

House Bill 969

By: Representatives Smith of the 18th, Williams of the 148th, Erwin of the 28th, Gaines of the 117th, and Gambill of the 15th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 13 of Title 33 of the Official Code of Georgia Annotated, relating to
2 insurance holding company systems, so as to update the regulation of insurance company
3 holding systems per direction from the National Association of Insurance Commissioners;
4 to provide for definitions; to provide guidelines for group capital calculation in insurance
5 company holding systems; to provide guidelines for liquidity stress test framework in
6 insurance company holding systems; to provide standards governing transactions within an
7 insurance holding company system when an insurer is deemed to be in a hazardous financial
8 condition; to provide protections for an affiliate in an insurance holding company system
9 when a domestic insurer is subject to certain proceedings; to provide clarifications on
10 confidentiality and to extend confidentiality protections to third-party consultants designated
11 by the Commissioner; to provide for related matters; to provide for an effective date; to
12 repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 969

- 1 -

SECTION 1.

14

15 Chapter 13 of Title 33 of the Official Code of Georgia Annotated, relating to insurance
16 holding company systems, is amended by revising Code Section 33-13-1, relating to
17 definitions, as follows:

18 "33-13-1.

19 As used in this article, the term:

20 (1) 'Affiliate,' including the term 'affiliate of' or 'person affiliated with' a specific person,
21 means a person who directly or indirectly through one or more intermediaries controls,
22 is controlled by, or is under common control with the person specified.

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

25 (3) 'Control,' including the terms 'controlling,' 'controlled by,' and 'under common control
26 with,' means the direct or indirect possession of the power to direct or cause the direction
27 of the management and policies of a person whether through the ownership of voting
28 securities, by contract other than a commercial contract for goods or nonmanagement
29 services, or otherwise, unless the power is the result of an official position or corporate
30 office held by the person. Control shall be presumed to exist if any person directly or
31 indirectly owns, controls, holds with the power to vote, or holds proxies representing 10
32 percent or more of the voting securities of any other person. This presumption may be
33 rebutted by a showing made in the manner provided by subsection (k) of Code
34 Section 33-13-4 that control does not exist in fact. The Commissioner may determine
35 after furnishing all persons in interest notice and opportunity to be heard and after making
36 specific findings of fact to support such determination that control exists in fact,
37 notwithstanding the absence of a presumption to that effect.

38 (4) 'Enterprise risk' means any activity, circumstance, event, or series of events involving
39 one or more affiliates of an insurer that, if not remedied promptly, is likely to have a
40 material adverse effect upon the financial condition or liquidity of the insurer or its

41 insurance holding company system as a whole, including, but not limited to, anything that
42 would cause the insurer's risk-based capital to fall into company action level as set forth
43 in Chapter 56 of this title or would cause the insurer to be in hazardous financial
44 condition based on the standards prescribed by the Commissioner's rules and regulations.

45 ~~(4.1)(5)~~ 'Group-wide supervisor' means the regulatory official authorized to engage in
46 conducting and coordinating group-wide supervision activities who is determined or
47 acknowledged by the Commissioner under Code Section 33-13-7.1 to have sufficient
48 significant contacts with an internationally active insurance group.

49 (6) 'Group capital calculation instructions' mean the group capital calculation instructions
50 as adopted and amended by the NAIC and as adopted by regulation promulgated by the
51 Commissioner or as otherwise prescribed by regulation promulgated by the
52 Commissioner.

53 ~~(5)(7)~~ 'Insurance holding company system' means two or more affiliated persons, one or
54 more of which is an insurer.

55 ~~(6)(8)~~ 'Insurer' shall have the same meaning as set forth in Code Section 33-1-2, except
56 that it shall not include agencies, authorities, or instrumentalities of the United States, its
57 possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia,
58 or a state or political subdivision of a state.

59 ~~(6.1)(9)~~ 'Internationally active insurance group' means an insurance holding company
60 system that includes an insurer registered under Code Section 33-13-4 and that meets the
61 following criteria:

- 62 (A) Premiums written in at least three countries;
- 63 (B) The percentage of gross premiums written outside the United States is at least 10
64 percent of the insurance holding company system's total gross written premiums; and
- 65 (C) Based on a three-year rolling average, the total assets of the insurance holding
66 company system are at least \$50 billion or the total gross written premiums of the
67 insurance holding company system are at least \$10 billion.

68 (10) 'NAIC' means the National Association of Insurance Commissioners.

69 (11) 'NAIC Liquidity Stress Test Framework' means the separate NAIC publication
70 which includes a history of the NAIC's development of regulatory liquidity stress testing,
71 the scope criteria applicable for a specific data year, and the liquidity stress test
72 instructions and reporting templates as adopted and amended by the NAIC and as adopted
73 by regulation by the Commissioner or as otherwise prescribed by regulation promulgated
74 by the Commissioner.

75 ~~(7)~~(12) 'Person' means an individual, a corporation, a limited liability company, a
76 partnership, an association, a joint-stock company, a trust, an unincorporated
77 organization, any similar entity, or any combination of the foregoing acting in concert,
78 but shall not include any joint venture partnership exclusively engaged in owning,
79 managing, leasing, or developing real or tangible personal property.

80 (13) 'Scope criteria' as set forth in the NAIC Liquidity Stress Test Framework means the
81 designated exposure bases along with the minimum magnitudes thereof for the specified
82 data year, used to establish a preliminary list of insurers considered scoped into the NAIC
83 Liquidity Stress Test Framework for that data year.

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

87 ~~(8)~~(15) 'Subsidiary' means an affiliate controlled by a specified person directly or
88 indirectly through one or more intermediaries.

89 ~~(9)~~(16) 'Voting security' shall include any security convertible into or evidencing a right
90 to acquire a voting security."

91 **SECTION 2.**

92 Said chapter is further amended by revising Code Section 33-13-3, relating to the acquisition
93 of control of or merger with domestic insurers, as follows:

94 "33-13-3.

95 (a) **Filing requirements.**

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

109 (2) For the purposes of this Code section, any controlling person of a domestic insurer
110 seeking to divest its controlling interest in the domestic insurer, in any manner, shall file
111 with the Commissioner, with a copy to the insurer, confidential notice of its proposed
112 divestiture at least 30 days prior to the cessation of control. The Commissioner shall
113 determine those instances in which the party seeking to divest or to acquire a controlling
114 interest in an insurer will be required to file for and obtain approval of the transaction.
115 The information shall remain confidential until the conclusion of the transaction unless
116 the Commissioner, in his or her discretion, determines that confidential treatment will
117 interfere with enforcement of this Code section. If the statement referred to in
118 paragraph (1) of this subsection is otherwise filed, this paragraph shall not apply.

119 (3) With respect to a transaction subject to this Code section, the acquiring person must
120 also file a preacquisition notification with the Commissioner, which shall contain the

121 information set forth in paragraph (1) of subsection (c) of Code Section 33-13-3.1. A
122 failure to file the notification may be subject to penalties specified in paragraph (3) of
123 subsection (e) of Code Section 33-13-3.1.

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

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

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

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

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

- 148 (2) The source, nature, and amount of the consideration used or to be used in effecting
149 the merger or other acquisition of control, a description of any transaction wherein funds
150 were or are to be obtained for that purpose, including any pledge of the insurer's stock,
151 or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons
152 furnishing the consideration; provided, however, that where a source of the consideration
153 is a loan made in the lender's ordinary course of business, the identity of the lender shall
154 remain confidential if the person filing the statement so requests;
- 155 (3) Fully audited financial information as to the earnings and financial condition of each
156 acquiring party for the preceding five fiscal years of each acquiring party or for any lesser
157 period as the acquiring party and any predecessors of the acquiring party shall have been
158 in existence and similar unaudited information as of a date not earlier than 90 days prior
159 to the filing of the statement;
- 160 (4) Any plans or proposals which each acquiring party may have to liquidate the insurer,
161 to sell its assets or merge or consolidate it with any person, or to make any other material
162 change in its business or corporate structure or management;
- 163 (5) The number of shares of any security referred to in subsection (a) of this Code
164 section which each acquiring party proposes to acquire and the terms of the offer, request,
165 invitation, agreement, or acquisition referred to in subsection (a) of this Code section and
166 a statement as to the method by which the fairness of the proposal was arrived at;
- 167 (6) The amount of each class of any security referred to in subsection (a) of this Code
168 section which is beneficially owned or concerning which there is a right to acquire
169 beneficial ownership by each acquiring party;
- 170 (7) A full description of any contracts, arrangements, or understandings with respect to
171 any security referred to in subsection (a) of this Code section in which any acquiring
172 party is involved, including but not limited to transfer of any of the securities, joint
173 ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees
174 against loss or guarantees of profits, division of losses or profits, or the giving or

175 withholding of proxies; and the description shall identify the persons with whom the
176 contracts, arrangements, or understandings have been entered into;

177 (8) A description of the purchase by any acquiring party of any security referred to in
178 subsection (a) of this Code section during the 12 calendar months preceding the filing of
179 the statement by any acquiring party, including the dates of purchase, names of the
180 purchasers, and consideration paid or agreed to be paid;

181 (9) A description of any recommendations to purchase any security referred to in
182 subsection (a) of this Code section made during the 12 calendar months preceding the
183 filing of the statement by any acquiring party or by anyone based upon interviews or at
184 the suggestion of the acquiring party;

185 (10) Copies of all tender offers for, requests or invitations for tenders of exchange offers
186 for, and agreements to acquire or exchange any securities referred to in subsection (a) of
187 this Code section and, if distributed, of additional soliciting material relating thereto;

188 (11) The terms of any agreement, contract, or understanding made with or proposed to
189 be made with any broker-dealer as to solicitation of securities referred to in subsection (a)
190 of this Code section for tender and the amount of any fees, commissions, or other
191 compensation to be paid to broker-dealers with regard to the agreement, contract, or
192 understanding;

193 (12) An agreement by the person required to file the statement referred to in
194 subsection (a) of this Code section that it will provide the annual report, specified in
195 paragraph (1) of subsection (l) of Code Section 33-13-4, for so long as control exists;

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

200 (14) Any additional information as the Commissioner may by rule or regulation
201 prescribe as necessary or appropriate for the protection of policyholders of the insurer or
202 in the public interest.

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

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

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

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

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

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

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

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

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

244 (C) The financial condition of any acquiring party is such as might jeopardize the
245 financial stability of the insurer or prejudice the interest of its policyholders;

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

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

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

255 (2) The public hearing referred to in paragraph (1) of this subsection shall be held within
256 30 days after the statement required by subsection (a) of this Code section is filed; and
257 at least 20 days' notice of the public hearing shall be given by the Commissioner to the
258 person filing the statement. Not less than seven days' notice of the public hearing shall
259 be given by the person filing the statement to the insurer and to any other persons as may
260 be designated by the Commissioner. The Commissioner shall make a determination
261 within the 60 day period preceding the effective date of the proposed transaction. At the
262 hearing, the person filing the statement, the insurer, any person to whom notice of hearing
263 was sent, and any other person whose interests may be affected thereby shall have the
264 right to present evidence, examine and cross-examine witnesses, and offer oral and
265 written arguments and in connection therewith shall be entitled to conduct discovery
266 proceedings in the same manner as is presently allowed in the superior courts of this state.
267 All discovery proceedings shall be concluded not later than three days prior to the
268 commencement of the public hearing.

269 (3) If the proposed acquisition of control will require the approval of more than one
270 commissioner, the public hearing referred to in paragraph (2) of this subsection may be
271 held on a consolidated basis upon request of the person filing the statement referred to
272 in subsection (a) of this Code section. Such person shall file the statement referred to in
273 subsection (a) of this Code section with the ~~National Association of Insurance~~
274 ~~Commissioners~~ NAIC within five days of making the request for a public hearing. A
275 commissioner may opt out of a consolidated hearing and shall provide notice to the
276 applicant of the opt-out within ten days of the receipt of the statement referred to in
277 subsection (a) of this Code section. A hearing conducted on a consolidated basis shall
278 be public and shall be held within the United States before the commissioners of the

279 states in which the insurers are domiciled. Such commissioners shall hear and receive
280 evidence. A commissioner may attend such hearing, in person or by telecommunication.

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

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

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

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

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

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

302 (g) **Jurisdiction; service of process.** The courts of this state are vested with jurisdiction
303 over every person not resident, domiciled, or authorized to do business in this state who
304 files a statement with the Commissioner under this Code section and over all actions
305 involving that person arising out of violations of this Code section; and each person shall

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

312 **SECTION 3.**

313 Said chapter is further amended by revising Code Section 33-13-4, relating to the registration
314 of insurers belonging to holding company systems, as follows:

315 "33-13-4.

316 (a) **Requirement of registration generally.** Every insurer which is authorized to do
317 business in this state and which is a member of an insurance holding company system shall
318 register with the Commissioner, except a foreign insurer subject to disclosure requirements
319 and standards adopted by statute or regulation in the jurisdiction of its domicile which are
320 substantially similar to those contained:

321 (1) In this Code section;

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

324 (3) In either paragraph (2) of subsection (a) of Code Section 33-13-5 or a provision such
325 as the following: 'Each registered insurer shall keep current the information required to
326 be disclosed in its registration statement by reporting all material changes or additions
327 within 15 days after the end of the month in which it learns of each change or addition.'

328 Any insurer which is subject to registration under this Code section shall register within 15
329 days after it becomes subject to registration and annually thereafter by April 30 of each
330 year for the previous calendar year, unless the Commissioner for good cause shown
331 extends the time for registration, and then within the extended time. The Commissioner

332 may require any insurer authorized to do business in this state which is a member of an
333 insurance holding company system, and which is not subject to registration under this Code
334 section, to furnish a copy of the registration statement, the summary specified in
335 subsection (c) of this Code section, or other information filed by the insurance company
336 with the insurance regulatory authority of its domiciliary jurisdiction.

337 (b) **Contents of registration statement.** Every insurer subject to registration shall file a
338 registration statement with the Commissioner on a form and in a format prescribed by the
339 ~~National Association of Insurance Commissioners~~ NAIC and adopted by regulation
340 promulgated by the Commissioner or as otherwise prescribed by regulation promulgated
341 by the Commissioner, which statement shall contain current information about:

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

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

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

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

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

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

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

354 (E) All management and service contracts and all cost-sharing arrangements;

355 (F) Reinsurance agreements;

356 (G) Dividends and other distributions to shareholders; and

357 (H) Consolidated tax allocation agreements;

- 358 (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling
359 affiliate, for a loan made to any member of the insurance holding company system;
- 360 (5) If requested by the Commissioner, financial statements of or within an insurance
361 holding company system, including all affiliates. Financial statements may include, but
362 are not limited to, annual audited financial statements filed with the federal Securities and
363 Exchange Commission pursuant to the federal Securities Act of 1933, as amended, or the
364 Securities Exchange Act of 1934, as amended. An insurer required to file financial
365 statements pursuant to this paragraph may satisfy the request by providing the
366 Commissioner with the most recently filed parent corporation financial statements filed
367 with the Securities and Exchange Commission;
- 368 (6) Other matters concerning transactions between registered insurers and any affiliates
369 as may be included from time to time in any registration forms adopted or approved by
370 the Commissioner;
- 371 (7) Statements that the insurer's board of directors is responsible for and oversees
372 corporate governance and internal controls and that the insurer's officers or senior
373 management have approved, implemented, and continue to maintain and monitor
374 corporate governance and internal control procedures; and
- 375 (8) Any other information required by the Commissioner by rule or regulation.
- 376 (c) **Summary of changes to registration statement.** All registration statements shall
377 contain a summary outlining all items in the current registration statement representing
378 changes from the prior registration statement.
- 379 (d) **Disclosure of nonmaterial information.** No information need be disclosed on the
380 registration statement filed pursuant to subsection (b) of this Code section if the
381 information is not material for the purposes of this Code section. Unless the Commissioner
382 by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans,
383 extensions of credit, or investments involving one-half of 1 percent or less of an insurer's
384 admitted assets as of December 31 of the preceding year shall not be deemed material for

385 purposes of this Code section. The definition of materiality provided in this subsection
386 shall not apply for purposes of the group capital calculation or the NAIC Liquidity Stress
387 Test Framework.

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

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

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

399 (h) **Filing of consolidated registration.** The Commissioner may require or allow two or
400 more affiliated insurers subject to registration under this Code section to file a consolidated
401 registration statement.

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

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

410 (k) **Filing of disclaimer.** Any person may file with the Commissioner a disclaimer of
411 affiliation with any authorized insurer or the disclaimer may be filed by the insurer or any

412 member of an insurance holding company system. The disclaimer shall fully disclose all
413 material relationships and bases for affiliation between the persons and the insurer as well
414 as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to
415 have been granted unless the Commissioner, within 30 days following receipt of a
416 complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of
417 disallowance, the disclaiming party may request an administrative hearing, which shall be
418 granted. The disclaiming party shall be relieved of its duty to register under this Code
419 section if approval of the disclaimer has been granted by the Commissioner, or if the
420 disclaimer is deemed to have been approved.

421 (1)(1) **Enterprise risk filing.** The ultimate controlling person of every insurer subject
422 to registration shall also file an annual enterprise risk report. The report shall, to the best
423 of the ultimate controlling person's knowledge and belief, identify the material risks
424 within the insurance holding company system that could pose enterprise risk to the
425 insurer. The report shall be filed with the lead state commissioner of the insurance
426 holding system as determined by the procedures within the Financial Analysis Handbook
427 adopted by the ~~National Association of Insurance Commissioners~~ NAIC and adopted by
428 regulation promulgated by the Commissioner or as otherwise prescribed by regulation
429 promulgated by the Commissioner.

430 (2) **Group capital calculation.** Except as provided below, the ultimate controlling
431 person of every insurer subject to registration shall concurrently file with the registration
432 an annual group capital calculation as directed by the lead state commissioner. The
433 report shall be completed in accordance with the NAIC group capital calculation
434 instructions, which may permit the lead state commissioner to allow a controlling person
435 that is not the ultimate controlling person to file the group capital calculation. The report
436 shall be filed with the lead state commissioner of the insurance holding company system
437 as determined by the Commissioner in accordance with the procedures within the

438 Financial Analysis Handbook adopted by the NAIC. Insurance holding company systems
439 described below are exempt from filing the group capital calculation:

440 (A) An insurance holding company system that has only one insurer within its holding
441 company structure, that only writes business and is only licensed in its domestic state,
442 and assumes no business for any other insurer;

443 (B) An insurance holding company system that is required to perform a group capital
444 calculation specified by the United States Federal Reserve Board. The lead state
445 commissioner shall request the calculation from the Federal Reserve Board under the
446 terms of information sharing agreements in effect. If the Federal Reserve Board cannot
447 share the calculation with the lead state commissioner, the insurance holding company
448 system is not exempt from the group capital calculation filing;

449 (C) An insurance holding company system whose non-United States group-wide
450 supervisor is located within a reciprocal jurisdiction as described in division (a)(6)(A)(i)
451 of Code Section 33-7-14 that recognizes the United States state regulatory approach to
452 group supervision and group capital;

453 (D) An insurance holding company system:

454 (i) That provides information to the lead state that meets the requirements for
455 accreditation under the NAIC financial standards and accreditation program, either
456 directly or indirectly through the group-wide supervisor, who has determined such
457 information is satisfactory to allow the lead state to comply with the NAIC Financial
458 Analysis Handbook; and

459 (ii) Whose non-United States group-wide supervisor that is not in a reciprocal
460 jurisdiction recognizes and accepts, as specified by the Commissioner in regulation,
461 the group capital calculation as the world-wide group capital assessment for United
462 States insurance groups who operate in that jurisdiction;

463 (E) Notwithstanding the provisions of subparagraphs (C) and (D) of this paragraph, a
464 lead state commissioner shall require the group capital calculation for United States

465 operations of any non-United States based insurance holding company system where,
466 after any necessary consultation with other supervisors or officials, it is deemed
467 appropriate by the lead state commissioner for prudential oversight and solvency
468 monitoring purposes or for ensuring the competitiveness of the insurance marketplace;
469 (F) Notwithstanding the provisions of subparagraphs (A) and (D) of this paragraph,
470 the lead state commissioner has the discretion to exempt the ultimate controlling person
471 from filing the annual group capital calculation or to accept a limited group capital
472 filing or report in accordance with criteria as specified by the commissioner in
473 regulation; and

474 (G) If the lead state commissioner determines that an insurance holding company
475 system no longer meets one or more of the requirements for an exemption from filing
476 the group capital calculation under this subsection, the insurance holding company
477 system shall file the group capital calculation at the next annual filing date unless given
478 an extension by the lead state commissioner based on reasonable grounds shown.

479 (3) **Liquidity stress test.** The ultimate controlling person of every insurer subject to
480 registration and also scoped into the NAIC Liquidity Stress Test Framework shall file the
481 results of a specific year's liquidity stress test. The filing shall be made to the lead state
482 insurance commissioner of the insurance holding company system as determined by the
483 procedures within the Financial Analysis Handbook adopted by the NAIC:

484 (A)(i) The NAIC Liquidity Stress Test Framework includes scope criteria applicable
485 to a specific data year. These scope criteria are reviewed at least annually by the
486 NAIC Financial Stability Task Force or its successor. Any change to the NAIC
487 Liquidity Stress Test Framework or to the data year for which the scope criteria are
488 to be measured shall be effective on January 1 of the year following the calendar year
489 when such changes are adopted.

490 (ii) Insurers meeting at least one threshold of the scope criteria are considered scoped
491 into the NAIC Liquidity Stress Test Framework for the specified data year unless the

492 lead state insurance commissioner, in consultation with the NAIC Financial Stability
493 Task Force or its successor, determines the insurer should not be scoped into such
494 framework for that data year.

495 (iii) Insurers that do not trigger at least one threshold of the scope criteria are
496 considered scoped out of the NAIC Liquidity Stress Test Framework for the specified
497 data year, unless the lead state insurance commissioner, in consultation with the
498 NAIC Financial Stability Task Force or its successor, determines the insurer should
499 be scoped into such framework for that data year.

500 (iv) The lead state insurance commissioner, in consultation with the NAIC Financial
501 Stability Task Force or its successor, will assess the concern that state regulators wish
502 to avoid having insurers scoped in and out of the NAIC Liquidity Stress Test
503 Framework on a frequent basis as part of the determination for an insurer; and

504 (B) The performance of, and filing of the results from, a specific year's liquidity stress
505 test shall comply with the NAIC Liquidity Stress Test Framework's instructions and
506 reporting templates for that year and any lead state insurance commissioner
507 determinations, in consultation with the NAIC Financial Stability Task Force or its
508 successor, provided within such framework.

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

512 **SECTION 4.**

513 Said chapter is further amended by revising Code Section 33-13-5, relating to the standards
514 governing transactions by registered insurers with affiliates generally, extraordinary
515 distributions, and adequacy of surplus, as follows:

516 "33-13-5.

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

519 (A) The terms shall be fair and reasonable;

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

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

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

525 (E) The books, accounts, and records of each party to all such transactions shall be so
526 maintained as to clearly and accurately disclose the nature and details of the
527 transactions, including such accounting information as is necessary to support the
528 reasonableness of the charges or fees to the respective parties; ~~and~~

529 (F) The insurer's surplus with regard to policyholders following any dividends or
530 distributions to shareholder affiliates shall be reasonable in relation to the insurer's
531 outstanding liabilities and adequate to its financial needs;

532 (G)(i) If an insurer subject to this article is deemed by the Commissioner to be in a
533 hazardous financial condition based upon standards prescribed by the Commissioner's
534 rules and regulations or a condition that would be grounds for supervision,
535 conservation, or a delinquency proceeding, then the Commissioner may require the
536 insurer to secure and maintain either a deposit, held by the Commissioner, or a bond,
537 as determined by the insurer at the insurer's discretion, for the protection of the insurer
538 for the duration of any contracts or agreements or the existence of the condition for
539 which the Commissioner required the deposit or the bond.

540 (ii) In determining whether a deposit or a bond is required, the Commissioner should
541 consider whether concerns exist with respect to the affiliated person's ability to fulfill
542 any contracts or agreements if the insurer were to be put into liquidation. Once the

543 insurer is deemed to be in a hazardous financial condition or a condition that would
544 be grounds for supervision, conservation, or a delinquency proceeding, and a deposit
545 or bond is necessary, the Commissioner has discretion to determine the amount of the
546 deposit or bond, not to exceed the value of the contracts or agreements in any one
547 year, and whether such deposit or bond should be required for a single contract,
548 multiple contracts, or a contract only with a specified person or persons;

549 (H)(i) All records and data of the insurer held by an affiliate are and remain the
550 property of the insurer, are subject to control of the insurer, are identifiable, and are
551 segregated or readily capable of segregation, at no additional cost to the insurer, for
552 all other persons' records and data. This includes all records and data that are
553 otherwise the property of the insurer, in whatever form maintained, including but not
554 limited to: claims and claims files; policyholder lists; application files; litigation files;
555 premium records; rate books; underwriting manuals; personnel records; financial
556 records; and similar records within the possession, custody, or control of the affiliate.

557 (ii) At the request of the insurer, the affiliate shall provide that the receiver can:
558 obtain a complete set of all records of any type that pertain to the insurer's business;
559 obtain access to the operational systems on which the data is maintained; obtain the
560 software that runs those systems either through assumption of licensing agreements
561 or otherwise; and restrict the use of the data by the affiliate if it is not operating the
562 insurer's business. The affiliate shall provide a waiver of any landlord lien or other
563 encumbrance to give the insurer access to all records and data in the event of the
564 affiliates' default under a lease other agreement; and

565 (I) Premiums or other funds belonging to the insurer that are collected by or held by
566 an affiliate are the exclusive property of the insurer and are subject to the control of the
567 insurer. Any right of offset in the event an insurer is placed into receivership shall be
568 subjected to Chapter 37 of this title.

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

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

585 (B) Loans or extensions of credit to any person who is not an affiliate, where the
586 insurer makes such loans or extensions of credit with the agreement or understanding
587 that the proceeds of such transactions, in whole or in substantial part, are to be used to
588 make loans or extensions of credit to, to purchase assets of, or to make investments in
589 any affiliate of the insurer making such loans or extensions of credit to purchase assets
590 of, or to make investments in, any affiliate of the insurer making the loans or extensions
591 of credit, provided such transactions are equal to or exceed: with respect to nonlife
592 insurers, the lesser of 3 percent of the insurer's admitted assets or 25 percent of surplus
593 with regard to policyholders; or with respect to life insurers, 3 percent of the insurer's
594 admitted assets; each as of December 31 next preceding;

- 595 (C) Reinsurance agreements or modifications thereto, including:
596 (i) All reinsurance pooling agreements; and
597 (ii) Agreements in which the reinsurance premium or a change in the insurer's
598 liabilities, or the projected reinsurance premium or a change in the insurer's liabilities
599 in any of the next three years, equals or exceeds 5 percent of the insurer's surplus with
600 regard to policyholders, as of December 31 next preceding, including those
601 agreements which may require as consideration the transfer of assets from an insurer
602 to a nonaffiliate, if an agreement or understanding exists between the insurer and
603 nonaffiliate that any portion of the assets will be transferred to one or more affiliates
604 of the insurer;
- 605 (D) All management agreements, service contracts, tax allocation agreements,
606 guarantees, and all cost-sharing agreements;
- 607 (E) Guarantees when made by a domestic insurer; provided, however, that a guarantee
608 which is quantifiable as to amount is not subject to the notice requirements of this
609 paragraph unless it exceeds the lesser of one-half of 1 percent of the insurer's admitted
610 assets or 10 percent of surplus as regards policyholders as of December 31 next
611 preceding. Further, all guarantees which are not quantifiable as to amount are subject
612 to the notice requirements of this paragraph;
- 613 (F) Direct or indirect acquisitions or investments in a person that controls the insurer
614 or in an affiliate of the insurer in an agreement which, together with its present holdings
615 in such investments, exceeds 2 1/2 percent of the insurer's surplus to policyholders.
616 Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Code
617 Section 33-13-2 or authorized under any other Code section of this title, or in
618 nonsubsidiary insurance affiliates that are subject to the provisions of this article, are
619 exempt from this requirement; and
- 620 (G) Any material transactions, specified by regulation, which the Commissioner
621 determines may adversely affect the interests of the insurer's policyholders.

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

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

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

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

638 (6)(A) Any affiliate that is party to an agreement or contract with a domestic insurer
639 that is subject to subparagraph (a)(2)(D) of this Code section shall be subject to the
640 jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings
641 against the insurer and to the authority of any supervisor, conservator, rehabilitator, or
642 liquidator for the insurer appointed pursuant to Chapter 37 of this title for the purpose
643 of interpreting, enforcing, and overseeing the affiliates' obligations under the agreement
644 or contract to perform services for the insurer that:

645 (i) Are an integral part of the insurer's operations, including but not limited to:
646 management; administration; accounting; data processing; marketing; underwriting;
647 claims handling; investment; and any other similar functions; or

648 (ii) Are essential to the insurer's ability to fulfill its obligations under insurance
649 policies.

650 (B) The Commissioner may require that an agreement or contract pursuant to
651 subparagraph (a)(2)(D) of this Code section for the provision of services described in
652 divisions (i) and (ii) of subparagraph (A) of this paragraph specify that the affiliate
653 consents to the jurisdiction as set forth in this paragraph.

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

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

668 (3) In determining whether a dividend or distribution is extraordinary, an insurer other
669 than a life insurer may carry forward net income from the previous two calendar years
670 that has not already been paid out as dividends. This carry-forward shall be computed
671 by taking the net income from the second and third preceding calendar years, not
672 including realized capital gains, less dividends paid in the second and immediate
673 preceding calendar years.

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

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

- 683 (1) The size of the insurer as measured by its assets, capital and surplus, reserves,
684 premium writings, insurance in force, and other appropriate criteria;
- 685 (2) The extent to which the insurer's business is diversified among the several lines of
686 insurance;
- 687 (3) The number and size of risks insured in each line of business;
- 688 (4) The extent of the geographical dispersion of the insurer's insured risks;
- 689 (5) The nature and extent of the insurer's reinsurance program;
- 690 (6) The quality, diversification, and liquidity of the insurer's investment portfolio;
- 691 (7) The recent past and projected future trend in the size of the insurer's surplus as
692 regards policyholders;
- 693 (8) The surplus with regard to policyholders maintained by other comparable insurers;
- 694 (9) The adequacy of the insurer's reserves; and
- 695 (10) The quality and liquidity of investments in affiliates. The Commissioner may treat
696 any such investment as a disallowed asset for purposes of determining the adequacy of
697 surplus with regard to policyholders whenever in the judgment of the Commissioner the
698 investment so warrants."

699

SECTION 5.

700 Said chapter is further amended by revising Code Section 33-13-8, relating to confidentiality
701 of information and documents obtained during examinations or investigations, sharing
702 certain information, not delegation of regulatory authority or rule making, and responsibility
703 for enforcement, as follows:

704 "33-13-8.

705 (a)(1) Documents, materials, or other information in the possession or control of the
706 department that are obtained by or disclosed to the Commissioner or any other person in
707 the course of an examination or investigation made pursuant to Code Section 33-13-6 and
708 all information reported or provided to the department pursuant to paragraphs (12) and
709 (13) of subsection (b) of Code Section 33-13-3 and Code Sections 33-13-4, 33-13-5, and
710 33-13-7.1 are recognized by this state as being proprietary and to contain trade secrets,
711 and shall be confidential by law and privileged, shall not be subject to public disclosure
712 under Article 4 of Chapter 18 of Title 50, shall not be subject to subpoena, and shall not
713 be subject to discovery or admissible in evidence in any private civil action. However,
714 the Commissioner is authorized to use the documents, materials, or other information in
715 the furtherance of any regulatory or legal action brought as a part of the Commissioner's
716 official duties. The Commissioner shall not otherwise make the documents, materials,
717 or other information public without the prior written consent of the insurer to which it
718 pertains unless the Commissioner, after giving the insurer and its affiliates that would be
719 affected thereby notice and opportunity to be heard, determines that the interest of
720 policyholders, shareholders, or the public will be served by the publication thereof, in
721 which event the Commissioner may publish all or any part in such manner as may be
722 deemed appropriate.

723 (2) For purposes of the information reported and provided to the department pursuant to
724 paragraph (2) of subsection (1) of Code Section 33-13-4, the Commissioner shall maintain
725 the confidentiality of the group capital calculation and group capital ratio produced within

726 the calculation and any group capital information received from an insurance holding
727 company supervised by the Federal Reserve Board or any United States group-wide
728 supervisor.

729 (3) For purposes of the information reported and provided to the department pursuant to
730 paragraph (3) of subsection (1) of Code Section 33-13-4, the Commissioner shall maintain
731 the confidentiality of the liquidity stress test results and supporting disclosures and any
732 liquidity stress test information received from an insurance holding company supervised
733 by the Federal Reserve Board and non-United States group-wide supervisors.

734 (b) Neither the Commissioner nor any person who received documents, materials, or other
735 information while acting under the authority of the Commissioner or with whom such
736 documents, materials, or other information are shared pursuant to this article shall be
737 permitted or required to testify in any private civil action concerning any confidential
738 documents, materials, or other information subject to subsection (a) of this Code section.

739 (c) In order to assist in the performance of the Commissioner's duties, the Commissioner:

740 (1) May share documents, materials, or other information, including the confidential and
741 privileged documents, materials, or other information subject to subsection (a) of this
742 Code section, and including proprietary and trade secret documents and materials, with
743 other state, federal, and international regulatory agencies, with the ~~National Association~~
744 ~~of Insurance Commissioners and its affiliates and subsidiaries, and with NAIC, any~~
745 third-party consultant designated by the Commissioner, and state, federal, and
746 international law enforcement authorities, including members of any supervisory college
747 described in Code Section 33-13-7, provided that the recipient agrees in writing to
748 maintain the confidentiality and privileged status of the document, material, or other
749 information and has verified in writing the legal authority to maintain confidentiality;

750 (2) Notwithstanding paragraph (1) of this subsection, may only share confidential and
751 privileged documents, materials, or other information reported pursuant to paragraph (1)
752 of subsection (1) of Code Section 33-13-4 with commissioners of states having statutes

753 or regulations substantially similar to subsection (a) of this Code section and who have
754 agreed in writing not to disclose such information;

755 (3) May receive documents, materials, or other information, including otherwise
756 confidential and privileged documents, materials, or other information, ~~from the National~~
757 ~~Association of Insurance Commissioners and its affiliates and subsidiaries~~ including
758 proprietary and trade secret information from the NAIC and from regulatory and law
759 enforcement officials of other foreign or domestic jurisdictions and shall maintain as
760 confidential or privileged any document, material, or other information received with
761 notice or the understanding that it is confidential or privileged under the laws of the
762 jurisdiction that is the source of the document, material, or other information; and

763 (4) Shall enter into written agreements with the ~~National Association of Insurance~~
764 ~~Commissioners~~ NAIC and any third-party consultant designated by the Commissioner
765 governing sharing and use of information provided pursuant to this article consistent with
766 this subsection that shall:

767 (A) Specify procedures and protocols regarding the confidentiality and security of
768 information shared with the ~~National Association of Insurance Commissioners and its~~
769 ~~affiliates and subsidiaries~~ NAIC or a third-party consultant designated by the
770 Commissioner pursuant to this article, including procedures and protocols for sharing
771 by the ~~National Association of Insurance Commissioners~~ NAIC with other state,
772 federal, and international regulatory agencies. The agreement shall provide that the
773 recipient agrees in writing to maintain the confidentiality and privileged status of the
774 documents, materials, or other information and has verified in writing the legal
775 authority to maintain such confidentiality;

776 (B) Specify that ownership of information shared with the ~~National Association of~~
777 ~~Insurance Commissioners and its affiliates and subsidiaries~~ NAIC or a third-party
778 consultant designated by the Commissioner pursuant to this article remains with the
779 Commissioner and that the ~~National Association of Insurance Commissioners'~~ NAIC's

780 or designated third-party consultant's use of the information is subject to the direction
781 of the Commissioner;

782 (C) Excluding documents, materials, or information reported pursuant to paragraph (3)
783 of subsection (l) of Code Section 33-13-4, prohibit the NAIC or a third-party consultant
784 designated by the Commissioner from storing the information shared pursuant to this
785 article in a permanent database after the underlying analysis is completed;

786 ~~(C)~~(D) Require prompt notice to be given to an insurer whose confidential information
787 in the possession of the ~~National Association of Insurance Commissioners~~ NAIC or a
788 third-party consultant designated by the Commissioner pursuant to this article is subject
789 to a request or subpoena to the ~~National Association of Insurance Commissioners~~ NAIC
790 a third-party consultant designated by the Commissioner for disclosure or production;
791 and

792 ~~(D)~~(E) Require the ~~National Association of Insurance Commissioners and its affiliates~~
793 ~~and subsidiaries~~ NAIC or a third-party consultant designated by the Commissioner to
794 consent to intervention by an insurer in any judicial or administrative action in which
795 the ~~National Association of Insurance Commissioners and its affiliates and subsidiaries~~
796 NAIC or a third-party consultant designated by the Commissioner may be required to
797 disclose confidential information about the insurer shared with the ~~National Association~~
798 ~~of Insurance Commissioners and its affiliates and subsidiaries~~ NAIC or a third-party
799 consultant designated by the Commissioner pursuant to this article.; and

800 (F) For documents, materials, or information reporting pursuant to paragraph (3) of
801 subsection (l) of Code Section 33-13-4, in the case of an agreement with a third-party
802 consultant designated by the Commissioner, provide for notification of the identity of
803 the consultant to the applicable insurers.

804 (d) The sharing of information by the Commissioner pursuant to this article shall not
805 constitute a delegation of regulatory authority or rule making, and the Commissioner is

806 solely responsible for the administration, execution, and enforcement of the provisions of
807 this article.

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

812 (f) Documents, materials, or other information in the possession or control of the ~~National~~
813 ~~Association of Insurance Commissioners~~ NAIC or a third-party consultant designated by
814 the Commissioner pursuant to this article shall be confidential by law and privileged, shall
815 not be subject to the open records laws, shall not be subject to subpoena, and shall not be
816 subject to discovery or admissible in evidence in any private civil action.

817 (g) The group capital calculation and resulting group capital ratio required under
818 paragraph (2) of subsection (l) of Code Section 33-13-4 and the liquidity stress test along
819 with its results and supporting disclosures required under paragraph (3) of subsection (l)
820 of Code Section 33-13-4 are regulatory tools for assessing group risks and capital adequacy
821 and group liquidity risks, respectively, and are not intended as a means to rank insurers or
822 insurance company systems generally. Therefore, except as otherwise may be required
823 under the provisions of this article, the making, publishing, disseminating, circulating, or
824 placing before the public, or causing directly or indirectly to be made, published,
825 disseminated, circulated, or placed before the public in a newspaper, magazine, or other
826 publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio
827 or television station or any electronic means of communication available to the public, or
828 in any other way as an advertisement, announcement, or statement containing a
829 representation or statement with regard to the group capital calculation, group capital ratio,
830 the liquidity stress test results, or supporting disclosures for the liquidity stress test of any
831 insurer or any insurer group, or of any component derived in the calculation by any insurer,
832 broker, or other person engaged in any manner in the insurance business would be

833 misleading and is therefore prohibited; provided, however, that if any materially false
834 statement with respect to the group capital calculation, resulting group capital ratio, an
835 inappropriate comparison of any amount to an insurer's or insurance group's group capital
836 calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures
837 for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's
838 or insurance group's liquidity stress test result or supporting disclosures is published in any
839 written publication and the insurer is able to demonstrate to the Commissioner with
840 substantial proof the falsity of such statement or the inappropriateness, as the case may be,
841 then the insurer may publish announcements in a written publication if the sole purpose of
842 the announcement is to rebut the materially false statement."

843 **SECTION 6.**

844 This Act shall become effective on July 1, 2022.

845 **SECTION 7.**

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