

House Bill 312 (COMMITTEE SUBSTITUTE)

By: Representatives Carson of the 46th, Golick of the 40th, Smith of the 134th, Brockway of the 102nd, Shaw of the 176th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 13 of Title 33 of the Official Code of Georgia Annotated, relating to insurance holding company systems, so as to provide for comprehensive revision of the provisions regulating insurance holding company systems; to amend Chapter 21 of Title 33 of the Official Code of Georgia Annotated, relating to health maintenance organizations, so as to provide the extension of malpractice insurance to a medical group which has a mutually exclusive contract to provide medical services to the enrollees of a health maintenance organization under certain circumstances; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 13 of Title 33 of the Official Code of Georgia Annotated, relating to insurance holding company systems, is amended by revising the entire chapter as follows:

"CHAPTER 13

33-13-1.

As used in this chapter, the term:

(1) 'Affiliate,' including the term 'affiliate of' or 'person affiliated with' a specific person, means a person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with ~~any person specified in paragraph (6) of this Code section~~ the person specified.

(2) 'Commissioner' means the Commissioner of Insurance, ~~his~~ the Commissioner's deputies, or the Insurance Department, as appropriate.

(3) 'Control,' including the terms 'controlling,' 'controlled by,' and 'under common control with,' means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting

securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position ~~with an entity listed in paragraph (6) of this Code section~~ or corporate office held by the person. Control shall be presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection ~~(i)~~ (k) of Code Section 33-13-4 that control does not exist in fact. The Commissioner may determine after furnishing all persons in interest notice and opportunity to be heard and after making specific findings of fact to support such determination that control exists in fact, notwithstanding the absence of a presumption to that effect.

(4) 'Enterprise risk' means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in Chapter 56 of this title or would cause the insurer to be in hazardous financial condition based on the standards prescribed by Chapter 120-2-54 of the Commissioner's rules and regulations.

~~(4)~~(5) 'Insurance holding company system' means two or more affiliated persons, one or more of which is an insurer.

~~(5)~~(6) 'Insurer' shall have the same meaning as set forth in Code Section 33-1-2, except that it shall not include: ~~(A)~~ agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state; ~~(B)~~ fraternal benefit societies; or ~~(C)~~ nonprofit medical and hospital service associations.

~~(6)~~(7) 'Person' means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but shall not include ~~any securities broker performing no more than the usual and customary broker's function~~ any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

~~(7)~~ 'Securityholder' means ~~one who owns any security of a specified person including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.~~

(8) 'Subsidiary' means an affiliate controlled by a specified person directly or indirectly through one or more intermediaries.

(9) 'Voting security' ~~means any instrument which in law or by contract gives the holder the right to vote, consent, or authorize any corporate action of an insurer. Voting security shall also include any security convertible into or evidencing a right to acquire a voting security.~~

33-13-2.

(a) Any domestic insurer either by itself or in cooperation with one or more persons may organize or acquire one or more subsidiaries. The subsidiaries may conduct any kind of business or businesses permitted by the Constitution and laws of this state; and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other Code sections of this title, a domestic insurer may also:

(1) Invest in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries amounts which do not exceed the lesser of 5 10 percent of the insurer's assets or 50 percent of the insurer's surplus as regards policyholders, provided that after the investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there shall be included:

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

(B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

~~(2) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, if the insurer's total liabilities, as calculated for purposes of the National Association of Insurance Commissioners' annual statement, are less than 10 percent of its assets, provided that after the investment the insurer's surplus as regards policyholders, considering the investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;~~

~~(3)~~(2) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, provided that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations applicable to the insurer as specified ~~in paragraph (1) of this subsection or~~ in Chapter 11 of this title. For the purpose of this paragraph, 'the total investment of the insurer' shall include:

(A) Any ~~any~~ direct investment by the insurer in an asset; and

(B) The ~~the~~ insurer's proportionate share of any investment in an asset by any subsidiary of the insurer which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary; and

~~(4)~~(3) Invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries with the approval of the Commissioner, provided that after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs; ~~and~~
~~(5) Invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to or holding title to and managing or developing real or personal property if, after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs and if following such investment all voting securities of such subsidiary would be owned by the insurer.~~

(c) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (b) of this Code section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this title applicable to the investments of insurers.

(d) Whether any investment pursuant to subsection (b) of this Code section meets the applicable requirements of ~~paragraphs (1) through (5) of that subsection (b) of this Code section~~ is to be determined immediately after the investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the date they were made before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all

previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(e) If an insurer ceases to control a subsidiary, it shall dispose of any investment in the subsidiary made pursuant to this Code section within three years from the time of the cessation of control or within any further time as the Commissioner may prescribe unless at any time after the investment shall have been made the investment shall have met the requirements for investment under any other Code section of this title and the insurer notifies the Commissioner that the requirement has been met.

33-13-3.

(a) **~~Requirement of filing of statement~~ Filing requirements.**

(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if after the consummation of the agreement the person would directly or indirectly or by conversion or by exercise of any right to acquire be in control of the insurer; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless at the time the offer, request, or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the Commissioner and has sent to the insurer ~~and the insurer has sent to its shareholders~~ a statement containing the information required by this Code section and the offer, request, invitation, agreement, or acquisition has been approved by the Commissioner in the manner prescribed in subsection ~~(e)~~ (d) of this Code section.

(2) For the purposes of this Code section, ~~a 'domestic insurer' means any other person controlling a domestic insurer, unless the other person is either directly or through its affiliates primarily engaged in business other than the business of insurance~~ any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the Commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The Commissioner shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the Commissioner, in his or her discretion, determines that confidential treatment will interfere with enforcement of this Code section. If the statement referred to in paragraph (1) of this subsection is otherwise filed, this paragraph shall not apply.

(3) With respect to a transaction subject to this Code section, the acquiring person must also file a preacquisition notification with the Commissioner, which shall contain the information set forth in paragraph (1) of subsection (c) of Code Section 33-13-3.1. A failure to file the notification may be subject to penalties specified in paragraph (3) of subsection (e) of Code Section 33-13-3.1.

(4) For purposes of this Code section, a 'domestic insurer' shall include any person controlling a domestic insurer unless the person, as determined by the Commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For the purposes of this Code section, 'person' shall not include any securities broker holding, in the usual and customary broker's function, less than 20 percent of the voting securities of an insurance company or of any person which controls an insurance company.

(b) **Execution and content of statement.** The statement to be filed with the Commissioner in accordance with this Code section shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person, hereinafter called 'acquiring party,' by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) of this Code section is to be effected and:

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

(B) If the person is not an individual, a report of the nature of its business operations during the past five years or for any lesser periods as the person and any predecessors of such person shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person or who perform or will perform functions appropriate to the positions. The list shall include for each individual the information required by subparagraph (A) of this paragraph;

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

- (3) ~~Financial statements containing independent fully~~ Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party or for any lesser period as the acquiring party and any predecessors of the acquiring party shall have been in existence and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;
- (4) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;
- (5) The number of shares of any security referred to in subsection (a) of this Code section which each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a) of this Code section and a statement as to the method by which the fairness of the proposal was arrived at;
- (6) The amount of each class of any security referred to in subsection (a) of this Code section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;
- (7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) of this Code section in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies; and the description shall identify the persons with whom the contracts, arrangements, or understandings have been entered into;
- (8) A description of the purchase by any acquiring party of any security referred to in subsection (a) of this Code section during the 12 calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid ~~for such purchase~~;
- (9) A description of any recommendations to purchase any security referred to in subsection (a) of this Code section made during the 12 calendar months preceding the filing of the statement by any acquiring party or by anyone based upon interviews or at the suggestion of the acquiring party;
- (10) Copies of all tender offers for, requests or invitations for tenders of exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a) of this Code section and, if distributed, of additional soliciting material relating thereto;
- (11) The terms of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (a) of this Code section for tender and the amount of any fees, commissions, or other

compensation to be paid to broker-dealers with regard to the agreement, contract, or understanding; and

(12) An agreement by the person required to file the statement referred to in subsection (a) of this Code section that it will provide the annual report, specified in subsection (l) of Code Section 33-13-4, for so long as control exists;

(13) An acknowledgment by the person required to file the statement referred to in subsection (a) of this Code section that the person and all subsidiaries within its control in the insurance holding company system will provide information to the Commissioner upon request as necessary to evaluate enterprise risk to the insurer; and

~~(12)~~(14) Any additional information as the Commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) of this Code section is a partnership, limited partnership, syndicate, or other group, the Commissioner may require that the information called for by paragraphs (1) through (14) of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member, or person is a corporation or the person required to file the statement referred to in subsection (a) of this Code section is a corporation, the Commissioner may require that the information called for by paragraphs (1) through (14) of this subsection shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the corporation. If any material change occurs in the facts set forth in the statement filed with the Commissioner and sent to the insurer pursuant to this Code section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the Commissioner and sent to the insurer within two business days after the person learns of the change.

~~(c) **Filing requirements for partnerships.** If the person required to file the statement referred to in subsection (a) of this Code section is a partnership, limited partnership, syndicate, or other group, the Commissioner may require that the information called for by paragraphs (1) through (12) of subsection (b) of this Code section shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member, or person is a corporation or if the person required to file the statement referred to in subsection (a) of this Code section is a corporation, the Commissioner may require that the information called for by paragraphs (1) through (12) of subsection (b) of this Code~~

~~section shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the corporation.~~

~~(d) **Amendment of statement.** If any material change occurs in the facts set forth in the statement filed with the Commissioner and sent to the insurer pursuant to this Code section, an amendment setting forth the change together with copies of all documents and other material relevant to the change shall be filed with the Commissioner and sent to the insurer within two business days after the person learns of the change. The insurer shall send the amendment to its shareholders.~~

~~(e)(c) **Alternate filing of registration statements materials.** If any offer, request, invitation, agreement, or acquisition referred to in subsection (a) of this Code section is proposed to be made by means of a registration statement under the Securities Act of 1933, in circumstances requiring the disclosure of similar information, under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) of this Code section may utilize the documents in furnishing the information called for by that statement.~~

~~(f)(d) **Approval or disapproval by Commissioner; hearings.**~~

~~(1) The Commissioner shall approve any merger or other acquisition of control referred to in subsection (a) of this Code section unless, after a public hearing thereon, he or she finds that:~~

~~(A) After the change of control the domestic insurer referred to in subsection (a) of this Code section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;~~

~~(B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly. in the insurance business in this state; In applying the competitive standard in this subparagraph:~~

~~(i) The informational requirements of paragraph (1) of subsection (c) of Code Section 33-13-3.1 and the standards of paragraph (2) of subsection (d) of Code Section 33-13-3.1 shall apply;~~

~~(ii) The merger or other acquisition shall not be disapproved if the Commissioner finds that any of the situations meeting the criteria provided by paragraph (3) of subsection (d) of Code Section 33-13-3.1 exist; and~~

~~(iii) The Commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;~~

(C) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders ~~or the interests of any remaining securityholders who are unaffiliated with the acquiring party;~~

~~(D) The terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a) of this Code section are unfair and unreasonable to the securityholders of the insurer;~~

~~(E)~~(D) The plans or proposals which the acquiring party has to liquidate the insurer, to sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest; ~~or~~

~~(F)~~(E) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

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

(2) The public hearing referred to in paragraph (1) of this subsection shall be held within 30 days after the statement required by subsection (a) of this Code section is filed; and at least 20 days' notice of the public hearing shall be given by the Commissioner to the person filing the statement. Not less than seven days' notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons as may be designated by the Commissioner. ~~The insurer shall give the notice to its securityholders.~~ The Commissioner shall make a determination within ~~30 days after the conclusion of the hearing~~ the 60 day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the superior courts of this state. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(3) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in paragraph (2) of this subsection may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (a) of this Code section. Such person shall file the statement referred to in subsection (a) of this Code section with the National Association of Insurance Commissioners within five days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing and shall provide notice to the

applicant of the opt-out within ten days of the receipt of the statement referred to in subsection (a) of this Code section. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner may attend such hearing, in person or by telecommunication.

(4) In connection with a change of control of a domestic insurer, any determination by the Commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than 60 days after the date of notification of the change in control submitted pursuant to paragraph (1) of subsection (a) of this Code section.

(5) The Commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed acquisition of control.

~~(g) **Mailing of statements, etc., to shareholders; payment of expenses.** All statements, amendments, or other material filed pursuant to subsection (a) or (b) of this Code section and all notices of public hearings held pursuant to subsection (f) of this Code section shall be mailed by the insurer to its shareholders within five business days after the insurer has received the statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of the expenses, such person shall file with the Commissioner an acceptable bond or other deposit in an amount to be determined by the Commissioner.~~

~~(h)~~(e) **Exemptions.** This Code section shall not apply to any offer, request, invitation, agreement, or acquisition which the Commissioner by order shall exempt from this Code section as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer or as otherwise not comprehended within the purposes of this Code section.

~~(i)~~(f) **Violations.** The following shall be violations of this Code section:

(1) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (a) or (b) of this Code section; or

(2) The effectuation or any attempt to effectuate an acquisition of control of or merger with a domestic insurer unless the Commissioner has given his approval to the acquisition of control or merger.

~~(j)~~(g) **Jurisdiction; service of process.** The courts of this state are vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the Commissioner under this Code section and over all actions

involving that person arising out of violations of this Code section; and each person shall be deemed to have performed acts equivalent to and constituting an appointment by that person of the Commissioner to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this Code section. Copies of all lawful process shall be served on the Commissioner and transmitted by registered or certified mail or statutory overnight delivery by the Commissioner to the person at his or her last known address.

33-13-3.1.

(a) As used in this Code section, the term:

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

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

(b)(1) Except as exempted in paragraph (2) of this subsection, this Code section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

(2) This Code section shall not apply to the following:

~~(A) An acquisition subject to approval or disapproval by the Commissioner pursuant to Code Section 33-13-3;~~

~~(B)~~(A) A purchase of securities solely for investment purposes so long as such securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under paragraph (3) of Code Section 33-13-1, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the Commissioner of this state;

~~(C)~~(B) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the Commissioner in accordance with paragraph (1) of subsection (c) of this Code section 30 days prior to the proposed effective date of the acquisition. However, such preacquisition notification is not required for exclusion from this Code section if the acquisition would otherwise be excluded from this Code section by any other subparagraph of this paragraph;

~~(D)~~(C) The acquisition of already affiliated persons;

~~(E)~~(D) An acquisition if, as an immediate result of the acquisition:

(i) In no market would the combined market share of the involved insurers exceed 5 percent of the total market;

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

(iii) In no market would:

(I) The combined market share of the involved insurers exceed 12 percent of the total market; and

(II) The market share increase by more than 2 percent of the total market.

For the purpose of this subparagraph, the term 'market' means a direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

~~(F)~~(E) An acquisition for which a preacquisition notification would be required pursuant to this Code section due solely to the resulting effect on the ocean marine insurance line of business; or

~~(G)~~(F) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that such insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving such insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and such findings are communicated by the domiciliary commissioner to the Commissioner of this state.

(c) An acquisition covered by subsection (b) of this Code section may be subject to an order pursuant to subsection (e) of this Code section unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The Commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in Code Section ~~33-13-7~~ 33-13-8:

(1) The preacquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners relating to those markets which, under subparagraph ~~(b)(2)(E)~~ (b)(2)(D) of this Code section, cause the acquisition not to be exempted from the provisions of this Code section. The Commissioner may require such additional material and information as he or she deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (d) of this Code section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion; and

(2) The waiting period required shall begin on the date of receipt of the Commissioner of a preacquisition notification and shall end on the earlier of the thirtieth day after the date of such receipt or termination of the waiting period by the Commissioner. Prior to the end of the waiting period, the Commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of such additional information by the Commissioner or termination of the waiting period by the Commissioner.

(d)(1) The Commissioner may enter an order under paragraph (1) of subsection (e) of this Code section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with subsection (c) of this Code section.

(2) In determining whether a proposed acquisition would violate the competitive standard of paragraph (1) of this subsection, the Commissioner shall consider the following:

(A) Any acquisition covered under subsection (b) of this Code section involving two or more insurers competing in the same market is prima-facie evidence of violation of the competitive standards:

(i) If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4 percent	4 percent or more
10 percent	2 percent or more
15 percent	1 percent or more; or

(ii) If the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5 percent	5 percent or more
10 percent	4 percent or more
15 percent	3 percent or more
19 percent	1 percent or more

A highly concentrated market is one in which the share of the four largest insurers is 75 percent or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurers are

involved, exceeding the total of the two columns in the table is prima-facie evidence of violation of the competitive standard in paragraph (1) of this subsection. For the purpose of this subparagraph, the insurer with the largest share of the market shall be deemed to be Insurer A;

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

- (i) There is a significant trend toward increased concentration in the market;
- (ii) One of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and
- (iii) Another involved insurer's market is 2 percent or more;

(C) For the purposes of this paragraph:

- (i) The term 'insurer' includes any company or group of companies under common management, ownership, or control;
- (ii) The term 'market' means the relevant product and geographical markets. In determining the relevant product and geographical markets, the Commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state; and
- (iii) The burden of showing prima-facie evidence of violation of the competitive standard rests upon the Commissioner; and

(D) Even though an acquisition is not prima-facie violative of the competitive standard under subparagraphs (A) and (B) of this paragraph, the Commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima-facie violative of the competitive standard under subparagraphs (A) and (B) of this paragraph, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the

following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry into the market and exit from the market.

(3) An order may not be entered under paragraph (1) of subsection (e) of this Code section if:

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

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

(e)(1)(A) If an acquisition violates the standards of this Code section, the Commissioner may enter an order:

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

(ii) Denying the application of an acquired or acquiring insurer for a license to do business in this state.

(B) Such an order shall not be entered unless:

(i) There is a hearing;

(ii) Notice of such hearing is issued prior to the end of the waiting period and not less than 15 days prior to the hearing; and

(iii) The hearing is concluded and the order is issued no later than 60 days after the end of the waiting period. Every order shall be accompanied by a written decision of the Commissioner setting forth his or her findings of fact and conclusions of law.

~~(C) An order entered under this paragraph shall not become final earlier than 30 days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon such plan or other information, the Commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this Code section would be remedied and the order vacated or modified.~~

~~(D)~~(C) An order pursuant to this paragraph shall not apply if the acquisition is not consummated.

(2) Any person who violates a cease and desist order of the Commissioner under paragraph (1) of this subsection and while such order is in effect; may after notice and hearing and upon order of the Commissioner, be subject, at the discretion of the Commissioner, to any one or more of the following:

(A) A monetary penalty of not more than \$10,000.00 for every day of violation; or

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

(3) Any insurer or other person who fails to make any filing required by this subsection and who also fails to demonstrate a good faith effort to comply with any such filing requirement shall be subject to a fine of not more than \$50,000.00.

(f) Paragraphs (b) and (c) of Code Section 33-13-10 and Code Section 33-13-12 shall not apply to acquisitions covered under this Code section.

33-13-4.

(a) **Requirement of registration generally.** Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the Commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained ~~in this Code section. Any insurer which is subject to registration under this Code section shall register within 15 days after it becomes subject to registration unless the Commissioner for good cause shown extends the time for registration, and then within the extended time. The Commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this Code section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction~~

(1) In this Code section;

(2) In paragraph (1) of subsection (a), subsection (b), and subsection (d) of Code Section 33-13-5; and

(3) In either paragraph (2) of subsection (a) of Code Section 33-13-5 or a provision such as the following: 'Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition.'
Any insurer which is subject to registration under this Code section shall register within 15 days after it becomes subject to registration and annually thereafter by April 30 of each year for the previous calendar year, unless the Commissioner for good cause shown extends the time for registration, and then within the extended time. The Commissioner may require any insurer authorized to do business in this state which is a member of an insurance holding company system, and which is not subject to registration under this Code section, to furnish a copy of the registration statement, the summary specified in subsection (c) of this Code section, or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(b) **Contents of registration statement.** Every insurer subject to registration shall file a registration statement with the Commissioner on a form and in a format provided by the Commissioner prescribed by the National Association of Insurance Commissioners, which statement shall contain current information about:

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

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

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

(A) Loans, other investments, or purchases, sales, or exchanges of the affiliates by the insurer or of the insurer by its affiliates;

(B) Purchases, sales, or exchanges of assets;

(C) Transactions not in the ordinary course of business;

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

(E) All management and service contracts and all cost-sharing arrangements; ~~other than cost allocation arrangements based upon generally accepted accounting principles; and~~

(F) Reinsurance agreements; ~~covering all or substantially all of one or more lines of insurance of the ceding company; and~~

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements;

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

(5) If requested by the Commissioner, financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the federal Securities and Exchange Commission pursuant to the federal Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the Commissioner with the most recently filed parent corporation financial statements that have been filed with the Securities and Exchange Commission;

~~(4)(6)~~ Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Commissioner;

(7) Statements that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

(8) Any other information required by the Commissioner by rule or regulation.

(c) **Summary of changes to registration statement.** All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

~~(c)~~(d) **Disclosure of nonmaterial information.** No information need be disclosed on the registration statement filed pursuant to subsection (b) of this Code section if the information is not material for the purposes of this Code section. Unless the Commissioner by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, extensions of credit, or investments involving one-half of 1 percent or less of an insurer's admitted assets as of December 31 of the preceding year shall not be deemed material for purposes of this Code section.

~~(d) **Amendment of registration statements.** Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the Commissioner, within 15 days after the end of the month in which it learns of each change or addition; provided, however, subject to subsection (c) of Code Section 33-13-5, each registered insurer shall so report all dividends and other distributions to shareholders within five business days following the declaration of the dividends and other distributions and at least ten days prior to the payment thereof.~~

(e) **Reporting dividends to shareholders.** Subject to subsection (b) of Code Section 33-13-5, each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within 15 business days following the declaration thereof.

(f) **Information of insurers.** Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

~~(e)~~(g) **Termination of registration.** The Commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

~~(f)~~(h) **Filing of consolidated registration.** The Commissioner may require or allow two or more affiliated insurers subject to registration under this Code section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

~~(g)~~**(i) Filing of registration for affiliated insurer.** The Commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) of this Code section and to file all information and material required to be filed under this Code section.

~~(h)~~**(j) Exemptions.** This Code section shall not apply to any insurer, information, or transaction if and to the extent that the Commissioner by rule, regulation, or order shall exempt the same from this Code section.

~~(i)~~**(k) Filing of disclaimer.** Any person may file with the Commissioner a disclaimer of affiliation with any authorized insurer or the disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the persons and the insurer as well as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the Commissioner, within 30 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this Code section if approval of the disclaimer has been granted by the Commissioner, or if the disclaimer is deemed to have been approved. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this Code section which may arise out of the insurer's relationship with the person, unless and until the Commissioner disallows the disclaimer. The Commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard after making specific findings of fact to support the disallowance.

(l) Enterprise risk filing. The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

~~(j)~~**(m) Violations.** The failure to file a registration statement or any amendment to the registration statement required by this Code section within the time specified for the filing shall be a violation of this Code section.

33-13-5.

(a)(1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(A) The terms shall be fair and reasonable;

(B) Agreements for cost sharing services and management shall include such provisions as required by the Commissioner by rule or regulation;

~~(B)~~(C) Charges or fees for services performed shall be reasonable;

~~(C)~~(D) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

~~(D)~~(E) The books, accounts, and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the 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

~~(E)~~(F) The insurer's surplus with regard to 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.

(2) The following transactions involving a domestic insurer and any person in its holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this Code section, which are subject to any materiality standards contained in subparagraphs (A) through (G) of this paragraph, may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into such transaction at least 30 days prior thereto, or such shorter period as the Commissioner may permit, and the Commissioner has not disapproved it within such period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within 30 days after a termination of a previously filed agreement, to the Commissioner for determination of the type of filing required, if any:

(A) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided such transactions are equal to or exceed: with respect to nonlife insurers, the lesser of 3 percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders; or with respect to life insurers, 3 percent of the insurer's admitted assets; each as of December 31 next preceding;

(B) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the insurer making such loans or extensions of credit to purchase assets

of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit, provided such transactions are equal to or exceed: with respect to nonlife insurers, the lesser of 3 percent of the insurer's admitted assets or 25 percent of surplus with regard to policyholders; or with respect to life insurers, 3 percent of the insurer's admitted assets; each as of December 31 next preceding;

(C) ~~Reinsurance agreements or modifications thereto, in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5 percent of the insurer's surplus with regard to policyholders, as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer; including:~~

(i) All reinsurance pooling agreements; and

(ii) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds 5 percent of the insurer's surplus with regard to policyholders, as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(D) All management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing agreements; ~~and~~

(E) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of 1 percent of the insurer's admitted assets or 10 percent of surplus as regards policyholders as of December 31 next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph;

(F) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an agreement which, together with its present holdings in such investments, exceeds 2 1/2 percent of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Code Section 33-13-2 or authorized under any other Code section of this title, or in nonsubsidiary insurance affiliates that are subject to the provisions of this chapter, are exempt from this requirement; and

~~(E)~~(G) Any material transactions, specified by regulation, which the Commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing contained in this paragraph shall be deemed to authorize or permit any transactions which, in the case of an insurer ~~who~~ that is not a member of the same holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the Commissioner determines that such separate transactions were entered into over any 12 month period for such purpose, ~~he~~ the Commissioner may exercise his or her authority under Code Section ~~33-13-9 or Code Section 33-13-100~~ 33-13-11.

(4) The Commissioner, in reviewing transactions pursuant to paragraph (2) of this subsection, shall consider whether the transactions comply with the standards set forth in paragraph (1) of this subsection and whether they may adversely affect the interests of policyholders.

(5) The Commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds 10 percent of such corporation's voting securities.

(b)(1) No domestic insurer shall apply any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the Commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or until the Commissioner ~~shall have~~ has approved such payment within such 30 day period.

(2) For the purposes of this subsection, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the ~~greater~~ lesser of 10 percent of such insurer's surplus with regard to policyholders as of December 31 next preceding, or the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the 12 month period ending December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(3) In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not

including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(3)(4) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until the Commissioner has approved the payment of such a dividend or distribution or the Commissioner has not disapproved such payment within the 30 day period referred to in paragraph (1) of this subsection.

(c) For purposes of this chapter, in determining whether an insurer's surplus with regard to policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) The surplus with regard to policyholders maintained by other comparable insurers; considering the factors provided in paragraphs (1) through (7) of this subsection;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in affiliates. ~~The Commissioner may discount or treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus with regard to policyholders whenever in the Commissioner's judgment such investment so warrants; and~~ The Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus with regard to policyholders whenever in the judgment of the Commissioner the investment so warrants.

~~(11) The quality of the insurer's earnings and the extent to which reported earnings include extraordinary items.~~

33-13-6.

(a) **Powers of Commissioner.** Subject to the limitation contained in this Code section and in addition to the powers which the Commissioner has under this title relating to the

859 examination of insurers, the Commissioner shall also have the power to order any insurer
860 ~~registered under~~ examine any insurer registered under Code Section 33-13-4 to produce
861 ~~any records, books, or other information papers in the possession of the insurer or its~~
862 ~~affiliates as shall be necessary to ascertain the financial condition or legality of conduct of~~
863 ~~the insurer. In the event the insurer fails to comply with the order, the Commissioner shall~~
864 ~~have the power to examine the affiliates to obtain such information and its affiliates to~~
865 ascertain the financial condition of the insurer, including the enterprise risk to the insurer
866 by the ultimate controlling party, or by any entity or combination of entities within the
867 insurance holding company system, or by the insurance holding company system on a
868 consolidated basis.

869 (b) ~~The Commissioner shall exercise his power under subsection (a) of this Code section~~
870 ~~only if the examination of the insurer under other chapters of this title is inadequate or if~~
871 ~~the interests of the policyholders of the insurer may be adversely affected~~ **Access to books**
872 **and records.**

873 (1) The Commissioner may order any insurer registered under Code Section 33-13-4 to
874 produce such records, books, or other information in the possession of the insurer or its
875 affiliates as are reasonably necessary to determine compliance with this chapter.

876 (2) To determine compliance with this chapter, the Commissioner may order any insurer
877 registered under Code Section 33-13-4 to produce information not in the possession of
878 the insurer if the insurer can obtain access to such information pursuant to contractual
879 relationships, statutory obligations, or other method. In the event the insurer cannot
880 obtain the information requested by the Commissioner, the insurer shall provide the
881 Commissioner a detailed explanation of the reason that the insurer cannot obtain the
882 information and the identity of the holder of information. Whenever it appears to the
883 Commissioner that the detailed explanation is without merit, the Commissioner may
884 require, after notice and hearing, the insurer to pay a penalty of \$1,000.00 for each day's
885 delay, or may suspend or revoke the insurer's license.

886 (c) **Use of consultants.** The Commissioner may retain at the registered insurer's expense
887 such attorneys, actuaries, accountants, and other experts not otherwise a part of the
888 Commissioner's staff as shall be reasonably necessary to assist in the conduct of the
889 examination under subsection (a) of this Code section. Any persons so retained shall be
890 under the direction and control of the Commissioner and shall act in a purely advisory
891 capacity.

892 (d) **Expenses.** Each registered insurer producing for examination records, books, and
893 ~~papers for examination~~ pursuant to subsection (a) of this Code section shall be liable for
894 and shall pay the expense of the examination in accordance with Code Section 33-2-15.

(e) ~~All filings and registrations required by this Code section shall be accompanied by a fee or fees as provided in Code Section 33-8-1.~~ **Compelling production.** In the event the insurer fails to comply with an order, the Commissioner shall have the power to examine the affiliates to obtain the information. The Commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this subsection. Upon the failure or refusal of any person to obey a subpoena, the Commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in superior court, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

33-13-7.

(a) **Power of Commissioner.** With respect to any insurer registered under Code Section 33-13-4, and in accordance with subsection (c) of this Code section, the Commissioner shall also have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this title. The powers of the Commissioner with respect to supervisory colleges include, but are not limited to, the following:

(1) Initiating the establishment of a supervisory college;

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

(3) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;

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

(5) Establishing a crisis management plan.

(b) **Expenses.** Each registered insurer subject to this Code section shall be liable for and shall pay the reasonable expenses of the Commissioner's participation in a supervisory college in accordance with subsection (c) of this Code section, including reasonable travel expenses. For purposes of this Code section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the

931 Commissioner may establish a regular assessment to the insurer for the payment of these
 932 expenses.

933 (c) **Supervisory college.** In order to assess the business strategy, financial position, legal
 934 and regulatory position, risk exposure, risk management and governance processes, and as
 935 part of the examination of individual insurers in accordance with Code Section 33-13-6,
 936 the Commissioner may participate in a supervisory college with other regulators charged
 937 with supervision of the insurer or its affiliates, including other state, federal, and
 938 international regulatory agencies. The Commissioner may enter into agreements in
 939 accordance with subsection (c) of Code Section 33-13-8 providing the basis for cooperation
 940 between the Commissioner and the other regulatory agencies, and the activities of the
 941 supervisory college. Nothing in this Code section shall delegate to the supervisory college
 942 the authority of the Commissioner to regulate or supervise the insurer or its affiliates within
 943 its jurisdiction.

944 33-13-8.

945 ~~All information, documents, and copies thereof obtained by or disclosed to the~~
 946 ~~Commissioner or any other person in the course of an examination or investigation made~~
 947 ~~pursuant to Code Section 33-13-6 and all information reported pursuant to Code Section~~
 948 ~~33-13-4 shall be given confidential treatment, shall not be subject to subpoena, and shall~~
 949 ~~not be made public by the Commissioner or any other person, except to insurance~~
 950 ~~departments of other states, without the prior written consent of the insurer to which it~~
 951 ~~pertains unless the Commissioner, after giving the insurer and its affiliates who would be~~
 952 ~~affected thereby notice and opportunity to be heard, determines that the interests of~~
 953 ~~policyholders, shareholders, or the public will be served by the publication of the~~
 954 ~~information and documents, in which event he may publish all or any part of the~~
 955 ~~information and documents in such manner as he may deem appropriate.~~

956 (a) Documents, materials, or other information in the possession or control of the
 957 department that are obtained by or disclosed to the Commissioner or any other person in
 958 the course of an examination or investigation made pursuant to Code Section 33-13-6 and
 959 all information reported pursuant to paragraphs (12) and (13) of subsection (b) of Code
 960 Section 33-13-3, Code Section 33-13-4, and Code Section 33-13-5 shall be confidential by
 961 law and privileged, shall not be subject to public disclosure under Article 4 of Chapter 18
 962 of Title 50, shall not be subject to subpoena, and shall not be subject to discovery or
 963 admissible in evidence in any private civil action. However, the Commissioner is
 964 authorized to use the documents, materials, or other information in the furtherance of any
 965 regulatory or legal action brought as a part of the Commissioner's official duties. The
 966 Commissioner shall not otherwise make the documents, materials, or other information

967 public without the prior written consent of the insurer to which it pertains unless the
968 Commissioner, after giving the insurer and its affiliates that would be affected thereby
969 notice and opportunity to be heard, determines that the interest of policyholders,
970 shareholders, or the public will be served by the publication thereof, in which event the
971 Commissioner may publish all or any part in such manner as may be deemed appropriate.
972 (b) Neither the Commissioner nor any person who received documents, materials, or other
973 information while acting under the authority of the Commissioner or with whom such
974 documents, materials, or other information are shared pursuant to this chapter shall be
975 permitted or required to testify in any private civil action concerning any confidential
976 documents, materials, or other information subject to subsection (a) of this Code section.
977 (c) In order to assist in the performance of the Commissioner's duties, the Commissioner:
978 (1) May share documents, materials, or other information, including the confidential and
979 privileged documents, materials, or other information subject to subsection (a) of this
980 Code section, with other state, federal, and international regulatory agencies, with the
981 National Association of Insurance Commissioners and its affiliates and subsidiaries, and
982 with state, federal, and international law enforcement authorities, including members of
983 any supervisory college described in Code Section 33-13-7, provided that the recipient
984 agrees in writing to maintain the confidentiality and privileged status of the document,
985 material, or other information and has verified in writing the legal authority to maintain
986 confidentiality;
987 (2) Notwithstanding paragraph (1) of this subsection, may only share confidential and
988 privileged documents, materials, or other information reported pursuant to subsection (1)
989 of Code Section 33-13-4 with commissioners of states having statutes or regulations
990 substantially similar to subsection (a) of this Code section and who have agreed in writing
991 not to disclose such information;
992 (3) May receive documents, materials, or other information, including otherwise
993 confidential and privileged documents, materials, or other information from the National
994 Association of Insurance Commissioners and its affiliates and subsidiaries and from
995 regulatory and law enforcement officials of other foreign or domestic jurisdictions and
996 shall maintain as confidential or privileged any document, material, or other information
997 received with notice or the understanding that it is confidential or privileged under the
998 laws of the jurisdiction that is the source of the document, material, or other information;
999 and
1000 (4) Shall enter into written agreements with the National Association of Insurance
1001 Commissioners governing sharing and use of information provided pursuant to this
1002 chapter consistent with this subsection that shall:

1003 (A) Specify procedures and protocols regarding the confidentiality and security of
1004 information shared with the National Association of Insurance Commissioners and its
1005 affiliates and subsidiaries pursuant to this chapter, including procedures and protocols
1006 for sharing by the National Association of Insurance Commissioners with other state,
1007 federal, and international regulatory agencies;

1008 (B) Specify that ownership of information shared with the National Association of
1009 Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter
1010 remains with the Commissioner and that the National Association of Insurance
1011 Commissioners' use of the information is subject to the direction of the Commissioner;

1012 (C) Require prompt notice to be given to an insurer whose confidential information in
1013 the possession of the National Association of Insurance Commissioners pursuant to this
1014 chapter is subject to a request or subpoena to the National Association of Insurance
1015 Commissioners for disclosure or production; and

1016 (D) Require the National Association of Insurance Commissioners and its affiliates and
1017 subsidiaries to consent to intervention by an insurer in any judicial or administrative
1018 action in which the National Association of Insurance Commissioners and its affiliates
1019 and subsidiaries may be required to disclose confidential information about the insurer
1020 shared with the National Association of Insurance Commissioners and its affiliates and
1021 subsidiaries pursuant to this chapter.

1022 (d) The sharing of information by the Commissioner pursuant to this chapter shall not
1023 constitute a delegation of regulatory authority or rule making, and the Commissioner is
1024 solely responsible for the administration, execution, and enforcement of the provisions of
1025 this chapter.

1026 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,
1027 materials, or other information shall occur as a result of disclosure to the Commissioner
1028 under this Code section or as a result of sharing as authorized in subsection (c) of this Code
1029 section.

1030 (f) Documents, materials, or other information in the possession or control of the National
1031 Association of Insurance Commissioners pursuant to this chapter shall be confidential by
1032 law and privileged, shall not be subject to the open records laws, shall not be subject to
1033 subpoena, and shall not be subject to discovery or admissible in evidence in any private
1034 civil action.

1035 ~~33-13-8~~ 33-13-9.

1036 The Commissioner may, upon notice and opportunity for all interested persons to be heard,
1037 issue any rules, regulations, and orders as shall be necessary to carry out this chapter.

~~33-13-9~~ 33-13-10.

(a) **Injunctions.** Whenever it appears to the Commissioner that any insurer or any director, officer, employee, or agent of any insurer has committed or is about to commit a violation of this chapter or of any rule, regulation, or order issued by the Commissioner under this chapter, the Commissioner may apply to the superior court of the county in which the principal office of the insurer is located or, if the insurer has no such office in this state, to the Superior Court of Fulton County for an order enjoining the insurer or the director, officer, employee, or agent of such insurer from violating or continuing to violate this chapter or any rule, regulation, or order and for any other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(b) **Voting of securities; when prohibited.** No security which is the subject of any agreement or arrangement regarding acquisition or which is acquired or to be acquired in contravention of this chapter or of any rule, regulation, or order issued by the Commissioner under this chapter may be voted at any shareholders' meeting or counted for quorum purposes; and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the Commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of this chapter or of any rule, regulation, or order issued by the Commissioner under this chapter, the insurer or the Commissioner may apply to the Superior Court of Fulton County or to the superior court of the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of Code Section 33-13-3 or any rule, regulation, or order issued by the Commissioner under Code Section 33-13-3 to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders, and for any other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(c) **Sequestration of voting securities.** In any case in which a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule, regulation, or order issued by the Commissioner under this chapter, the Superior Court of Fulton County or the superior court of the county in which the insurer has its principal place of business, on any notice as the court deems appropriate and upon the application of the insurer or the Commissioner, may seize or sequester any voting securities of the insurer owned directly or indirectly by the person and issue such orders with respect to the

seizure or sequestration as may be appropriate to effectuate this chapter. Notwithstanding any other provisions of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

~~33-13-10.~~

~~Whenever it appears to the Commissioner that any insurer or any director, officer, employee, or agent of any insurer has committed a willful violation of this chapter, the Commissioner may cause criminal proceedings to be instituted by the superior court of the county in which the principal office of the insurer is located or, if the insurer has no such office in the state, by the Superior Court of Fulton County against the insurer or the responsible director, officer, employee, or agent of the insurer.~~

33-13-11.

(a) Any insurer failing, without just cause, to file any registration statement as required in this chapter shall be required, after notice and hearing, to pay a penalty of \$1,000.00 for each day's delay. The maximum penalty under this Code section is \$50,000.00. The Commissioner may reduce the penalty if the insurer demonstrates to the Commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(b) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to subsection (a) of Code Section 33-13-4, paragraph (2) of subsection (a) of Code Section 33-13-5, or subsection (b) of Code Section 33-13-5, or which violate this chapter, shall pay, in their individual capacity, a civil forfeiture of not more than \$50,000.00 per violation, after notice and hearing before the Commissioner. In determining the amount of the civil forfeiture, the Commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(c) Whenever it appears to the Commissioner that any insurer subject to this chapter or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract which is subject to Code Section 33-13-5 and which would not have been approved had the approval been requested, the Commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the Commissioner may also order the insurer to void any contracts and restore the status quo if the action is in the best interest of its policyholders, creditors, or the public.

1109 (d) Whenever it appears to the Commissioner that any insurer or any director, officer,
 1110 employee, or agent thereof has committed a willful violation of this chapter, the
 1111 Commissioner may cause criminal proceedings to be instituted by the Superior Court of
 1112 Fulton County against the insurer or the responsible director, officer, employee, or agent
 1113 thereof. Any insurer which willfully violates this chapter may be fined not more than
 1114 \$100,000.00. Any individual who willfully violates this chapter may be fined in his or her
 1115 individual capacity not more than \$100,000.00 or be imprisoned for not more than one to
 1116 three years, or both.

1117 (e) Any officer, director, or employee of an insurance holding company system who
 1118 willfully and knowingly subscribes to or makes or causes to be made any false statements
 1119 or false reports or false filings with the intent to deceive the Commissioner in the
 1120 performance of his or her duties under this chapter upon conviction shall be imprisoned for
 1121 not more than three years or fined \$100,000.00, or both. Any fines imposed shall be paid
 1122 by the officer, director, or employee in his or her individual capacity.

1123 (f) Whenever it appears to the Commissioner that any person has committed a violation
 1124 of Code Section 33-13-3 and which prevents the full understanding of the enterprise risk
 1125 to the insurer by affiliates or by the insurance holding company system, the violation may
 1126 serve as an independent basis for disapproving dividends or distributions and for placing
 1127 the insurer under an order of supervision in accordance with Code Section 33-3-18.

1128 ~~33-13-11~~ 33-13-12.

1129 Whenever it appears to the Commissioner that any person has committed a violation of this
 1130 chapter which so impairs the financial condition of a domestic insurer as to threaten
 1131 insolvency or make the further transaction of business by it hazardous to its policyholders,
 1132 creditors, shareholders, or the public, the Commissioner may proceed as provided in
 1133 Chapter 37 of this title to take possession of the property of the domestic insurer and to
 1134 conduct the business of the domestic insurer.

1135 ~~33-13-12~~ 33-13-13.

1136 Whenever it appears to the Commissioner that any person has committed a violation of this
 1137 chapter which makes the continued operation of an insurer contrary to the interests of
 1138 policyholders or the public, the Commissioner may, after giving notice and an opportunity
 1139 to be heard, determine to suspend, revoke, or refuse to renew the insurer's license or
 1140 authority to do business in this state for any period as he or she finds is required for the
 1141 protection of policyholders or the public. Any determination shall be accompanied by
 1142 specific findings of fact and conclusions of law.

~~33-13-13~~ 33-13-14.

(a) If an order for the liquidation, rehabilitation, or conservation of an insurer authorized to do business in this state is entered under Chapter 37 of this title, the receiver appointed under the order shall have a right to recover on behalf of the insurer ~~the amount of distributions other than stock dividends paid by the insurer on its capital stock at any time during the five years preceding the petition for liquidation, rehabilitation, or conservation, subject to the limitations of subsections (b) through (d) of this Code section~~ (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, where the distribution or payment pursuant to (i) or (ii) is made at any time during the one year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (b), (c), and (d) of this Code section.

(b) No ~~dividend~~ distribution shall be recoverable if that insurer shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill the obligations to claimants under its insurance contracts.

(c)(1) Any person who was ~~an affiliate of the insurer~~ a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions ~~he or~~ payments under subsection (a) of this Code section which the person received.

(2) Any person who was ~~an affiliate of the insurer~~ otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions ~~he or she~~ would have received if they had been paid immediately.

(3) If under paragraphs (1) and (2) of this subsection two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this Code section shall be:

~~(1) The amount needed in excess of all other available assets to pay all claims under the receivership of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds; and~~

~~(2) Reduced by any amount already paid to receivers under similar laws of other states.~~

~~(e) If any person liable under subsection (b) of this Code section is insolvent, all its affiliates that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate. To the extent that any person liable under subsection (c) of this Code section is insolvent or~~

otherwise fails to pay claims due from it, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

~~(f) In addition to any authority of the Commissioner contained elsewhere under this title or under the laws of this state, whenever the Commissioner shall deem it expedient, he shall also have the authority to examine either in person or by some examiner duly authorized by him the affairs, transactions, accounts, records, documents, and assets of any insurer, person, parent, subsidiary, or affiliate within an insurance holding company system and any other facts relative to the business methods, management, and affairs of the insurers, persons, parents, subsidiaries, or affiliates to determine whether any dividends or other distributions made by an insurer to any person, parent, subsidiary, or affiliate within the holding company system are recoverable under subsection (b) of this Code section; and the Commissioner may subpoena any portion or all of the documents, books, accounts, records, or other information of insurers, persons, parents, subsidiaries, or affiliates as he may deem necessary to reach his determination. The subpoenas may be obtained by the Commissioner in accordance with Chapter 2 of this title and the expenses of any examination made pursuant to this Code section shall be paid by the persons, affiliates, subsidiaries, or insurers in the same manner as provided for insurers in Chapter 2 of this title.~~

~~33-13-14~~ 33-13-15.

(a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the Commissioner pursuant to this chapter may appeal the action to the Superior Court of Fulton County. The court shall conduct its review without a jury and by trial de novo, except that, if all parties including the Commissioner so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

(b) The filing of an appeal pursuant to this Code section shall stay the application of any such rule, regulation, order, or other action of the Commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors, or the public.

(c) Any person aggrieved by any failure of the Commissioner to act or make a determination required by this chapter may petition the Superior Court of Fulton County for a writ in the nature of a mandamus or a peremptory mandamus directing the Commissioner to act or make the determination immediately.

1216 ~~33-13-15.~~

1217 ~~Any insurer which willfully violates this chapter may be fined not more than \$10,000.00.~~

1218 ~~Any individual who willfully violates this chapter may be fined not more than \$1,000.00~~

1219 ~~or, if the willful violation involves the deliberate perpetration of a fraud upon the~~

1220 ~~Commissioner, imprisoned not more than two years, or both."~~

1221 **SECTION 2.**

1222 Chapter 21 of Title 33 of the Official Code of Georgia Annotated, relating to health

1223 maintenance organizations, is amended by revising subsection (a) of Code Section 33-21-8,

1224 relating to general powers of health maintenance organizations and filing of notice of

1225 exercise of powers, as follows:

1226 "(a) The powers of a health maintenance organization include, but are not limited to, the
1227 following:

1228 (1) The purchase, lease, construction, renovation, operation, or maintenance of hospitals,
1229 medical facilities, or both, their ancillary equipment, and such property as may
1230 reasonably be required for the organization's principal office or for such other purposes
1231 as may be necessary in the transaction of the business of the organization;

1232 (2) The making of loans to a medical group under contract with it in furtherance of its
1233 program or the making of loans to a corporation or corporations under its control for the
1234 purpose of acquiring or constructing medical facilities and hospitals or in furtherance of
1235 a program providing health care services to enrollees;

1236 (3) The furnishing of health care services through providers which are under contract
1237 with or employed by the organization;

1238 (4) The contracting with any person for the performance on its behalf of certain functions
1239 such as marketing and enrollment;

1240 (5) The contracting with another insurer licensed in this state for the provision of
1241 insurance, indemnity, or reimbursement against the cost of health care services provided
1242 by the organization; ~~and~~

1243 (6) The offering, in addition to basic health care services, of:

1244 (A) Additional health care services;

1245 (B) Indemnity benefits covering out-of-area or emergency services; and

1246 (C) Indemnity benefits, in addition to those relating to out-of-area and emergency
1247 services, provided through insurers; and

1248 (7) The extension of malpractice insurance to a medical group with which it has a
1249 mutually exclusive contract to provide medical services to the enrollees of the health
1250 maintenance organization; provided, however, that coverage only protects against
1251 liability arising from medical care provided to enrollees of the health maintenance

1252 organization who receive medical care at a facility under contract with or owned or
1253 operated by the health maintenance organization."

1254 **SECTION 3.**

1255 All laws and parts of laws in conflict with this Act are repealed.