Tennessee Captive Insurance Statutes

Revised Tennessee Captive Insurance Act

Part 1—General Provisions

§ 56–13–101. Short Title; Purpose
§ 56–13–102. Definitions
§ 56–13–103. License Limitations; Requirements to DO Business
§ 56–13–104. Original Names
§ 56–13–105. Capital and Surplus Requirements
§ 56–13–106. Dividends; Payment Out of Capital or Surplus
§ 56–13–107. Formation; Modifications
§ 56–13–108. Report of Financial Condition
§ 56–13–109. Visits by Commissioner; Audits
§ 56–13–110. License Suspension or Revocation
§ 56–13–111. Investments Requirements
§ 56–13–112. Reinsurance
§ 56–13–113. Rating Organizations; Insolvency Fund
§ 56–13–114. Taxes
§ 56–13–115. Rules Adoption to Carry Out Chapter Provisions
§ 56–13–116. Application of Title Provisions Generally; Application of Chapter 45
§ 56–13–117. Rules; Risk Management Function
§ 56–13–118. Application of Chapter 24 of Title
§ 56–13–119. Purchase of Stock by Governmental Entities
§ 56–13–120. Violations; Authority of Commissioner
§ 56–13–121. Rules
§ 56–13–122. Captive Insurance Companies; Audit; Report
§ 56–13–123. Redomestications

Part 2—Protected Cell Captive Insurance Companies

§ 56–13–201. Formation of Company; Incorporation
§ 56–13–202. Definitions
§ 56–13–203. Company Information Filing Requirements
§ 56–13–204. Protected Cells; Establishment and Maintenance; Conditions
§ 56–13–205. Participants in Protected Cell Captive Insurance Companies
§ 56–13–206. Investments
§ 56–13–207. Application of Chapter 9 of Title; Management of Assets and Liabilities by Receiver
§ 56–13–208. Litigation Involving Protected Cell Captive Insurance Companies

Current as of the 2016 Tennessee General Assembly session
* May only be applicable to Risk Retention Groups.
The 2016 session of the General Assembly enacted Public Chapters 735 and 1018 which made revisions to these statutes. Pub. Ch. 1018 was signed by the Governor and became law effective April 28, 2016. Revisions made by Pub Ch. 1018 are italicized. Pub. Ch. 735 was signed by the Governor and became law effective April 26, 2016. Revisions made by Pub. Ch. 735 are underlined. The placement of these revisions in the Tennessee Code as indicated here are tentative and will not be final until enacted by the Tennessee Code Commission. Do not cite italicized or underlined code sections in published works, instead cite to 2016 Tenn. Pub. Acts Ch. 1018 or 2016 Tenn. Pub. Acts Ch. 735 until the code citation becomes available.

Part 3—Branch Captive Insurance Companies
§ 56–13–301. Establishment of Branch Captive Insurance Company
§ 56–13–302. Definitions
§ 56–13–303. License; Security for Payment of Liabilities; Form
§ 56–13–304. Captive Insurance Company Seeking Licensure as Branch Captive Insurance Company; Petition by Alien Captive Insurance Company
§ 56–13–305. Reports and Statements; Filing
§ 56–13–306. Examination of Branch Business; Certificate of Compliance
§ 56–13–307. Tax Application to Branch Business

Part 4—Special Purpose Financial Captives
§ 56–13–401. Creation of Special Purpose Financial Captives
§ 56–13–402. Definitions
§ 56–13–403. Application of Title Provisions; Exemption from Chapter
§ 56–13–404. Application for Authority to Transact Insurance or Reinsurance Business; Filings; Examinations; Rules; Fees; Taxes; Grant of Authority
§ 56–13–405. Form of Organization; Documents; Name; Residency
§ 56–13–406. Capitalization
§ 56–13–407. Allowed Insurance, Contacts, and Other Activities; Reserves
§ 56–13–408. Protected Cells; Establishment and Maintenance
§ 56–13–409. Protected Cells; Business Operations and Procedures
§ 56–13–410. Securities; Issuance
§ 56–13–411. Asset Management Agreements; Investments
§ 56–13–412. Reinsurance Contracts
§ 56–13–413. Insurance Securitization; Insurance Business
§ 56–13–414. Asset Administration; Investments
§ 56–13–415. Dividends
§ 56–13–416. Plan of Operation; Material Change; Audit; Records
§ 56–13–417. Expiration or Modification of Authority to Conduct Activities
§ 56–13–418. Application of Chapter 9 of Title; Management of Assets and Liabilities by Receiver

Other Statutes Relative to Captive Insurance

Examinations
§ 56-1-401. Prerequisite for certificate of authority
§ 56-1-402 & -403 Repealed
§ 56-1-404 Charges required for reinsurance
§ 56-1-405 Financial Condition; commissioner's authority
§ 56-1-406 Commissioner; custodian of collateral
§ 56-1-407 Valuation of bonds

§ 56-1-408 Examination of licensed companies
§ 56-1-409 Examination; when deemed prudent; upon request
§ 56-1-410 Examination of foreign companies
§ 56-1-411 Conduct of examination reports; violations; confidentiality
§ 56-1-412 Examinations; failure to appear; obstruction; penalties
§ 56-1-413 Costs of examination
§ 56-1-414 Impaired capital
§ 56-1-415 Domestic life insurance companies; insufficient assets
§ 56-1-416 Certificates of authority; revocation and suspension
§ 56-1-417 Certificates of authority; revocation and suspension; notice
§ 56-1-418 Calculations of reserves for accident and health policies
§ 56-1-419 Actuarial opinions; statements; summaries; reports
§ 56-1-420 Confidential and privileged documents

Authorized Insurance Coverages

§ 56-2-201. Definitions
§ 56-2-202. Property Insurance
§ 56-2-203. Life insurance annuities; contract loans; legal trusts
§ 56-2-204. Accidents; disabilities; thefts; watercraft; marine risks

Tennessee Self-Procurement Tax
§ 56-2-411. Tax liability

Confidential Information
§ 56-2-801. Sharing of confidential information

Authorized Investments (for RRGs and association captives)
§ 56-3-401. Definitions
§ 56-3-402. Other insurers; permissible investments
§ 56-3-403. Foreign Investments
§ 56-3-404. Stock of other insurers
§ 56-3-405. Real property
§ 56-3-406. Real property; time held
§ 56-3-407. Investment limited
§ 56-3-408. Underwriting of securities and withholding property from sale; authorization of loans by board or committee
§ 56-3-409. Previously held investments

Fees and Taxes
§ 56-4-101. Amounts to be collected by commissioner; applicability.

Managing General Agents *

§ 56-6-501. Short Title
§ 56-6-502. Definitions
§ 56-6-503. Licenses; Bonds; Errors and Omissions Policies
§ 56-6-504. Written Contracts
§ 56-6-505. Requirements
§ 56-6-506. MGA as agent of insurer
§ 56-6-507. Violations
§ 56-6-508. Rules and Regulations
§ 56-6-509. Commissioner's Power to Waive Application
§ 56-6-510. Effective Date

Insurance Holding Company System Act *

§ 56-11-101. Short Title; Definitions
§ 56-11-102. Subsidiaries; Authorization; Investment Authority; Exemption from Investment Restrictions; Qualification of Investment; Cessation of control
§ 56-11-103. Required Filing; Approval by Commissioner; Exemptions; Violations; Jurisdiction of Courts
§ 56-11-104. Requirements for Acquisitions; Enforcement by Commissioner
§ 56-11-105. Registration of Insurers and Health Maintenance Organizations; Statements; Disclaimer of Affiliation
§ 56-11-106. Transactions Within a Holding Company System; Standards; Dividends; Management of Domestic Insurers and Health Maintenance Organziations
§ 56-11-107. Information About Insurer's Financial Condition; Examinations
§ 56-11-108. Confidentiality of Information Obtained by Commissioner
§ 56-11-109. Rules and Regulations
§ 56-11-110. Injunctions; Voting of Securities; Sequestrations
§ 56-11-111. Penalties
§ 56-11-112. Assumption of Control by Commissioner; Insolvency
§ 56-11-113. Order for Liquidation or Rehabilitation; Receiver's Rights to Recover
§ 56-11-114. Suspension; Revocation; Refusal to Renew License
§ 56-11-115. Appeal of Commissioner's Action
§ 56-11-116. Supervisory Colleges
§ 56-11-117. *(omitted) – relative to foreign insurer participating in TennCare program*
§ 56-11-118. Conflicts of Law
§ 56-11-119. Severability Clause

Insolvent Corporations

§ 56-24-101. Insolvent corporations; restraint from transacting business
§ 56-24-102. Receivers; removal of officers

§ 56-24-103. Agents' certificate of authority
§ 56-24-104. Fees

Risk Retention Groups *
§ 56-45-101. Purpose
§ 56-45-102. Definitions
§ 56-45-103. Charter; plan of operation or feasibility study
§ 56-45-104. Compliance with laws
§ 56-45-105. Insurance insolvency guaranty funds; equitable apportionment of liability insurance losses and expenses
§ 56-45-106. Countersignature
§ 56-45-107 to -110. *omitted (relative to Risk Purchasing Groups)*
§ 56-45-111. Commission's powers of enforcement
§ 56-45-112. Soliciting, negotiating, or procuring liability insurance; restrictions
§ 56-45-113. Injunctions; United States district courts
§ 56-45-114. Rules and Regulations

Local Taxation of Insurance Companies
§ 67-5-1201. Corporate property and capital stock
§ 67-5-1202. Places of assessment
§ 67-5-1203. Valuation
§ 67-5-1204. First fifteen years in business
§ 67-5-1205. Application of assessment and taxation
§ 67-5-1206. Written assessment schedule; reporting schedule; forced assessment
§ 67-5-1207. Minimum assessment based on 1967 assessment
§ 67-5-1208. Nonseverability
§ 67-5-1209. Application of part to pure captive insurance company

Federal Liability Risk Retention Act of 1996 *
15 U.S.C. § 3901 Definitions
15 U.S.C. § 3902 Risk retention groups
15 U.S.C. § 3903 Purchasing groups
15 U.S.C. § 3904 Securities laws
15 U.S.C. § 3905 Clarification concerning permissible State authority
15 U.S.C. § 3906 Injunctive orders issued by United States district courts

Prohibited Conduct Related to Insurance
18 U.S.C. § 1033 Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce
18 U.S.C. § 1034 Civil penalties and injunctions for violation of section 1033

Current as of the 2016 Tennessee General Assembly session
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REVISED TENNESSEE CAPTIVE INSURANCE ACT

Part 1. General Provisions

§ 56-13-101. Short title; purpose

(a) This chapter shall be known and may be cited as the "Revised Tennessee Captive Insurance Act."

(b) The purpose of this chapter is to establish the procedures for the organization and regulation of the operations of captive insurance companies within this state and thereby promote the general welfare of the people of this state.

§ 56-13-102. Definitions

As used in this chapter, unless the context requires otherwise:

(1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management;

(2) "Alien" means a company formed according to the legal requirements of a foreign country;

(3) "Association" means any legal association of individuals, corporations, limited liability companies, partnerships, associations, or other entities, whereby:

(A) The member organizations of such or the association itself, whether or not in conjunction with some or all of the member organizations:

(i) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer;

(ii) Have complete voting control over an association captive insurance company incorporated as a mutual insurer;

(iii) Constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer; or

(iv) Have complete voting control over an association captive insurance company formed as a limited liability company; or

(B) Each member organization of the association is either:

(i) A not-for-profit corporation, nonprofit association, or similar nonprofit organization;

(ii) An entity or organization exempt from taxation under § 501(c) of the Internal Revenue Code, compiled in 26 U.S.C. § 501(c); or

(iii) A municipality, metropolitan government, county, authority, utility district or other public body generally classified as a governmental body or governmental entity, whether organized by private act or public act of the general assembly, or any agency, board, or commission of any municipality, metropolitan government, county, authority, utility district or other public body generally classified as a governmental body or governmental entity. This subdivision (3)(B)(iii) shall be liberally construed;

(4) "Association captive insurance company" means any company that insures risks of the member organizations of an association, and that also may insure the risks of affiliated companies of the member organizations and the risks of the association itself;

(5) "Captive insurance company" means any pure captive insurance company, association captive insurance company, industrial insured captive insurance company, risk retention group, protected cell captive insurance company, incorporated cell captive insurance company, or special purpose financial captive insurance company formed or licensed under this chapter;

(6) "Commissioner" means the commissioner of the department, or the commissioner's designee;

(7) "Controlled unaffiliated business" means any person:

(A) That is not in the corporate system of a parent and its affiliated companies in the case of a pure captive insurance company, or that is not in the corporate system of an industrial insured and its affiliated companies in the case of an industrial insured captive insurance company;

(B) That has an existing contractual relationship with a parent or one (1) of its affiliated companies in the case of a pure captive insurance company, or with an industrial insured or one (1) of its affiliated companies in the case of an industrial insured captive insurance company; and

(C) Whose risks are managed by a pure captive insurance company or an industrial insured captive insurance company, as applicable, in accordance with § 56-13-117;

(8) "Department" means the department of commerce and insurance;

(9) "Excess workers' compensation insurance" or "excess accident and health insurance" means, in the case of an employer that has insured or self-insured its workers' compensation or accident and health insurance risks in accordance with applicable state or federal law, insurance in excess of a specified per incident or aggregate limit established by the commissioner;

(10) “Incorporated cell” means a protected cell of an incorporated cell captive insurance company that is organized as a corporation or other legal entity separate from the incorporated cell captive insurance company;

(11) “Incorporated cell captive insurance company” means a protected cell captive insurance company that is established as a corporation or other legal entity separate from its incorporated cells that are also organized as separate legal entities;

(12) “Industrial insured” means an insured:

(A) Who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(B) Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars ($25,000); and

(C) Who has at least twenty-five (25) full-time employees;

(13) “Industrial insured captive insurance company” means any company that insures risks of the industrial insureds that comprise the industrial insured group, and that may insure the risks of the affiliated companies of the industrial insureds and the risks of the controlled unaffiliated business of an industrial insured or its affiliated companies;

(14) “Industrial insured group” means any group of industrial insureds that collectively:

(A) Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer;

(B) Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer;

(C) Constitute all of the subscribers of an industrial insured captive insurance company formed as a reciprocal insurer; or

(D) Have complete voting control over an industrial insured captive insurance company formed as a limited liability company;

(15) “Member organization” means any individual, corporation, limited liability company, partnership, association, or other entity that belongs to an association;

(16) “Mutual corporation” means a corporation organized without stockholders and includes a nonprofit corporation with members;

(17) “Mutual insurer” means a company owned by its policyholders where no stock is available for purchase on the stock exchanges;

(18) "Organizational documents" means the documents that must be submitted pursuant to title 48 and title 61 in order to legally form a business in this state or to obtain a certificate of authority to transact business in this state;

(19) "Parent" means an individual, corporation, limited liability company, partnership, association, or other entity, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting:

(A) Securities of a pure captive insurance company organized as a stock corporation;
(B) Membership interests of a pure captive insurance company organized as a nonprofit corporation; or
(C) Membership interests of a pure captive insurance company organized as a limited liability company;

(20) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies or a controlled unaffiliated business or businesses; and

(21) "Risk retention group" means a captive insurance company organized under the laws of this state pursuant to the Liability Risk Retention Act of 1986, as amended, compiled in 15 U.S.C. § 3901 et seq., as a stock or mutual corporation, a reciprocal or other limited liability entity. Risk retention groups formed under this chapter are subject to all applicable insurance laws including, but not limited to any applicable provisions in chapters 1, 2, 5, 6, 11, and 45 of this title.

§ 56-13-103. License limitations; requirements to do business

(a) Any captive insurance company, when permitted by its organizational documents, may apply to the commissioner for a license to do any and all insurance comprised in §§ 56-2-201(2) and (4)-(7), 56-2-202, 56-2-203, and 56-2-204; provided, however, that:

(1) No pure captive insurance company shall insure any risks other than those of its parent and affiliated companies or a controlled unaffiliated business or businesses;

(2) No association captive insurance company shall insure any risks other than those of its association, those of the member organizations of its association, and those of a member organization's affiliated companies;

(3) No industrial insured captive insurance company shall insure any risks other than those of the industrial insureds that comprise the industrial insured group, those of their affiliated companies, and those of the controlled unaffiliated business of an industrial insured or its affiliated companies;

(4) No risk retention group shall insure any risks other than those of its members and owners;

(5) No captive insurance company shall provide personal motor vehicle or homeowner's insurance coverage or any component thereof;

(6) No captive insurance company shall accept or cede reinsurance except as provided in §§ 56-13-112 and 56-13-412;

(7) Any captive insurance company may provide excess or stop-loss accident and health insurance, unless prohibited by federal law or the laws of the state having jurisdiction over the transaction;

(8) Except as provided in subdivision (a)(9), a captive insurance company may only issue policies of workers' compensation insurance to an insured or an affiliate who otherwise qualifies and maintains its qualifications as a self-insured under title 50, chapter 6; provided, that a captive insurance company may provide excess or stop-loss workers' compensation coverage for those insureds not qualifying as self insureds. The commissioner shall have the discretion to waive the requirements of this subdivision (a)(8) and the self-insurance requirements of § 50-6-405(b) and (c) according to guidelines established through the promulgation of rules or regulations; and

(9) Any association captive insurance company of an association that is described in § 56-13-102(3)(B) or mutual captive insurance company whose member organizations or insureds are the type member organizations described in § 56-13-102(3)(B) may issue policies of workers' compensation, directors' and officers' liability, and public officials' liability insurance and reinsurance in addition to the insurance and reinsurance otherwise permitted to be made under this section.

(b) Except as provided in subsection (f), no captive insurance company shall transact any insurance business in this state unless:

(1) It first obtains from the commissioner a license authorizing it to do insurance business in this state;

(2) Its board of directors or committee of members or managers or, in the case of a reciprocal insurer, its subscribers' advisory committee holds at least one (1) meeting each year in this state;

(3) It maintains its principal place of business in this state; and

(4) It appoints a registered agent to accept service of process and to otherwise act on its behalf in this state; provided, that whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the commissioner shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served.

(c) (1) In order to receive a license to issue policies of insurance as a captive insurance company in this state, an applicant business entity shall meet the requirements of this subdivision (c)(1).

(A) The applicant business entity shall submit its organizational documents to the commissioner. If the commissioner approves the organizational documents, then the commissioner shall issue a letter to the applicant certifying the commissioner's approval. The applicant business entity shall submit the organizational documents, along with a copy of the approval letter issued by the commissioner, and the required filing fees for organizational documents prescribed in title 48 and title 61 to the secretary of state for filing. Upon filing the organizational documents, the secretary of state shall issue an acknowledgment letter to the applicant. The applicant business entity shall submit a copy of the acknowledgment letter relative to the applicant's organizational documents issued by the secretary of state to the commissioner.

(B) The applicant business entity shall also file with the commissioner evidence of the following:

(i) The amount and liquidity of its assets relative to the risks to be assumed;

(ii) The adequacy of the expertise, experience, and character of the person or persons who will manage it;

(iii) The overall soundness of its plan of operation;

(iv) The adequacy of the loss prevention programs of its insureds; and

(v) Such other factors deemed relevant by the commissioner in ascertaining whether the applicant business entity will be able to meet its policy obligations.

(C) No less than the amount required by § 56-13-105 shall be paid in by the applicant business entity and deposited with the commissioner. In the alternative, an

irrevocable letter of credit in that amount and acceptable to the commissioner shall be filed with the commissioner.

(D) Upon compliance with subdivision (c)(1)(C), the applicant business entity shall be certified as compliant with this chapter through examination by the commissioner. The department shall be reimbursed for the cost of the examination in accordance with § 56-1-413.

(E) The applicant business entity shall submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with such additional information as the commissioner may reasonably require.

(2) (A) Whenever a captive insurance company desires to amend the organizational documents submitted pursuant to subdivision (c)(1)(A), the company shall submit the amended organizational documents to the commissioner. If the commissioner approves the amendment, then the commissioner shall issue a letter to the applicant certifying the commissioner's approval. The applicant business entity shall submit the organizational documents, along with a copy of the approval letter issued by the commissioner, and the required filing fees for organizational documents prescribed in title 48 and title 61 to the secretary of state for filing. Upon filing the organizational documents, the secretary of state shall issue an acknowledgment letter to the applicant. The applicant shall submit a copy of the acknowledgment letter relative to the applicant's organizational documents issued by the secretary of state to the commissioner.

(B) If a captive insurance company makes any subsequent material change to any item in the description submitted pursuant to subdivision (c)(1)(E), then the company shall submit an appropriate revision to the commissioner for approval and shall not offer any additional kinds of insurance until a revision of such description is approved by the commissioner. The captive insurance company shall inform the commissioner of any material change in rates within thirty (30) days of the adoption of such change.

(3) Information submitted pursuant to this subsection (c) shall be and remain confidential, and shall not be made public by the commissioner without the written consent of the captive insurance company, except that:

(A) Such information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted such information is a party, upon a showing by the party seeking to discover such information that:

(i) The information sought is relevant to and necessary for the furtherance of such action or case;

(ii) The information sought is unavailable from other non-confidential sources; and

(iii) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner; provided, however, that this subdivision (c)(3) shall not apply to any risk retention group; and

(B) The commissioner shall have the discretion to disclose such information to a public officer having jurisdiction over the regulation of insurance in another state; provided, that:

(i) Such public official shall agree in writing to maintain the confidentiality of such information; and

(ii) The laws of the state in which such public official serves require such information to be and to remain confidential.

(d) Each captive insurance company shall make payments to the commissioner in accordance with the fee schedule established in chapter 4, part 1 of this title. The commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable costs of which may be charged against the applicant. Sections 56-1-401 -- 56-1-420 shall apply to examinations, investigations, and processing conducted under the authority of this section.

(e) If the commissioner is satisfied that the documents and statements filed by an applicant captive insurance company comply with this chapter, then the commissioner may grant a license authorizing it to do insurance business in this state.

(f) Any captive insurance company licensed and in good standing on September 1, 2011, which was licensed under the former "Tennessee Captive Insurance Act of 1978", shall not be required to obtain a new license as required in this section; provided, that any such captive insurance company is subject to the remainder of this chapter.

§ 56-13-104. Original names

No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in this state, nor any name likely to mislead the public. Any name adopted by a captive insurance company shall comply with the requirements of titles 48 and 61.

§ 56-13-105. Capital and surplus requirements

(a) No captive insurance company shall be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(1) In the case of a pure captive insurance company, not less than two hundred fifty thousand dollars ($250,000);
(2) In the case of an association captive insurance company, not less than five hundred thousand dollars ($500,000);
(3) In the case of an industrial insured captive insurance company, not less than five hundred thousand dollars ($500,000);
(4) In the case of a risk retention group, not less than one million dollars ($1,000,000); and
(5) In the case of a protected cell captive insurance company, not less than two hundred fifty thousand dollars ($250,000).

(b) The commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business to be transacted.

(c) Capital and surplus shall be in the form of cash, or cash equivalent, or an irrevocable letter of credit issued by a bank approved by the commissioner.

(d) Except as otherwise provided in this chapter, chapter 9 of this title shall apply to captive insurance companies formed under this chapter. *(Note: Title 56, Chapter 9 refers to the procedure for placing an insurance company into receivership)*

§ 56-13-106. Dividends; payment out of capital or surplus

No captive insurance company shall pay a dividend out of, or other distribution with respect to, capital or surplus without the prior approval of the commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by the commissioner. A captive insurance company may otherwise make such distributions as are in conformity with its purposes and approved by the commissioner.

§ 56-13-107. Formation; modifications

(a) A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a nonprofit corporation with one (1) or more members, or as a limited liability company.

(b) An association captive insurance company, an industrial insured captive insurance company, or a risk retention group may be:

(1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(2) Incorporated as a mutual corporation;

(3) Organized as a reciprocal insurer in accordance with chapter 16 of this title; or

(4) Organized as a limited liability company.

(c) A captive insurance company incorporated or organized in this state shall have not less than three (3) incorporators or three (3) organizers of whom not less than one (1) shall be a resident of this state.

(d) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(e) In the case of a captive insurance company formed as a:

(1) Corporation, at least one (1) of the members of the board of directors shall be a resident of this state;

(2) Reciprocal insurer, at least one (1) of the members of the subscribers' advisory committee shall be a resident of this state; and

(3) Limited liability company, at least one (1) of the members or managers shall be a resident of this state.

(f) Captive insurance companies formed as corporations, limited liability companies or as nonprofit corporations under this chapter shall have the privileges provided in and be subject to title 48 and this chapter, as applicable; provided, that this chapter shall control in the event of a conflict. Captive insurance companies formed as partnerships under this chapter shall have the privileges provided in and be subject to title 61 and this chapter, as applicable; provided, that this chapter shall control in the event of a conflict.

(g) Mergers, consolidations, conversions, mutualizations, acquisitions, redomestications, or other similar transactions of captive insurance companies shall be subject to the same provisions of this title applicable to traditional insurance companies, except that:

(1) The commissioner may, upon request of an insurer party to a merger authorized under this subsection (g), waive such applicable requirements;

(2) The commissioner may waive or modify the requirements for public notice and hearing in accordance with rules which the commissioner may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing ten (10) days before the day set for the hearing, then the commissioner may cancel the hearing; and

(3) An alien insurer may be a party to a merger authorized under this subsection (g); provided, that the requirements for a merger between a captive insurance company and a foreign insurer under this title shall apply to a merger between a captive insurance company and an alien insurer under this subsection (g). For the purposes of this subdivision (g)(3), an alien insurer shall be treated as a foreign insurer under this title and the jurisdiction of the alien shall be the equivalent of a state.

(h) Captive insurance companies formed as reciprocal insurers under this chapter shall have the privileges provided in and be subject to chapter 16 of this title in addition to this chapter; provided, that this chapter shall control in the event of a conflict. To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to chapter 16, such provisions shall not be applicable to a reciprocal insurer formed under this chapter unless such provisions are expressly made applicable to captive insurance companies under this chapter.

(i) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may authorize a quorum of its board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors.

(j) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of its subscribers' advisory committee to consist of no fewer than one-third (1/3) of the number of its members.

(k) With the commissioner's approval, a captive insurance company organized as a stock insurer may convert to a nonprofit corporation with one (1) or more members by filing with the secretary of state an election for such conversion; provided, that:

(1) The election shall certify that, at the time of the company's original organization and at all times thereafter, the company has conducted its business in a manner not inconsistent with a nonprofit purpose as permitted by title 48, chapter 53; and

(2) At the time of the filing of its election, the company shall file with both the commissioner and the secretary of state amended and restated articles of incorporation consistent with this chapter and with title 48, duly authorized by the corporation.

(l) Title 48, chapter 61 shall not apply to a captive insurance company that is a nonprofit corporation in the case of any merger in which a captive insurance company merges with and into a captive insurance company organized as a nonprofit corporation under title 48 where the latter is the surviving corporation.

(m) In the case of a captive insurance company formed as a limited liability company, a reciprocal insurance company or mutual insurance company, any proxy executed by the

members, subscribers, and policyholders of each shall be valid if executed and transmitted in compliance with title 48.

§ 56-13-108. Report of financial condition

(a) No captive insurance companies shall be required to make any annual report except as provided in this chapter and as required by title 48 and title 61.

(b) Prior to March 15 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition, verified by oath of two (2) of its executive officers; provided, however, that a captive insurance company organized as a risk retention group shall instead submit to the commissioner a report of its financial condition prior to March 1 of each year, verified by oath of two (2) of its executive officers. Each captive insurance company, including risk retention groups organized under this chapter, shall report using generally accepted accounting principles, unless the commissioner requires, approves, or accepts the use of statutory accounting principles or other comprehensive basis of accounting. The commissioner may require, approve, or accept any appropriate or necessary modifications of the statutory accounting principles or other comprehensive basis of accounting for the type of insurance and kinds of insurers to be reported upon. The commissioner may require additional information to supplement such report. Except as otherwise provided, each risk retention group shall file its report in the form required by this title, and each risk retention group shall comply with the requirements set forth in this title. The commissioner shall by rule propose the forms in which pure captive insurance companies and industrial insured captive insurance companies shall report. Section 56-13-103(c)(3) shall apply to each report filed pursuant to this section; provided, that § 56-13-103(c)(3) shall not apply to reports filed by risk retention groups.

(c) A pure captive insurance company or an industrial insured captive insurance company may make written application to the commissioner for filing the required report on a fiscal year-end. If an alternative reporting date is granted by the commissioner, then:

(1) The annual report is due one hundred and eighty (180) days after the fiscal year-end; and

(2) *In order to provide sufficient detail to support the premium tax return, the pure captive insurance company or industrial insured captive insurance company shall file, prior to March 15 of each year for each calendar year-end, such information as may be required on a form approved by the commissioner, verified by oath of two (2) of its executive officers.*

§ 56-13-109. Visits by commissioner; audits

(a) At least once every three (3) years, and whenever the commissioner determines it to be

prudent, the commissioner shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has complied with this chapter. The commissioner may extend such three-year period to five (5) years; provided, that the captive insurance company is subject to a comprehensive annual audit by independent auditors approved by the commissioner during such five-year period. The comprehensive audit shall be of a scope satisfactory to the commissioner. The expenses and charges of the examination shall be paid by the captive insurance company.

(b) Any other law or regulation to the contrary notwithstanding, an association captive insurance company, all of whose insureds operate municipal or cooperative electric systems, shall not be required to have performed an audit of its annual statutory financial statements by an independent certified public accountant, unless, within ninety (90) days before the close of the fiscal year of the association captive insurance company, a majority of the association members who are insured, directly or indirectly by it, request an audit.

(c) Sections 56-1-401 -- 56-1-420 shall apply to examinations conducted under this section.

(d) All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the captive insurance company, except to the extent provided in this subsection (d). Nothing in this subsection (d), shall prevent the commissioner from using such information in furtherance of the commissioner's regulatory authority under this title. The commissioner shall have the discretion to grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of this state or any other state or agency of the federal government at any time, only if the officers receiving the information agree in writing to maintain the confidentiality of the information in a manner consistent with this subsection (d).

§ 56-13-110. License suspension or revocation

(a) The license of a captive insurance company may be suspended or revoked by the commissioner for any of the following reasons:

(1) Insolvency or impairment of capital or surplus;

(2) Failure to meet the requirements of § 56-13-105;

(3) Refusal or failure to submit an annual report, as required by this chapter, or any other report or statement required by law or by lawful order of the commissioner;

(4) Failure to comply with its own charter, bylaws or other organizational document;

(5) Failure to submit to or pay the cost of examination or any legal obligation relative to an examination, as required by this chapter;

(6) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or

(7) Failure otherwise to comply with the laws of this state.

(b) If the commissioner finds, upon examination, hearing, or other evidence, that any captive insurance company has violated subsection (a), then the commissioner may suspend or revoke such company's license if the commissioner deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this title.

§ 56-13-111. Investments requirements

(a) Except as may be otherwise authorized by the commissioner, association captive insurance companies and risk retention groups shall comply with the investment requirements contained in §§ 56-3-401 -- 56-3-409, as applicable. Notwithstanding any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating.

(b) No pure captive insurance company, industrial insured captive insurance company, protected cell captive insurance company, incorporated cell captive insurance company or special purpose financial captive insurance company as defined in part 4 of this chapter shall be subject to any restrictions on allowable investments; provided, that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company. Companies under this subsection (b) must file with the commissioner a statement of investment policy approved by its governing body that describes the types of investments that the company may elect to undertake and may not make investments that materially deviate from the statement of investment policy that is on file with the commissioner.

(c) No pure captive insurance company shall make a loan to or an investment in its parent company or affiliates without prior written approval of the commissioner, and any such loan or investment shall be evidenced by documentation approved by the commissioner. Loans of minimum capital and surplus funds required by § 56-13-105 are prohibited.

(d) (1) Notwithstanding this section or chapter 3, part 4 of this title, an association captive insurance company of an association described in § 56-13-102(3)(B) may hold any interest in qualified headquarters property as defined in subdivision (d)(2), and the qualified headquarters property shall be admitted assets and authorized investments of the association captive insurance company. The net book value of the qualified headquarters property deemed admitted and authorized under this subsection (d) may not exceed two million five hundred thousand dollars ($2,500,000), and an association captive insurance company holding qualified headquarters property pursuant to this subsection (d) shall at all times maintain total surplus, without regard to the qualified headquarters property, of at least the sum of:

(A) Fifty percent (50%) of the net book value of the qualified headquarters property; and

(B) The minimum capital and surplus requirements.

(2) For purposes of this subsection (d), "qualified headquarters property" includes the real property and the building in which the principal office of the association captive insurance company is located and also includes any improved and unimproved real property of the association captive insurance company that is located within one thousand five hundred feet (1,500′) of the company's principal office.

§ 56-13-112. Reinsurance

(a) Any captive insurance company may provide reinsurance as authorized by this title on risks ceded by any other insurer.

(b) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with this title. If the reinsurer is licensed as a risk retention group, then the ceding risk retention group or its members must qualify for membership with the reinsurer. The commissioner shall have the discretion to allow a captive insurance company to take credit for the reinsurance of risks or portions of risks ceded to an unauthorized reinsurer, after review, on a case by case basis. The commissioner may require any documents, financial information or other evidence that such an unauthorized reinsurer will be able to demonstrate adequate security for its financial obligations.

(c) In addition to reinsurers authorized by this title, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange or association to the extent authorized by the commissioner. The commissioner may require any documents, financial information or other evidence that such a pool, exchange or association will be able to provide adequate security for its financial obligations. The commissioner may deny authorization or

impose any limitations on the activities of a reinsurance pool, exchange or association that, in the commissioner's judgment, are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large.

(d) Except where specifically provided otherwise, insurance by a captive insurance company of any workers' compensation or accident and health qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.

§ 56-13-113. Rating organizations; insolvency fund

(a) No captive insurance company shall be required to join a rating organization.

(b) No captive insurance company shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this state, nor shall any such captive insurance company, or any insured or affiliate thereof, receive any benefit from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company.

§ 56-13-114. Taxes

(a) Each captive insurance company shall pay to the department, on or prior to *March 15* of each year, a tax at the rate of four tenths of one percent (0.4%) on the first twenty million dollars ($20,000,000), and three tenths of one percent (0.3%) on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums. Return premiums shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders. No tax shall be due or payable under this title as to considerations received for annuity contracts.

(b) Each captive insurance company shall pay to the department, on or prior to *March 15* of each year, a tax at the rate of 225-thousandths of one percent (0.225%) on the first twenty million dollars ($20,000,000) of assumed reinsurance premium, and 150-thousandths of one percent (0.150%) on the next twenty million dollars ($20,000,000), and 50-thousandths of one percent (0.050%) on the next twenty million dollars ($20,000,000), and 25-thousandths of one percent (0.025%) of each dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (a). No reinsurance premium tax shall be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control; provided, that the commissioner verifies that such transaction is part of a plan to

discontinue the operations of such other insurer, and if the intent of the parties to such transaction is to renew or maintain such business with the captive insurance company.

(c) (1) Except with regard to a protected cell captive insurance company, as defined in § 56-13-202, with more than ten (10) cells, the annual minimum aggregate tax to be paid by a captive insurance company calculated under subsections (a) and (b) shall be five thousand dollars ($5,000), and the annual maximum aggregate tax shall be one hundred thousand dollars ($100,000).

(2) For a protected cell captive insurance company with more than ten (10) cells, the annual minimum aggregate tax to be paid under subsections (a) and (b) shall be ten thousand dollars ($10,000), and the annual maximum aggregate tax shall be one hundred thousand dollars ($100,000) plus five thousand dollars ($5,000) multiplied by the number of cells over ten (10).

(d) The tax provided for in this section shall constitute all taxes collectible under the laws of this state from any captive insurance company and from any insured on its payments to a captive insurance company, and no other occupation tax or other taxes shall be levied or collected from any captive insurance company by this state or any county, city, or municipality within this state, except ad valorem taxes on real and personal property used in the production of income.

(e) Captive insurance companies, protected cells of captive insurance companies, and incorporated protected cells of captive insurance companies shall be subject to the fees in § 56-4-101.

(f) All premium taxes paid into the department under this chapter shall be held by the commissioner as expendable receipts for the purpose of administering this chapter and for promoting the Tennessee captive insurance industry.

(g) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax under this section.

(h) Nothing in this section shall be construed to provide an exemption from the sales and use tax imposed by title 67, chapter 6.

(i) (1) Entities in this state, including industrial insureds as defined in § 56-2- 105(7), who have procured insurance from a captive insurance company and, on or before December 31, 2018, either redomesticate that captive insurance company to this state pursuant to this chapter or transfer a complete line of business or complete geographic risk into a captive formed in this state between January 1, 2016, and December 31, 2018, shall not be liable for any unreported

taxes due pursuant to § 56-2-411 on a policy or contract of insurance procured from the captive insurance company before the redomestication of the captive insurance company or transfer of line of business or complete geographic risk to this state; provided, that the policy or contract is substantially similar to a policy or contract of insurance procured from the captive insurance company after it is redomiciled or after the line of business or the complete geographic risk is transferred to this state.

(2) In order for a transfer of a line of business or complete geographic risk to a Tennessee captive formed between January 1, 2016, and December 31, 2018, to qualify under subdivision (i)(1), the Tennessee captive formed between January 1, 2016, and December 31, 2018, must have and maintain, for no less than five (5) years from the date of formation, capital of at least fifteen million dollars ($15,000,000) and annual premiums of at least thirty million dollars ($30,000,000).

§ 56-13-115. Rules adoption to carry out chapter provisions

The commissioner may adopt and, from time to time, amend such rules relating to captive insurance companies as are necessary to enable the commissioner to carry out the provisions of this chapter.

§ 56-13-116. Application of title provisions generally; application of chapter 45

No provisions of this title, other than those contained in this chapter or expressly provided in this chapter, shall apply to captive insurance companies. Risk retention groups shall have the privileges and be subject to chapter 45 of this title in addition to the applicable provisions of this chapter. Section 56-2-801 applies to this chapter.

§ 56-13-117. Rules; risk management function

The commissioner may adopt rules establishing standards to ensure that a parent or its affiliated company, or an industrial insured or its affiliated company, is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by a pure captive insurance company or an industrial insured captive insurance company, respectively; provided, however, that, until such time as rules under this section are adopted, the commissioner may approve the coverage of such risks by a pure captive insurance company or an industrial insured captive insurance company.

§ 56-13-118. Application of chapter 24 of title

Except as otherwise provided in this chapter, the terms and conditions set forth in chapter 24 of this title shall apply in full to captive insurance companies formed or licensed under this chapter.

§ 56-13-119. Purchase of stock by governmental entities

Any municipality, metropolitan government, county, authority, utility district, or other public body generally classified as a governmental body or governmental entity, whether organized by private act or public act of the general assembly, or otherwise, or any agency, board, or commission of any municipality, metropolitan government, county, authority, utility district, or other public body generally classified as a governmental body or governmental entity, may expend public funds other than local tax revenues for the purchase of capital stock in a captive insurance company or to provide guaranty capital in a mutual captive insurance company; provided, that at the time of authorization of expenditure of public funds adequate insurance markets in the United States are not available to cover the risks, hazards and liabilities of the public body or that the needed coverage is only available at excessive rates or with unreasonable deductibles.

§ 56-13-120. Violations; authority of commissioner

If, after providing notice consistent with the process established by § 4-5-320(c) and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, the commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized to transact the business of insurance under this chapter has violated any provision of this chapter or any rule or regulation authorized by this chapter, the commissioner may order:

(1) The insurer, person, or entity to cease and desist from engaging in the act or practice giving rise to the violation;

(2) Payment of a monetary penalty of not more than one thousand dollars ($1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars ($100,000), unless the insurer, person, or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than twenty-five thousand dollars ($25,000) for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars ($250,000). This subdivision (2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (2), each day of continued violation shall constitute a separate violation; and

(3) The suspension or revocation of the insurer's, person's, or entity's license.

§ 56-13-121. Rules

The commissioner is authorized to promulgate rules and regulations necessary to effectuate the purposes of this chapter; provided, that, no rule promulgated pursuant to this chapter shall affect a special purpose financial captive (SPFC) insurance securitization, as defined and authorized by part 4 of this chapter, in effect at the time of the promulgation. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

§ 56-13-122. Captive insurance companies; audit; report

(a) The regulation of captive insurance companies as authorized by this chapter is subject to audit by the comptroller of the treasury as otherwise provided by state law. Information submitted to the department by captive insurance companies subject to this chapter shall, without written request, be open to inspection by, or disclosure to, the comptroller of the treasury or the comptroller's designated representative for purposes of audit.

(b) The commissioner shall annually report to the commerce and labor committee of the senate, and the insurance and banking committee of the house of representatives regarding the captive insurance company program. Such report shall include, but not be limited to, the number and types of captive insurance companies authorized by the commissioner to conduct business in this state, the amount of premium tax and fee revenues generated pursuant to the program, and any recommendations for legislative action to improve the captive insurance company program.

§ 56-13-123. Redomestications

(a) Notwithstanding any other method authorized by law, a foreign or alien insurer may become a domestic captive insurance company by complying with all of the requirements of this chapter relative to the organization and licensing of a domestic captive insurance company of the same type with the approval of the commissioner. A company redomesticating to this state pursuant to this section may be organized under any lawful corporate form permitted by this chapter.

(b) A redomestication pursuant to this section shall be authorized for insurance companies domiciled in foreign or alien jurisdictions that authorize the redomestication of insurance companies where, as a result of the actions taken by the company pursuant to this section to redomesticate to this state, shall no longer be a domestic legal entity of foreign or alien jurisdiction. A company wishing to redomesticate under this section must also provide evidence that the applicable regulatory authority of its domicile consents to the redomestication.

(c) An insurance company wishing to redomesticate under this section shall file with the secretary of state its articles of association, charter, or other organizational document, together with appropriate amendments thereto adopted in accordance with the laws of this state and bring such articles of association, charter, or other organizational document into compliance

with the laws of this state, along with an approval letter issued by the commissioner. The company may file with the secretary of state an election deferring the effective date of the redomestication. Upon filing and paying the required fees prescribed in title 48 and title 61, the secretary of state shall issue an acknowledgement letter to the applicant. The secretary of state is also authorized to promulgate rules that provide for a fee to cover the cost of a redomestication.

(d) The company shall file a copy of the secretary of state's acknowledgement letter with the commissioner, who shall then issue a license pursuant to § 56-13-103.
(e) Upon the completion of a redomestication under this section, the captive insurance company shall be subject to the laws of this state and shall be considered domiciled in this state. The captive insurance company shall be deemed to have a formation date corresponding to its original formation date in the foreign or alien domicile.

(f) For the purposes of the § 56-13-109 examination, any examination conducted by the foreign or alien domicile that is substantially similar to an examination that would have been done in this state had the company been domiciled in this state shall be recognized for the purposes of establishing the period of time when the next examination is due.

(g) (1) A company redomesticating under this section shall only be liable for taxes due pursuant to § 56-13-114 on premiums paid to the company after redomestication.

(2) A company redomesticating under this section after July 1 of any year shall only be subject to one-half (1/2) of the minimum premium tax specified in § 56-13-114(c) in its first year.

(3) An alien company redomesticating under this section shall report all premium taxes due under § 56-13-114 but may, in either its first or its second year of operations, but not both, after redomesticating into this state, elect to forego the payment of premium taxes. However, a company making such an election that surrenders its license or redomesticates to another jurisdiction within five (5) years of redomestication into this state shall immediately pay a tax in an amount equal to the foregone premium tax plus ten percent (10%) per annum from the date the foregone premium tax would have been due.

(h) This section shall not be the exclusive means of redomesticating an insurance company to this state and shall not restrict the ability of an insurance company to undergo a merger, consolidation, transfer of assets and liabilities, or utilize any other means permitted by law to effect the transfer of operations of a foreign or alien insurance company to this state.

Part 2. Protected Cell Captive Insurance Companies

<u>§ 56-13-201. Formation of company; incorporation</u>

(a) One (1) or more sponsors may form a protected cell captive insurance company under this chapter. In addition to part 1 of this chapter, this part shall apply to protected cell captive insurance companies.

(b) A protected cell captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a mutual corporation, as a nonprofit corporation with one (1) or more members, or as a limited liability company.

§ 56-13-202. Definitions

As used in this part, unless the context requires otherwise:

(1) "General account" means all assets and liabilities of a protected cell captive insurance company not attributable to a protected cell;

(2) "Participant" means a person or an entity, authorized to be a participant by § 56-13-205, and any affiliate of a participant, that is insured by a protected cell captive insurance company, if the losses of the participant are limited through a participant contract;

(3) "Participant contract" means a contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each such participant to its pro rata share of the assets of one (1) or more protected cells identified in such participant contract;

(4) "Protected cell" means a separate account established by a protected cell captive insurance company formed or licensed under this chapter, in which an identified pool of assets and liabilities are segregated and insulated by means of this chapter from the remainder of the protected cell captive insurance company's assets and liabilities in accordance with the terms of one (1) or more participant contracts to fund the liability of the protected cell captive insurance company with respect to the participants as set forth in the participant contracts;

(5) "Protected cell assets" means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive insurance company;

(6) "Protected cell captive insurance company" means any captive insurance company:

(A) In which the minimum capital and surplus required by this chapter are provided by one (1) or more sponsors;

(B) That is formed or licensed under this chapter;

(C) That insures the risks of separate participants through participant contracts; and

(D) That funds its liability to each participant through one (1) or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account;

(7) “Protected cell liabilities” means all liabilities and other obligations identified with and attributed to a specific protected cell of a protected cell captive insurance company; and

(8) “Sponsor” means any person or entity that is approved by the commissioner to provide all or part of the capital and surplus required by this chapter and to organize and operate a protected cell captive insurance company.

§ 56-13-203. Company information filing requirements

In addition to the information required by § 56-13-103(c)(1), each applicant-protected cell captive insurance company shall file with the commissioner the following:

(1) Materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner, and how it will report such experience to the commissioner;

(2) A statement acknowledging that all financial records of the applicant, including records pertaining to any protected cells, shall be made available for inspection or examination by the commissioner or the commissioner's designated agent;

(3) All contracts or sample contracts between the applicant and any participants; and

(4) Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.

§ 56-13-204. Protected cells; establishment and maintenance; conditions

A protected cell captive insurance company formed or licensed under this chapter may establish and maintain one (1) or more incorporated or unincorporated protected cells, to insure risks of one (1) or more participants, subject to the following conditions:

(1) (A) A protected cell captive insurance company may establish one (1) or more protected cells if the commissioner has approved in writing a plan of operation or amendments to a plan of operation submitted by the protected cell captive insurance company with respect to each protected cell. A plan of operation shall include, but is not limited to, the specific business

objectives and investment guidelines of the protected cell; provided, that the commissioner may require additional information in the plan of operation;

(B) Upon the commissioner's written approval of the plan of operation, the protected cell captive insurance company, in accordance with the approved plan of operation, may attribute insurance obligations with respect to its insurance business to the protected cell;

(C) A protected cell shall have its own distinct name or designation that shall include the words “protected cell” or “incorporated cell” provided, an incorporated cell formed as a series of a limited liability company, if formed after July 1, 2015, shall bear a distinct name or designation as reflected in its formation documents and shall include the words “series cell”;

(D) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one (1) or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell;

(E) An incorporated protected cell may be organized and operated in any form of business organization authorized by the commissioner, including, but not limited to, an individual series of a limited liability company as provided for in title 48, chapter 249. Each incorporated protected cell of a protected cell captive insurer shall be treated as a captive insurer for purposes of this chapter. Unless otherwise permitted by the organizational documents of a protected cell captive insurer, each incorporated protected cell of the protected cell captive insurer must have the same directors, secretary, and registered office as the protected cell captive insurer;

(F) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation and participant contracts approved by the commissioner. No other attribution of assets or liabilities shall be made by a protected cell captive insurance company between the protected cell captive insurance company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell shall be in cash or in readily marketable securities with established market values;

(2) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this part, including assets transferred to a protected cell account, are owned by the protected cell. No protected cell captive

insurance company shall be, or hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding this subdivision (2), the protected cell captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell and otherwise allowed under applicable law;

(3) This chapter shall not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell, if all remuneration, expenses, and other compensation of the third party advisor or manager are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account;

(4) (A) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify the one (1) or more protected cells of the protected cell captive insurance company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a protected cell captive insurance company shall keep protected cell assets and protected cell liabilities:

(i) Separate and separately identifiable from the assets and liabilities of the protected cell captive insurance company's general account; and

(ii) Attributable to one (1) protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells;

(B) If subdivision (4)(A) is violated, then the remedy of tracing is applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account. The remedy of tracing shall not be construed as an exclusive remedy;

(5) When establishing a protected cell, the protected cell captive insurance company shall attribute to the protected cell assets a value at least equal to the reserves and other insurance liabilities attributed to that protected cell;

(6) Each protected cell shall be accounted for separately on the books and records of the protected cell captive insurance company to reflect the financial condition and results of operations of such protected cell, net income or loss, dividends or other distributions to participants, and such other factors as may be provided in the participant contract or required by the commissioner;

(7) No asset of a protected cell shall be chargeable with liabilities arising out of any other insurance business the protected cell captive insurance company may conduct;

(8) No sale, exchange, or other transfer of assets shall be made by such protected cell captive insurance company between or among any of its protected cells without the consent of such protected cells;

(9) No sale, exchange, transfer of assets, dividend, or distribution shall be made from a protected cell to a protected cell captive insurance company or participant without the commissioner's approval. In no event shall the commissioner's approval be given if the sale, exchange, transfer, dividend or distribution would result in the insolvency or impairment of a protected cell;

(10) All attributions of assets and liabilities to the protected cells and the general account shall be in accordance with the plan of operation approved by the commissioner. No other attribution of assets or liabilities shall be made by a protected cell captive insurance company between its general account and any protected cell or between any protected cells. The protected cell captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a reinsurance contract entered into with respect to a protected cell to such protected cell. The performance under such reinsurance contract and any tax benefits, losses, refunds, or credits allocated pursuant to a tax allocation agreement to which the protected cell captive insurance company is a party, including any payments made by or due to be made to the protected cell captive insurance company pursuant to the terms of such agreement, shall reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that are attributed to such protected cell;

(11) In connection with the conservation, rehabilitation, or liquidation of a protected cell captive insurance company, the assets and liabilities of a protected cell shall, to the extent the commissioner determines they are separable, at all times be kept separate from, and shall not be commingled with, those of other protected cells and the protected cell captive insurance company;

(12) Each protected cell captive insurance company shall annually file with the commissioner such financial reports as required by the commissioner. Any such financial report shall include, without limitation, accounting statements detailing the financial experience of each protected cell;

(13) Each protected cell captive insurance company shall notify the commissioner in writing within ten (10) business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations;

(14) No participant contract shall take effect without the commissioner's prior written approval. The addition of each new protected cell, the withdrawal of any participant, or the termination of any existing protected cell shall constitute a change in the plan of operation requiring the commissioner's prior written approval;

(15) The business written by a protected cell captive insurance company, with respect to each protected cell, shall be:

(A) Fronted by an insurance company licensed under the laws of any state;
(B) Reinsured by a reinsurer authorized or approved by this state; or
(C) Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the commissioner. The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums for business written through the participant's protected cell. The commissioner may require the protected cell captive insurance company to increase the funding of any security arrangement established under this subdivision (15). If the form of security is a letter of credit, the letter of credit shall be issued or confirmed by a bank approved by the commissioner. A trust maintained pursuant to this subdivision (15) shall be established in a form and upon such terms approved by the commissioner; and

(16) Notwithstanding this title or other laws of this state, and in addition to § 56-13-207, in the event of an insolvency of a protected cell captive insurance company where the commissioner determines that one (1) or more protected cells remain solvent, the commissioner may separate such cells from the protected cell captive insurance company and may allow, on application of the protected cell captive insurance company, for the conversion of such protected cells into one (1) or more new or existing protected cell captive insurance companies, or one (1) or more other captive insurance companies, pursuant to such plan of operation as the commissioner deems acceptable.

§ 56-13-205. Participants in protected cell captive insurance companies

(a) Associations, corporations, limited liability companies, partnerships, trusts, and other business entities may be participants in any protected cell captive insurance company formed or licensed under this chapter.

(b) A sponsor may be a participant in a protected cell captive insurance company.

(c) A participant need not be a shareholder of the protected cell captive insurance company or any affiliate thereof.

(d) A participant shall insure only its own risks through a protected cell captive insurance company, unless otherwise approved by the commissioner.

§ 56-13-206. Investments

Notwithstanding § 56-13-204, the assets of two (2) or more protected cells may be combined for purposes of investment, and such combination shall not be construed as defeating the segregation of such assets for accounting or other purposes. Notwithstanding any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating.

§ 56-13-207. Application of chapter 9 of title; management of assets and liabilities by receiver

(a) Except as otherwise provided in this section, chapter 9 of this title shall apply to a protected cell captive insurance company.

(b) Upon any order of supervision, rehabilitation, or liquidation of a protected cell captive insurance company, the receiver shall manage the assets and liabilities of the protected cell captive insurance company pursuant to this part.

(c) Notwithstanding chapter 9 of this title:

(1) No assets of a protected cell shall be used to pay any expenses or claims other than those attributable to such protected cell; and

(2) A protected cell captive insurance company's capital and surplus shall at all times be available to pay any expenses of or claims against the protected cell captive insurance company.

§ 56-13-208. Litigation Involving Protected Cell Captive Insurance Companies

(a) The pleadings in any legal action brought by or against a protected cell captive insurance company shall specify which protected cell or cells are or should be named a party to the suit. If the general account is party to this suit, it likewise shall be separately identified in the pleadings as if it were a protected cell.

(b) A legal action brought against a protected cell captive insurance company that does not specify one (1) or more protected cells shall be deemed to have been brought against the general account only.

(c) Any protected cell that is not named in the pleadings of the legal action shall not be deemed to be a party to the legal action. Any protected cell that is erroneously HA0940 014865 -4- named as a party or named without proper cause shall be entitled to prompt dismissal from the legal action.

(d) Unless specified by the plan of operation, participant contract, or other prior contractual agreement, the assets of one (1) protected cell may not be encumbered or seized to satisfy the obligations of or a judgment against any other protected cell. No protected cell has a duty to defend the rights and obligations of any other protected cell.

(e) In any legal action involving a protected cell captive insurance company or a protected cell, any papers, documents, or property of a nonparty protected cell shall be afforded the same status during discovery as the documents or property of any other unrelated third party. A nonparty protected cell shall have standing to appear and petition for any appropriate relief to protect the confidentiality of its papers or documents.

Part 3. Branch Captive Insurance Companies

§ 56-13-301. Establishment of branch captive insurance company

(a) A branch captive insurance company may be established in this state, in accordance with this chapter, to write in this state any insurance or reinsurance of the employee benefit business of its parent and affiliated companies that is subject to the Employee Retirement Income Security Act of 1974, as amended, or any insurance or reinsurance permitted to be written by captive insurance companies pursuant to this chapter. In addition to any applicable provisions of this chapter, this part shall apply to branch captive insurance companies.

(b) No branch captive insurance company shall do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state.

§ 56-13-302. Definitions

As used in this part, unless the context requires otherwise:

(1) "Alien captive insurance company" means any insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction

which imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in such jurisdiction;

(2) “Branch business” means any insurance business transacted by a branch captive insurance company in this state;

(3) “Branch captive insurance company” means any alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state. A branch captive insurance company is a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the commissioner; and

(4) “Branch operations” means any business operations of a branch captive insurance company in this state.

§ 56-13-303. License; security for payment of liabilities; form

(a) No branch captive insurance company shall be issued a license by the commissioner unless it possesses and maintains, as security for the payment of liabilities attributable to the branch operations:

(1) An amount equal to the amount set forth in § 56-13-105 as the minimum capital requirement for a pure captive insurance company; and

(2) Reserves on such insurance policies or such reinsurance contracts as may be issued or assumed by the branch captive insurance company through its branch operations, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, that, the commissioner may permit a branch captive insurance company to credit against any such reserve requirement any security for loss reserves that the branch captive insurance company may post with a ceding insurer or that may be posted by a reinsurer with the branch captive insurance company, and in either case if such security remains posted.

(b) Subject to the prior approval of the commissioner, the amounts required in subsection (a) may be held in the form of:

(1) A trust formed under a trust agreement and funded by assets acceptable to the commissioner;

(2) An irrevocable letter of credit issued or confirmed by a bank approved by the commissioner;

(3) With respect to the amounts required in subdivision (a)(1) only, cash on deposit with the commissioner; or

(4) Any combination of subdivisions (b)(1)-(3).

§ 56-13-304. Captive insurance company seeking licensure as branch captive insurance company; petition by alien captive insurance company

In the case of a captive insurance company seeking to become licensed as a branch captive insurance company, the alien captive insurance company shall petition the commissioner to issue a certificate setting forth the commissioner's finding that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the alien captive insurance company, the licensing and maintenance of the branch operations will promote the general good of this state. The alien captive insurance company in this state after the commissioner's certificate of authority is issued shall also comply with titles 48 and 61.

§ 56-13-305. Reports and statements; filing

Prior to March 1 of each year, or with the approval of the commissioner within sixty (60) days after its fiscal year-end, a branch captive insurance company shall file with the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath of two (2) of its executive officers. If the commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

§ 56-13-306. Examination of branch business; certificate of compliance

(a) The examination of a branch captive insurance company pursuant to § 56-13-109 shall be of branch business and branch operations only, if the branch captive insurance company provides annually to the commissioner a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed, and demonstrates to the commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of such jurisdiction.

(b) As a condition of licensure, an alien captive insurance company shall grant authority to the commissioner for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

§ 56-13-307. Tax application to branch business

In the case of a branch captive insurance company, the tax provided for in § 56-13-114 shall apply only to the branch business of such company.

Part 4. Special Purpose Financial Captives

§ 56-13-401. Creation of special purpose financial captives

This part provides for the creation of "special purpose financial captives" (SPFCs) exclusively to facilitate the securitization of one (1) or more risks, as a means of accessing alternative sources of capital and achieving the benefits of securitization. SPFCs are created for the limited purpose of entering into SPFC contracts and insurance securitization transactions and into related agreements to facilitate the accomplishment and execution of those transactions. The creation of SPFCs is intended to achieve greater efficiencies in structuring and executing insurance securitizations, to diversify and broaden sources of capital for insurers, to facilitate access for many insurers to insurance securitization and capital markets financing technology, and to further the economic development and expand the interest of this state through its captive insurance program.

§ 56-13-402. Definitions

For purposes of this part:

(1) "Affiliated company" means a company in the same corporate system as a parent, by virtue of common ownership, control, operation, or management;

(2) "Control", "controlling", "controlled by", and "under common control with" mean the possession, direct or indirect, 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 non-management services, or otherwise; provided, that such power is not the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist. Notwithstanding this subdivision (2), for purposes of this part, the fact that an SPFC exclusively

provides reinsurance to a ceding insurer under an SPFC contract is not by itself sufficient grounds for a finding that the SPFC and ceding insurer are under common control;

(3) “Counterparty” means an SPFC's parent or affiliated company, a ceding insurer to the SPFC contract, or subject to the prior approval of the commissioner, a non-affiliated company;

(4) “Fair value” means:

(A) As to cash, the amount of the cash; and

(B) As to an asset other than cash:

(i) The quoted mid-market price for the asset in active markets shall be used if available; or

(ii) If the quoted mid-market price is not available:

(*a*) A value determined using the best information available considering values of similar assets and other valuation methods, such as present value of future cash flows, historical value of the same or similar assets, or comparison to values of other asset classes, the value of which have been historically related to the subject asset; or

(*b*) The amount at which that asset could be bought or sold in a current transaction between arms-length, willing parties;

(5) “Insolvency” or “insolvent” means that the SPFC or one (1) or more of its protected cells is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute, or the commissioner previously has established by order other criteria for determining the solvency of the SPFC or one (1) or more of its protected cells, in which case the SPFC is insolvent if it fails to meet that criteria;

(6) “Insurance securitization” and “securitization” mean a transaction or a group of related transactions, which:

(A) Include capital market offerings, that are effected through related risk transfer instruments and facilitating administrative agreements where all or part of the result of such transactions is used to fund the SPFC's obligations under a reinsurance contract with a ceding insurer and by which:

(i) Proceeds are obtained by a special purpose financial captive insurance company, directly or indirectly, through the issuance of securities by the SPFC or any other person; or

(ii) A person provides one (1) or more letters of credit or other assets for the benefit of the SPFC; that the commissioner authorizes the SPFC to treat such letters of credit or other assets as admitted assets for purposes of the SPFC's annual report; and all or any part of such proceeds, letters of credit, or assets, as applicable, are used to fund the SPFC's obligations under a reinsurance contract with a ceding insurer; and

(B) Do not include the issuance of a letter of credit for the benefit of the commissioner to satisfy all or part of the SPFC's capital and surplus requirements under § 56-13-406;

(7) "Management" means the board of directors, managing board, or other individual or individuals vested with overall responsibility for the management of the affairs of the SPFC, including the election and appointment of officers or other of those agents to act on behalf of the SPFC;

(8) "Organizational document" means the SPFC's articles of incorporation, articles of charter, articles of organization, bylaws, operating agreement, or other formation documents as required by the secretary of state that establish the SPFC as a legal entity or prescribes its existence;

(9) "Parent" means any corporation, limited liability company, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of an SPFC;

(10) "Protected cell" means a separate account established and maintained by an SPFC for one (1) SPFC contract and the accompanying insurance securitization with a counterparty;

(11) "Securities" means those different types of debt obligations, equity, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments;

(12) "SPFC" or "special purpose financial captive" means a captive insurance company that has received a certificate of authority from the commissioner for the limited purposes provided for in this part;

(13) "SPFC contract" means a contract between the SPFC and the counterparty pursuant to which the SPFC agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business;

(14) "SPFC securities" means the securities issued by a SPFC; and

(15) "Surplus note" means an unsecured subordinated debt obligation deemed to be a surplus certificate under this title and otherwise possessing characteristics consistent with paragraph 3 of the Statement of Statutory Accounting Principals No. 41, as amended, National Association of Insurance Commissioners (NAIC).

§ 56-13-403. Application of title provisions; exemption from chapter

(a) No provisions of this title, other than those expressly provided in this part, shall apply to an SPFC, and those provisions apply only as modified by this part. If a conflict occurs between this title and this part, this part shall control.

(b) The commissioner, by rule, regulation, or order, may exempt an SPFC or its protected cells, on a case-by-case basis, from this chapter if the commissioner determines regulation under this chapter to be inappropriate given the nature of the risks to be insured.

§ 56-13-404. Application for authority to transact insurance or reinsurance business; filings; examinations; rules; fees; taxes; grant of authority

(a) An SPFC, when permitted by its organizational documents, may apply to the commissioner for a certificate of authority to transact insurance or reinsurance business as authorized by this part. An SPFC shall only insure or reinsure the risks of its counterparty. Notwithstanding any other provision of this part, an SPFC may purchase reinsurance to cede the risks assumed under the SPFC contract as approved by the commissioner.

(b) To transact business in this state, an SPFC shall:

(1) Comply with the procedure established in § 56-13-103(c)(1);

(2) Obtain from the commissioner a certificate of authority authorizing it to conduct insurance or reinsurance business, or both, in this state;

(3) Hold at least one (1) management meeting each year in this state;

(4) Maintain its principal place of business in this state;

(5) Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this state. If the registered agent, with reasonable diligence, is not found at the registered office of the SPFC, the commissioner shall be an agent of the SPFC upon whom any process, notice, or demand may be served;

(6) Provide such documentation of the insurance securitization as requested by the commissioner immediately upon closing of the transaction, including:

(A) An opinion of legal counsel with respect to compliance with this part and any other applicable laws as of the effective date of the transaction; and

(B) A statement under oath of its president and secretary demonstrating its financial condition; and

(7) Provide a complete set of the documentation of the insurance securitization to the commissioner immediately following closing of the transaction.

(c) A complete SPFC application shall include the following:

(1) A certified copy of the SPFC's organizational documents; and

(2) Evidence of:

(A) The amount and liquidity of its assets relative to the risks to be assumed;

(B) The adequacy of the expertise, experience, and character of the person or persons who manage the SPFC;

(C) The overall soundness of the SPFC's plan of operation;

(D) Other factors considered relevant by the commissioner in ascertaining whether the proposed SPFC is able to meet its policy obligations; and

(E) The applicant SPFC's financial condition, including the source and form of the minimum capitalization to be contributed to the SPFC;

(3) A plan of operation, consisting of a description of or statement of intent with respect to the contemplated insurance securitization, the SPFC contract, and related transactions, which shall include:

(A) Draft documentation or, at the discretion of the commissioner, a written summary of all material agreements that are entered into to effectuate the SPFC contract and, before the effectuation of the SPFC contract, the insurance securitization, to include the names of the counterparty, the nature of the risks being assumed, the proposed use of protected cells, if any, and the maximum amounts, purpose, and nature and the

interrelationships of the various transactions required to effectuate the insurance securitization;

(B) The source and form of additional capitalization to be contributed to the SPFC;

(C) The proposed investment strategy of the SPFC;

(D) A description of the underwriting, reporting, and claims payment methods by which losses covered by the SPFC contract are reported, accounted for, and settled; and

(E) A pro forma balance sheet and income statement illustrating various stress case scenarios for the performance of the SPFC under the SPFC contract;

(4) Biographical affidavits in NAIC format of all of the prospective SPFC's officers and directors, providing the officers' and directors' legal names, any names under which they have or are conducting their affairs, and any other biographical information as the commissioner may request;

(5) An affidavit from the applicant SPFC verifying:

(A) The applicant SPFC complies with this part;

(B) The applicant SPFC operates only pursuant to this part;

(C) The applicant SPFC's investment strategy reflects and takes into account the liquidity of assets and the reasonable preservation, administration, and asset management of such assets relative to the risks associated with the SPFC contract and the insurance securitization transaction;

(D) The securities proposed to be issued, if any, are valid legal obligations that are either properly registered with the commissioner or constitute an exempt security or form part of an exempt transaction; and

(6) Any other statements or documents required by the commissioner to evaluate and complete the licensing of the SPFC.

(d) In addition to the information required by subsection (c) and § 56-13-408, if a protected cell is used, then an applicant SPFC shall file with the commissioner:

(1) A business plan demonstrating how the applicant SPFC accounts for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner, and how the applicant will report the experience to the commissioner;

(2) A statement acknowledging that all financial records of the SPFC, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner;

(3) All contracts or sample contracts between the SPFC and any counterparty, related to each protected cell; and

(4) A description of the expenses allocated to each protected cell.

(e) Information submitted pursuant to this section shall be and remain confidential, and shall not be made public by the commissioner without the written consent of the company, except that:

(1) Such information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted such information is a party, upon a showing by the party seeking to discover such information that:

(A) The information sought is relevant to and necessary for the furtherance of such action or case;

(B) The information sought is unavailable from other non-confidential sources; and

(C) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner; and

(2) The commissioner shall have the discretion to disclose such information to a public officer having jurisdiction over the regulation of insurance in another state; provided, that:

(A) Such public official shall agree in writing to maintain the confidentiality of such information; and

(B) The laws of the state in which such public official serves require such information to be and to remain confidential.

(f) Section 56-13-109 applies to examinations, investigations, and processing conducted pursuant this part.

(g) SPFCs are subject to any rules or regulations promulgated pursuant to § 56-13-121, unless specifically exempted from such rule.

(h) An SPFC shall make payments to the commissioner in accordance with the fee schedule established in chapter 4, part 1 of this title. The commissioner may retain legal, financial, and examination services from outside the department to examine and investigate the application, the reasonable cost of which may be charged against the applicant. The commissioner also may use internal resources to examine and investigate the application based upon an hourly rate for the services performed or the usual and customary fee charged by the financial services industry for similar work subject to a minimum fee of twelve thousand dollars ($12,000), six thousand dollars ($6,000) of which is payable upon filing of the application, and the remainder upon licensure.

(i) An SPFC shall be subject to payment of premium taxes as required by § 56-13-114.

(j) The commissioner may grant a certificate of authority authorizing the SPFC to transact insurance or reinsurance business as an SPFC in this state, upon a finding by the commissioner that:

(1) The SPFC's proposed plan of operation provides a reasonable and expected successful operation;

(2) The terms of the SPFC contract and related transactions comply with this part;

(3) The proposed plan of operation is not hazardous to any counterparty;

(4) To the extent required by law or regulation, the commissioner or an equivalent regulatory authority of the state of domicile of each counterparty has notified the commissioner in writing or otherwise provided assurance satisfactory to the commissioner that it has approved or not disapproved the transaction; and

(5) The certificate of authority authorizing the SPFC to transact business is limited only to the insurance or reinsurance activities that the SPFC is authorized to conduct pursuant to this part.

(k) In evaluating the expectation of a successful operation, the commissioner shall consider, among other factors, whether the proposed SPFC and its management are of known good character and reasonably believed not to be affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations, with a person known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

(l) To ensure the proposed plan of operation is not hazardous to any counterparty, the commissioner may require reasonable safeguards in the SPFC's plan of operation where applicable and appropriate in the circumstance, including, without limitation, that certain assets of the SPFC be held in a trust to secure the obligations of the SPFC to a counterparty under an SPFC contract.

(m) A foreign or alien corporation or limited liability company, upon approval of the commissioner, may become a domestic SPFC after complying with § 56-13-103(c)(1)(A). After such documents are successfully filed, the foreign or alien corporation or limited liability company is entitled to the necessary or appropriate certificates or licenses to transact business as an SPFC in this state and is subject to the authority and jurisdiction of this state. In connection with this redomestication, the commissioner may waive any requirements for public hearings. It is not necessary for a corporation or limited liability company redomesticating into this state to merge, consolidate, transfer assets, or otherwise engage in another reorganization, other than as specified in this section.

§ 56-13-405. Form of organization; documents; name; residency

(a) An SPFC may be established as a stock corporation, limited liability company, mutual, partnership, or other form of organization approved by the commissioner.

(b) The SPFC's organizational documents shall limit the SPFC's authority to transact the business of insurance or reinsurance to those activities the SPFC conducts to accomplish its purpose as expressed in this part.

(c) The SPFC shall not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for another existing business name registered in this state. Any name adopted by an SPFC shall comply with titles 48 and 61.

(d) An SPFC shall have at least three (3) incorporators or organizers, of whom at least two (2) shall be residents of this state.

(e) At least one (1) of the members of the management of the SPFC shall be a resident of this state.

(f) An SPFC formed pursuant to this part has the privileges of and is subject to all other requirements of this state's law applicable to its formation, as well as the applicable provisions contained in this part; provided, that this part controls if a conflict exists in this state's law.

§ 56-13-406. Capitalization

(a) An SPFC shall initially possess and maintain, minimum capitalization of not less than two hundred and fifty thousand dollars ($250,000). All of the minimum initial capitalization shall be in cash. All other funds of the SPFC in excess of its minimum initial capitalization shall be in the form of cash, cash equivalent, or securities invested as approved by the commissioner.

(b) Additional capitalization for the SPFC shall be determined, if so required, by the commissioner after giving due consideration to the SPFC's plan of operation, feasibility study, pro-formas, and the nature of the risks being insured or reinsured, which may be prescribed in formulas approved by the commissioner.

§ 56-13-407. Allowed insurance, contacts, and other activities; reserves

(a) An SPFC shall only insure the risks of a counterparty.

(b) No SPFC shall issue a contract for assumption of risk or indemnification of loss other than an SPFC contract. However, the SPFC may cede risks assumed through an SPFC contract to third party reinsurers through the purchase of reinsurance or retrocession protection on terms approved by the commissioner.

(c) An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the SPFC contract, insurance securitization, and this part. Those activities may include, but are not limited to:

(1) Entering into SPFC contracts;

(2) Issuing SPFC securities in accordance with applicable securities law;

(3) Complying with the terms of such contracts or securities;

(4) Entering into trust, guaranteed investment contract, letter of credit, swap, tax, administration, reimbursement, or fiscal agent transactions; and

(5) Complying with trust indenture, reinsurance, or retrocession; and agreements necessary or incidental to effectuate an insurance securitization in compliance with this part or the plan of operation approved by the commissioner.

(d) (1) An SPFC shall discount its reserves at discount rates as approved by the commissioner.

(2) An SPFC shall maintain reserves that are actuarially sufficient to support the liabilities incurred by SPFC in reinsuring life insurance policies.

(3) An SPFC shall file annually with the commissioner an actuarial opinion on reserves provided by an approved independent actuary.

§ 56-13-408. Protected cells; establishment and maintenance

(a) This section and § 56-13-409 provide a basis for the creation and use of protected cells by an SPFC as a means of accessing alternative sources of capital, lowering formation and administrative expenses, and generally making insurance securitizations more efficient. If a conflict exists between this chapter and either this section or § 56-13-409, either this section or § 56-13-409 shall control, as applicable.

(b) An SPFC may establish and maintain one (1) or more protected cells with prior written approval of the commissioner and subject to compliance with the applicable provisions of this part and the following conditions:

(1) A protected cell shall be established only for the purpose of insuring or reinsuring risks of one (1) or more SPFC contracts with a counterparty with the intent of facilitating an insurance securitization;

(2) Each protected cell shall be accounted for separately on the books and records of the SPFC to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends, or other distributions to the counterparty for the SPFC contract with each cell, and other factors as may be provided in the SPFC contract, insurance securitization transaction documents, plan of operation, or business plan, or as required by the commissioner;

(3) Amounts attributed to a protected cell under this part, including assets transferred to a protected cell account, are owned by the SPFC, and no SPFC shall be, or hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account;

(4) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation approved by the commissioner. No other attribution of assets or liabilities shall be made by an SPFC between the SPFC's general account and its protected cell or cells. The SPFC shall attribute all insurance obligations, assets, and liabilities relating to an SPFC contract and the related insurance securitization transaction, including any securities issued by the SPFC as part of the insurance securitization, to a particular protected cell. The rights, benefits, obligations, and liabilities of any securities attributable to that protected cell and the performance under an SPFC contract and the related securitization transaction and any tax benefits, losses, refunds, or credits allocated, or any of them, at any point in time pursuant to a tax allocation agreement between the SPFC and the SPFC's counterparty, parent, or company or group company, or any of them, in common control with them, as the case

may be, including any payments made by or due to be made to the SPFC pursuant to the terms of the agreement, shall reflect the insurance obligations, assets, and liabilities relating to the SPFC contract and the insurance securitization transaction that are attributed to a particular protected cell;

(5) No assets of a protected cell shall be chargeable with liabilities arising out of an SPFC contract related to or associated with another protected cell. However, one (1) or more SPFC contracts may be attributed to a protected cell only if the SPFC contracts are intended to be, and ultimately are, part of a single securitization transaction;

(6) No sale, exchange, or other transfer of assets shall be made by the SPFC between, or among, any of the SPFC's protected cells without the consent of the commissioner, counterparty, and each protected cell;

(7) Except as otherwise contemplated in the SPFC contract or related insurance securitization transaction documents, or both no sale, exchange, transfer of assets, dividend, or distribution shall be made from a protected cell to a counterparty or parent without the commissioner's approval and the sale, exchange, transfer, dividend, or distribution shall not be approved if the sale, exchange, transfer, dividend, or distribution would result in a protected cell's insolvency or impairment; and

(8) An SPFC may pay interest or repay principal, or both, and make distributions or repayments with respect to any securities attributed to a particular protected cell from assets or cash flows relating to, or emerging from, the SPFC contract and the insurance securitization transactions that are attributable to that particular protected cell in accordance with this part or as otherwise approved by the commissioner.

(c) No SPFC contract with, or attributable to, a protected cell shall take effect without the commissioner's prior written approval, and the addition of each new protected cell constitutes a change in the business plan requiring the commissioner's prior written approval. The commissioner may retain legal, financial, and examination services from outside the department to examine and investigate the application for a protected cell, the reasonable cost of which may be charged against the applicant, or the commissioner may use internal resources to examine and investigate the application, the reasonable cost of which may be charged against the applicant, or both.

(d) An SPFC utilizing protected cells shall possess and maintain minimum capitalization separate and apart from the capitalization of its protected cell or cells in an amount determined by the commissioner after giving due consideration of the SPFC's business plan, feasibility study, and pro-formas, including the nature of the risks to be insured or reinsured. For purposes of determining the capitalization of each protected cell, an SPFC shall initially capitalize and

maintain capitalization in each protected cell in the amount and manner required for an SPFC in § 56-13-406.

(e) The establishment of one (1) or more protected cells alone shall not constitute, and shall not be deemed to be, a fraudulent conveyance, an intent by the SPFC to defraud creditors, or the carrying out of business by the SPFC for any other fraudulent purpose.

§ 56-13-409. Protected cells; business operations and procedures

(a) (1) The creation of a protected cell shall not create, with respect to that protected cell, a legal person separate from the SPFC.

(2) Notwithstanding subdivision (a)(1), a protected cell shall have its own distinct name or designation that includes the words "protected cell". The SPFC shall transfer all assets attributable to the protected cell to one (1) or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.

(3) Although a protected cell is not a separate legal person, the property of an SPFC in a protected cell is subject to orders of a court by name as the property would have been if the protected cell were a separate legal person.

(4) The property of an SPFC in a protected cell shall be served in its own name with process in all civil actions or proceedings involving or relating to the activities of that protected cell or a breach by the SPFC of a duty to the protected cell or to a counterparty to a transaction linked or attributed to it by serving the SPFC.

(5) A protected cell exists only at the pleasure of the SPFC. At the cessation of business of a protected cell in accordance with the plan approved by the commissioner, the SPFC shall close out the protected cell account.

(b) Nothing in this section shall be construed to prohibit an SPFC from contracting with, or arranging for, an investment advisor, commodity trading advisor, or other third party to manage the assets of a protected cell, if all remuneration, expenses, and other compensation of the third party advisor or manager are payable from the assets of that protected cell and not from the assets of other protected cells or the assets of the SPFC's general account, unless approved by the commissioner.

(c) Creditors with respect to a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets of the SPFC's general account. If an obligation of an SPFC relates only to the general account, the obligation of the SPFC extends

only to that creditor, with respect to that obligation, and the creditor is entitled to have recourse only to the assets of the SPFC's general account.

(d) The assets of the protected cell shall not be used to pay expenses or claims other than those attributable to the protected cell. Protected cell assets are available only to the SPFC contract counterparty and other creditors of the SPFC that are creditors only with respect to that protected cell and, accordingly, are entitled, in conformity with this part, to have recourse to the protected cell assets attributable to that protected cell. The assets of the protected cell are protected from the creditors of the SPFC that are not creditors with respect to that protected cell and who, accordingly, are not entitled to have recourse to the protected cell assets attributable to that protected cell. If an obligation of an SPFC to a person or counterparty arises from an SPFC contract or related insurance securitization transaction, or is otherwise incurred, with respect to a protected cell, then the obligation shall:

(1) Extend only to the protected cell assets attributable to that protected cell, and the person or counterparty, with respect to that obligation, is entitled to have recourse only to the protected cell assets attributable to that protected cell; and

(2) Not extend to the protected cell assets of another protected cell or the assets of the SPFC's general account, and the person or counterparty, with respect to that obligation, is not entitled to have recourse to the protected cell assets of another protected cell or the assets of the SPFC's general account. The SPFC's capitalization held separate and apart from the capitalization of its protected cell or cells must be available at all times to pay expenses of or claims against the SPFC and may not be used to pay expenses or claims attributable to any protected cell.

(e) Notwithstanding any other provision of law, an SPFC may allow for a security interest in accordance with applicable law to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell or to facilitate an insurance securitization, including, without limitation, the issuance of the SPFC contract, to the extent those protected cell assets are not required at all times to support the risk, but without otherwise affecting the discharge of liabilities under the SPFC contract, or as otherwise approved by the commissioner.

(f) An SPFC shall establish administrative and accounting procedures necessary to properly identify the one (1) or more protected cells of the SPFC and the protected cell assets and protected cell liabilities to each protected cell. An SPFC shall keep protected cell assets and protected cell liabilities:

(1) Separate and separately identifiable from the assets and liabilities of the SPFC's general account; and

(2) Attributable to one (1) protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(g) All contracts or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities. In all SPFC insurance securitizations involving a protected cell, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contracts or other documentation shall clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding this subsection (g), and subject to this part and other applicable law or regulations, the failure to include this language in the contracts or other documentation shall not be used as the sole basis by creditors, insureds or reinsureds, insurers or reinsurers, or other claimants to circumvent the provisions of this section.

(h) An SPFC with protected cells shall annually file with the department accounting statements and financial reports required by this part, which, at least, shall:

(1) Detail the financial experience of each protected cell and the SPFC separately; and

(2) Provide the combined financial experience of the SPFC and all protected cells.

(i) An SPFC with protected cells shall notify the commissioner in writing within ten (10) business days of a protected cell becoming insolvent.

§ 56-13-410. Securities; issuance

(a) An SPFC may issue securities, including surplus notes and other forms of financial instruments, subject to and in accordance with applicable law, its approved plan of operation, and its organizational documents.

(b) An SPFC, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) Subject to the approval of the commissioner, an SPFC may lawfully:

(1) Account for the proceeds of surplus notes as surplus and not as debt for purposes of statutory accounting; and

(2) Submit for prior approval of the commissioner periodic written requests for payments of interest on and repayments of principal of surplus notes. In lieu of approval of periodic written requests for authorization to make payments of interest on and repayments of principal of surplus

notes and other debt obligations issued by the SPFC, the commissioner may approve a formula or plan, which shall be included in the SPFC's plan of operation as amended from time to time, for payment of interest, principal, or both with respect to such surplus notes and debt obligations.

(d) The commissioner, without otherwise prejudicing the commissioner's authority, may approve formulas for an ongoing plan of interest payments or principal repayments, or both, to provide guidance in connection with the commissioner's ongoing reviews of requests to approve the payments on and principal repayments of the surplus notes.

(e) The obligation to repay principal or interest, or both, on the securities issued by the SPFC must reflect the risk associated with the obligations of the SPFC to the counterparty under the SPFC contract.

§ 56-13-411. Asset management agreements; investments

An SPFC may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, or interest rate risk of the investments to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to an SPFC insurance securitization transaction or the obligations of the SPFC under the SPFC contract.

§ 56-13-412. Reinsurance contracts

(a) An SPFC may reinsure only the risks of a ceding insurer, pursuant to a reinsurance contract. No SPFC shall issue a contract of insurance or a contract for assumption of risk or indemnification of loss other than such reinsurance contract.

(b) Unless otherwise approved in advance by the commissioner, no SPFC shall assume or retain exposure to insurance or reinsurance losses for its own account that are not funded by:

(1) Proceeds from an insurance securitization or letters of credit or other assets described in § 56-13-402;

(2) Premium and other amounts payable by the ceding insurer to the SPFC pursuant to the reinsurance contract; and

(3) Any return on investment of the items described in subdivisions (b)(1) and (2).

(c) The reinsurance contract shall contain all provisions reasonably required or approved by the commissioner, which requirements shall take into account the laws applicable to the ceding insurer regarding the ceding insurer taking credit for the reinsurance provided under such reinsurance contract.

(d) An SPFC may cede risks assumed through a reinsurance contract to one (1) or more reinsurers through the purchase of reinsurance, subject to the prior approval of the commissioner.

(e) An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the reinsurance contract, the insurance securitization, and this part, provided such contracts and activities are included in the SPFC's plan of operation or are otherwise approved in advance by the commissioner. Such contracts and activities may include but are not limited to:

(1) Entering into SPFC contracts;
(2) Issuing SPFC securities in accordance with applicable securities law;
(3) Complying with the terms of such contracts or securities;
(4) Entering into trust, guaranteed investment contract, letter of credit, swap, tax, administration, reimbursement, or fiscal agent transactions; and
(5) Complying with trust indenture, reinsurance, or retrocession; and other agreements necessary or incidental to effectuate an insurance securitization in compliance with this part or the plan of operation approved by the commissioner.

(f) Unless otherwise approved in advance by the commissioner, a reinsurance contract shall not contain any provision for payment by the SPFC in discharge of its obligations under the reinsurance contract to any person other than the ceding insurer or any receiver of the ceding insurer.

(g) An SPFC shall notify the commissioner immediately of any action by a ceding insurer or any other person to foreclose on or otherwise take possession of collateral provided by the SPFC to secure any obligation of the SPFC.

(h) In the SPFC insurance securitization, the contracts or other relating documentation shall contain provisions identifying the SPFC.

(i) Unless otherwise approved by the commissioner, no SPFC shall enter into an SPFC contract with a person that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile.

(j) No SPFC shall:

(1) Have any direct obligation to the policyholders or reinsureds of the counterparty; or

(2) Lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from, other than by issuance of the securities pursuant to an insurance securitization, or advance from, anyone convicted of a felony, anyone who is untrustworthy or of known bad character, or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption.

§ 56-13-413. Insurance securitization; insurance business

No securities issued by an SPFC pursuant to an insurance securitization shall be considered to be insurance or reinsurance contracts. No investor in these securities or a holder of these securities, by sole means of this investment or holding, shall be considered to be transacting the business of insurance in this state. The underwriter's placement or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization pursuant to this part shall not be considered to be insurance producers or brokers or conducting business as an insurance or reinsurance company or agency, brokerage, intermediary, advisory, or consulting business only by virtue of their activities in connection with an insurance securitization.

§ 56-13-414. Asset administration; investments

(a) The assets of an SPFC shall be preserved and administered by or on behalf of the SPFC to satisfy the liabilities and obligations of the SPFC incident to the reinsurance contract, the insurance securitization, and other related agreements.

(b) In the insurance securitization, the security offering memorandum or other document issued to prospective investors regarding the offer and sale of a surplus note or other security shall include a disclosure that all or part of the proceeds of such insurance securitization will be used to fund the SPFC's obligations to the ceding insurer.

(c) No SPFC shall be subject to any restriction on investments other than the following:

(1) The commissioner may limit investments by an SPFC to those categories and amounts of authorized investments delineated in chapter 3, parts 3 or 4 of this title, as applicable and as amended from time to time;

(2) No SPFC shall make a loan to any person other than as permitted under its plan of operation or as otherwise approved in advance by the commissioner; and

(3) The commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the SPFC unless the investment is otherwise approved in its plan of operation or in an order issued to the SPFC pursuant to § 56-13-404, as either is amended from time to time.

§ 56-13-415. Dividends

(a) No SPFC shall declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no extent shall the dividends decrease the capital of the SPFC below two hundred fifty thousand dollars ($250,000). After giving effect to the dividends, the assets of the SPFC, including assets held in trust pursuant to the terms of the insurance securitization, shall be sufficient to satisfy the commissioner that the SPFC can meet its obligations. Approval by the commissioner of an ongoing plan for the payment of dividends or other distribution by an SPFC must be conditioned upon the retention, at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the SPFC by the commissioner.

(b) The dividends may be declared by the management of the SPFC if the dividends do not violate this part or jeopardize the fulfillment of the obligations of the SPFC or the trustee pursuant to the SPFC insurance securitization agreements, the SPFC contract, or any related transaction and other provisions of this part.

§ 56-13-416. Plan of operation; material change; audit; records

(a) Any material change of the SPFC's plan of operation, whether or not through an SPFC protected cell, shall require prior approval of the commissioner. The following transactions do not constitute material change for purposes of this section:

(1) If initially approved in the plan of operation, securities subsequently issued to continue the securitization activities of the SPFC either during or after expiration, redemption, or satisfaction, of all of these, of part or all of the securities issued pursuant to initial insurance securitization transactions; and

(2) A change and substitution in a counterparty to a swap transaction for an existing insurance securitization as allowed pursuant to this part if the replacement swap counterparty carries a similar or higher rating to its predecessor with two (2) or more nationally recognized rating agencies.

(b) No later than six (6) months after the fiscal year-end of the SPFC, the SPFC shall file with the commissioner an audit by a certified public accounting firm of the financial statements of the SPFC and the trust accounts.

(c) An SPFC shall report using statutory accounting principles, unless the commissioner requires, approves, or accepts the use of generally accepted accounting principles or other comprehensive basis of accounting, in each case the commissioner may require, approve, or accept any appropriate or necessary modifications or adaptations. The commissioner may require the report to be supplemented by additional information.

(d) Each SPFC shall file by March 1, a statement of operations, using either generally accepted accounting principles or, if approved, accepted or required by the commissioner, statutory accounting principles with useful or necessary modifications or adaptations for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. The statement of operations shall include a statement of income, a balance sheet, and may include a detailed listing of invested assets, including identification of assets held in trust to secure the obligations of the SPFC under the SPFC contract. The SPFC also may include with the filing risk based capital calculations and other adjusted capital calculations to assist the commissioner with evaluating the levels of the surplus of the SPFC for the year ending on December 31st of the previous year. The statements shall be prepared on forms required by the commissioner. In addition, the commissioner may require the filing of performance assessments of the SPFC contract.

(e) An SPFC shall maintain the SPFC's records in this state unless otherwise approved by the commissioner and shall make its records available for examination by the commissioner at any time. The SPFC shall keep its books and records in such manner that its financial condition, affairs, and operations can be ascertained and so that the commissioner may readily verify its financial statements and determine its compliance with this part.

(f) All original books, records, documents, accounts, and vouchers shall be preserved and kept available in this state for the purpose of examination and until authority to destroy or otherwise dispose of the records is secured from the commissioner. The original records, however, may be kept and maintained outside this state if, according to a plan adopted by the management of the SPFC and approved by the commissioner, it maintains suitable copies instead of the originals. The books or records may be photographed, reproduced on film, or stored and reproduced electronically.

§ 56-13-417. Expiration or modification of authority to conduct activities

At the cessation of business of an SPFC following termination or cancellation of an SPFC contract and the redemption of any related securities issued in connection with the SPFC contract, the authority granted by the commissioner expires or, in the case of retiring and surviving protected cells, is modified, and the SPFC is no longer authorized to conduct activities unless and until a new or modified certificate of authority is issued pursuant to a new filing under this part or as agreed by the commissioner.

§ 56-13-418. Application of chapter 9 of title; management of assets and liabilities by receiver

(a) Except as otherwise provided in this section, chapter 9 of this title shall apply in full to an SPFC.

(b) Upon any order of supervision, rehabilitation, or liquidation of an SPFC, the receiver shall manage the assets and liabilities of the SPFC pursuant to this part.

(c) Notwithstanding chapter 9 of this title:

(1) No asset of a protected cell shall be used to pay any expenses or claims other than those attributable to such protected cell; and

(2) An SPFC's capital and surplus shall, at all times, be available to pay any expenses of or claims against the SPFC.

OTHER STATUTES RELATIVE TO CAPTIVE INSURANCE

These statutes are provided as a convenience to the captive insurance industry. Not all of the statutes listed below are applicable to every type of captive insurance company. The statutes which are considered applicable to risk retention groups and generally not applicable to other types of captives are marked with an asterisk. The information contained herein should not be considered a substitute for qualified legal counsel.

EXAMINATIONS

§ 56-1-401. Prerequisite for certificate of authority

Before granting certificates of authority to an insurance company to issue policies or make contracts of insurance, the commissioner shall be satisfied, by such examination and evidence as the commissioner sees fit to make and require, that the company is duly qualified under the laws of the state to transact business in the state.

§ 56-1-402 and **-403** repealed.

§ 56-1-404. Charges required for reinsurance

To determine the liability upon the contracts of insurance for insurance companies doing business in this state, foreign and domestic, other than life, the commissioner shall require the companies to charge, as the liability for reinsurance of outstanding policies, fifty percent (50%) of the premiums received on policies or risks having not more than one (1) year to run, and a pro rata of all premiums received on policies or risks having more than one (1) year to run.

§ 56-1-405. Financial condition; commissioner's authority

The commissioner shall allow to the credit of an insurance company in the account of its financial condition only the assets that are or can be made available for the payment of losses in the state, but may credit any deposits of funds of the company set apart as security for a particular liability, or any deposits of funds of the company that are deposited for the purpose of meeting the requirements for doing business in another state or commonwealth. The commissioner may, in the commissioner's discretion, disallow stockholders' obligations of any description as part of the assets or capital of any insurance company, unless secured by competent collateral.

§ 56-1-406. Commissioner; custodian of collateral

The commissioner shall be the custodian of all collateral in the form of stock certificates, bonds, debentures, notes and other evidences of indebtedness deposited or pledged with the commissioner under any existing law, and it shall be the commissioner's official duty safely to keep, surrender and account for the collateral deposited as provided by law, and for the safekeeping of that collateral both the commissioner and the sureties on the commissioner's official bond are liable.

§ 56-1-407. Valuation of bonds

(a) All bonds or other evidences of debt having a fixed term and rate held by any life insurance company, assessment life association, or fraternal beneficiary association, authorized to do business in this state, may, if amply secured and not in default as to principal and interest, be valued as follows:

(1) If purchased at par, at par value; or

(2) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

(b) The purchase shall in no case be taken at a higher figure than the actual market value at the time of purchase.

(c) The commissioner shall have full discretion in determining the method of calculating values according to subsection (a).

§ 56-1-408. Examination of licensed companies

As often as once in five (5) years, the commissioner shall, personally or by a deputy or some competent person appointed by the commissioner for that purpose, visit each insurance company licensed in this state and examine its affairs, especially as to its financial condition and ability to fulfill its obligations, and whether it has complied with the law.

§ 56-1-409. Examination; when deemed prudent; upon request

(a) The commissioner shall also make an examination of each insurance company licensed in this state whenever the commissioner deems it prudent to do so, or upon the request of five (5) or more of the stockholders or persons pecuniarily interested in the company, who shall make affidavit of their belief, with specifications of their reasons for the belief, that the company is in an unsound condition.

(b) For the purpose of ascertaining financial condition or legality of conduct, the commissioner may, for good cause, make an investigation and examination, independent of any other examination of an insurer or proposed insurer, of any accounts, records, files, documents, and transactions pertaining to the business of insurance. The investigatory and examination authority shall extend to:

(1) Any insurance agency, agent, general agent, surplus lines agent, insurance representative, or any person holding out to be an insurance agency, agent, general agent, surplus lines agent, or insurance representative;

(2) Any person having a contract under which that person enjoys by terms or in fact the exclusive or dominant right to manage or control an insurer;

(3) Any corporation, association, or person engaged in the business of adjusting losses, financing premiums, or furnishing insurance services in the form of administrative services only to self-insured groups;

(4) Any other individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance; and

(5) Any employer that self-insures its workers' compensation liabilities pursuant to § 50-6-405(b) or a group of employers qualifying as self-insurers pursuant to § 50-6-405(c).

§ 56-1-410. Examination of foreign companies

(a) When the commissioner or the commissioner's deputy deems it prudent for the protection of policyholders in this state, the commissioner shall in like manner, visit and examine, or cause to be visited and examined by some competent person or persons the commissioner may appoint for that purpose, any foreign insurance company applying for admission to do business in this state.

(b) In lieu of an examination under this section of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the department of insurance for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, these reports may only be accepted if:

(1) The department of insurance was at the time of the examination accredited under the National Association of Insurance Commissioners, Financial Regulation Standards and Accreditation Program; or

(2) The examination is performed:

(A) Under the supervision of a department of insurance so accredited; or

(B) With the participation of one (1) or more examiners who are employed by such an accredited state department of insurance and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their department of insurance.

§ 56-1-411. Conduct of examination; reports; violations; confidentiality

(a) In the course of the examination, the commissioner, the commissioner's deputy, or the person appointed by the commissioner for the purpose of making the examination may examine:

(1) Any insurance company transacting, or being organized to transact, business in this state;

(2) Any corporation, association, or person engaged in or proposing to be engaged in the organization, promotion or solicitation of shares or capital contributions to, or aiding in the formation of, an insurance company;

(3) As an incident to the examination of the insurance company itself, any corporation, association, or person holding shares of capital stock of an insurance company for the purpose of controlling the management of the insurance company as voting trustee or otherwise;

(4) As an incident to the examination of the insurance company itself, any corporation, association, or person having a contract, written or oral, pertaining to the management or control of an insurance company as general agent, managing agent or attorney-in-fact;

(5) As an incident to the examination of the insurance company itself, any corporation, association, or person that has substantial control, directly or indirectly, over any insurance company doing business in this state whether by ownership of its stock or otherwise, or any corporation, association, or person owning stock in any such insurance company, which stock constitutes a substantial proportion of the stock of the insurance company;

(6) Any subsidiary or affiliate of any insurance company doing business in this state;

(7) Any licensed agent, broker or solicitor or any corporation, association, or person making application for a license as an agent, broker or solicitor; and

(8) Any corporation, association, or person engaged in the business of adjusting losses or financing premiums.

(b) (1) Every company, corporation, association, or person being examined, its officers, directors and agents, shall provide to the commissioner, the commissioner's deputy, or the person appointed by the commissioner for the purpose of the examination, convenient and free access at its office to all books, records, securities, documents and any and all papers relating to the property, assets, business and affairs of the company. The officers, directors and agents of the company, corporation, association or person shall facilitate the examination and aid in the examination so far as it is in their power to do so.

(2) The commissioner, the commissioner's deputy, or the person appointed by the commissioner for the purpose of the examination, has the power to:

(A) Administer oaths and to examine under oath any person relative to the business of the company; and

(B) Appraise or cause to be appraised by competent appraisers appointed by the commissioner or such other person all property in which the company has or claims an interest or that is security in any form for the payment of any debt or obligation to the company.

(c) (1) The commissioner, the commissioner's deputy, or the person appointed by the commissioner for the purpose of the examination, shall make a full and true report of the examination, which shall comprise only facts ascertained from the books, papers, records, securities or documents or other evidence obtained by investigation and examined by them or ascertained from the testimony of officers or agents or other persons examined under oath concerning the business, affairs, assets and obligations of the company. The report of examination shall be verified by the oath of the examiner in charge of the examination and shall be prima facie evidence in any action or proceeding in the name of the state against the company, its officers or agents upon the facts stated in the report.

(2) In the conduct of an examination, the criteria as set forth in the Examiners Handbook adopted by the National Association of Insurance Commissioners and the National Association of Insurance Commissioners Accounting Practices and Procedures Manuals that were in effect when the commissioner exercised discretion to make an examination under or to take other action permitted by this chapter shall be used. The commissioner may also employ other guidelines or procedures the commissioner deems appropriate.

(d) (1) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that affords the company examined a reasonable opportunity of not more

than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(2) Within thirty (30) days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers and enter an order:

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation;

(B) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling pursuant to subdivision (c)(2); or

(C) Calling for an investigatory hearing with no less than twenty (20) days' notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(3) If the examination reveals that the company is operating in violation of any law, regulation or prior order, the commissioner, in the written order, may require the company to take any action the commissioner considers necessary or appropriate in accordance with the report of examination or the hearing, if any, on the report. That order shall be subject to judicial review in accordance with title 27, chapter 9.

(4) Nothing contained in this chapter shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating to the reports or results, to the department of insurance of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating to the reports agrees in writing to hold it confidential and in a manner consistent with this section.

(e) Any company, corporation, or association that, or person who, violates or aids and abets any violation of a written order issued pursuant to this section shall be punished by a fine of not more than five thousand dollars ($5,000), which shall be sued for and recovered pursuant to § 56-1-802.

(f) All working papers, recorded information, documents and copies of working papers, recorded information and documents produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this chapter must be given confidential treatment and may not be made public by the commissioner or any other person, except to the extent provided in subsection (d). Access may also be granted to the National Association of Insurance Commissioners. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

§ 56-1-412. Examinations; failure to appear; obstruction; penalties

Whoever, without justifiable cause, neglects, upon due summons, to appear and testify before the commissioner, the commissioner's deputy, or person appointed by the commissioner as provided, and whoever obstructs the commissioner, the commissioner's deputy or examiner in examining insurance companies commits a Class C misdemeanor.

§ 56-1-413. Costs of examination

(a) (1) Any insurance company authorized to do business in this state and examined under the law shall pay the proper charges incurred in the examination, including the expenses of the commissioner or the commissioner's deputy, and the expenses and compensation of the commissioner's assistants employed in the examination.

(2) The compensation of the experts, actuaries and examiners designated by the commissioner for examining the books or business of insurance companies doing business in this state shall be fixed by the commissioner at a reasonable amount commensurate with usual compensation for like services.

(b) All persons engaging, assisting or making the required examination under this chapter shall be regular state employees, and their entire expenses and compensation shall be paid only by the state as now provided for by law. Notwithstanding this subsection (b), the commissioner may contract, in accordance with applicable state contracting procedures, for qualified actuaries and financial examiners the commissioner deems necessary due to the unavailability of qualified regular state employees to conduct a particular examination; provided, that, with respect to financial examinations, the compensation and per diem allowances paid to the persons shall not exceed one hundred fifty percent (150%) of the compensation and per diem allowances set forth in the guidelines adopted by the National Association of Insurance Commissioners, unless the commissioner determines that a higher compensation rate is necessary, and the insurance company being examined agrees to pay a compensation rate that might exceed these allowances.

(c) The full cost of the examination fixed by the commissioner shall be paid into the department for its use and benefit in meeting the expenses and compensation for the persons engaged in the examinations.

§ 56-1-414. Impaired capital

When it appears to the commissioner that the capital stock of a domestic insurance company is impaired to the extent of twenty percent (20%) or more, the commissioner shall notify the company that its capital is legally subject to be made good; and, if the company does not, within sixty (60) days after the notice, satisfy the commissioner that it has fully repaired its capital, or reduced its capital as provided by law, the commissioner shall institute proceedings against it.

§ 56-1-415. Domestic life insurance companies; insufficient assets

When the actual funds of a domestic life insurance company, exclusive of its capital, are not of a net cash value equal to its liabilities, including the net value of its policies, computed by the rule of valuation established by part 9 of this chapter, the commissioner shall notify the company and its agents to issue no new policies until its funds become equal to its liabilities.

§ 56-1-416. Certificates of authority; revocation and suspension

(a) The commissioner shall revoke or suspend all certificates of authority granted to the company or its agents and cause notice of revocation or suspension to be published in one (1) or more newspapers of general circulation, if the commissioner is of the opinion, upon examination or other evidence, that:

(1) A foreign insurance company is:

(A) In an unsound condition; or

(B) If a life insurance company, has actual funds, exclusive of its capital, less than its liabilities; or

(2) A foreign insurance company has:

(A) Failed to comply with the law; or

(B) Its officers or agents have:

(i) Refused to submit to examination;

(ii) Refused to perform any legal obligations in relation to examinations; or

(iii) Failed to pay any final judgment against the company recovered by a Tennessee citizen.

(b) No new business shall be done by a company or its agents under suspension or revocation while the default or disability continues, nor until its authority to do business is restored by the commissioner.

§ 56-1-417. Certificates of authority; revocation and suspension; notice

Unless the ground for revocation or suspension relates only to the financial condition or soundness of the company or to a deficiency in its assets, the commissioner shall notify the company no less than ten (10) days before revoking its authority to do business in this state, and the commissioner shall specify in the notice the particulars of the supposed violation.

§ 56-1-418. Calculations of reserves for accident and health policies

The commissioner shall annually cause to be made, or require the insurer to make, calculations of policy and claim reserves for accident and health policies providing disability benefits as defined in § 56-2-201 on the basis of regulations the commissioner prescribes from time to time regarding minimum reserve standards and tables of mortality, morbidity, interest or other contingencies to be used to compute the reserves. From July 1, 1995, until the date of promulgation of rules and regulations, all calculations with respect to policy and claim reserves for accident and health policies providing disability benefits shall be made at a rate of interest not exceeding four and one half percent (4.5%) per annum.

§ 56-1-419. Actuarial opinions; statements; summaries; reports

(a) STATEMENT OF ACTUARIAL OPINION. On or before March 1, 2012, and annually every year thereafter, every property and casualty insurance company doing business in this state, unless otherwise exempted by the domiciliary commissioner, shall submit the opinion of an appointed actuary entitled "Statement of Actuarial Opinion". This opinion shall be filed with the appropriate National Association of Insurance Commissioners (NAIC) property and casualty annual statement instructions and shall cover the activity of the prior calendar year.

(b) ACTUARIAL OPINION SUMMARY.

(1) Every property and casualty insurance company domiciled in this state that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate NAIC property and casualty annual statement instructions and shall be considered as a document supporting the actuarial opinion required in subsection (a).

(2) A company licensed but not domiciled in this state shall provide the actuarial opinion summary upon request.

(c) ACTUARIAL REPORT AND WORK PAPERS.

(1) An actuarial report and underlying work papers as required by the appropriate NAIC property and casualty annual statement instructions shall be prepared to support each actuarial opinion.

(2) If the insurance company fails to provide a supporting actuarial report and/or work papers at the request of the commissioner or the commissioner determines that the supporting actuarial report or work papers provided by the insurance company is otherwise unacceptable to

the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or work papers.

(d) The appointed actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

§ 56-1-420. Confidential and privileged documents

(a) The statement of actuarial opinion, submitted pursuant to § 56-1-419, shall be provided with the annual statement in accordance with the appropriate National Association of Insurance Commissioners (NAIC) property and casualty annual statement instructions and shall be treated as a public document.

(b) (1) Notwithstanding the provisions of § 10-7-503 or any other law to the contrary, documents, materials or other information in the possession or control of the department of commerce and insurance that are considered an actuarial report, work papers or actuarial opinion summary provided in support of the opinion, and any other material provided by the company to the commissioner in connection with the actuarial report, work papers or actuarial opinion summary, shall be confidential by law and privileged, shall not be subject to open records requests or sunshine laws, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(2) This subsection (b) shall not be construed to limit the commissioner's authority to release the documents to the Actuarial Board for Counseling and Discipline (ABCD) so long as the material is required for the purpose of professional disciplinary proceedings and that the ABCD establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents, nor shall this section be construed to limit the commissioner's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(c) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (b).

(d) In order to assist in the performance of the commissioner's duties, the commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (b) with other state, federal and international regulatory agencies, with NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information and has the legal authority to maintain confidentiality;

(2) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(3) May enter into agreements governing sharing and use of information consistent with subsections (b)-(d).

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (d).

AUTHORIZED INSURANCE COVERAGES

NOTE: Per T.C.A. § 56-13-103(a), captive insurance companies are authorized to do any and all insurance comprised in §§ 56-2-201(2) and (4)-(7), 56-2-202, 56-2-203, and 56-2-204, subject to the additions and limitations of authorized coverage as provided for in § 56-13-103.

§ 56-2-201. Definitions

Kinds of insurance are defined as follows:

(1) "Accident and health insurance" means insurance against bodily injury, disablement or death, by accident or accidental means, or the expense of bodily injury, disablement or death, against disablement or expense resulting from sickness, and every insurance pertaining thereto; providing for the mental and emotional welfare of an individual and members of the individual's family by defraying the cost of legal services; or providing aggregate or excess stop-loss coverage in connection with employee welfare benefit plans, managed care organizations participating in commercial plans or the TennCare program, or both, health maintenance organizations, long-term care facilities, physician-hospital organizations as defined in § 56-32-102 and provider aggregate or per-patient stop-loss protection insurance coverage as authorized by § 56-32-104;

(2) "Casualty insurance" includes vehicle insurance, disability insurance, and in addition is:

(A) “Boiler insurance,” which is insurance against any liability and loss or damage to property resulting from accidents to or explosion of boilers, pipes, pressure containers, machinery, or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured;

(B) “Burglary and theft insurance,” which is insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment, or from any attempt of burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail;

(C) “Collision insurance,” which is insurance against loss of or damage to any property of the insured resulting from collision of any other object with the property, but not including collision to or by elevators, or to or by vessels, craft, piers or other instrumentalities of ocean or inland navigation;

(D) “Credit insurance,” which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(E) “Elevator insurance,” which is insurance against loss or damage to any property of the insured resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspection of and issue certificates of inspection on elevators;

(F) “Glass insurance,” which is insurance against loss of or damage to glass and its appurtenances resulting from any cause;

(G) “Liability insurance,” which is insurance against legal liability for the death, injury, or disability of any person, or for damage to property; and insurance of medical, hospital, surgical and funeral benefits to persons injured, regardless of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(H) “Livestock insurance,” which is insurance against loss of or damage to any domesticated or wild animal resulting from any cause;

(I) “Personal property floater,” which is insurance of individuals, by an all-risk type of policy commonly known as the “personal property floater,” against any and all kinds of loss of or damage to, or loss of use of, any personal property other than merchandise;

(J) “Professional liability insurance,” which is insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of legal liability, and including any obligation of the insured to pay medical, hospital, surgical and funeral benefits to injured persons, regardless of legal liability of the insured, arising out of the death or injury of any person, or arising out of injury to the economic interest of any person as the result of negligence in rendering expert, fiduciary or professional service;

(K) “Water insurance,” which is insurance against loss of or damage to any property caused by the breakage or leakage of sprinklers, water pipes and other apparatus, or by water entering through leaks or openings in buildings, other than flood waters;

(L) “Workers' compensation and employer's liability insurance,” which is insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees; and

(M) Insurance against any other kind of loss, damage, or liability properly the subject of insurance and not within any other kind or kinds of insurance as defined in this section, if the insurance is not disapproved by the commissioner as being contrary to law or public policy;

(3) “Credit insurance” includes:

(A) “Credit accident and health insurance,” which means that form of insurance under which a borrower of money or a purchaser of goods is indemnified in connection with a specific loan or credit transaction against loss of time resulting from accident or sickness; and

(B) “Credit life insurance,” which means that form of insurance under which the life of a borrower of money or a purchaser of goods is insured in connection with a specified loan or credit transaction;

(4) “Life insurance” means insurance on human lives and insurance appertaining to human lives or connected with human lives. For the purposes of this title, the transacting of life insurance includes the granting of annuities, both with and without a life or mortality contingency or element, and endowment benefits, additional benefits in the event of death by accident or accidental means, additional benefits in the event of the total and permanent disability of the insured, and optional modes of settlement of proceeds;

(5) (A) “Property insurance” means insurance against loss of or damage to real or personal property of every kind and interest in the real or personal property, from any or all hazards or causes, and against loss consequential upon the loss or damage;

(B) “Property insurance” includes, but is not limited to:

(i) Insurance against loss or damage to property and loss of use and occupancy by fire, lightning, storm, flood, frost, freezing, snow, hail, ice, weather or climatic conditions, including excess or deficiency of moisture, rain or rising of the waters of the ocean or its tributaries, drought, insects, vermin, forces of nature, smoke, smudge, riot, riot attending strike, strikes, sabotage, civil commotion, vandalism or malicious mischief or caused by wrongful conversion, disposal or concealment of a motor vehicle or aircraft, whether or not handled under a conditional sales contract or subject to chattel mortgage, civil war, rebellion, insurrection, invasion, bombardment, military or usurped power, or by any order of civil authorities meant to prevent the spread of conflagration or epidemic or catastrophe, explosion with no fire ensuing, except explosion by steam boilers or flywheels, but there may be insured explosion of pressure vessels, not including steam boilers of more than fifteen pounds (15 lbs.) pressure, in buildings designed and used

solely for residential purposes by not more than four (4) families, explosion of any kind originating outside the insured building, or outside the building containing the property insured, and explosion of pressure vessels that do not contain steam or that are not operated with steam coils or steam jackets;

(ii) Insurance against loss or damage by insects or disease to farm crops or products, and loss of rental value of land used in producing the crops or products;

(iii) Insurance against accidental injury to sprinklers, pumps, water pipes, elevator tanks and cylinders, steam pipes and radiators, plumbing and its fixtures, ventilating, refrigerating, heating, lighting or cooking apparatus, or their connections, or conduits or containers of any gas, fluid, or other substance, and against loss or damage to property of the insured caused by the breakage or leakage thereof, or by water, hail, rain, sleet or snow seeping or entering through water pipes, leaks or openings in buildings;

(iv) Insurance against loss or damage caused by railroad equipment, motor vehicles, airplanes, seaplanes, dirigibles or other aircraft;

(v) Insurance against loss of or damage to vessels, crafts, aircrafts, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidence of debt, valuable papers, bottomry and respondentia interests therein, in respect to, appertaining to or in connection with, any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the being assembled, packed, crated, baled, compressed or similarly prepared for shipment or during any delays, storage, transshipment incident thereto, including marine builder's risks and all personal property floater risks, and persons or property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of the insurance, but not including life insurance or surety bonds, and precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade, or otherwise, and whether in course of transportation or otherwise, and bridges, tunnels and other instrumentalities of transportation, and communication, excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage, unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion, are the only hazards to be covered, and piers, wharves, docks and ships, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion, and other aids to navigation and transportation, including dry docks and marine railways, against all risks;

(vi) “Marine protection and indemnity insurance,” which means insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways,

including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person; and

(vii) Vehicle insurance;

(C) Matters set out in subdivision (5)(B) are not deemed to limit the scope of property insurance as defined in subdivision (5)(A), nor shall the fact that certain coverages coming within the scope of property insurance, as defined in subdivision (5)(A), are also defined as part of another kind of insurance be deemed to limit the scope of the definition of property insurance or the right of a property insurer to provide the coverage;

(6) "Surety insurance" includes:

(A) Credit insurance;

(B) "Fidelity insurance," which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(C) Guaranteeing the performance of contracts, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(D) Indemnifying banks, bankers, brokers, financial or moneyed corporations or associations or other persons against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made from precious metals, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while the items are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also against loss or damage to the insured's premises, or to the insured furnishings, fixtures, equipment, safes and vaults in safes, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt of burglary, robbery, theft, vandalism or malicious mischief; and

(E) Insurance that guarantees the performance of any debt obligation of a public or private corporation; and

(7) (A) "Vehicle insurance" means insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon, or being loaded or unloaded therein or therefrom, and against any loss, expense or liability for loss or damage to persons or property resulting from or incident to ownership, maintenance, or use of the vehicle or aircraft or animal;

(B) Insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if the insurance is issued as part of insurance on the vehicle, aircraft, or draft or riding animal, shall be deemed to be vehicle insurance.

§ 56-2-202. Property Insurance

(a) The company has the power generally to insure against loss by fire, earthquakes, storms, floods, explosions, except the explosions of the kind contemplated in § 56-19-108(5), riots, civil commotions, and any and all other damages on all kinds and species of property.

(b) This section shall apply to every insurance corporation heretofore or hereafter organized under the laws of this state.

(c) All policies of insurance heretofore issued by insurance corporations organized under the laws of this state insuring against loss from any cause included in the authorization in subsection (a) are validated, insofar as the corporation was without specific charter power to insure against those losses.

§ 56-2-203. Life insurance; annuities; contract loans; legal trusts

The company has the further right to insure the lives of persons, and engage in the general business of life insurance, and, coupled with that right, the right to grant and sell annuity, or contract loans based on life annuity, with benefit of survivorship, and accept and execute all legal trusts that may be confided to it.

§ 56-2-204. Accidents; disabilities; thefts; watercraft; marine risks

The company also has the power to insure:
(1) Against all accidents:
    (A) To property in transit; and
    (B) To persons traveling or otherwise;
(2) Against disabilities to persons by disease or sickness, or other bodily infirmities;
(3) Against thefts of property;
(4) Ships, steamboats, and other craft; and
(5) Freight and sailors' wages, including all marine risks.

SELF-PROCUREMENT TAX

§ 56-2-411 Tax liability

(a) Under §§ 56-2-409, 56-2-410, and this section are also included citizens of this state procuring and holding insurance contracts or policies on the types of coverage listed in § 56-2-201 upon property situated or located in this state in companies not authorized to transact business in this state.

(b) The procuring or accepting policies or contracts of the insurance from unauthorized companies or associations makes every citizen of this state, including industrial insureds as defined in § 56-2-105(7), holding the contracts or policies liable for taxes, the same as if procured through a surplus lines agent. The taxes shall be paid at the same time, in the same manner, and at the same rate as the tax levied on surplus lines insurance in §§ 56-14-106 and 56-14-113.

CONFIDENTIAL INFORMATION

§ 56-2-801 Sharing of confidential information

The commissioner shall maintain as confidential all information received from the National Association of Insurance Commissioners (NAIC), any state or federal agency, and foreign countries that is confidential in those jurisdictions. The commissioner may allow for the sharing of otherwise confidential documents, materials, information, administrative or judicial orders, and other actions with the regulatory officials of any state or federal agency and foreign countries; provided, that the recipients are required, under their respective laws, to maintain such confidentiality. The commissioner may also allow for the sharing of otherwise confidential documents, materials, information, administrative or judicial orders, and other actions with the NAIC; provided, that the NAIC demonstrates by written statement its intent to maintain such confidentiality.

AUTHORIZED INVESTMENTS

NOTE: These restrictions apply to association captives and captive RRGs only. Investments by other captives are controlled by T.C.A. § 56-13-111.

§ 56-3-401. Definitions

As used in this part, unless the context otherwise requires:
(1) "Domestic insurance company" means an insurance company, other than life and fraternal insurance companies, nonprofit hospital and medical service corporations, nonprofit dental service corporations, nonprofit vision service corporations and title insurance companies, incorporated under the laws of this state;

(2) "Fixed charges" includes interest on all bonds and other evidence of indebtedness, and amortization of debt discount and expenses;

(3) “Institution” includes a corporation, a joint-stock association and a business trust;

(4) “Net earnings available for fixed charges” means net income determined on either a consolidated or an unconsolidated basis after allowance for operating and maintenance expenses, depreciation and depletion, and taxes, other than federal and state income taxes, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of the issuing, assuming or guaranteeing institution. In applying the test of net earnings available for fixed charges to an issuing, assuming or guaranteeing institution or a lessee, whether or not in legal existence during the whole of the test period, that has at or prior to the date of investment by the insurance company acquired the assets of any other institution by purchase, merger, consolidation or otherwise substantially as an entirety, net earnings available for fixed charges of the predecessor or constituent institution for such portion of the test period as preceded acquisition may be included in the net earnings of the issuing, assuming or guaranteeing institution or the lessee, in accordance with consolidated earnings statement covering the period. The requirements imposed by § 56-3-402(2) and (13) upon the issuing, assuming or guaranteeing institution or the lessee are deemed to have been met if at the time the investment is made an institution that meets the requirements has guaranteed the indebtedness or has otherwise become obligated to pay amounts that are applicable to the payment of and sufficient to discharge the principal of and interest on the indebtedness in accordance with the terms of the indebtedness; provided, that, in determining whether the requirements have been met, the pro forma annual interest on the indebtedness is included in the fixed charges of the institution applicable to the test period in question;

(5) “Net earnings available for fixed charges and dividends” are determined in the same manner as “net earnings available for fixed charges” but after allowance for federal and state income taxes;

(6) “Preferred dividend requirements” means dividends at the maximum prescribed rate on all preferred stock of the same class as that being acquired by the insurance company and on all stock ranking as to dividends on a parity with the dividends or prior to the dividends, whether or not the dividends are cumulative; and

(7) “State” includes the several states, the District of Columbia, the Commonwealth of Puerto Rico and the possessions of the United States.

§ 56-3-402. Other insurers; permissible investments

Domestic insurance companies may invest their assets only as follows:
(1) In bonds or other evidences of indebtedness, not in default as to principal or interest, that are valid and legally authorized obligations issued, assumed or guaranteed by the United States or by

any state of the United States, by any county, city, town, village, municipality or district in the state, or by any political subdivision of the state, by any civil division or public instrumentality of one (1) or more of the governmental units, if, by statutory or other legal requirements applicable to the entity, the obligations are payable, as to both principal and interest, from taxes levied, or by the law required to be levied, upon all taxable property or all taxable income within the jurisdiction of the governmental unit or from adequate special revenues pledged or otherwise appropriated or by the law required to be provided for the purpose of the payment, but not including any obligations payable solely out of special assessments on properties benefited by local improvements;

(2) In interest-bearing bonds, debentures, notes or other evidences of indebtedness, or in commercial paper or bankers' acceptances, or similar evidences of indebtedness customarily issued at a discount from principal value, issued, assumed, or guaranteed by any solvent institution created or existing under the laws of the United States or any state of the United States, that are not in default as to principal or interest; provided, that either:

(A) The net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five (5) fiscal years next preceding the date of acquisition by the insurance company has averaged per year not less than one and one half (1.5) times its average annual fixed charges applicable to the period, if during either of the last two (2) years of the period the net earnings have been not less than one and one half (1.5) times its fixed charges for the year;

(B) The issuing, assuming or guaranteeing institution's or institutions' long-term obligations are included in the four (4) highest grades by any of the recognized rating agencies;

(3) (A) In preferred stock or shares of any solvent institution created or existing under the laws of the United States or of any state of the United States; provided, that:

(i) If the stock or shares are cumulative, dividends on the stock or shares are not in arrears, or, if noncumulative, full dividends have been paid in each of the three (3) fiscal years next preceding the date of acquisition by the insurance company;

(ii) The aggregate net earnings of the issuing institution available for its fixed charges and dividends for a period of three (3) fiscal years next preceding the date of acquisition is at least equal to one and one fourth (1.25) times the sum of its aggregate fixed charges, full contingent interest and preferred dividend requirements for the same period; and

(iii) The investments made under the authority of this subdivision (3) shall not at any time cause the insurance company's holdings:

(*a*) Of the preferred stock or shares of any one (1) institution to exceed three percent (3%) of the admitted assets of the insurance company; or

(*b*) Of the preferred stock or shares of all institutions to exceed twenty-five percent (25%) of the admitted assets of the insurance company;

(B) For purposes of determining the holdings of the preferred stock or shares pursuant to subdivision (3)(A), the value of the stock or shares shall be computed at cost or at market on the December 31 preceding, whichever is lower, and, if there is no market on that date, then at cost or book value of that date, whichever is lower;

(4) (A) In common stock or shares of any solvent institution created or existing under the laws of the United States or of any state of the United States; provided, that:

(i) The institution has earned, during the period of five (5) fiscal years next preceding the date of acquisition by the insurance company, an aggregate sum available for dividends upon its common stock or shares equal at least to an aggregate sum that would have been sufficient to pay dividends of six percent (6%) per annum upon the par or stated value of all its common stock or shares outstanding during the period;

(ii) If the stock or shares are in a real estate company, §§ 56-3-405 and 56-3-406 shall apply with respect to the stock or shares and to the real property owned by the real estate company, and the amount invested in the stock or shares of the real estate company shall be included with the aggregate of all of the insurance company's holdings and investments for the purposes of § 56-3-405(b);

(iii) Investments made under the authority of this subdivision (4) shall not at any time cause the insurance company's holdings:

(*a*) Of common stock or shares of any one (1) institution to exceed five percent (5%) of the admitted assets of the insurance company; or

(*b*) Of common stock of all institutions to exceed either the larger of thirty percent (30%) of the assets of the insurance company or one hundred percent (100%) of the amount by which the capital and surplus of the insurance company exceed the minimum capital and surplus required for the kind of insurance it is authorized to transact in this state;

(B) For purposes of determining the holdings of the common stock or shares pursuant to subdivision (4)(A), the value of the stock or shares shall be computed at cost or at market on the

December 31 preceding, whichever is lower, and, if there is no market on that date, then at cost or book value on that date, whichever is lower;

(5) Upon security of promissory notes amply secured by pledge of any bonds or other securities in which the companies are authorized to invest their funds;

(6) Upon security of promissory notes amply secured by pledge of unearned premiums of their own policies;

(7) In the obligations, and/or stock where stated, of the following agencies of the government of the United States, whether or not the obligations are guaranteed by the United States government:

(A) Commodity credit corporation;
(B) Federal intermediate credit banks;
(C) Federal land banks;
(D) Banks for cooperatives;
(E) Federal home loan banks, and stock of such banks;
(F) The Federal National Mortgage Association, and stock of the Federal National Mortgage Association when acquired in connection with sale of mortgage loans to the association; and
(G) Any other similar agency of the government of the United States and of similar financial quality;

(8) In lawfully authorized bonds or other evidences of indebtedness issued or guaranteed by the International Bank for Reconstruction and Development, or the Inter-American Development Bank, the African Development Bank, or the Asian Development Bank;

(9) In shares in federally insured building and loan and savings and loan institutions;

(10) In other good and solvent securities, in addition to those authorized by this section or other sections of the code, subject to the approval of the commissioner;

(11) In loans secured by mortgages upon improved, unencumbered real property, or upon leasehold estates in improved real property in the United States, not exceeding, however, seventy-five percent (75%) of the value of the property or leasehold estate, repayable in not more than thirty (30) years. All loans secured by leasehold estates must provide for amortization of principal at least once in each year in amounts sufficient to completely amortize the loan at least twenty-one (21) years prior to expiration of the lease term, inclusive of the term or terms that may be provided by an enforceable option or options of renewal. Real property and leasehold estates shall not be deemed to be encumbered within the meaning of this section by reason of the

existence of unpaid assessments and taxes not delinquent, mineral, oil or timber rights, easements or rights-of-way for public highways, private roads, railroads, telegraph, telephone, electric light and power lines, drains, sewers or other similar easements or rights-of-way, liens for service and maintenance of water rights when not delinquent, party wall agreements, building restrictions, or other restrictive covenants or conditions, or leases under which rents or profits are reserved to the owner, if in any event the security for the loan is a first lien upon the real property or leasehold estate and if there is no condition or right of re-entry or forfeiture under which, in the case of real property other than leaseholds, the lien can be cut off, subordinated or otherwise disturbed, or under which, in the case of leaseholds, the insurance company is unable to continue the lease in force for the duration of the loan. A loan guaranteed or insured in full by the administrator of veterans' affairs pursuant to the Servicemen's Readjustment Act of 1944, compiled in 38 U.S.C. §§ 3701-3725, may be subject to a prior encumbrance insured by the federal housing administrator or commissioner, and the foregoing limitations in respect to value and repayment shall not apply to a loan that is:

(A) Insured by, or for which a commitment to insure has been made by, the federal housing administrator or commissioner pursuant to the National Housing Act, primarily codified in 12 U.S.C. § 371 et seq.;

(B) Guaranteed by the administrator of veterans' affairs pursuant to the Servicemen's Readjustment Act of 1944, compiled in 38 U.S.C. §§ 3701-3725, except that, if only a portion of a loan is so guaranteed, the limitation of value shall apply to the portion not so guaranteed; or

(C) Insured by the administrator pursuant to the Servicemen's Readjustment Act of 1944, compiled in 38 U.S.C. §§ 3701-3725;

(12) In purchase money mortgages or like securities received by the insurance company upon the sale or exchange of real property acquired pursuant to § 56-3-405;

(13) In bonds, debentures, notes or other evidences of indebtedness of persons or corporations organized under the laws of the United States, or any state of the United States, secured by assignment of lease or leases, or the rentals payable under the leases, of real or personal property or both to the United States, or any state of the United States, or any county, city, town, village, municipality or district in the state or any political subdivision of the county, city, town, village, municipality or district or any civil division or public instrumentality of one (1) or more of the governmental units, or one (1) or more institutions created or existing under the laws of the United States, or of any state; provided, that:

(A) The fixed rentals assigned shall be sufficient to repay the indebtedness within the unexpired term of the lease, exclusive of the term that may be provided by an enforceable option of renewal;

(B) The lessee has not defaulted in payment of principal of and interest on any of its bonds, notes, debentures, or other evidences of indebtedness during the five (5) fiscal years immediately preceding the date of the investment;

(C) The net earnings of each lessee under this subdivision (13) available for its fixed charges for a period of five (5) fiscal years next preceding the date of acquisition by the insurance company has averaged per year not less than one and one half (1.5) times its average annual fixed charges applicable to the period and during either of the last two (2) years of the period the net earnings have been not less than one and one half (1.5) times its fixed charges for the year; and

(D) A first lien on the interest of the lessor in the unencumbered property so leased shall be obtained as additional security for the indebtedness;

(14) In the purchase and ownership of vessels, vehicles, or rolling stock used or useful for the transportation of persons, goods, products or commodities, or of machinery or equipment used by manufacturing, processing or financial establishments, or of communications equipment used by radio or television stations, or of store fixtures used by retail establishments, which transportation equipment, or machinery or equipment or communications equipment or store fixtures are or will become subject to contracts for the sale or use thereof under which contractual payments are to be made which may reasonably be expected to return the principal of, and provide earnings on, the investment within the anticipated useful life of the property, the anticipated useful life to not be less than five (5) years;

(15) In loans or investments in addition to those permitted in other subdivisions of this section or under other sections of the code, notwithstanding any limitations or prohibitions contained in § 56-3-405(a)(5) that might otherwise be applicable; provided, that for the purposes of subdivision (11) and this subdivision (15), the portion of a loan secured by a mortgage upon real property that does not exceed seventy-five percent (75%) of the value of the property shall be deemed to be a permitted investment under subdivision (11) and the remainder of the loan may be deemed to be made under this subdivision (15); and provided, further, for the purposes of § 56-3-405, that the portion of an investment in a single piece or adjoining pieces of real property acquired or held under the authority of § 56-3-405(5) that does not exceed two percent (2%) of the insurance company's admitted assets shall be deemed to be a permitted investment under § 56-3-404, and the remainder of the investment shall be deemed to be made under this subdivision (15). Any loan or investment originally made under this subdivision (15) that would subsequently, if it were then being made, qualify as a permitted investment under another subdivision of this section or under another section of the code shall thenceforth be deemed to be a permitted investment under the other subdivision or section. The aggregate of the insurance company's

loans and investments under this subdivision (15) shall not exceed five percent (5%) of the company's admitted assets; and

(16) In electronic computer or data processing machines or systems purchased for use in connection with the business of the insurer; provided, that the machine or system shall have an original cost of at least fifty thousand dollars ($50,000), and that the amortized value of the machine or system at the end of any calendar year shall not be greater than the original purchase price less ten percent (10%) for each completed year after purchase.

§ 56-3-403. Foreign investments

(a) Domestic insurance companies may invest in, or otherwise acquire or loan upon, securities and investments in Canada that are substantially of the same kinds, classes and investment grades as those eligible for investment under § 56-3-402; but the aggregate amount of the investments that are held at any time by the company shall not exceed ten percent (10%) of its admitted assets, except where a greater amount is permitted pursuant to subsection (b), in which case this subsection (a) shall not be applicable.

(b) Any domestic insurance company that is authorized to do business in a foreign country or that has outstanding insurance, or reinsurance contracts or risks, resident or located in a foreign country may invest in, or otherwise acquire or loan upon, securities and investments in the foreign country that are substantially of the same kinds, classes and investment grades as those eligible for investment under § 56-3-402; but the aggregate amount of the investments in a foreign country and of cash in the currency of the country that is at any time held by the company shall not, except as provided in § 56-3-404(a)(1), exceed one and one half (1.5) times the amount of its reserves and other obligations under the contracts or the amount that the company is required by law to invest in the country, whichever is greater.

(c) In addition to the foreign investments permitted under § 56-3-404(a)(1) and (2), any domestic insurance company may invest in, or otherwise acquire or loan upon, securities and investments in foreign countries that are substantially of the same kinds, classes and investment grades as those eligible for investment under § 56-3-402; but the aggregate amount of the investments made pursuant to this subsection (c) shall not exceed one percent (1%) of its admitted assets.

§ 56-3-404. Stock of other insurers

(a) Notwithstanding any of the provisions or limitations of this section or of any other section of this code, a domestic insurance company may, at the time of original issue or at any other time, with the approval of the commissioner, acquire and hold:

(1) More than fifty percent (50%) of the shares of outstanding voting stock of any other solvent insurance company, domestic or foreign;

(2) More than fifty percent (50%) of the shares of outstanding voting stock of any domestic or foreign business corporation other than an insurance company, which corporation was formed or acquired for, and necessary and incidental to, the convenient operation of its insurance business, the administration of any of its lawful investments or the lawful business of any affiliated company; provided, that the stock or shares in any real estate company and the real property owned by the company shall be subject to §§ 56-3-405 and 56-3-406, and the amount invested in the stock or shares shall be included with the aggregate of all the insurance company's holdings and investments for the purposes of § 56-3-405(b); or

(3) Stock of an insurance company formed under the laws of a foreign country, but the aggregate amount of the holdings shall not exceed five percent (5%) of the admitted assets of the insurance company.

(b) The total holdings of a domestic insurance company of shares of voting stock authorized to be acquired and held under this section, together with the investments made under the authority of § 56-3-402(3) and (4), shall not at any time exceed the amount by which the capital and surplus of the company exceed the minimum capital and surplus required for the kind of insurance it is authorized to transact in this state; provided, that for purposes of determining the holdings of the stock pursuant to this section, the value of the stock shall be computed at cost or at market value on the December 31 preceding, whichever is lower and that, if there is no market on that date, then at cost or book value on that date, whichever is lower.

§ 56-3-405. Real property

Domestic insurance companies may acquire, hold and convey real property only for the following purposes and in the following manner:

(1) The land and the building on the land in which it has its principal office and other real property that is requisite for its convenient accommodations in the transaction of its insurance business, the amount not to exceed ten percent (10%) of its admitted assets, subject, however, to the limitations of § 56-3-406;

(2) Real property that has been mortgaged to it in good faith by way of security for loans previously contracted or for moneys due;

(3) Real property that has been conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

(4) Real property that has been purchased at sales on judgments, decrees, or mortgages obtained or made for those debts;

(5) Real property that has been acquired for investment purposes; provided, that:

(A) No real property may be acquired or held under the authority of this section unless at the time of acquisition it is already improved and income-producing or unless it is improved with due diligence after acquisition so as to produce an income;

(B) The company shall not at any one (1) time have more than two percent (2%) of its admitted assets invested in a single piece or adjoining pieces of real property acquired or held under the authority of this section; and

(C) No investments under the authority of this section shall be made in hotels, club houses, garages, schools, factories erected and designed for special purposes or agricultural properties, without specific approval in advance by the commissioner; and

(6) In no event shall the aggregate of all of a company's holdings and investments, under the authority of §§ 56-3-401--56-3-404, this section and §§ 56-3-406 and 56-3-407, exceed ten percent (10%) of the company's admitted assets; provided, that nothing in this section shall prevent the acquisition by the company of any property under subdivisions (2)-(4), but properties so acquired shall be held under § 56-3-406, and the company shall list the book value of the properties as assets not admitted, to the extent the aggregate of the book value of real estate exceeds ten percent (10%) of the company's admitted assets.

§ 56-3-406. Real property; time held

All property specified in § 56-3-405(2)-(4), which is not be necessary for its accommodation in the convenient transaction of its business, shall be sold and disposed of within two (2) years after the company has acquired title to the property, or within two (2) years after the property has ceased to be necessary for the accommodation of its business; and it shall not hold the property for a longer period unless it procures a certificate from the commissioner authorizing an extension of time for the sale of the property. The commissioner is authorized to issue such a certificate extending the time for the sale of such property if in the commissioner's judgment it appears that the interest of the company will suffer materially by a forced sale of the property.

§ 56-3-407. Investment limited

No domestic insurance company shall invest or loan its funds in any manner except as provided in §§ 56-3-401--56-3-406.

§ 56-3-408. Underwriting of securities and withholding property from sale; authorization of loans by board or committee

(a) No domestic insurance company, whether incorporated by special act or under a general law of this state, shall underwrite or participate in the underwriting of an offering of securities or property by any other person; nor shall the company enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its board of directors.

(b) (1) No investment or loan, except premium finance loans, shall be made by any such insurance company, unless the investment or loan has first been authorized by the board of

directors or by a committee appointed by the board and charged with the duty of supervising the investment or loan.

(2) Membership on the board of directors shall not be a requirement for eligibility to membership on the committee.

§ 56-3-409. Previously held investments

Any particular investment that the insurance company held on September 1, 1979, or was obligated to accept by a legally enforceable commitment effectuated prior to September 1, 1979, and that the insurance company was legally entitled to hold immediately prior to September 1, 1979, shall be deemed to be an eligible investment.

FEES AND TAXES

§ 56-4-101. Amounts to be collected by commissioner; applicability

(a) The commissioner shall collect and pay into the state treasury the following nonrefundable fees:

(1) For receiving and reviewing each new application for admission from every foreign or domestic insurance company, including application for eligibility of surplus lines insurers, six hundred seventy-five dollars ($675).

(2) For issuing each new certificate of authority to a company, foreign or domestic, including letter of notification of eligibility of surplus limes insurers, upon application for admission or eligibility, as the case may be, four hundred forty dollars ($440);

(3) For annual review for determination of continuing eligibility of surplus lines insurers, two hundred seventy dollars ($ 270);

(4) For each company's annual statement, five hundred fifteen dollars ($515);

(5) For amendments to the company's certificate of authority, ninety dollars ($90.00);

(6) For each seal of office, with certificate, seven dollars ($7.00); and

(7) For copies of any paper on file or deposit with the commissioner or commissioner's office, fifty cents (50¢) per page.

(8) For receiving and reviewing each change of business plan or change of ownership for a captive insurance company, four hundred dollars ($400);

(9) For receiving and reviewing each change of ownership for a protected cell of a captive insurance company or an incorporated protected cell of a captive insurance company, one hundred twenty-five dollars ($125).

(b) This section shall apply to all insurance companies, including state and county mutual fire insurance companies, title insurance companies, assocations, fraternal benefit societies, captive insurance companies and surplus lines insurers maintaining eligibility status, notwithstanding any law or statute under which companies, associations and societies may have been organized.

MANAGING GENERAL AGENTS *

§ 56-6-501. Short Title *

This part shall be known and may be cited as the "Managing General Agents Act."

§ 56-6-502. Definitions *

As used in this part, unless the context otherwise requires:

(1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries;

(2) "Insurer" means any person, firm, association or corporation duly licensed in this state as an insurance company pursuant to § 56-2-102;

(3) (A) "Managing general agent" (MGA) means any person, firm, association or corporation that negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and acts as an agent for the insurer, whether known as an MGA, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent (5%) of the total policyholder surplus as reported in the last annual statement of the insurer in any one (1) quarter or year, together with one (1) or more of the following:

(i) Adjusts or pays claims in excess of an amount determined by rule by the commissioner; or

(ii) Negotiates reinsurance on behalf of the insurer;

(B) Notwithstanding subdivision (3)(A), the following persons shall not be considered as MGAs for the purposes of this part:

(i) An employee of the insurer;
(ii) A United States manager of the United States branch of an alien insurer;
(iii) An underwriting manager that, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to the Insurance Holding Company System Act of 1986, compiled in chapter 11 of this title, and whose compensation is not based on the volume of premiums written; and
(iv) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney; and

(4) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

§ 56-6-503. Licenses; bonds; errors and omissions policies *

(a) No person shall act in the capacity of an MGA, with respect to risks located in this state for an insurer licensed in this state, unless the person is a licensed insurance agent in this state.

(b) No person shall act in the capacity of an MGA representing an insurer domiciled in this state, with respect to risks located outside this state, unless the person is a licensed insurance agent in this state, which includes a nonresident license, pursuant to this part.

(c) The commissioner may require a bond in an amount acceptable to the commissioner for the protection of the insurer.

(d) The commissioner may require the MGA to maintain an errors and omissions policy.

§ 56-6-504. Written contracts *

No person, firm, association or corporation acting in the capacity of an MGA shall place business with an insurer unless there is in force a written contract between the parties that sets forth the responsibilities of each party and where both parties share responsibility for a particular function, specifies the division of responsibilities, and that contains the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination;

(2) The MGA will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;

(3) All funds collected for the account of an insurer will be held by the MGA in a fiduciary capacity in a bank that is a member of the federal reserve system or is a state bank covered by federal deposit insurance. This account shall be used for all payments on behalf of the insurer. The MGA may retain no more than three (3) months estimated claims payments and allocated loss adjustment expenses;

(4) Separate records of business written by the MGA will be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer, and the commissioner shall have access to all books, bank accounts and records of the MGA in a form usable to the commissioner. The records shall be retained according to § 56-6-154;

(5) The contract may not be assigned in whole or in part by the MGA;

(6) (A) Appropriate underwriting guidelines including:

(i) The maximum annual premium volume;
(ii) The basis of the rates to be charged;
(iii) The types of risks which may be written;
(iv) Maximum limits of liability;
(v) Applicable exclusions;
(vi) Territorial limitations;
(vii) Policy cancellation provisions; and
(viii) The maximum policy period.

(B) The insurer shall have the right to cancel or nonrenew any policy of insurance, subject to the applicable laws and regulations concerning the cancellation and nonrenewal of insurance policies;

(7) If the contract permits the MGA to settle claims on behalf of the insurer:

(A) All claims must be reported to the company in a timely manner;

(B) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;

(ii) Involves a coverage dispute;
(iii) May exceed the MGA's claims settlement authority;
(iv) Is open for more than six (6) months; or
(v) Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less;

(C) All claim files will be the joint property of the insurer and MGA. Upon an order of liquidation of the insurer, the files shall become the sole property of the insurer or its estate. The MGA shall have reasonable access to and the right to copy the files on a timely basis; and

(D) Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination;

(8) Where electronic claims files are in existence, the contract must address the timely transmission of the data;

(9) If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the MGA until one (1) year after they are earned for property insurance business and five (5) years after they are earned on casualty business, and not until the profits have been verified pursuant to § 56-6-505; and

(10) The MGA shall not:

(A) Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;

(B) Commit the insurer to participate in insurance or reinsurance syndicates;

(C) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed;

(D) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent (1%) of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(E) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;

(F) Permit its subproducer to serve on the insurer's board of directors;

(G) Jointly employ an individual who is employed with the insurer; or

(H) Appoint a sub-MGA.

§ 56-6-505. Requirements *

(a) The insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each MGA with which it has done business.

(b) If an MGA establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the MGA. This is in addition to any other required loss reserve certification.

(c) The insurer shall periodically, at least semi-annually, conduct an on-site review of the underwriting and claims processing operations of the MGA.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the MGA.

(e) Within thirty (30) days of entering into or termination of a contract with an MGA, the insurer shall provide written notification of the appointment or termination to the commissioner. Notices of appointment of an MGA shall include a statement of duties that the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

(f) (1) An insurer shall review its books and records each quarter to determine if any producer, as defined by § 56-6-602, has become, by operation of § 56-6-502(3), an MGA.

(2) If the insurer determines that a producer has become an MGA pursuant to subdivision (f)(1), the insurer shall promptly notify the producer and the commissioner of that determination, and the insurer and producer must fully comply with this part within thirty (30) days.

(g) An insurer shall not appoint to its board of directors an officer, director, employee, subproducer or controlling shareholder of its MGAs. This subsection (g) shall not apply to relationships governed by the Insurance Holding Company Act, compiled in chapter 11 of this title, or, if applicable, the Business Transacted with Producer Controlled Property/Casualty Insurer Act, compiled in part 6 of this chapter.

§ 56-6-506. MGA as agent of insurer *

The acts of the MGA are considered to be the acts of the insurer on whose behalf it is acting. An MGA may be examined as if it were the insurer.

§ 56-6-506. Violations *

(a) If the commissioner finds, after a hearing conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, that any person has violated this part, the commissioner may order:

(1) For each separate violation, a penalty in an amount of five thousand dollars ($5,000);

(2) Revocation or suspension of the producer's license; and

(3) The MGA to reimburse the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this part committed by the MGA.

(b) The decision, determination or order of the commissioner pursuant to subsection (a) is subject to judicial review pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and state insurance law.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance law.

(d) Nothing contained in this part is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and auditors.

§ 56-6-508. Rules and regulations *

The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this part. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

§ 56-6-509. Commissioner's power to waive application *

The commissioner may waive the application of this chapter to a particular person or arrangement if the application of this chapter is not necessary to carry out the purposes of this chapter.

§ 56-6-510. Effective date *

No insurer may continue to utilize the services of an MGA on and after July 1, 1991, unless the utilization is in compliance with this part.

INSURANCE HOLDING COMPANY SYSTEM ACT *

§ 56-11-101. Short title; definitions *

(a) This part shall be known and may be cited as the "Insurance Holding Company System Act of 1986."

(b) As used in this part unless the context otherwise requires:

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

(2) "Commissioner" means the commissioner of commerce and insurance;

(3) (A) "Control" including "controlling," "controlled by" and "under common control with" means the possession, direct or indirect, 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 non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(B) "Control" shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by § 56-11-105(k) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the

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 (1) 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 § 56-46-104 or would cause the insurer to be in hazardous financial condition as set forth in Tenn. Comp. R. & Reg. 0780-01-66, as amended;

(5) "Health maintenance organization" means a health maintenance organization as defined at § 56-32-102;

(6) "Health maintenance organization holding company system" means two (2) or more affiliated persons, one (1) of which is a health maintenance organization. "Health maintenance organization holding company system" also means a corporation regulated pursuant to title 56, chapter 29, which owns or controls, either directly or indirectly, a health maintenance organization;

(7) "Insurance holding company system" means two (2) or more affiliated persons, one (1) or more of which is an insurer;

(8) "Insurer" has the same meaning as "insurance company," as set forth in § 56-1-102, except that it does 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;

(C) Nonprofit medical and hospital service associations; or

(D) Nonprofit dental service corporations;

(9) "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 does not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property;

(10) “Securityholder” of a specified person is one who owns any security of the person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing;

(11) “Subsidiary” of a specified person is an affiliate controlled by the person directly or indirectly through one (1) or more intermediaries; and

(12) “Voting security” includes any security convertible into or evidencing a right to acquire a voting security.

§ 56-11-102. Subsidiaries; authorization investment authority; exemption from investment restrictions; qualification of investment; cessation of control *

(a) AUTHORIZATION. Any domestic insurer or licensed health maintenance organization, either by itself or in cooperation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries. The subsidiaries may conduct any kind of business or businesses and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer or a licensed health maintenance organization.

(b) ADDITIONAL INVESTMENT AUTHORITY. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this title, a domestic insurer or licensed health maintenance organization may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of the insurer's assets or fifty percent (50%) of the insurer's surplus as regards policyholders, or, with respect to health maintenance organization’s, net worth; provided, that after such investments, the insurer's surplus as regards policyholders or health maintenance organizations net worth will be reasonable in relation to the insurer's or health maintenance organization's outstanding liabilities and adequate to meet 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) (A) 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 such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subdivision (b)(1) or in §§ 56-3-301 -- 56-3-307 or §§ 56-3-401 -- 56-3-409 applicable to the insurer.

(B) For the purpose of this subdivision (b)(2), "the total investment of the insurer" includes:

(i) Any direct investment by the insurer or health maintenance organization in an asset, and

(ii) The insurer's or health maintenance organization's proportionate share of any investment in an asset by any subsidiary of the insurer or health maintenance organization, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary;

(3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one (1) or more subsidiaries; provided, that after the investment the insurer's surplus as regards policyholders or health maintenance organization's net worth will be reasonable in relation to the insurer's or health maintenance organization's outstanding liabilities and adequate to its financial needs.

(c) EXEMPTION FROM INVESTMENT RESTRICTIONS. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection (b) shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this title applicable to such investments of insurers except §§ 56-3-303, 56-3-402, 56-3-403 and 56-3-404.

(d) QUALIFICATION OF INVESTMENT; WHEN DETERMINED. Whether any investment made pursuant to subsection (b) meets the applicable requirements of subsection (b) is to be determined 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) CESSATION OF CONTROL. If an insurer ceases to control a subsidiary, it shall dispose of any investment in that subsidiary made pursuant to this section within three (3) years from the time of the cessation of control or within such 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 section of this part, and the insurer has so notified the commissioner.

§ 56-11-103. Required filing; approval by commissioner; exemptions; violations; jurisdiction of courts *

(a) (1) FILING REQUIREMENTS. 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 thereof, 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 such 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 any such offer, request, or invitation is made or any such 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, a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner prescribed in this part.

(2) For purposes of this section, 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 thirty (30) days prior to the cessation of control. The commissioner shall determine those instances in which the party or parties 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 the commissioner's discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to above is otherwise filed, this subdivision (a)(2) shall not apply.

(3) With respect to a transaction subject to this section, the acquiring person must also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in § 56-11-104(c)(1). A failure to file the notification may be subject to penalties specified in § 56-11-104(e)(3).

(4) As used in this section, “domestic insurer” includes 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.

(5) For the purposes of this section, “person” does not include any securities broker holding, in the usual and customary broker's function, less than twenty percent (20%) of the voting securities of an insurance company or of any person that controls an insurance company.

(b) CONTENT OF STATEMENT. The statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected, called the “acquiring party;”

(A) If an individual, the person's principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years; and

(B) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as the person and any predecessors thereof 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 such individual the information required by subdivision (b)(1)(A);

(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 any such 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, 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) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each such acquiring party, or for such lesser periods as the acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;

(4) Any plans or proposals that 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) that each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a), and a statement as to the method for arriving at the fairness of the proposal;

(6) The amount of each class of any security referred to in subsection (a) that 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) 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. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into;

(8) A description of the purchase of any security referred to in subsection (a) during the twelve (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 the security;

(9) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve (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), and, if distributed, of additional soliciting material relating to the activity;

(11) The term 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) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard to the agreement;

(12) A nonrefundable fee in an amount that the commissioner shall by rule establish;

(13) Any additional information the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest. If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information

called for by subdivisions (b)(1)-(15) 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 such partner, member or person is a corporation, or the person required to file the statement referred to in subsection (a) is a corporation, the commissioner may require that the information called for by subdivisions (b)(1)-(15) 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 ten percent (10%) 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 section, an amendment setting forth the change, together with copies of all documents and other materials relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change;

(14) An agreement by the person required to file the statement referred to in subsection (a) that it will provide the annual report, specified in § 56-11-105(l), for so long as control exists; and

(15) An acknowledgement by the person required to file the statement referred to in subsection (a) 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.

(c) ALTERNATIVE FILING MATERIALS. If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933, or 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) may utilize the documents in furnishing the information called for by that statement.

(d) APPROVAL BY COMMISSIONER; HEARINGS.

(1) The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing, the commissioner finds that:

(A) After the change of control, the domestic insurer referred to in subsection (a) 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 this state. In applying the competitive standard in this subdivision (d)(1)(B):

(i) The informational requirements of § 56-11-104(c)(1) and the standards of § 56-11-104(d)(2)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 § 56-11-104(d)(3) 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 that it might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(D) The plans or proposals that the acquiring party has to liquidate the insurer, 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;

(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 subdivision (d)(1) shall be held within thirty (30) days after the statement required by subsection (a) is filed, and at least twenty (20) days' notice of the public hearing shall be given by the commissioner to the person filing the statement. Not less than seven (7) days' notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within the sixty-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 interest may be affected by the proposed transaction, 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 Uniform Administrative Procedures Act, compiled in title 4, chapter 5. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(3) If the proposed acquisition of control will require the approval of more than one (1) commissioner, the public hearing referred to in subdivision (d)(2) may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (a). Such person shall file the statement referred to in subsection (a) with the National Association of Insurance Commissioners (NAIC) within five (5) 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 (10) days of the receipt of the statement referred to in subsection (a). 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 this title, shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to § 56-11-103(a)(1).

(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.

(e) EXEMPTIONS. This section does not apply to:

(1) Any transaction that is subject to the provisions of chapter 10 of this title dealing with the merger or consolidation of two (2) or more insurers.

(2) Any offer, request, invitation, agreement or acquisition that the commissioner by order shall exempt therefrom as:

(A) 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

(B) As otherwise not comprehended within the purposes of this section.

(f) VIOLATIONS. The following are violations of this section:

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

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

(g) JURISDICTION; CONSENT TO SERVICE OF PROCESS. The courts of this state are hereby 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 section, and overall actions involving the person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be the person's true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at the person's last known address.

§ 56-11-104. Requirements for acquisitions; enforcement by commissioner *

(a) DEFINITIONS. As used in this section only:

(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; and

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

(b) SCOPE.

(1) Except as exempted in subdivision (b)(2), this 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 section does not apply to the following:

(A) Deleted by 2014 Pub.Acts, c. 583, § 10, eff. March 28, 2014;

(B) A purchase of securities solely for investment purposes so long as the 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§ 56-11-101(b)(3), it is not solely for investment purposes unless the commissioner of insurance of the insurer's state of domicile accepts a

disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of commerce and insurance of this state;

(C) 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 pre-acquisition notification is filed with the commissioner of commerce and insurance in accordance with subdivision (c)(1) thirty (30) days prior to the proposed effective date of the acquisition. However, the pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subdivision of this subdivision (b)(2);

(D) The acquisition of already affiliated persons;

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

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

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

(iii) In no market would the combined market share of the involved insurers exceed twelve percent (12%) of the total market, and the market share increases by more than two percent (2%) of the total market. For the purpose of this subdivision (b)(2)(E), "market" means 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) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; or

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

(c) PRE-ACQUISITION NOTIFICATION, WAITING PERIOD. An acquisition covered by subsection (b) may be subject to an order pursuant to subsection (e) unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner of commerce and insurance shall give

confidential treatment to information submitted under this subsection (c) in the same manner as provided in § 56-11-108.

(1) The pre-acquisition notification shall be in the form and contain the information as prescribed by the National Association of Insurance Commissioners relating to those markets that, under subdivision (b)(2)(E), cause the acquisition not to be exempted from the provisions of this section. The commissioner may require additional material and information deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (d). 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 the person indicating the person's ability to render an informed opinion.

(2) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of the 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 the additional information by the commissioner, or termination of the waiting period by the commissioner.

(d) COMPETITIVE STANDARD.

(1) The commissioner may enter an order under subdivision (e)(1) 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).

(2) In determining whether a proposed acquisition would violate the competitive standard of subdivision (d)(1), the commissioner shall consider the following:

(A) Any acquisition covered under subsection (b) involving two (2) 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%	4% or more

10%	2% or more
15%	1% or more

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

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

A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two (2) columns in the table is prima facie evidence of violation of the competitive standard in subdivision (d)(1). For the purpose of this subdivision (d)(2)(A), 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 (2) largest to the eight (8) largest has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (b) involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in subdivision (d)(1) if:

(i) There is a significant trend toward increased concentration in the market;

(ii) One (1) of the insurers involved is one (1) of the insurers in a grouping of the large insurers showing the requisite increase in the market share; and

(iii) Another involved insurer's market is two percent (2%) or more.

(C) As used in this subdivision (d)(2):

(i) “Insurer” includes any company or group of companies under common management, ownership or control;

(ii) “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, the 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.

(D) Even though an acquisition is not prima facie violative of the competitive standard under subdivisions (d)(2)(A) and (B), 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 subdivisions (d)(2)(A) and (B), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subdivision (d)(2)(D) 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 and exit into the market.

(3) An order may not be entered under subdivision (e)(1) 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 that would arise from the economies exceed the public benefits that would arise from not lessening competition; or

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

(e) ORDERS AND PENALTIES.

(1) If an acquisition violates the standards of this section, the commissioner may enter an order 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.

(2) The commissioner may also issue an order denying the application of an acquired or acquiring insurer for a license to do business in this state.

(3) An order shall not be entered unless there is a hearing, notice of the hearing is issued prior to the end of the waiting period and not less than fifteen (15) days prior to the hearing, and the hearing is concluded and the order is issued no later than sixty (60) days after the date of the filing of the pre-acquisition notification with the commissioner. Every order shall be accompanied by a written decision of the commissioner setting forth the commissioner's findings of fact and conclusions of law.

(4) An order pursuant to this subsection (e) shall not apply if the acquisition is not consummated.

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

(A) A monetary penalty of not more than ten thousand dollars ($10,000) for every day of violation; or

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

(6) Any insurer or other person who fails to make any filing required by this section and who also fails to demonstrate a good faith effort to comply with any filing requirement shall be subject to a fine of not more than fifty thousand dollars ($50,000).

(f) INAPPLICABLE PROVISIONS. Sections 56-11-110(b) and (c) and 56-11-112 do not apply to acquisitions covered under subsection (b).

§ 56-11-105. Registration of insurers and health maintenance organizations; statements; disclaim of affiliation *

(a) (1) REGISTRATION. Every insurer and every health maintenance organization that is authorized to do business in this state and that is a member of an insurance holding company system or health maintenance organization holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in:

(A) This section;

(B) § 56-11-106(a)(1), (b), (d); and

(C) Either § 56-11-106(a)(2) 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 fifteen (15) days after the end of the month in which it learns of each change or addition.

(2) Any insurer or health maintenance organization that is subject to registration under this section shall register within fifteen (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 or health maintenance organization authorized to do business in the state which is a member of an insurance or health maintenance organization holding company system that is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in § 56-11-105(c), or other information filed by the insurance company or health maintenance organization with the insurance or health maintenance organization regulatory authority of its domiciliary jurisdiction.

(b) INFORMATION AND FORM REQUIRED. Every insurer and every health maintenance organization subject to registration shall file the registration statement on a form prescribed by the National Association of Insurance Commissioners, which shall contain the following current information:

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

(2) The identity and relationship of every member of the insurance holding company system or health maintenance organization holding company system;

(3) The following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year between the insurer or health maintenance organization and its affiliates:

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

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

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

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

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

(F) Reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements;

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

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

(6) Other matters concerning transactions between registered insurers or registered health maintenance organizations 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 or health maintenance organization's board of directors oversees corporate governance and internal controls and that the insurer's or health maintenance organization'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 REGISTRATION STATEMENT. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) MATERIALITY. No information need be disclosed on the registration statement filed pursuant to subsection (b) if the information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (0.5%) or less of an insurer's or health maintenance organization's admitted assets as of December 31 next preceding, shall not be deemed material for purposes of this section.

(e) REPORTING OF DIVIDENDS TO SHAREHOLDERS. Subject to § 56-11-106(b), each registered insurer and each registered health maintenance organization shall report to the commissioner, for informational purposes, all dividends and other distributions to shareholders within five (5) business days following the declaration thereof, and at least ten (10) days prior to their payment. The commissioner shall promulgate rules that establish procedures to:

(1) Consider promptly the informational prepayment notices and the standards set forth in § 56-11-106(b); and

(2) Review annually all ordinary dividends within the preceding twelve (12) months.

(f) INFORMATION OF INSURERS. Any person within an insurance holding company system or health maintenance organization holding company system subject to registration shall be required to provide complete and accurate information to an insurer or health maintenance organization, where the information is reasonably necessary to enable the insurer or health maintenance organization to comply with this part.

(g) TERMINATION OF REGISTRATION. The commissioner shall terminate the registration of any insurer or health maintenance organization that demonstrates that it no longer is a member of an insurance holding company system or health maintenance organization holding company system.

(h) CONSOLIDATED FILING. The commissioner may require or allow two (2) or more affiliated insurers or two (2) or more affiliated health maintenance organizations subject to registration under this section to file a consolidated registration statement.

(i) ALTERNATIVE REGISTRATION. The commissioner may allow an insurer or health maintenance organization that is authorized to do business in this state and that is part of an insurance holding company system or health maintenance organization holding company system to register on behalf of any affiliated insurer or health maintenance organization that is required

to register under subsection (a) and to file all information and material required to be filed under this section.

(j) EXEMPTIONS. This section does not apply to any insurer, health maintenance organization, information or transaction if, and to the extent that, the commissioner by rule, regulation, or order may exempt the same from this section.

(k) DISCLAIMER. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or health maintenance organization or such a disclaimer may be filed by the insurer or health maintenance organization or any member of any insurance holding company system or health maintenance organization holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer or health maintenance organization as well as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (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 any duty to register or report under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

(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 company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(m) VIOLATIONS. The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for the filing is a violation of this section.

§ 56-11-106. Transactions within a holding company system; standards; dividends; management of domestic insurers and health maintenance organizations *

(a) TRANSACTIONS WITHIN A HOLDING COMPANY SYSTEM.

(1) Transactions within an insurance or health maintenance organization holding company system, to which an insurer or health maintenance organization 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 rule and regulation issued by the commissioner;

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

(D) Expenses incurred and payment received shall be allocated to the insurer or health maintenance organization in conformity with customary insurance accounting practices, or, in the case of health maintenance organizations, customary accounting practices applicable to health maintenance organizations, consistently applied;

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

(F) The insurer's surplus as regards policyholders, or the health maintenance organization's net worth, following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's, or health maintenance organization's, outstanding liabilities and adequate to meet the insurer's or health maintenance organization's financial needs.

(2) The following transactions involving a domestic insurer or a health maintenance organization and any person in its insurance or health maintenance organization holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subdivisions (a)(2)(A)-(G), may not be entered into unless the insurer or health maintenance organization has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior thereto, or a shorter period that the commissioner may permit, and the commissioner has not disapproved it within the 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 thirty (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, extensions of credit, or investments, provided, that the transactions are equal to or exceed;

(i) With respect to nonlife insurers and health maintenance organizations, the lesser of three percent (3%) of the insurer's or health maintenance organization's admitted assets, or twenty-five percent (25%) of surplus as regards policyholders, or, with respect to health maintenance organizations, net worth as of December 31 next preceding; and

(ii) With respect to life insurers, three percent (3%) 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 or health maintenance organization makes the loans or extensions of credit with the agreement or understanding that the proceeds of the 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 or health maintenance organization making the loans or extensions of credit; provided, that the transactions are equal to or exceed:

(i) With respect to nonlife insurers and health maintenance organizations, the lesser of three percent (3%) of the insurer's or health maintenance organization's admitted assets, or twenty-five percent (25%) of surplus as regards policyholders, or, with respect to health maintenance organizations, net worth as of December 31 next preceding; and

(ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of December 31 next preceding;

(C) Reinsurance agreements or modifications thereto, including:

(i) All reinsurance pooling agreements;

(ii) Agreements in which the reinsurance premium or a change in the insurer's or health maintenance organization's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three (3) years, equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, or, with respect to health maintenance organizations, net worth, as of December 31 next preceding, including those agreements that may require as consideration the transfer of assets from an insurer or health maintenance organization to a non-affiliate, if an agreement or understanding exists between the insurer or health maintenance organization and non-affiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer or health maintenance organization;

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

(E) Guarantees when made by a domestic insurer or health maintenance organization; 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 one percent (0.5%) of the insurer's or health maintenance organization's admitted assets, or ten percent (10%) of surplus as regards policyholders, or with respect to health maintenance organizations, net worth, as of December 31 next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this subdivision (a)(2)(E);

(F) Direct or indirect acquisitions or investments in a person that controls the insurer or health maintenance organization or in an affiliate of the insurer or health maintenance organization in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders, or, with respect to health maintenance organizations, net worth. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to § 56-11-102 (or authorized under any other section of this title), or in non-subsidiary insurance affiliates that are subject to this part, are exempt from this requirement; and

(G) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders or the health maintenance organization's enrollees or providers. Nothing in this subdivision (a)(2) shall be deemed to authorize or permit any transactions that, in the case of an insurer or health maintenance organization that is not a member of the same insurance or health maintenance organization holding company system, would be otherwise contrary to law.

(3) A domestic insurer or a health maintenance organization may not enter into transactions that are part of a plan or series of like transactions with persons within the insurance or health maintenance organization 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 the separate transactions were entered into over any twelve-month period for this purpose, the commissioner may exercise the authority under § 56-11-111.

(4) The commissioner, in reviewing transactions pursuant to subdivision (a)(2), shall consider whether the transactions comply with the standards set forth in subdivision (a)(1), and whether they may adversely affect the interests of policyholders, or, in the case of health maintenance organizations, enrollees or providers.

(5) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer or health maintenance organization in any one (1) corporation if the total investment in the corporation by the insurance holding company system or health maintenance organization holding company system exceeds ten percent (10%) of the corporation's voting securities.

(b) DIVIDENDS AND OTHER DISTRIBUTIONS.

(1) No domestic insurer and no health maintenance organization shall pay an extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(A) Thirty (30) days after the commissioner has received notice of the declaration thereof and has not within the period disapproved the payment; or

(B) The commissioner shall have approved the payment within the thirty-day period.

(2) For purposes of this section, 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 twelve (12) months exceeds the greater of:

(A) Ten percent (10%) of the insurer's surplus as regards policyholders, or, with respect to health maintenance organizations, net worth, as of December 31 next preceding; or

(B) The net gain from operations of the insurer, if the insurer is a life insurer, or of the net income, if the insurer is not a life insurer, or a health maintenance organization, not including realized capital gains, for the twelve-month period ending December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's or health maintenance organization's own securities.

(3) Notwithstanding any other law in this title, an insurer or health maintenance organization may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until:

(A) The commissioner has approved the payment of such a dividend or distribution; or

(B) The commissioner has not disapproved the payment within the thirty-day period referred to in subdivision (b)(1).

(4) (A) A domestic insurer or health maintenance organization shall pay a dividend or make a distribution to its shareholders only from the insurer's or health maintenance organization's earned surplus; provided, that the insurer or health maintenance organization may pay a dividend or make a distribution not from earned surplus if the commissioner's approval is first received.

(B) As used in this subdivision (b)(4), "earned surplus" means unassigned surplus as reported in the insurer's or health maintenance organization's most recent financial statement.

(c) MANAGEMENT OF DOMESTIC INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS SUBJECT TO REGISTRATION.

(1) Notwithstanding the control of a domestic insurer or any licensed health maintenance organization by any person, the officers and directors of the insurer or health maintenance organization shall not thereby be relieved of any obligation or liability to which they would otherwise be subject to by law, and the insurer or health maintenance organization shall be managed so as to assure its separate operating identity consistent with this part.

(2) Nothing in this section shall preclude a domestic insurer or any licensed health maintenance organization from having or sharing a common management or cooperative or joint use of personnel, property or services with one (1) or more other persons under arrangements meeting the standards of subdivision (a)(1).

(3) Not less than one-third (1/3) of the directors of a domestic insurer or any licensed health maintenance organization, and not less than one-third (1/3) of the members of each committee of the board of directors of any domestic insurer or health maintenance organization shall be persons who are not officers or employees of the insurer or health maintenance organization or of any entity controlling, controlled by, or under common control with the insurer or health maintenance organization and who are not beneficial owners of a controlling interest in the voting stock of the insurer or health maintenance organization or entity. At least one (1) such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer or any licensed health maintenance organization shall establish one (1) or more committees comprised solely of directors who are not officers or employees of the insurer or health maintenance organization or of any entity controlling, controlled by, or under common control with the insurer or health maintenance organization and who are not beneficial owners of a controlling interest in the voting stock of the

insurer or health maintenance organization or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer or health maintenance organization and recommending to the board of directors the selection and compensation of the principal officers.

(5) Subdivisions (c)(3) and (4) shall not apply to a domestic insurer or any licensed health maintenance organization if the person controlling the insurer or health maintenance organization, such as an insurer, a health maintenance organization, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of subdivisions (c)(3) and (4) with respect to such controlling entity.

(6) An insurer or health maintenance organization may make application to the commissioner for a waiver from the requirements of this subsection (c), if the insurer's or health maintenance organization's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than three hundred million ($300,000,000). An insurer or health maintenance organization may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

(d) ADEQUACY OF SURPLUS.

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

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

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

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

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

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

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

(G) The recent past and projected future trend in the size of the insurer's investment portfolio;

(H) The surplus as regards policyholders maintained by other comparable insurers;

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

(J) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants.

(2) Subdivisions (d)(1)(A)-(J) shall also apply to health maintenance organizations, to the extent appropriate.

§ 56-11-107. Information about insurer's financial condition; examinations *

(a) POWER OF COMMISSIONER. Subject to the limitation contained in this section, and in addition to the powers that the commissioner has under chapters 1 and 32 of this title, relating to the examination of insurers or health maintenance organizations, the commissioner also has the power to examine any insurer or health maintenance organization registered under § 56-11-105 and its affiliates to ascertain the financial condition of the insurer or health maintenance organization, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance or health maintenance organization holding company system, or by the insurance or health maintenance organization holding company system on a consolidated basis.

(b) ACCESS TO BOOKS AND RECORDS.

(1) The commissioner may order any insurer or health maintenance organization registered under § 56-11-105 to produce any records, books, or other information papers in the possession of the insurer or health maintenance organization or its affiliates that are reasonably necessary to determine compliance with this title.

(2) To determine compliance with this title, the commissioner may order any insurer or health maintenance organization registered under § 56-11-105 to produce information not in the possession of the insurer or health maintenance organization if the insurer or health maintenance organization can obtain access to such information pursuant to contractual relationships, statutory obligations, or other methods. In the event the insurer or health maintenance

organization cannot obtain the information requested by the commissioner, the insurer or health maintenance organization shall provide the commissioner a detailed explanation of the reason that the insurer or health maintenance organization cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer or health maintenance organization to pay a penalty of one hundred dollars ($100) for each day's delay, or may suspend or revoke the insurer's license.

(c) USE OF CONSULTANTS. The commissioner may retain, at the registered insurer or health maintenance organization's expense, attorneys, actuaries, accountants and other experts, not otherwise a part of the commissioner's staff, that shall be reasonably necessary to assist in the conduct of the examination under subsection (a). Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(d) EXPENSES. Each registered insurer or health maintenance organization producing for examination records, books and papers pursuant to subsection (a) shall be liable for and shall pay the expense of the examination in accordance with chapters 1 and 32 of this title.

(e) 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 section. 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. Such person shall be entitled to the same fees and mileage, if claimed, as a witness in courts of this state, 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.

§ 56-11-108. Confidentiality of information obtained by commissioner *

(a) Documents, materials or other information in the possession or control of the department of commerce and insurance that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to § 56-11-107, and all information reported pursuant to §§ 56-11-103(b)(12) and (13), 56-11-105 and 56-11-106, shall be confidential by law and privileged, shall not be subject to § 10-7-503 or § 56-1-602, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or

other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer or health maintenance organization to which it pertains unless the commissioner, after giving the insurer or health maintenance organization and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, enrollees, providers, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof, in the manner the commissioner may deem appropriate.

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

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

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (a), with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in § 56-11-116; provided, that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.

(2) Notwithstanding subdivision (c)(1), may only share confidential and privileged documents, material, or information reported pursuant to § 56-11-105(l) with commissioners of states having statutes or regulations substantially similar to subsection (a) and who have agreed in writing not to disclose such information;

(3) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(4) Shall enter into written agreements with the NAIC governing sharing and use of information provided pursuant to this part consistent with this subsection (c) that shall:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this part, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators;

(B) Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this part remains with the commissioner and the NAIC's use of the information is subject to the direction of the commissioner;

(C) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to this part is subject to a request or subpoena to the NAIC for disclosure or production; and

(D) Require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this part.

(d) The sharing of information by the commissioner pursuant to this part shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of this part.

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

(f) Documents, materials or other information in the possession or control of the NAIC pursuant to this part shall be confidential by law and privileged, shall not be subject to § 10-7-503 or § 56-1-602, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

§ 56-11-109. Rules and regulations *

The commissioner may promulgate rules, regulations and orders necessary to carry out this part.

§ 56-11-110. Injunctions *

(a) INJUNCTIONS. Whenever it appears to the commissioner that any insurer or health maintenance organization, or any director, officer, employee or agent thereof, has committed or is about to commit a violation of this part or of any rule, regulation, or order issued by the

commissioner under this part, the commissioner may apply to the chancery court to enjoin the insurer or health maintenance organization or any director, officer, employee or agent of the insurer or health maintenance organization from violating or continuing to violate this part or any such rule, regulation or order, and for other equitable relief as the nature of the case and the interest of the insurer or health maintenance organization's policyholders, enrollees, providers, creditors, and shareholders or the public may require.

(b) VOTING OF SECURITIES; WHEN PROHIBITED. No security that is the subject of any agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of this part or of any rule, regulation or order issued by the commissioner under this part may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or health maintenance organization or unless the courts of this state have so ordered. If an insurer or health maintenance organization or the commissioner has reason to believe that any security of the insurer or health maintenance organization has been or is about to be acquired in contravention of this part or of any rule, regulation or order issued by the commissioner under this part, the insurer or health maintenance organization or the commissioner may apply to the chancery court of Davidson County to enjoin any offer, request, invitation, agreement or acquisition made in contravention of § 56-11-103 or any rule, regulation, or order issued by the commissioner under § 56-11-103 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 other equitable relief as the nature of the case and the interest of the insurer or health maintenance organization's policyholders, enrollees, providers, creditors and shareholders or the public may require.

(c) SEQUESTRATION OF VOTING SECURITIES. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this part or any rule, regulation or order issued by the commissioner under this part, the chancery court of Davidson County may, on such notice as the court deems appropriate, upon the application of the insurer or health maintenance organization or the commissioner, seize or sequester any voting securities of the insurer or health maintenance organization owned directly or indirectly by the person, and issue the order with respect thereto as may be appropriate to effectuate this part. Notwithstanding any other law, for the purposes of this part, situs of the ownership of the securities of domestic insurers or health maintenance organizations shall be deemed to be in this state.

§ 56-11-111. Penalties *

(a) Any insurer or health maintenance organization failing, without just cause, to file any registration statement as required in this part shall be required, after notice and hearing, to pay a

penalty of one hundred dollars ($100) for each day's delay, to be recovered by the commissioner, and the penalty so recovered shall be paid into the general revenue fund of this state. The maximum penalty under this section is ten thousand dollars ($10,000). The commissioner may reduce the penalty if the insurer or health maintenance organization demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer or health maintenance organization.

(b) Every director or officer of an insurance holding company system or health maintenance organization holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the insurer or health maintenance organization to engage in transactions or make investments that have not been properly reported or submitted pursuant to §§ 56-11-105(a) and 56-11-106(a)(2) and (b), or that violate this part, shall pay, in the director's or officer's individual capacity, a civil forfeiture of not more than one thousand dollars ($1,000) 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 other matters as justice may require.

(c) Whenever it appears to the commissioner that any insurer or health maintenance organization subject to this part, or any director, officer, employee or agent thereof, has engaged in any transaction or entered into a contract that is subject to § 56-11-106and that would not have been approved had such approval been requested, the commissioner may order the insurer or health maintenance organization to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer or health maintenance organization to void any such contracts and restore the status quo if the action is in the best interest of the policyholders, creditors, or the public.

(d) Whenever it appears to the commissioner that any insurer or health maintenance organization or any director, officer, employee or agent thereof has committed a willful violation of this part, the commissioner may cause criminal proceedings to be instituted against the insurer or health maintenance organization or the responsible director, officer, employee or agent. Any insurer or health maintenance organization that willfully violates this part may be fined not more than ten thousand dollars ($10,000). Any individual who willfully violates this part may be fined in the person's individual capacity not more than ten thousand dollars ($10,000) or be punished for a Class E felony, or both.

(e) Any officer, director or employee of an insurance holding company system or health maintenance organization holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of the officer, director or employee's duties under this part, upon conviction, shall be fined not more than ten thousand dollars ($10,000) or be

punished for a Class E felony, or both. Any fines imposed shall be paid by the officer, director, or employee in the person's individual capacity.

(f) Whenever it appears to the commissioner that any person has committed a violation of § 56-11-103 and which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with § 56-9-503.

§ 56-11-112. Assumption of control by commissioner; insolvency *

Whenever it appears to the commissioner that any person has committed a violation of this part that so impairs the financial condition of a domestic insurer or of a health maintenance organization as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, enrollees, providers, creditors, shareholders or the public, the commissioner may proceed as provided in chapter 9 of this title to take possession of the property of the domestic insurer or health maintenance organization and to conduct its business.

§ 56-11-113. Order for liquidation or rehabilitation; receiver's rights to recover *

(a) If an order for liquidation or rehabilitation of a domestic insurer or health maintenance organization has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer or health maintenance organization:

(1) From any parent corporation or holding company or person or affiliate who otherwise controlled the insurer or health maintenance organization, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer or health maintenance organization on its capital stock; or

(2) Any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or health maintenance organization or its subsidiaries to a director, officer or employee, where the distribution or payment pursuant to subdivision (a)(1) or (a)(2) is made at any time during the one (1) year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of subsections (b)-(d).

(b) No such distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer or health maintenance organization did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer or health maintenance organization to fulfill its contractual obligations.

(c) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or health maintenance organization or affiliate at the time the distributions were paid, shall be liable up to the amount of distributions or payments the person received under subsection (a). Any person who otherwise controlled the insurer or health maintenance organization at the time the distributions were declared shall be liable up to the amount of distributions the person would have received had the person been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer or health maintenance organization to pay the contractual obligations of the impaired or insolvent insurer or health maintenance organization and to reimburse any guaranty funds.

(e) To the extent that any person liable under subsection (c) is insolvent or otherwise fails to pay claims due from it pursuant to subsection (c), 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.

§ 56-11-114. Suspension; revocation; refusal to renew license *

Whenever it appears to the commissioner that any person has committed a violation of this part which makes the continued operation of an insurer or health maintenance organization contrary to the interests of policyholders, enrollees, providers or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew the insurer or health maintenance organization's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders, enrollees, providers or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

§ 56-11-115. Appeal of commissioner's action *

Any person aggrieved by an act, determination, rule, regulation, order, or any other action of the commissioner pursuant to this part may appeal as set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

§ 56-11-116. Supervisory College *

(a) POWER OF COMMISSIONER. With respect to any insurer or health maintenance organization registered under § 56-11-105, and in accordance with subsection (c), the

commissioner shall also have the power to participate in a supervisory college for any domestic insurer or health maintenance organization that is part of an insurance holding company system with international operations in order to determine compliance by the insurer or health maintenance organization 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.

(1) Each registered insurer or health maintenance organization subject to this 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), including reasonable travel expenses.

(2) For purposes of this 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 health maintenance organization or its affiliates, and the commissioner may establish a regular assessment to the insurer or health maintenance organization for the payment of these expenses.

(c) SUPERVISORY COLLEGE. In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with § 56-11-107, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or health maintenance organization or its affiliates, including other state, federal and international regulatory agencies. The commissioner may enter into agreements in accordance with § 56-11-108(c) providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

§ 56-11-117. (omitted) *

Relevant to foreign insurers participating in TennCare.

§ 56-11-118. Conflicts of law *

To the extent that this part conflicts with or is inconsistent with any laws in this title, this part shall control.

§ 56-11-119. Severability clause *

If any provision of this part or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this part which can be given effect without the invalid provisions or application, and for this purpose the provisions of this part are severable.

INSOLVENT CORPORATIONS

§ 56-24-101. Insolvent corporations; restraint from transacting business

When the commissioner of commerce and insurance, on investigation, is satisfied that any corporation organized under the laws of this state and doing business as a life and casualty insurance company is insolvent because of matured death claims or other obligations due and unpaid exceeding its assets and death assessments or periodical payments called or in process of collection, or has exceeded its powers, has failed to comply with any provision of law, or is not carrying out its contracts with members in good faith, the commissioner shall report the facts to the attorney general and reporter, who, if of the opinion that the facts require the action, may apply to any court having jurisdiction for an order requiring the officers of the corporation to show cause within a reasonable time why the corporation should not be restrained from continuing to transact business.

§ 56-24-102. Receivers; removal of officers

The court may, in its discretion, appoint receivers to take charge of the effects and wind up the business of the corporation, subject to rules and orders as the court may from time to time prescribe, according to the course of proceedings in equity, or the court may, if it deems that the best interests of the corporation will be served thereby, decree a removal from office of the officers or any number thereof, and substitute suitable persons to serve until the regular annual election, or until a successor is regularly chosen.

§ 56-24-103. Agents' certificate of authority

Every corporation transacting business under this chapter shall obtain from the commissioner a certificate of authority for each agent writing or soliciting insurance for it in this state, which certificate shall show that the corporation has complied with this chapter, and the certificate, unless sooner revoked, shall expire with the end of each calendar year, and be renewed within thirty (30) days thereafter. Any corporation that neglects or fails to make application for certificates of authority for its agents or any one (1) of its agents, and any agent who transacts any business for the corporation without first receiving the certificate herein required, shall be liable to a fine of one hundred dollars ($100).

§ 56-24-104. Fees

The commissioner shall collect and pay into the state treasury the fees prescribed by § 56-4-101 for issuing each new certificate of authority, for filing the company's annual statement and for amendments to the company's certificate of authority.

RISK RETENTION GROUPS *

§ 56-45-101. Purpose *

The purpose of this chapter is to regulate the formation and/or operation of risk retention groups and purchasing groups in this state formed pursuant to the federal "Liability Risk Retention Act of 1986" ("RRA 1986"), to the extent permitted by law.

§ 56-45-102. Definitions *

As used in this chapter, unless the context otherwise requires:
(1) "Commissioner" means the commissioner of commerce and insurance or the commissioner, director or superintendent of insurance in any other state;

(2) "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:

(A) Any person who performs that work; or

(B) Any person who hires an independent contractor to perform that work, but includes liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability;

(3) "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means:

(A) For a corporation, the state in which the purchasing group is incorporated; and

(B) For an unincorporated entity, the state of its principal place of business;

(4) “Hazardous financial condition” means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to:

(A) Meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) Pay other obligations in the normal course of business;

(5) “Insurance” means primary insurance, excess insurance, reinsurance, surplus lines insurance and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this state;

(6) “Liability”:

(A) Means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to other persons resulting from or arising out of:

(i) Any business, whether profit or nonprofit, trade, product, services, including professional services, premises or operations; or

(ii) Any activity of any state or local government, or any agency or political subdivision of state or local government; and

(B) Does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the federal Employers' Liability Act, compiled in 45 U.S.C. § 51 et seq.;

(7) “Personal risk liability” means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial or household responsibilities or activities, rather than from responsibilities or activities referred to in subdivision (6);

(8) “Plan of operation or a feasibility study” means an analysis that presents the expected activities and results of a risk retention group including, at a minimum:

(A) Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;

(B) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(C) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

(D) Pro forma financial statements and projections;

(E) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(F) Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies or reinsurance agreements;

(G) Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state; and

(H) Other matters that may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state;

(9) “Product liability” means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of the person when the incident giving rise to the claim occurred;

(10) “Purchasing group” means any group that:

(A) Has as one (1) of its purposes the purchase of liability insurance on a group basis;

(B) Purchases the insurance only for its group members and only to cover the group member's similar or related liability exposure, as described in subdivision (10)(C);

(C) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) Is domiciled in any state;

(11) "Risk retention group" means any corporation or other limited liability association:

(A) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(B) That is organized for the primary purpose of conducting the activity described under subdivision (11)(A);

(C) That:

(i) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the insurance commissioner of at least one (1) state that it satisfied the capitalization requirements of that state, except that the group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date, and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as the terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986;

(D) That does not exclude any person from membership in the group solely to provide for members of the group a competitive advantage over such a person;

(E) That has:

(i) As its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the group; or

(ii) As its sole owner an organization that has as:

(*a*) Its members only persons who comprise the membership of the risk retention group; and

(*b*) Its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the group;

(F) Whose members are engaged in businesses or activities similar or related with respect to the liability of which the members are exposed by virtue of any related, similar or common business trade, product, services, premises or operations;

(G) Whose activities do not include the provision of insurance other than:

(i) Liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) Reinsurance with respect to the liability of any other risk retention group, or any members of the other group, that is engaged in businesses or activities so that the group or member meets the requirement described in subdivision (11)(F) from membership in the risk retention group that provides the reinsurance; and

(H) The name of which includes the phrase "Risk Retention Group"; and

(12) "State" means any state of the United States or the District of Columbia.

§ 56-45-103. Charter; plan of operation or feasibility study *

(a) A risk retention group shall, pursuant to this chapter, be chartered and licensed to write only liability insurance pursuant to this chapter and, except as provided elsewhere in this chapter, must comply with all of the laws, rules, regulations and requirements applicable to the insurers chartered and licensed in this state and with § 56-45-104, to the extent the requirements are not a limitation on laws, rules, regulations or requirements of this state.

(b) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the commissioner of commerce and insurance a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within ten (10) days of the change. The group shall not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of the plan or study is approved by the commissioner.

(c) (1) At the time of filing its application for a charter, the risk retention group shall provide to the commissioner in summary form the following information:

(A) The identity of the initial members of the group;

(B) The identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group;

(C) The amount and nature of initial capitalization;

(D) The coverages to be afforded; and

(E) The states in which the group intends to operate.

(2) Upon receipt of this information, the commissioner shall forward the information to the National Association of Insurance Commissioners.

(3) Providing notification to the National Association of Insurance Commissioners is in addition to, and does not suffice as, satisfying the requirements of § 56-45-104 or any other sections of this chapter.

(d) **Governance Standards For Risk Retention Groups.** Within one (1) year of the effective date of this section, existing risk retention groups shall ensure compliance with the following governance standards. Risk retention groups that are licensed on or after the effective date of this act shall be in compliance with the following standards at the time of licensure:

(1) (A) The board of directors of the risk retention group shall have a majority of independent directors. If the risk retention group is a reciprocal, then the attorney-in-fact would be required to adhere to the same standards regarding independence of operation and governance as imposed on the risk retention group's board of directors/subscribers advisory committee under the standards set out in this subsection (d); and, to the extent permissible under state law, service providers of a reciprocal risk retention group should contract with the risk retention group and not the attorney-in-fact;

(B) No director qualifies as "independent" unless the board of directors affirmatively determines that the director has no material relationship with the risk retention group. Each risk retention group shall disclose these determinations to its domestic regulator, at least annually. For purposes of this subdivision (d)(1)(B), any person who is a direct or indirect owner of or subscriber in the risk retention group (or is an officer, director, or employee of such an owner and insured, unless some other position of such officer, director, or employee constitutes a material relationship), as contemplated by 15 U.S.C. § 3901(a)(4)(E)(ii) of the Liability Risk Retention Act, is considered to be "independent;"

(2) **Service Provider Contracts**

(A) The term of any material service provider contract with the risk retention group shall not exceed five (5) years. Any such contract, or its renewal, shall require the approval of the majority of the risk retention group's independent directors. The risk retention group's board of directors shall have the right to terminate any service provider, audit or actuarial contract at any time for cause after providing adequate notice pursuant to the terms of the contract. The service provider contract is deemed material if the amount to be paid for such contract is greater than or equal to five percent (5%) of the risk retention group's annual gross written premium or two percent (2%) of its surplus, whichever is greater;

(B) No service provider contract constituting a material relationship shall be entered into unless the risk retention group has notified the commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior to entering into the proposed transaction and the commissioner has not disapproved it within such period;

(3) **Written Policy.** The risk retention group's board of directors shall adopt a written policy in the plan of operation as approved by the board that requires the board to:

(A) Assure that all owner and insureds of the risk retention group receive evidence of ownership interest;

(B) Develop a set of governance standards applicable to the risk retention group;

(C) Oversee the evaluation of the risk retention group's management, including, but not limited to, the performance of the captive manager, managing general underwriter or other party or parties responsible for underwriting, determination of rates, collection of premium, adjusting or settling claims, or the preparation of financial statements;

(D) Review and approve the amount to be paid to material service providers; and

(E) Review and approve, at least annually:

(i) The risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(ii) The officers' and service providers' performance in accordance with those goals and objectives; and

(iii) The continued engagement of the officers and material service providers;

(4) **Audit Committee**

(A) The risk retention group shall have an audit committee composed of at least three (3) independent board members. A nonindependent board member may participate in the activities of the audit committee, if invited by the members, but cannot be a member of such committee;

(B) The audit committee shall have a written charter that defines the committee's purpose, which, at a minimum, must be to:

(i) Assist board oversight of the:

(a) Integrity of the risk retention group's financial statements;

(b) Compliance with legal and regulatory requirements; and

(c) Qualifications, independence, and performance of the independent auditor and actuary;

(ii) Discuss the annual audited financial statements and quarterly financial statements with management;

(iii) Discuss the annual audited financial statements with the independent auditor and, if advisable, discuss quarterly financial statements with the independent auditor;

(iv) Discuss policies with respect to risk assessment and risk management;

(v) Meet separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors;

(vi) Review with the independent auditor any audit problems or difficulties and management's response;

(vii) Set clear hiring policies of the risk retention group regarding the hiring of employees or former employees of the independent auditor;

(viii) Require the external auditor to rotate the lead (or coordinating) audit partner having primary responsibility for the risk retention group's audit as

well as the audit partner responsible for reviewing that audit so that neither individual performs audit services for a particular risk retention group for more than five (5) consecutive fiscal years; and

(ix) Report regularly to the board of directors;

(C) The domestic regulator may waive the requirement to establish an audit committee composed of independent board members if the risk retention group is able to demonstrate to the domestic regulator that it is impracticable to do so and the risk retention group's board of directors itself is otherwise able to accomplish the purposes of an audit committee, as described in subdivision (d)(4)(B);

(5) **Governance Standards.** The board of directors shall adopt governance standards and shall make such standards available electronically, including, but not limited to, posting such information on the risk retention group's web site, or by other means, and provide such information to members/insureds upon request. Governance standards shall include:

(A) The process by which the directors are elected by the owner and insureds;

(B) Director qualification standards;

(C) Director responsibilities;

(D) Director access to management and, as necessary and appropriate, independent advisors;

(E) Director compensation;

(F) Director orientation and continuing education;

(G) Management succession policies and procedures; and

(H) The policies and procedures that are followed for annual performance evaluation of the board;

(6) **Business Conduct and Ethics.** The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers and employees and promptly disclose to the board of directors any waivers of the code for directors or executive officers. The code shall address the following topics:

(A) Conflicts of interest;

(B) Matters subject to the corporate opportunities doctrine under the group's state of domicile;

(C) Confidentiality;

(D) Fair dealing;

(E) Protection and proper use of risk retention group assets;

(F) Compliance with all applicable laws, rules, and regulations; and

(G) Mandatory reporting of any illegal or unethical behavior which affects the operation of the risk retention group;

(7) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the domestic regulator in writing if either becomes aware of any material noncompliance with any of these governance standards; and

(8) For purposes of this subsection (d):

(A) "Board of directors" or "board" means the governing body of the risk retention group elected by the owners and insureds to establish policy, elect or appoint officers and committees, and make other governing decisions;

(B) "Director" means a natural person designated in the formation documents of the risk retention group, or designated, elected or appointed by any other manner, name or title to act as a director;

(C) "Material relationship" includes, but is not limited to:

(i) The receipt, in any twelve-month period, of compensation or payment of any other item of value by a person, a member of the person's immediate family or any business with which the person is affiliated from the risk retention group, or a consultant or service provider to the risk retention group that is greater than or equal to five percent (5%) of the risk retention group's gross written premium for such twelve-month period or two percent (2%) of its surplus, whichever is greater, as measured at the end of any fiscal quarter falling in such twelve-month period. Such person or the person's immediate family member shall not be independent until one (1) year after the person's compensation from the risk retention group falls below the threshold;

(ii) In regards to a relationship with an auditor, a director or an immediate family member of a director who is affiliated with or employed in a professional capacity by a present or former internal or external auditor of the risk retention group is not independent until one (1) year after the end of the affiliation, employment, or auditing relationship; or

(iii) In regards to a relationship with a related entity, a director or immediate family member of a director who is employed as an executive officer of another company where any of the risk retention group's present executives serve on that other company's board of directors is not independent until one (1) year after the end of such service or the employment relationship; and

(D) "Service providers" includes captive managers, auditors, accountants, attorneys, actuaries, investment advisors, managing general underwriters or other parties responsible for underwriting, determination of rates, collection of premium, adjusting and settling claims, or the preparation of financial statements. Any reference to attorneys in this subdivision (d)(8)(D) does not include defense counsel retained by the risk retention group to defend claims, unless the amount of fees paid to such attorneys are material as referenced in subdivision (d)(8)(C).

§ 56-45-104. Compliance with laws *

(a) Risk retention groups chartered and licensed in states other than this state, and seeking to do business as a risk retention group in this state, shall comply with the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(A) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, charter date, its principal place of business, and other information, including information on its membership, the commissioner of commerce and insurance may require to verify that the risk retention group is qualified under § 56-45-102(11); and

(B) A copy of its plan of operations or feasibility study and revisions of the plan or study submitted to the state in which the risk retention group is chartered and licensed; provided, that the provision relating to the submission of a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance that was:

(i) Defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(ii) Offered before October 27, 1986, by any risk retention group that had been chartered and operating for not less than three (3) years before that date;

(2) The risk retention group shall submit a copy of any material revision to its plan of operation or feasibility study required by § 56-45-103(b) within thirty (30) days of the date of the approval of such revision by the commissioner of its chartering state, or if no such approval is required, within thirty (30) days of the filing; and

(3) A statement of registration, for which a filing fee shall be determined by the commissioner, that designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(b) Any risk retention group doing business in this state shall submit to the commissioner:

(1) A copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;

(2) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(3) Upon request by the commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group; and

(4) Other information that may be required to verify its continuing qualification as a risk retention group under § 56-45-102(11).

(c) (1) Each risk retention group is liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state, and shall report to the commissioner the net premiums written for risks resident or located within this state. The risk retention group is subject to taxation, and any applicable fines and penalties related to the taxation, on the same basis as a foreign admitted insurer.

(2) To the extent licensed agents or brokers are utilized pursuant to § 56-45-112, they shall report to the commissioner the premiums for direct business for risks resident or located

within this state that the licensees have placed with, or on behalf of, a risk retention group not chartered in this state.

(3) To the extent that insurance agents or brokers are utilized pursuant to § 56-45-112, the agent or broker shall keep a complete and separate record of all policies procured from each such risk retention group, which record shall be open to examination by the commissioner upon request. These records shall, for each policy and each kind of insurance provided under the policy, include:

(A) The limit of liability;

(B) The time period covered;

(C) The effective date;

(D) The name of the risk retention group that issued the policy;

(E) The gross premium charged; and

(F) The amount of return premiums, if any.

(d) Any risk retention group, its agents and representatives shall comply with the Unfair Claims Settlement Practices Act, compiled in § 56-8-104.

(e) Any risk retention group shall comply with § 56-8-104, regarding deceptive, false or fraudulent acts or practices. If the commissioner seeks an injunction regarding the conduct, the injunction must be obtained from a court of competent jurisdiction.

(f) Any risk retention group must submit to an examination by the commissioner to determine its financial condition, if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within sixty (60) days after a request by the commissioner of commerce and insurance. The examination shall be coordinated to avoid unjustified repetition, and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners (NAIC) examiner handbook.

(g) Every application form for insurance from a risk retention group, and every policy, on its front and declaration pages, issued by a risk retention group, shall contain in ten (10) point type the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(h) The following acts by a risk retention group are prohibited:

(1) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

(2) The solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or financially impaired.

(i) No risk retention group is allowed to do business in this state if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

(j) The terms of any insurance policy issued by any risk retention group shall not provide, or be construed to provide, coverage prohibited generally by statutes of this state or declared unlawful by the highest court of the state whose law applies to the policy.

(k) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subsection (f).

(l) A risk retention group that violates this chapter will be subject to fines and penalties, including revocation of its right to do business in this state, applicable to licensed insurers generally.

§ 56-45-105. Insurance insolvency guaranty funds; equitable apportionment of liability insurance losses and expenses *

(a) No risk retention group is required or permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the insurance policies issued by the risk retention group.

(b) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or a risk retention group, the risks, wherever resident or located, shall not be covered by any insurance guaranty fund or similar mechanism in this state.

(c) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state shall be covered by the state guaranty fund subject to § 56-12-111.

(d) Notwithstanding § 56-41-105 to the contrary, the commissioner may require a risk retention group to participate, or exempt a risk retention group from participation, in any mechanism established or authorized under the law of this state for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through the mechanism, and the risk retention group shall submit sufficient information to the commissioner to enable the commissioner to apportion on a nondiscriminatory basis the risk retention group's proportionate share of the losses and expenses.

§ 56-45-106. Countersignature *

A policy of insurance issued to a risk retention group, or any member of that group, shall not be required to be countersigned.

§ 56-45-107 to -110 ***omitted (relative to Risk Purchasing Groups)***

§ 56-45-111. Commission's powers of enforcement *

The commissioner is authorized to make use of any of the powers established under the insurance code of this state to enforce the laws of this state not specifically preempted by the Risk Retention Act of 1986, including the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties and seek injunctive relief. With regard to any investigation, administrative proceedings or litigation, the commissioner can rely on the procedural laws of this state. The injunctive authority of the commissioner, in regard to risk retention groups, is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

§ 56-45-112. Soliciting, negotiating, or procuring liability insurance; restrictions *

(a) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in this state from a risk retention group unless the person, firm, association or corporation is licensed as an insurance agent or broker in accordance with chapter 6 of this title.

(b) (1) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless the person, firm,

association or corporation is licensed as an insurance agent or broker in accordance with chapter 6 of this title.

(2) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance coverage in this state for any member of a purchasing group under a purchasing group's policy unless the person, firm, association or corporation is licensed as an insurance agent or broker in accordance with chapter 6 of this title.

(3) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance from an approved surplus lines insurer on behalf of a purchasing group located in this state unless the person, firm, association or corporation is licensed as a surplus lines agent or an excess line broker in accordance with chapter 14 of this title.

(c) For purposes of acting as an agent or broker for a risk retention group or purchasing group pursuant to subsections (a) and (b), the requirement of residence in this state does not apply.

(d) Every person, firm, association or corporation licensed pursuant to chapter 6 of this title, on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the notice required by § 56-45-104(g), in the case of a risk retention group, and § 56-45-109(b), in the case of a purchasing group.

§ 56-45-113. Injunctions; United States district courts *

An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating in any state, or in all states or in any territory or possession of the United States, upon a finding that the risk retention group is in hazardous financial or financially impaired condition, is enforceable in the courts of this state.

§ 56-45-114. Rules and regulations *

The commissioner is authorized to promulgate, and from time to time amend, rules and regulations relating to risk retention groups as may be necessary or desirable to carry out this chapter. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

LOCAL TAXATION OF INSURANCE COMPANIES

§ 67-5-1201. Corporate property and capital stock

The corporate property and capital stock employed in Tennessee of every insurance company whose principal office is located in the state shall be taxed according to its value, that value to be ascertained as provided in this part.

§ 67-5-1202. Places of assessment

The corporate property and capital stock referred to in § 67-5-1201 shall be assessed at the following places:

(1) The real property and tangible personal property shall be assessed and taxed where situated; and

(2) The balance of such corporate property and capital stock shall be assessed and taxed in the county or civil district in which the principal office of such company is maintained.

§ 67-5-1203. Valuation

(a) The value of such real property and tangible personal property shall be ascertained in the same manner as the real property and tangible personal property of other taxpayers.

(b) The value of the balance of the corporate property and capital stock employed in Tennessee by an insurance company with stockholders shall be ascertained in the following manner:

(1) The assessor shall first determine the aggregate amount of the issued and outstanding capital stock and surplus of such company as shown on its annual statement and shall deduct therefrom:

(A) One-fourth (¼) the sum of the value of the property held at the end of each calendar quarter by such company which is exempt from ad valorem property taxation under any law of this state or of the United States; and

(B) The assessed value of all the real and tangible personal property of such company situated in and having a permanent situs in other states;

(2) The assessor shall then apportion such remaining value to this state on the basis of the smaller of the following two (2) ratios:

(A) The ratio which the direct premiums and annuity considerations received by such company from policies on persons residing in or property located in this state during the preceding calendar year bear to the total premiums, including premiums for reinsurance assumed, and annuity considerations received by such company during such year from all sources; or

(B) The ratio which the aggregate direct premiums and annuity considerations received by all companies subject to this part from policies on persons residing in or property located in this state during the preceding calendar year bear to the aggregate

total premiums, including premiums for reinsurance assumed, and annuity considerations received by all such companies during such year from all sources, which ratio shall be computed and published by the commissioner of commerce and insurance on or before April 15 of each year;

(3) From such apportioned value, the assessor shall deduct:

(A) The assessed value of all real property and tangible personal property of such company otherwise assessed or returned for taxation in Tennessee; and

(B) The assessed value of all real property in Tennessee occupied by such company as its principal office under a lease which provides that all ad valorem taxes on such property shall be paid by such company, and which has been registered in the county where such principal office is located;

and the remainder shall constitute the value of the balance of the corporate property and the capital stock employed in Tennessee by such company.

(c) (1) In the case of an insurance company without stockholders, the value of the corporate property of such company for purposes of this section, excluding real property and tangible personal property, shall be equal to the total dividends paid to policyholders in the preceding calendar year.

(2) For purposes of this subsection (c), "dividends" do not include returns or reductions of premiums or credits applied to premiums.

(d) The assessor shall make the assessment on such value at the same percentage or ratio of assessment to value of property as was provided by law for the year 1972.

§ 67-5-1204. First fifteen years in business

(a) During the first fifteen (15) full years an insurance company is in business, its apportionment ratio, determined in accordance with § 67-5-1203(b)(2), shall be reduced proportionately at the rate of one-fifteenth ($^{1}/_{15}$) for each full year that fifteen (15) exceeds the number of full years it has been in business.

(b) The period of fifteen (15) full years shall be measured from the earliest date the company, or any predecessor insurance company of which the company is the continuing corporation, was authorized and qualified to do insurance business subject to the maximum fifteen (15) years of reduced assessments as set forth in subsection (c).

(c) This section shall not apply to any insurance company formed as a successor in interest to any insurance company that has already received a reduction in its apportionment ratio for the entirety of the fifteen (15) years permitted pursuant to subsection (a); provided, however, that

any insurance company formed as a successor in interest in the year 2006 shall be entitled to receive the reduction to its apportionment ratio provided in subsection (a) during the first five (5) full years of its existence to the same extent as a new insurance company not formed as a successor in interest.

§ 67-5-1205. Application of assessment and taxation

(a) The value of the corporate property and capital stock of each company subject to this part shall be construed as including all the tangible and intangible value of such company.
(b) The assessment and taxation of such corporate property and capital stock under this part shall be in lieu of the taxation of the income derived from such corporate property and capital stock and of the assessment and taxation of the shares of stock of such company as the personal property of its stockholders.
(c) No person shall be taxed on the income derived from any stock which constitutes a part of the capital stock of any insurance company which is itself subject to this part or which has a wholly-owned subsidiary which is subject to this part.

§ 67-5-1206. Written assessment schedule; reporting schedule; forced assessment

(a) The president or chief financial officer of each company subject to this part shall fill out and furnish under oath to the assessor of the county in which the principal office of such company is maintained an assessment schedule in writing, which schedule shall contain the following information:

(1) The number of shares of each class of capital stock issued and outstanding and the par value per share;

(2) The amount of surplus, including special surplus funds, paid-in and contributed surplus and unassigned surplus;

(3) An itemized statement of the value of all property which is exempt from ad valorem taxation by any law of this state or of the United States, showing the appropriate code section granting the exemption for each item;

(4) An itemized statement of the assessed value of all real property and tangible personal property having a situs outside Tennessee, showing the location of each item;

(5) An itemized statement of the assessed value of all real property and tangible personal property having a situs in Tennessee, showing the location of each item;

(6) A statement of the assessed value of all real property in Tennessee occupied by such company as its principal office under a lease, together with a copy of such lease;

(7) A statement of the date such company was first authorized and qualified to do insurance business, or, if such company is the continuing corporation resulting from a merger or consolidation, a statement of the earliest date its predecessor corporations were authorized and qualified to do insurance business; and

(8) Such other facts pertaining to the value of its corporate property and capital stock as may be deemed necessary or material by the assessor.

(b) The assessment schedule filed pursuant to this section shall be derived from, and consistent with, the annual statement of such company as of the last day of the preceding calendar year as filed with the commissioner of commerce and insurance.

(c) The assessor shall furnish by February 1 a reporting schedule in a form approved by the state board of equalization to each company subject to assessment under this part, and the schedule shall be completed and returned by the company by March 1 of the year for which the assessment is to be made. A taxpayer who fails, refuses or neglects to complete, sign, and file the schedule with the assessor of property, as provided in subsection (a), shall be deemed to have waived objections to the forced assessment determined by the assessor, subject only to the remedies provided in subsection (d). In determining a forced assessment, the assessor shall consider available evidence indicative of the assessable value of property assessable to the taxpayer under this section, and having determined the assessable value of property assessable to the taxpayer under this section, the assessor shall give the taxpayer notice of the assessment by United States mail, addressed to the last known address of the taxpayer, or the taxpayer's agent, at least ten (10) calendar days before the local board of equalization commences its annual session. Failure of the assessor to send a schedule or failure of the taxpayer to receive a schedule shall not relieve or excuse any taxpayer from filing such schedule by March 1, nor shall it prevent the assessor from issuing a forced assessment against the taxpayer.

(d) If a forced assessment is shown to exceed the assessable value of the taxpayer's property, then the taxpayer shall have the following remedies:

(1) The taxpayer may appeal to the county board of equalization pursuant to § 67-5-1407, but must present a completed schedule as otherwise provided in this section;

(2) If the deadline to appeal to the county board of equalization has expired, then the taxpayer may request the assessor to mitigate the forced assessment by reducing the forced assessment to the assessable value of the taxpayer's assessable property plus twenty-five percent (25%), so long as the failure to file the schedule or failure to timely appeal to the county board of equalization was not the result of gross negligence or willful disregard of the law. Mitigation of the forced assessment shall follow the procedure provided and be subject to the deadlines provided in § 67-5-509. Gross negligence shall be presumed if notice of the forced assessment,

in a form approved by the state board of equalization, was sent certified mail, return receipt requested, to the taxpayer's last known address on file with the assessor.
(e) Whether or not an assessor's error affected the original assessment, the assessor may correct a forced assessment using the procedure provided and subject to the deadlines provided in § 67-5-509, upon determining that the taxpayer was not in business as of the assessment date for the year at issue, and upon determining that the taxpayer did not own property assessable pursuant to this part as of the assessment date for the year at issue.
(f) The taxpayer may amend a schedule timely filed with the assessor in the same manner provided for tangible personal property returns.

§ 67-5-1207. Minimum assessment based on 1967 assessment.

In no event shall the assessment of the balance of the corporate property and capital stock of any company under § 67-5-1203(b), in any year up to and including the year 1980, be less than the assessment of the shares of stock of such company for the year 1967, under this part, or, in the case of a corporation which is the continuing corporation resulting from a merger or consolidation, less than the aggregate assessment of the shares of stock of all its predecessor corporations for the year 1967, under this part.

§ 67-5-1208. Nonseverability

If any provision of this part and the 1968 amendments to §§ 67-5-1101 and 67-2-104 or the application thereof to any person or circumstance is held invalid, such provision shall not be severable from this part and the 1968 amendments to §§ 67-5-1101 and 67-2-104 and the whole of such provisions shall fail and be inoperative.

§ 67-5-1209. Application of part to pure captive insurance company.

The tax levied by this part shall not apply to the balance of the corporate property and capital stock, otherwise subject to valuation and assessment under §§ 67-5-1202(2) and 67-5-1203(b), of any pure captive insurance company, as defined in § 56-13-102 or of any entity operating in a similar manner to a pure captive insurance company such that fifty-one percent (51%) or more of its direct written premium revenue is from an affiliated company, as defined in § 56-13-102, or an associated company, as defined in § 56-13-102.

FEDERAL LIABILITY RISK RETENTION ACT OF 1986 *

15 U.S.C. § 3901. Definitions *

(a) As used in this chapter--

(1) "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(2) "liability"--

(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of--

(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations, or

(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

(3) "personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);

(4) "risk retention group" means any corporation or other limited liability association--

(A) whose primary activity consists of assuming, and spreading all, or any portion, of the liability exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which--

(i) is chartered or licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before October 27, 1986);

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(E) which--

(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) has as its sole owner an organization which has as--

(I) its members only persons who comprise the membership of the risk retention group; and

(II) its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(F) whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(G) whose activities do not include the provision of insurance other than--

(i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and

(ii) reinsurance with respect to the similar or related liability exposure of any other risk retention group (or any member of such other group) which is engaged in businesses or activities so that such group (or member) meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

(H) the name of which includes the phrase "Risk Retention Group". [FN1]

(5) "purchasing group" means any group which--

(A) has as one of its purposes the purchase of liability insurance on a group basis;

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) is domiciled in any State;

(6) "State" means any State of the United States or the District of Columbia; and

(7) "hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able--

(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) to pay other obligations in the normal course of business.

(b) Nothing in this chapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and the definitions of liability, personal risk liability, and insurance under any State law shall not be applied for the purposes of this chapter, including recognition or qualification of risk retention groups or purchasing groups.

15 U.S.C. § 3902. Risk retention groups *

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would--

(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to--

(A) comply with the unfair claim settlement practices law of the State;

(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the State;

(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism;

(D) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

(E) submit to an examination by the State insurance commissioners in any State in which the group is doing business to determine the group's financial condition, if--

(i) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group; and

(ii) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;

(F) comply with a lawful order issued--

(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

(ii) in a voluntary dissolution proceeding;

(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

"NOTICE

"This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group."

(2) require or permit a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong;

(3) require any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State; or

(4) otherwise, discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

(b) Scope of exemptions

The exemptions specified in subsection (a) of this section apply to laws governing the insurance business pertaining to--

(1) liability insurance coverage provided by a risk retention group for--

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of liability insurance coverage for a risk retention group; and

(3) the provision of--

(A) insurance related services;

(B) management, operations, and investment activities; or

(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.

(c) Licensing of agents or brokers for risk retention groups

A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d) Documents for submission to State insurance commissioners

Each risk retention group shall submit--

(1) to the insurance commissioner of the State in which it is chartered--

(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State--

(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by--

(A) a member of the American Academy of Actuaries, or

(B) a qualified loss reserve specialist.

(e) Power of courts to enjoin conduct

Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin--

(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.

(f) State powers to enforce State laws

(1) Subject to the provisions of subsection (a)(1)(G) of this section (relating to injunctions) and paragraph (2), nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this chapter.

(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e) of this section, such injunction must be obtained from a Federal or State court of competent jurisdiction.

(g) States' authority to sue

Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

(h) State authority to regulate or prohibit ownership interests in risk retention groups

Nothing in this chapter shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.

15 U.S.C. § 3903. Purchasing groups *

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section and section 3905 of this title, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would--

(1) prohibit the establishment of a purchasing group;
(2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters;
(3) prohibit a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection;
(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;
(5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form;
(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;
(7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or

(8) otherwise discriminate against a purchasing group or any of its members.

(b) Scope of exemptions

The exemptions specified in subsection (a) of this section apply to--

(1) liability insurance provided to--
(A) a purchasing group; or
(B) any person who is a member of a purchasing group; and
(2) the provision of--
(A) liability coverage;
(B) insurance related services; or
(C) management services;
to a purchasing group or member of the group.

(c) Licensing of agents or brokers for purchasing groups

A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d) Notice to State insurance commissioners of intent to do business

(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice--

(A) shall identify the State in which such group is domiciled;
(B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;
(C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and
(D) shall identify the principal place of business of the group.
(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

(e) Designation of agent for service of documents and process

A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group--

(1) which--

(A) was domiciled before April 1, 1986; and

(B) is domiciled on and after October 27, 1986;

in any State of the United States;

(2) which--

(A) before September 25, 1981, purchased insurance from an insurance carrier licensed in any State; and

(B) since September 25, 1981, purchases its insurance from an insurance carrier licensed in any State;

(3) which was a purchasing group under the requirements of this chapter before October 27, 1986; and

(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this chapter as in effect before October 27, 1986.

(f) Purchases of insurance through licensed agents or brokers acting pursuant to surplus lines laws

A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.

(g) State powers to enforce State laws

Nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this chapter.

(h) States' authority to sue

Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

15 U.S.C. § 3904. Securities laws *

(a) Ownership interest of members in risk retention groups

The ownership interests of members in a risk retention group shall be--

(1) considered to be exempted securities for purposes of section 5 of the Securities Act of 1933 [15 U.S.C.A. 77e] and for purposes of section 12 of the Securities Exchange Act of 1934 [15 U.S.C.A. 78l]; and

(2) considered to be securities for purposes of the provisions of section 17 of the Securities Act of 1933 [15 U.S.C.A. 77q] and the provisions of section 10 of the Securities Exchange Act of 1934 [11 U.S.C.A. 78j].

(b) Investment companies

A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(c) State blue sky laws

The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

15 U.S.C. § 3905. Clarification concerning permissible State authority *

(a) No exemption from State motor vehicle no-fault and motor vehicle financial responsibility laws

Nothing in this chapter shall be construed to exempt a risk retention group or purchasing group authorized under this chapter from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

(b) Applicability of exemptions

The exemptions provided under this chapter shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this chapter shall be construed to permit the provision or purchase of any other line of insurance by any such group.

(c) Prohibited insurance policy coverage

The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

(d) State authority to specify acceptable means of demonstrating financial responsibility

Subject to the provisions of section 3902(a)(4) of this title relating to discrimination, nothing in this chapter shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.

15 U.S.C. § 3906. Injunctive orders issued by United States district courts *

Any district court of the United States may issue an order enjoining a risk retention group from soliciting or selling insurance, or operating, in any State (or in all States) or in any territory or possession of the United States upon a finding of such court that such group is in hazardous financial condition. Such order shall be binding on such group, its officers, agents, and employees, and on any other person acting in active concert with any such officer, agent, or employee, if such other person has actual notice of such order.

PROHIBITED CONDUCT RELATED TO INSURANCE

18 U.S.C. § 1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce

(a) (1) Whoever is engaged in the business of insurance whose activities affect interstate commerce and knowingly, with the intent to deceive, makes any false material statement or report or willfully and materially overvalues any land, property or security--

(A) in connection with any financial reports or documents presented to any insurance regulatory official or agency or an agent or examiner appointed by such official or agency to examine the affairs of such person, and

(B) for the purpose of influencing the actions of such official or agency or such an appointed agent or examiner,

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under paragraph (1) is a fine as established under this title or imprisonment for not more than 10 years, or both, except that the term of imprisonment shall be not more than 15 years if the statement or report or overvaluing of land, property, or security jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation by an appropriate court.

(b) (1) Whoever--

(A) acting as, or being an officer, director, agent, or employee of, any person engaged in the business of insurance whose activities affect interstate commerce, or

(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business,

willfully embezzles, abstracts, purloins, or misappropriates any of the moneys, funds, premiums, credits, or other property of such person so engaged shall be punished as provided in paragraph (2).

(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if such embezzlement, abstraction, purloining, or misappropriation described in paragraph (1) jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation by an appropriate court, such imprisonment shall be not more than 15 years. If the amount or value so embezzled, abstracted, purloined, or misappropriated does not exceed $5,000, whoever violates paragraph (1) shall be fined as provided in this title or imprisoned not more than one year, or both.

(c) (1) Whoever is engaged in the business of insurance and whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business, knowingly makes any false entry of material fact in any book, report, or statement of such person engaged in the business of insurance with intent to deceive any person, including any officer, employee, or agent of such person engaged in the business of insurance, any insurance regulatory official or agency, or any agent or examiner appointed by such official or agency to examine the affairs of such person, about the financial condition or solvency of such business shall be punished as provided in paragraph (2).

(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if the false entry in any book, report, or statement of such person jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation by an appropriate court, such imprisonment shall be not more than 15 years.

(d) Whoever, by threats or force or by any threatening letter or communication, corruptly influences, obstructs, or impedes or endeavors corruptly to influence, obstruct, or impede the due

and proper administration of the law under which any proceeding involving the business of insurance whose activities affect interstate commerce is pending before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of a person engaged in the business of insurance whose activities affect interstate commerce, shall be fined as provided in this title or imprisoned not more than 10 years, or both.

(e) (1) (A) Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(B) Any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

(f) As used in this section--

(1) the term “business of insurance” means--

(A) the writing of insurance, or

(B) the reinsuring of risks,

by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons;

(2) the term “insurer” means any entity the business activity of which is the writing of insurance or the reinsuring of risks, and includes any person who acts as, or is, an officer, director, agent, or employee of that business;

(3) the term “interstate commerce” means--

(A) commerce within the District of Columbia, or any territory or possession of the United States;

(B) all commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof;

(C) all commerce between points within the same State through any place outside such State; or

(D) all other commerce over which the United States has jurisdiction; and

(4) the term "State" includes any State, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

18 U.S.C. § 1034. Civil penalties and injunctions for violations of section 1033

(a) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 1033 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. If the offense has contributed to the decision of a court of appropriate jurisdiction to issue an order directing the conservation, rehabilitation, or liquidation of an insurer, such penalty shall be remitted to the appropriate regulatory official for the benefit of the policyholders, claimants, and creditors of such insurer. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(b) If the Attorney General has reason to believe that a person is engaged in conduct constituting an offense under section 1033, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.