) to (7) of] subsection 2 of this section may
45 be subject to an order pursuant to subsection 5 of this section, unless the acquiring person files
46 a preacquisition notification and the waiting period described in this subsection has expired. The
47 acquired person or acquiring person may file a preacquisition notification. The director shall
48 give confidential treatment to information submitted under this subsection. The preacquisition
49 notification shall be in such form and contain such information as prescribed by the National

50 Association of Insurance Commissioners relating to those markets which, under subdivision [(5)]
 51 (4) of subsection 2 of this section cause the acquisition not to be exempted from the provisions
 52 of this section. The director may require such additional material and information as he **or she**
 53 deems necessary to determine whether the proposed acquisition, if consummated, would violate
 54 the competitive standard of subsection 4 of this section. The required information may include
 55 an opinion of an economist as to the competitive impact of the acquisition in this state
 56 accompanied by a summary of the education and experience of such person indicating his **or her**
 57 ability to render an informed opinion. The waiting period required shall begin on the date of
 58 receipt by the director of a preacquisition notification and shall end on the earlier of the thirtieth
 59 day after the date of such receipt, or termination of the waiting period by the director. Prior to
 60 the end of the waiting period, the director on a one-time basis may require the submission of
 61 additional needed information relevant to the proposed acquisition, in which event the waiting
 62 period shall end on the earlier of the thirtieth day after receipt of such additional information by
 63 the director or termination of the waiting period by the director.

64 4. (1) The director may enter an order under subsection 5 of this section with respect to
 65 an acquisition if there is substantial evidence that the effect of the acquisition may be
 66 substantially to lessen competition in any line of insurance in this state or tend to create a
 67 monopoly therein or if the insurer fails to file adequate information in compliance with
 68 subsection 3 of this section.

69 (2) In determining whether a proposed acquisition would violate the competitive
 70 standard of subdivision (1) of this subsection, the director shall consider the following:

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

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

76	Insurer A	Insurer B
77	4%	4% or more
78	10%	2% or more
79	15%	1% or more; or

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

82	Insurer A	Insurer B
83	5%	5% or more
84	10%	4% or more
85	15%	3% or more

86 19% 1% or more

87

88 A highly concentrated market is one in which the share of the four largest insurers is seventy-five
89 percent or more of the market. Percentages not shown in the tables are to be interpolated
90 proportionately to the percentages that are shown. If more than two insurers are involved,
91 exceeding the total of the two columns in the table is prima facie evidence of violation of the
92 competitive standard in subdivision (1) of this subsection. For the purpose of this subdivision,
93 the insurer with the largest share of the market shall be deemed to be insurer A;

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

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

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

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

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

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

108 (b) The term "market" means the relevant product and geographical markets. In
109 determining the relevant product and geographical markets, the director shall give due
110 consideration to, among other things, the definitions or guidelines, if any, promulgated by the
111 National Association of Insurance Commissioners and to information, if any, submitted by
112 parties to the acquisition. In the absence of sufficient information to the contrary, the relevant
113 product market is assumed to be the direct written insurance premium for a line of business, such
114 line being that used in the annual statement required to be filed by insurers doing business in this
115 state, and the relevant geographical market is assumed to be this state;

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

118 (4) Even though an acquisition is not prima facie violative of the competitive standard
119 under subdivision (2) of this subsection, the director may establish that the requisite
120 anticompetitive effect exists based upon other substantial evidence. Even though an acquisition
121 is prima facie violative of the competitive standard under subdivision (2) of this subsection, a

122 party may establish the absence of the requisite anticompetitive effect, based upon other
123 substantial evidence. Relevant factors in making a determination under this subdivision include,
124 but are not limited to, the following: market shares, volatility of ranking of market leaders,
125 number of competitors, concentration, trend of concentration in the industry, and ease of entry
126 and exit into the market.

127 (5) An order [may] **shall** not be entered under subsection 5 of this section if:

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

132 (b) The acquisition will substantially increase the availability of insurance, and the public
133 benefits of such increase exceed the public benefits which would arise from not lessening
134 competition.

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

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

138 (2) Denying the application of an acquired or acquiring insurer for a license to do
139 business in this state. Such an order shall not be entered unless there is a hearing, notice of such
140 hearing is issued prior to the end of the waiting period and not less than fifteen days prior to the
141 hearing, and the hearing is concluded and the order is issued no later than sixty days after the end
142 of the waiting period. Every order shall be accompanied by a written decision of the director
143 setting forth his **or her** findings of fact and conclusions of law. An order entered under this
144 subsection shall not become final earlier than thirty days after it is issued, during which time any
145 involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition
146 within a reasonable time. Based upon such plan or other information, the director shall specify
147 the conditions, if any, under the time period during which the aspects of the acquisition causing
148 a violation of the standards of this section would be remedied and the order vacated or modified.
149 An order issued pursuant to this subsection shall not apply if the acquisition is not consummated.

150 6. Any person who violates a cease and desist order of the director under subsection 5
151 of this section, and while such order is in effect, may, after notice and hearing and upon order
152 of the director, be subject at the discretion of the director to any one or more of the following:

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

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

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

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

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

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

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

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

8 (a) Loans, other investments, or purchases, sales or exchanges of securities of the
9 affiliates by the insurer or of the insurer by its affiliates;

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

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

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

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

16 (f) Reinsurance agreements;

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

18 (h) Consolidated tax allocation agreements;

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

21 (5) **Financial statements of or within an insurance holding company system,**
22 **including all affiliates, if requested by the director. Financial statements may include, but**
23 **are not limited to, annual audited financial statements filed with the United States**
24 **Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended,**
25 **or the Securities Exchange Act of 1934, as amended. An insurer required to file financial**
26 **statements under this subdivision may satisfy such requirement by providing the director**
27 **with the most recently filed parent corporation financial statements that have been filed**
28 **with the SEC;**

29 (6) **Statements that the insurer's board of directors oversees corporate governance**
30 **and internal controls and that the insurer's officers or senior management have approved,**

31 **implemented, and continue to maintain and monitor corporate governance and internal**
32 **control procedures;**

33 (7) Other matters concerning transactions between registered insurers and any affiliates
34 as may be included from time to time in any registration forms adopted or approved by the
35 director; **and**

36 **(8) Any other information required by the director by rule.**

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

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

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

382.160. The provisions of sections 382.100 [and 382.110] **to 382.180** shall not apply
2 to any insurer, information or transaction if and to the extent that the director by rule, regulation,
3 or order shall exempt the same from such provisions.

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

382.175. Upon request of the director, the ultimate controlling person of every insurer subject to registration shall file an annual enterprise risk report. The report shall be appropriate to the nature, scale, and complexity of the operations of the insurance holding company and shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system, if any, that could pose enterprise risk to the insurer. The report shall be filed with the lead state insurance commissioner of the insurance holding company system as determined by procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners. The first enterprise risk report shall be due and filed no later than May 1, 2016, and annually thereafter by the first day of May each year, unless the lead state insurance commissioner extends the time for filing for good cause shown.

382.180. The failure to file a registration statement [or any amendment thereto] , summary of the registration statement, or enterprise risk filing required under sections 382.100 to 382.180 within the time specified for the filing is a violation of sections [382.010 to 382.300] 382.100 to 382.180.

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

- (1) The terms shall be fair and reasonable;
- (2) Charges or fees for services shall be reasonable;
- (3) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
- (4) The books, accounts and records of each party shall be maintained so as to clearly and accurately disclose the precise nature and details of the transactions **including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties;** [and]
- (5) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs; **and**
- (6) **Agreements for cost-sharing services and management shall include such provisions as required by the director by rule.**

382.195. 1. The following transactions involving a domestic insurer and any person in its holding company system [may] , **including amendments or modifications of affiliate agreements previously filed under this section that are subject to any materiality standards contained in subdivisions (1) to (7) of this subsection, shall** not be entered into unless the insurer has notified the director in writing of its intention to enter into such transaction at least

6 thirty days prior thereto, or such shorter period as the director may permit, and the director has
7 not disapproved it within such period:

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

13 (2) Loans or extensions of credit to any person who is not an affiliate, where the insurer
14 makes such loans or extensions of credit with agreement or understanding that the proceeds of
15 such transactions, in whole or in substantial part, are to be used to make loans or extensions of
16 credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making
17 such loans or extensions of credit provided such transactions are equal to or exceed, with respect
18 to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five
19 percent of surplus as regards policyholders, or with respect to life insurers, three percent of the
20 insurer's admitted assets; each as of the thirty-first day of December of the preceding year;

21 (3) Reinsurance agreements or modifications thereto, **including:**

22 **(a) All reinsurance pooling agreements;**

23 **(b) Agreements** in which the reinsurance premium or a change in the insurer's liabilities,
24 **or the projected reinsurance premium or a change in the insurer's liabilities in any of the**
25 **next three years** equals or exceeds five percent of the insurer's surplus as regards policyholders,
26 as of the thirty-first day of December of the preceding year, including those agreements which
27 may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an
28 agreement or understanding exists between the insurer and nonaffiliate that any portion of such
29 assets will be transferred to one or more affiliates of the insurer;

30 (4) All management agreements, **tax allocation agreements**, service contracts, and all
31 cost-sharing arrangements; [and]

32 (5) **Guarantees when made by a domestic insurer; provided, however, that a**
33 **guarantee which is quantifiable as to amount is not subject to the notice requirements of**
34 **this subdivision unless it exceeds the lesser of one-half of one percent of the insurer's**
35 **admitted assets or ten percent of surplus as regards policyholders as of the thirty-first day**
36 **of December next preceding. Further, all guarantees which are not quantifiable as to**
37 **amount are subject to the notice requirements of this subdivision;**

38 (6) **Direct or indirect acquisitions or investments in a person that controls the**
39 **insurer or in an affiliate of the insurer in an amount which, together with its present**
40 **holding in such investments, exceeds two and one-half percent of the insurer's surplus to**
41 **policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired under**

42 **section 382.020 or authorized under any other provision of this chapter or in nonsubsidiary**
43 **insurance affiliates that are subject to the provisions of this chapter are exempt from such**
44 **requirement; and**

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

47

48 **The notice for amendments or modifications shall include the reasons for the change and**
49 **the financial impact on the domestic insurer.**

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

53 [2.] 3. A domestic insurer [may] **shall** not enter into transactions which are part of a plan
54 or series of like transactions with persons within the **insurance** holding company system if the
55 purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid
56 the review that would occur otherwise. If the director determines that such separate transactions
57 were entered into over any twelve-month period for such purpose, [he] **the director** may exercise
58 his **or her** authority under section 382.265.

59 4. **In reviewing transactions under subsection 1 of this section, the director shall**
60 **consider whether the transactions comply with the standards set forth in section 382.190**
61 **and whether they may adversely affect the interest of policyholders.**

62 5. **The director shall be notified within thirty days of any investment of the**
63 **domestic insurer in any one corporation if the total investment in the corporation by the**
64 **insurance holding company system exceeds ten percent of the corporation's voting**
65 **securities.**

382.220. 1. Subject to the limitation contained in this section and in addition to all the
2 other powers with which the director is vested by law relating to the examination of insurers, the
3 director may [order] **examine** any insurer registered under the provisions of sections [382.010
4 to 382.300] **382.100 to 382.180 and its affiliates to ascertain the financial condition of the**
5 **insurer including the enterprise risk to the insurer by the ultimate controlling party, by**
6 **any entity or combination of entities within the insurance holding company system, or by**
7 **the insurance company system on a consolidated basis.**

8 2. **The director may order any insurer registered under sections 382.100 to 382.180**
9 to produce such records, books, or other information papers in the possession of the insurer or
10 its affiliates as [shall be] **are reasonably** necessary to [ascertain the financial condition or
11 legality of conduct of the insurer. In the event the insurer fails to comply with the order, the

12 director may examine such affiliates to obtain such information] **determine compliance with**
13 **this chapter.**

14 **3. To determine compliance with this chapter, the director may order any insurer**
15 **registered under sections 382.100 to 382.180 to produce information not in the possession**
16 **of the insurer if the insurer is able to obtain access to such information under contractual**
17 **relationships, statutory obligations, or other methods. In the event the insurer is unable**
18 **to obtain the information requested by the director, the insurer shall provide the director**
19 **with a detailed explanation of the reason that the insurer is unable to obtain the**
20 **information and the identity of the holder of such information. If it appears to the director**
21 **that the detailed explanation is without merit, the director shall have the power to examine**
22 **the insurer to determine compliance with this section pursuant to the director's authority**
23 **under section 374.205 and this section.**

24 [2.] **4.** The director may retain at the registered insurer's expense such attorneys,
25 actuaries, accountants and other experts not otherwise a part of the director's staff as shall be
26 reasonably necessary to assist in the conduct of the examination under this section. Any persons
27 so retained shall be under the direction and control of the director and shall act in a purely
28 advisory capacity.

29 [3.] **5.** Each registered insurer producing for examination records, books and papers
30 pursuant to this section shall be liable for and shall pay the expense of such examination in
31 accordance with the provisions of section 374.220.

32 **6. In the event the insurer fails to comply with an order, the director shall have the**
33 **power to examine the affiliates to obtain the information. The director shall have the**
34 **power to issue subpoenas, administer oaths, and examine under oath any person for**
35 **purposes of determining compliance with this section. Upon the failure or refusal of any**
36 **person to obey a subpoena, the director may petition a court of competent jurisdiction, and**
37 **upon proper showing, the court may enter an order compelling the witness to appear and**
38 **testify or produce documentary evidence. Failure to obey the court order shall be**
39 **punishable as contempt of court. Every person shall be obligated to attend as a witness at**
40 **the place specified in the subpoena, if subpoenaed, anywhere within the state. He or she**
41 **shall be entitled to the same fees and mileage, if claimed, as a witness in section 491.280,**
42 **which fees, mileage, and actual expense, if any, necessarily incurred in securing the**
43 **attendance of witnesses and their testimony, shall be itemized, charged against, and paid**
44 **by the company being examined.**

382.225. 1. With respect to any insurer registered under sections 382.100 to 382.180
2 **and in accordance with subsection 3 of this section, the director shall also have the power**
3 **to participate in a supervisory college for any domestic insurer that is part of an insurance**

4 **holding company system with international operations in order to determine compliance**
5 **by the insurer with this chapter. The powers of the director with respect to supervisory**
6 **colleges include, but are not limited to, the following:**

7 (1) **Initiating the establishment of a supervisory college;**

8 (2) **Clarifying the membership and participation of other supervisors in the**
9 **supervisory college;**

10 (3) **Clarifying the functions of the supervisory college and the roles of other**
11 **regulators including the establishment of a group-wide supervisor or host, who may be the**
12 **director;**

13 (4) **Coordinating the ongoing activities of the supervisory college, including**
14 **planning meetings, supervisory activities, and processes for information sharing; and**

15 (5) **Establishing a crisis management plan.**

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

23 **3. In order to assess the business strategy, financial position, legal and regulatory**
24 **position, risk exposure, risk management and governance processes, and as part of the**
25 **examination of individual insurers in accordance with section 382.220, the director may**
26 **participate in a supervisory college with other regulators charged with supervision of the**
27 **insurer or its affiliates including other state, federal, and international regulatory agencies.**
28 **The director may enter into agreements in accordance with subsection 3 of section 382.230**
29 **providing the basis for cooperation between the director and the other regulatory agencies**
30 **and the activities of the supervisory college. Nothing in this section shall delegate to the**
31 **supervisory college the authority of the director to regulate or supervise the insurer or its**
32 **affiliates within the director's jurisdiction.**

382.230. **1. All information, documents and copies thereof in the possession or control**
2 **of the director that are** obtained by or disclosed to the director or any other person in the course
3 of an examination or investigation made [pursuant to] **under** section 382.220 and all information
4 reported [pursuant to section] **under subdivisions (13) and (14) of subsection 1 of section**
5 **382.050 and sections 382.100 to 382.210** shall be given confidential treatment and **privileges;**
6 **shall not be subject to the provisions of chapter 610;** shall not be subject to subpoena [and]
7 ; shall not be made public by the director, the National Association of Insurance Commissioners,

8 or any other person, except to the chief insurance regulatory official of other states[,] ; **and shall**
9 **not be subject to discovery or admissible as evidence in any private civil action. However,**
10 **the director is authorized to use the documents, materials, or other information in**
11 **furtherance of any regulatory or legal action brought as a part of the director's official**
12 **duties. The director shall not otherwise make the documents, materials, or other**
13 **information public** without the prior written consent of the insurer to which it pertains unless
14 the director, after giving the insurer and its affiliates who would be affected thereby, notice and
15 opportunity to be heard, determines that the interests of policyholders, shareholders or the public
16 will be served by the publication thereof, in which event [he] **the director** may publish all or any
17 part thereof in such manner as he **or she** may deem appropriate.

18 **2. Neither the director nor any person who receives documents, materials, or other**
19 **information while acting under the authority of the director or with whom such**
20 **documents, materials, or other information is shared under sections 382.010 to 382.300**
21 **shall be permitted or required to testify in any private civil action concerning any**
22 **confidential documents, materials, or other information subject to subsection 1 of this**
23 **section.**

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

25 **(1) May share documents, materials, or other information including the**
26 **confidential and privileged documents, materials, or other information subject to**
27 **subsection 1 of this section with other state, federal, and international financial regulatory**
28 **agencies; with the National Association of Insurance Commissioners and its affiliates and**
29 **subsidiaries; and with state, federal, and international law enforcement authorities**
30 **including members of any supervisory college described in section 382.225; provided that**
31 **the recipient agrees in writing to maintain the confidentiality and privileged status of such**
32 **documents, materials, or other information, and has verified in writing the legal authority**
33 **to maintain confidentiality;**

34 **(2) Notwithstanding the provisions of subsection 1 of this section and subdivision**
35 **(1) of this subsection, may share confidential and privileged documents, materials, or other**
36 **information reported under section 382.175 only with the directors of states having statutes**
37 **or regulations substantially similar to subsection 1 of this section and who have agreed in**
38 **writing not to disclose such information;**

39 **(3) May receive documents, materials, or other information including otherwise**
40 **confidential and privileged documents, materials, or information from the National**
41 **Association of Insurance Commissioners and its affiliates and subsidiaries and from**
42 **regulatory and law enforcement officials of other foreign or domestic jurisdictions, and**
43 **shall maintain as confidential or privileged any documents, materials, or other information**

44 received with notice or the understanding that it is confidential or privileged under the
45 laws of the jurisdiction that is the source of the document, material, or other information;
46 and

47 (4) Shall enter into a written agreement with the National Association of Insurance
48 Commissioners governing sharing and use of information provided under sections 382.010
49 to 382.300 consistent with this subsection that shall:

50 (a) Specify procedures and protocols regarding the confidentiality and security of
51 information shared with the National Association of Insurance Commissioners and its
52 affiliates and subsidiaries under sections 382.010 to 382.300 including procedures and
53 protocols for sharing by the National Association of Insurance Commissioners with other
54 state, federal, and international regulators;

55 (b) Specify that ownership of information shared with the National Association of
56 Insurance Commissioners and its affiliates and subsidiaries under sections 382.010 to
57 382.300 remains with the director and that the National Association of Insurance
58 Commissioner's use of such information is subject to the direction of the director;

59 (c) Require prompt notice to be given to an insurer whose confidential information
60 in the possession of the National Association of Insurance Commissioners under sections
61 382.010 to 382.300 is subject to a request or subpoena to the National Association of
62 Insurance Commissioners for disclosure or production; and

63 (d) Require the National Association of Insurance Commissioners and its affiliates
64 and subsidiaries to consent to intervention by an insurer in any judicial or administrative
65 action in which the National Association of Insurance Commissioners and its affiliates and
66 subsidiaries may be required to disclose confidential information about the insurer shared
67 with the National Association of Insurance Commissioners and its affiliates and
68 subsidiaries under sections 382.010 to 382.300.

69 4. The sharing of information by the director under sections 382.010 to 382.300
70 shall not constitute a delegation of regulatory or rulemaking authority, and the director
71 is solely responsible for the administration, execution, and enforcement of the provisions
72 of sections 382.010 to 382.300.

73 5. No waiver of any applicable privilege or claim of confidentiality in the
74 documents, materials, or other information shall occur as a result of disclosure of such
75 documents, materials, or other information to the director under this section or as a result
76 of sharing as authorized in sections 382.010 to 382.300.

77 6. Documents, materials, or other information in the possession or control of the
78 National Association of Insurance Commissioners under sections 382.010 to 382.300 shall
79 be confidential by law and privileged, shall not be subject to disclosure under chapter 610,

80 shall not be subject to subpoena, and shall not be subject to discovery or admissible in
81 evidence in any private civil action.

2 382.277. If it appears to the director that any person has committed a violation of
3 sections 382.040 to 382.090 and the violation prevents the full understanding of the
4 enterprise risk to the insurer by affiliates or by the insurance holding company system, the
5 violation may serve as an independent basis for disapproving dividends or distributions
6 and for placing the insurer under an order of suspension in accordance with section
375.1160.

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