

ASSEMBLY BILL NO. 435—COMMITTEE
ON COMMERCE AND LABOR

(ON BEHALF OF THE DEPARTMENT OF ADMINISTRATION)

MARCH 25, 2013

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing insurance.
(BDR 57-1171)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to insurance; revising the manner in which an assessment imposed on insurers in this State is calculated; revising requirements concerning reinsurance; exempting certain domestic insurers and prepaid limited health service organizations from a requirement to submit certain information to the Commissioner of Insurance; revising provisions governing the Nevada Life and Health Insurance Guaranty Association, the Interstate Insurance Product Regulation Compact, insurance holding companies and requirements that certain groups submit information to the Commissioner; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the regulation of the business of insurance in this State, including, without limitation, kinds of insurance, assets and liabilities of insurers, holding companies, captive insurers and liability risk retention. (Chapters 681A, 681B, 686C, 687C, 692C, 694C, 695E of NRS) This bill makes various changes to those provisions.

Existing law requires insurers authorized to transact business in this State to pay an assessment to fund a program to investigate unfair or fraudulent insurance practices. (NRS 679B.630, 679B.700) **Section 1** of this bill revises the way in which this assessment is calculated.

Sections 2-5 of this bill revise the requirements certain insurers must meet in order to be allowed credit when assuming reinsurance. **Section 6** of this bill authorizes the Commissioner of Insurance to exempt certain domestic insurers and



13 prepaid limited health service organizations from the requirement to prepare and
14 submit to the Commissioner a report of the level of risk-based capital of the insurer
15 at the end of the immediately preceding calendar year.

16 Existing law requires all insurers who provide life and health insurance in this
17 State to maintain membership in the Nevada Life and Health Insurance Guaranty
18 Association and requires the Association to cover the policies and contracts of an
19 insolvent insurer. (NRS 686C.130, 686C.152) **Section 7** of this bill provides that
20 the Association is not required to cover certain policies and contracts for health care
21 benefits pursuant to Medicare. **Section 8** of this bill revises the amounts of certain
22 benefits the Association is required to cover.

23 Under existing law, this State prospectively opts out of all uniform standards
24 adopted by the Interstate Insurance Product Regulation Commission involving
25 long-term care insurance products. (NRS 687C.030) **Section 9** of this bill deletes
26 the prospective opt-out of this State. **Section 12** of this bill enacts certain
27 requirements concerning the corporate governance of a domestic insurer.

28 **Section 13** of this bill authorizes the Commissioner to convene a supervisory
29 college, which is a forum for communication and cooperation between regulators,
30 to ascertain the financial condition or legality of the conduct of certain insurers.
31 **Sections 15 and 16** of this bill revise provisions relating to the investments of a
32 domestic insurer. **Sections 17-21** of this bill revise provisions governing the
33 acquisition of an insurer. **Sections 22 and 23** of this bill require an insurer to
34 submit certain information to the Commissioner concerning the insurer's general
35 financial condition and corporate governance. **Sections 24 and 25** of this bill revise
36 provisions governing transactions by registered insurers with their affiliates.

37 **Section 27** of this bill revises the method used to determine whether a dividend
38 or distribution may be paid without requesting approval from the Commissioner.
39 **Section 28** of this bill revises provisions governing the authority of the
40 Commissioner to examine an insurer. **Section 29** of this bill changes the date by
41 which certain insurers are required to submit to the Commissioner a report of the
42 financial condition of the insurer. **Sections 30-34** of this bill revise information
43 which certain groups that conduct business concerning insurance are required to
44 submit to the Commissioner.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 679B.700 is hereby amended to read as
2 follows:

3 679B.700 1. The Special Investigative Account is hereby
4 established in the Fund for Insurance Administration and
5 Enforcement created by NRS 680C.100 for use by the
6 Commissioner. The Commissioner shall deposit all money received
7 pursuant to this section with the State Treasurer for credit to the
8 Account. Money remaining in the Account at the end of a fiscal year
9 does not lapse to the State General Fund and may be used by the
10 Commissioner in any subsequent fiscal year for the purposes of this
11 section.

12 2. The Commissioner shall:

13 (a) In cooperation with the Attorney General, biennially prepare
14 and submit to the Governor, for inclusion in the executive budget, a



1 proposed budget for the program established pursuant to NRS
2 679B.630; and

3 (b) Authorize expenditures from the Special Investigative
4 Account to pay the expenses of the program established pursuant to
5 NRS 679B.630 and of any unit established in the Office of the
6 Attorney General that investigates and prosecutes insurance fraud.

7 3. The money authorized for expenditure pursuant to paragraph
8 (b) of subsection 2 must be distributed in the following manner:

9 (a) Fifteen percent of the money authorized for expenditure must
10 be paid to the Commissioner to oversee and enforce the program
11 established pursuant to NRS 679B.630; and

12 (b) Eighty-five percent of the money authorized for expenditure
13 must be paid to the Attorney General to pay the expenses of the unit
14 established in the Office of the Attorney General that investigates
15 and prosecutes insurance fraud.

16 4. Except as otherwise provided in ~~{subsections}~~ *subsection 5 ,*
17 ~~{and 6,}~~ costs of the program established pursuant to NRS 679B.630
18 must be paid by the insurers authorized to transact insurance in this
19 State. The Commissioner shall ~~{annually determine the total cost of~~
20 ~~the program and divide that amount among the insurers pro rata~~
21 ~~based upon the total amount of premiums charged to the insureds in~~
22 ~~this State by the insurer.~~

23 ~~— 5. The annual amount so assessed on each reinsurer that has the~~
24 ~~authority to assume only reinsurance must not exceed \$500. For all~~
25 ~~other insurers subject to the annual assessment, the~~ *collect an*
26 *annual assessment from each insurer authorized to transact*
27 *insurance in this State. The* annual amount so assessed to each
28 insurer:

29 (a) ~~{Must not exceed}~~ *Is* \$500, if the total amount of the
30 premiums charged to insureds in this State by the insurer is less than
31 \$100,000 ~~{; or if the insurer is a reinsurer that has the authority~~
32 ~~to assume only reinsurance;~~

33 (b) ~~{Must not exceed}~~ *Is* \$750, if the total amount of the
34 premiums charged to insureds in this State by the insurer is
35 \$100,000 or more, but less than \$1,000,000;

36 (c) ~~{Must not exceed}~~ *Is* \$1,000, if the total amount of the
37 premiums charged to insureds in this State by the insurer is
38 \$1,000,000 or more, but less than \$10,000,000;

39 (d) ~~{Must not exceed}~~ *Is* \$1,500, if the total amount of the
40 premiums charged to insureds in this State by the insurer is
41 \$10,000,000 or more, but less than \$50,000,000; and

42 (e) ~~{Must not exceed}~~ *Is* \$2,000, if the total amount of the
43 premiums charged to insureds in this State by the insurer is
44 \$50,000,000 or more.



~~16-1~~ 5. The provisions of this section do not apply to an insurer who provides only workers' compensation insurance and pays the assessment provided in NRS 232.680.

~~17-1~~ 6. The Commissioner shall adopt regulations to carry out the provisions of this section, including, without limitation, the ~~calculation and~~ collection of the assessment.

~~18-1~~ 7. As used in this section, "reinsurer" has the meaning ascribed to it in NRS 681A.370.

Sec. 2. NRS 681A.140 is hereby amended to read as follows:

681A.140 As used in NRS 681A.140 to 681A.240, inclusive, "qualified financial institution in the United States" means an institution that:

1. Is organized, or in the case of a branch or agency of a foreign banking organization in the United States licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; ~~and~~

2. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies ~~and~~;

3. *Is determined:*

(a) By the Commissioner to meet the standards of financial condition and standing prescribed by the Commissioner; or

(b) By the National Association of Insurance Commissioners to meet the standards of financial condition and standing prescribed by the National Association of Insurance Commissioners; and

4. *Is determined by the Commissioner to be otherwise acceptable.*

Sec. 3. NRS 681A.160 is hereby amended to read as follows:

681A.160 1. Except as otherwise provided in subsection 2, credit must be allowed if reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which:

(a) Files with the Commissioner an executed form approved by the Commissioner as evidence of its submission to this state's jurisdiction;

(b) Submits to this state's authority to examine its books and records;

(c) Files with the Commissioner a certified copy of a certificate of authority or other evidence approved by the Commissioner indicating that it is licensed to transact insurance or reinsurance in at least one state, or in the case of a branch in the United States of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;



(d) Files annually with the Commissioner a copy of its annual statement filed with the Division of its state of domicile or entry and a copy of its most recent audited financial statement;

(e) Maintains a surplus as regards policyholders in an amount which is ~~not~~ :

(1) ~~Not~~ less than \$20,000,000 and whose accreditation ~~is~~ ~~(1) Has~~ *has* not been denied by the Commissioner within 90 days after its submission; or

(2) ~~Has~~ *Less than \$20,000,000 and whose accreditation has* been approved by the Commissioner; and

(f) Pays all applicable fees, including, without limitation, all applicable fees required pursuant to NRS 680C.110.

2. No credit may be allowed for a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the Commissioner after notice and a hearing.

Sec. 4. NRS 681A.180 is hereby amended to read as follows:

681A.180 1. Except as otherwise provided in subsection 4, credit must be allowed if reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified financial institution in the United States for the payment of the valid claims of its policyholders and ceding insurers in the United States, their assigns and successors in interest. The assuming insurer shall ~~report~~ :

(a) *Report* annually to the Commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners' form of annual statement by licensed insurers to enable the Commissioner to determine the sufficiency of the trust fund ~~is~~ ; and

(b) *Submit to the authority of the Commissioner to examine its books and records.*

2. In the case of a single assuming insurer, the trust must consist of an account in trust equal to the assuming insurer's liabilities attributable to business written in the United States and the assuming insurer shall maintain a surplus in trust of not less than \$20,000,000.

3. In the case of a group of incorporated and individual unincorporated underwriters ~~is the~~ :

(a) *The* trust must consist of an account in trust equal to the group's liabilities attributable to business written in the United States. ~~and the~~

(b) *The* group shall ~~maintain~~ :

(1) *Maintain* a surplus in trust of which \$100,000,000 must be held jointly for the benefit of ceding insurers in the United States to any member of the group ; ~~is~~ and ~~the group shall make~~



(2) *Make* available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

(c) *The incorporated members of the group:*

(1) *Shall not engage in any business other than underwriting as a member of the group; and*

(2) *Must be subject to the same level of regulation and solvency control by the applicable regulatory agency of the state in which the group is domiciled as the individual unincorporated members of the group.*

4. If the assuming insurer does not meet the requirements of NRS 681A.110, 681A.160 or 681A.170, credit must not be allowed unless the assuming insurer has agreed to the following conditions set forth in the trust agreement:

(a) Notwithstanding any provision to the contrary in the trust instrument, if the trust fund consists of an amount that is less than the amount required pursuant to this section, or if the grantor of the trust fund is declared to be insolvent or placed into receivership, rehabilitation, liquidation or a similar proceeding in accordance with the laws of the grantor's state or country of domicile, the trustee of the trust fund must comply with an order of the commissioner of insurance or other appropriate person with regulatory authority over the trust fund in that state or country or a court of competent jurisdiction requiring the trustee to transfer to that commissioner or person all the assets of the trust fund;

(b) The assets of the trust fund must be distributed by and claims filed with and valued by the commissioner of insurance or other appropriate person with regulatory authority over the trust fund in accordance with the laws of the state in which the trust fund is domiciled that are applicable to the liquidation of domestic insurers in that state;

(c) If the commissioner of insurance or other appropriate person with regulatory authority over the trust fund determines that the assets of the trust fund or any portion of the trust fund are not required to satisfy any claim of any ceding insurer of the grantor of the trust fund in the United States, the assets must be returned by that commissioner or person to the trustee of the trust fund for distribution in accordance with the trust agreement; and

(d) The grantor of the trust must waive any right that:

(1) Is otherwise available to the grantor under the laws of the United States; and

(2) Is inconsistent with the provisions of this subsection.

Sec. 5. NRS 681A.240 is hereby amended to read as follows:

681A.240 A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the



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requirements of NRS 681A.110 or the regulations of the Commissioner concerning risk-based capital must be allowed in an amount not exceeding the liabilities carried by the ceding insurer and the reduction must be in the amount of assets held by or on behalf of the ceding insurer, including assets held in trust for the ceding insurer, under a contract of reinsurance with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified financial institution in the United States. The security may be in any of the following forms:

1. Cash.

2. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets.

3. Irrevocable, unconditional letters of credit, each issued or confirmed by a qualified financial institution in the United States ~~[which has been determined by the Commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary or appropriate to regulate the quality of financial institutions]~~ whose letters of credit are acceptable to the Commissioner, no later than December 31 of the year for which filing is made, and in the possession of the ceding company on or before the date of filing its annual statement. A letter of credit meeting applicable standards of acceptability of its issuer as of the date of its issuance or confirmation, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of acceptability, continues to be acceptable as security until its expiration, extension, renewal, modification or amendment, whichever first occurs.

4. Any other form of security acceptable to the Commissioner.

Sec. 6. NRS 681B.290 is hereby amended to read as follows:

681B.290 1. Except as otherwise provided in subsection 3, on or before March 1 of each year, each domestic insurer, and each foreign insurer domiciled in a state which does not have requirements for reporting risk-based capital, that transacts property, casualty, life or health insurance in this state shall prepare and submit to the Commissioner, and to each person designated by the Commissioner, a report of the level of the risk-based capital of the insurer as of the end of the immediately preceding calendar year. The report must be in such form and contain such information as required by the regulations adopted by the Commissioner pursuant to this section.



2. The Commissioner shall adopt regulations concerning the amount of risk-based capital required to be maintained by each insurer licensed to do business in this state that is transacting property, casualty, life or health insurance in this state. The regulations must be consistent with the instructions for reporting risk-based capital adopted by the National Association of Insurance Commissioners, as those instructions existed on January 1, 1997. If the instructions are amended, the Commissioner may amend the regulations to maintain consistency with the instructions if the Commissioner determines that the amended instructions are appropriate for use in this state.

3. The Commissioner may exempt from the provisions of this section ~~the~~:

(a) A domestic insurer who:

~~(a)~~ (1) Does not transact insurance in any other state; ~~and~~

~~(b)~~ (2) Does not assume reinsurance that is more than 5 percent of the direct premiums written by the insurer ~~;~~ and

(3) *Writes annual premiums of not more than \$2,000,000.*

(b) *A prepaid limited health service organization that provides or arranges for the provision of limited health services to fewer than 1,000 enrollees.*

4. *As used in this section, "prepaid limited health service organization" has the meaning ascribed to it in NRS 695F.050.*

Sec. 7. NRS 686C.035 is hereby amended to read as follows:

686C.035 1. This chapter does not provide coverage for:

(a) A portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the owner of the policy or contract.

(b) A policy or contract of reinsurance unless assumption certificates have been issued pursuant to that policy or contract.

(c) A portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate or similar factor determined by the use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(1) Averaged over the period of 4 years before the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting 2 percentage points from Moody's Corporate Bond Yield Average averaged for the same period, or for the period between the date of issuance of the policy or contract and the date the association became obligated, whichever period is less; and

(2) On or after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of



1 interest determined by subtracting 3 percentage points from
2 Moody's Corporate Bond Yield Average as most recently available.

3 (d) A portion of a policy or contract issued to a plan or program
4 of an employer, association or other person to provide life, health or
5 annuity benefits to its employees, members or other persons to the
6 extent that the plan or program is self-funded or uninsured,
7 including, but not limited to, benefits payable by an employer,
8 association or other person under:

9 (1) A multiple employer welfare arrangement described in 29
10 U.S.C. § ~~1144~~ **1002(40)**;

11 (2) A minimum-premium group insurance plan;

12 (3) A stop-loss group insurance plan; or

13 (4) A contract for administrative services only.

14 (e) A portion of a policy or contract to the extent that it provides
15 for dividends, credits for experience, voting rights or the payment of
16 any fee or allowance to any person, including the owner of a policy
17 or contract, for services or administration connected with the policy
18 or contract.

19 (f) A policy or contract issued in this state by a member insurer
20 at a time when the member insurer was not authorized to issue the
21 policy or contract in this state.

22 (g) A portion of a policy or contract to the extent that the
23 assessments required by NRS 686C.230 with respect to the policy or
24 contract are preempted by federal law.

25 (h) An obligation that does not arise under the express written
26 terms of the policy or contract issued by the insurer, including:

27 (1) Claims based on marketing materials;

28 (2) Claims based on side letters or other documents that were
29 issued by the insurer without satisfying applicable requirements for
30 filing or approval of policy forms;

31 (3) Misrepresentations of or regarding policy benefits;

32 (4) Extra-contractual claims; or

33 (5) A claim for penalties or consequential or incidental
34 damages.

35 (i) A contractual agreement that establishes the member
36 insurer's obligation to provide a guarantee based on accounting at
37 book value for participants in a defined-contribution benefit plan by
38 reference to a portfolio of assets owned by the benefit plan or its
39 trustee, which in each case is not an affiliate of the member insurer.

40 (j) A portion of a policy or contract to the extent that it provides
41 for interest or other changes in value which are determined by the
42 use of an index or other external reference stated in the policy or
43 contract, but which have not been credited to the policy or contract,
44 or as to which the rights of the owner of the policy or contract are
45 subject to forfeiture, determined on the date the member insurer



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1 becomes an impaired or insolvent insurer, whichever occurs first. If
2 the interest or changes in value of a policy or contract are credited
3 less frequently than annually, for the purpose of determining the
4 values that have been credited and are not subject to forfeiture, the
5 interest or change in value determined by using procedures stated in
6 the policy or contract must be credited as if the contractual date for
7 crediting interest or changing values was the date of the impairment
8 or insolvency of the insured member, whichever occurs first and is
9 not subject to forfeiture.

10 (k) An unallocated annuity contract other than an annuity owned
11 by a governmental retirement plan established under section 401,
12 403(b) or 457 of the Internal Revenue Code, 26 U.S.C. §§ 401,
13 403(b) and 457, respectively, or the trustees of such a plan.

14 *(l) A policy or contract providing any hospital, medical,*
15 *prescription drug or other health care benefits pursuant to 42*
16 *U.S.C. §§ 1395w-21 et seq. and 1395w-101 et seq., and any*
17 *regulations adopted pursuant thereto.*

18 2. As used in this section, “Moody’s Corporate Bond Yield
19 Average” means the monthly average for corporate bonds published
20 by Moody’s Investors Service, Inc., or any successor average.

21 **Sec. 8.** NRS 686C.210 is hereby amended to read as follows:

22 686C.210 1. The benefits that the Association may become
23 obligated to cover may not exceed the lesser of:

24 (a) The contractual obligations for which the insurer is liable or
25 would have been liable if it were not an impaired or insolvent
26 insurer;

27 (b) With respect to one life, regardless of the number of policies
28 or contracts:

29 (1) Three hundred thousand dollars in death benefits from
30 life insurance, but not more than \$100,000 in net cash for surrender
31 and withdrawal for life insurance; or

32 (2) ~~One~~ *Two* hundred *fifty* thousand dollars in the present
33 value of benefits from annuities, including net cash for surrender
34 and withdrawal;

35 (c) With respect to health insurance for any one ~~inatural person;~~
36 *life:*

37 (1) One hundred thousand dollars for coverages other than
38 disability insurance, *long-term care insurance*, basic hospital,
39 medical and surgical insurance or major medical insurance,
40 including any net cash for surrender or withdrawal;

41 (2) Three hundred thousand dollars for disability *insurance*
42 *or long-term care* insurance; or

43 (3) Five hundred thousand dollars for basic hospital, medical
44 and surgical insurance or major medical insurance;



(d) With respect to each payee of a structured settlement annuity, or beneficiary or beneficiaries of the payee if deceased, ~~\$100,000~~ *\$250,000* in present value of benefits from the annuity in the aggregate, including any net cash for surrender or withdrawal; or

(e) With respect to each participant in a governmental retirement plan covered by an unallocated annuity contract which is owned by a governmental retirement plan established under section 401, 403(b) or 457 of the Internal Revenue Code, 26 U.S.C. §§ 401, 403(b) and 457, respectively, or the trustees of such a plan, and which is approved by the Commissioner, an aggregate of ~~\$100,000,~~ *\$250,000 in present-value annuity benefits, including the value of net cash for surrender and net cash for withdrawal,* regardless of the number of contracts.

2. In no event is the Association obligated to cover more than:

(a) With respect to any one life or person under paragraphs (b) ~~and (c)~~ *to (e), inclusive,* of subsection 1:

(1) An aggregate of \$300,000 in benefits, excluding benefits for basic hospital, medical and surgical insurance or major medical insurance; or

(2) An aggregate of \$500,000 in benefits, including benefits for basic hospital, medical and surgical insurance or major medical insurance.

(b) With respect to one owner of several nongroup policies of life insurance, whether the owner is a natural person or an organization and whether the persons insured are officers, managers, employees or other persons, more than \$5,000,000 in benefits, regardless of the number of policies and contracts held by the owner.

3. The limitations set forth in this section are limitations on the benefits for which the Association is obligated before taking into account its rights to subrogation or assignment or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The cost of the Association's obligations under this chapter may be met by the use of assets attributable to covered policies, or reimbursed to the Association pursuant to its rights to subrogation or assignment.

4. In performing its obligation to provide coverage under NRS 686C.150 and 686C.152, the Association need not guarantee, assume, reinsure or perform, or cause to be guaranteed, assumed, reinsured or performed, the contractual obligations of the impaired or insolvent insurer under a covered policy or contract which do not materially affect the economic value or economic benefits of the covered policy or contract.



Sec. 9. NRS 687C.030 is hereby amended to read as follows:

687C.030 1. It is the policy of this State to opt out of and the Commissioner of Insurance shall by regulation opt out of any uniform standard adopted by the Interstate Insurance Product Regulation Commission which provides less protection than a law of this State or otherwise diminishes the rights of policyholders and persons applying for a policy of insurance in this State.

2. Upon determining, or upon becoming aware of a finding of a court of competent jurisdiction which found, that this State must opt out of a uniform standard pursuant to subsection 1, the Commissioner shall provide to the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature notice of such determination or finding.

~~13. This State prospectively opts out of all uniform standards adopted by the Interstate Insurance Product Regulation Commission involving long term care insurance products.~~

Sec. 10. Chapter 692C of NRS is hereby amended by adding thereto the provisions set forth as sections 11, 12 and 13 of this act.

Sec. 11. *“Enterprise risk” means any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, without limitation, any activity, circumstance, event or series of events that may cause:*

1. The risk-based capital of the insurer to fall below the minimum amount of risk-based capital required by regulations adopted pursuant to NRS 681B.290; or

2. The insurer to be in a hazardous financial condition as set forth in regulations adopted pursuant to NRS 680A.205.

Sec. 12. *1. If a domestic insurer is under the control of a foreign person, the officers and directors of the domestic insurer are not relieved of any obligations or liabilities to which they are subject by law. The domestic insurer must be managed in a manner that ensures its separate operating identity.*

2. The provisions of this section do not prohibit a registered domestic insurer and one or more other persons from having or sharing common management, participating as a cooperative or sharing employees, property or services in a manner authorized under NRS 692C.360.

3. Except as otherwise provided in subsections 6 and 7, at least one person in any quorum for the transaction of business at any meeting of the board of directors of a registered domestic insurer or any committee thereof must be a person who is not:



1 (a) *An officer or employee of the domestic insurer or of any*
2 *entity controlling, controlled by or under common control with the*
3 *domestic insurer; or*

4 (b) *A beneficial owner of a controlling interest in the voting*
5 *stock of the domestic insurer or entity.*

6 4. *Except as otherwise provided in subsections 6 and 7, not*
7 *less than one-third of the members of the board of directors of a*
8 *registered domestic insurer and not less than one-third of the*
9 *members of each committee of the board of directors of any*
10 *registered domestic insurer must be persons described in*
11 *subsection 3.*

12 5. *Except as otherwise provided in subsections 6 and 7, the*
13 *board of directors of a registered domestic insurer shall establish*
14 *one or more committees consisting solely of persons described in*
15 *subsection 3. Each committee shall:*

16 (a) *Nominate candidates for director for election by*
17 *shareholders or policyholders;*

18 (b) *Evaluate the performance of each principal officer of the*
19 *registered domestic insurer; and*

20 (c) *Make recommendations to the board of directors*
21 *concerning the selection and compensation of each of those*
22 *principal officers.*

23 6. *The provisions of subsections 3, 4 and 5 do not apply to a*
24 *registered domestic insurer if the registered domestic insurer is*
25 *controlled by an entity and the board of directors of the*
26 *controlling entity and the committees thereof meet the*
27 *requirements of subsections 3, 4 and 5.*

28 7. *A registered domestic insurer may apply to the*
29 *Commissioner for a waiver of the provisions of this section if the*
30 *registered domestic insurer has:*

31 (a) *Annual direct written and assumed premiums of less than*
32 *\$300,000,000, excluding any premiums reinsured with:*

33 (1) *The Federal Crop Insurance Corporation of the Risk*
34 *Management Agency of the United States Department of*
35 *Agriculture; and*

36 (2) *The National Flood Insurance Program of the Federal*
37 *Emergency Management Agency of the United States Department*
38 *of Homeland Security; or*

39 (b) *In any other circumstances determined by the*
40 *Commissioner to warrant a waiver.*

41 8. *In considering whether or not to grant a waiver pursuant*
42 *to subsection 7, the Commissioner may consider any relevant*
43 *factors, including, without limitation:*

44 (a) *The type of business entity applying for the waiver;*

45 (b) *The volume of business written;*



(c) *The availability of persons specified in subsection 3 to serve on the board of directors; and*

(d) *The ownership or organizational structure of the registered domestic insurer or controlling person thereof.*

Sec. 13. *1. The Commissioner may, for any registered insurer who is part of an insurance holding company system with international operations, convene a supervisory college or participate in a supervisory college convened by a state, federal or international regulatory agency with authority over any insurer who is part of the insurance holding company system:*

(a) *To determine whether or not the registered insurer is in compliance with the provisions of this chapter;*

(b) *To assess the business strategy, financial position, legal and regulatory compliance, risk exposure, risk management and governance procedures of the registered insurer; or*

(c) *As part of an examination of the registered insurer pursuant to NRS 692C.410.*

2. In convening a supervisory college pursuant to subsection 1, the Commissioner may, without limitation:

(a) *Establish:*

(1) *The membership of the supervisory college;*

(2) *The functions of the supervisory college; and*

(3) *The role of each regulatory agency participating in the supervisory college;*

(b) *Designate a regulatory agency as supervisor of the supervisory college; and*

(c) *Coordinate the activities of the supervisory college, including, without limitation:*

(1) *Meetings;*

(2) *Supervisory activities; and*

(3) *The sharing of information among members of the supervisory college.*

3. In convening or participating in a supervisory college pursuant to this section, the Commissioner may enter into agreements with other state, federal or international regulatory agencies concerning the governance of a supervisory college. Such an agreement must meet the confidentiality requirements of NRS 692C.420.

4. The provisions of this section must not be construed to:

(a) *Limit the authority of the Commissioner; or*

(b) *Delegate to any supervisory college the authority of the Commissioner to regulate a registered insurer or any affiliate of a registered insurer pursuant to this title.*

5. As used in this section, "supervisory college" means a temporary or permanent forum for communication and



1 *cooperation between regulators, including, without limitation,*
2 *state, federal and international regulatory agencies which are*
3 *charged with regulating and supervising an insurer.*

4 **Sec. 14.** NRS 692C.020 is hereby amended to read as follows:

5 692C.020 As used in this chapter, unless the context otherwise
6 requires, the words and terms defined in NRS 692C.025 to
7 692C.110, inclusive, *and section 11 of this act* have the meanings
8 ascribed to them in those sections.

9 **Sec. 15.** NRS 692C.140 is hereby amended to read as follows:

10 692C.140 In addition to making investments in common stock,
11 preferred stock, debt obligations and other securities permitted
12 under chapter 682A of NRS, a domestic insurer may invest:

13 1. In common stock, preferred stock, debt obligations and other
14 securities of one or more subsidiaries, amounts which do not exceed
15 the lesser of 10 percent of the insurer's assets or 50 percent of its
16 surplus as regards policyholders, if the insurer's surplus as regards
17 policyholders remains at a reasonable level in relation to the
18 insurer's outstanding liabilities and adequate to its financial needs.
19 In calculating the amount of such investments ~~the~~:

20 *(a) Any investment in a domestic or foreign insurance*
21 *subsidiary or health maintenance organization must be excluded.*

22 *(b) The following must be included:*

23 ~~(a)~~ (1) Total *net* money or other consideration expended and
24 obligations assumed in the acquisition or formation of a subsidiary,
25 including all organizational expenses and contributions to capital
26 and surplus of the subsidiary whether or not represented by the
27 purchase of capital stock or issuance of other securities; and

28 ~~(b)~~ (2) All amounts expended in acquiring additional common
29 stock, preferred stock, debt obligations and other securities and all
30 contributions to the capital or surplus of a subsidiary after its
31 acquisition or formation.

32 2. Any amount in common stock, preferred stock, debt
33 obligations and other securities of one or more subsidiaries ~~that~~
34 *are engaged exclusively in or organized to engage exclusively in*
35 *the ownership and management of assets which are authorized as*
36 *investments of the domestic insurer*, if each subsidiary agrees to
37 limit its investments in any asset so that those investments will not
38 cause the amount of the total investment of the insurer to exceed any
39 of the investment limitations specified in subsection 1 or in chapter
40 682A of NRS. For the purpose of this subsection, "total investment
41 of the insurer" includes any direct investment by the insurer in an
42 asset and the insurer's proportionate share of any investment in an
43 asset by any subsidiary of the insurer, which must be calculated by
44 multiplying the amount of the subsidiary's investment by the
45 percentage of the insurer's ownership of the subsidiary.



3. Any amount in common stock, preferred stock, debt obligations or other securities of one or more subsidiaries, with the approval of the Commissioner, if the insurer's surplus as regards policyholders remains at a reasonable level in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Sec. 16. NRS 692C.160 is hereby amended to read as follows:

692C.160 Whether or not any investment made pursuant to NRS 692C.140 meets the applicable requirements thereof is to be determined ~~immediately after~~ *before* such investment is made ~~by calculating the applicable investment limitations as though the investment has 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 date they were made ~~and the net of any return of capital invested, not including dividends.~~

Sec. 17. NRS 692C.180 is hereby amended to read as follows:

692C.180 1. No person other than the issuer may make a tender 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, nor may any person enter into an agreement to merge with or otherwise acquire control of a domestic insurer, unless, at the time any such offer, request or invitation is made or any such agreement is entered into, or before the acquisition of those securities if no offer or agreement is involved, the person has filed with the Commissioner and has sent to the insurer, and the insurer has sent to its shareholders, a statement containing the information required by NRS 692C.180 to 692C.250, inclusive, and *, except as otherwise provided in subsection 4,* the offer, request, invitation, agreement or acquisition has been approved by the Commissioner in the manner prescribed in this chapter.

2. *The statement required by subsection 1 must be filed with the Commissioner at least 60 days before the proposed date of the acquisition. The statement must set forth, without limitation, the information required by NRS 692C.254. A person who fails to comply with this subsection is subject to the penalties set forth in subsections 6 and 7 of NRS 692C.258.*

3. *A person controlling a domestic insurer who is seeking to divest his or her controlling interest in the domestic insurer shall file with the Commissioner, and send to the insurer, notice of the proposed divestiture at least 30 days before the proposed divestiture, unless a statement has been filed pursuant to*



1 *subsection 1 concerning the proposed transaction. Notice filed*
2 *pursuant to this subsection is confidential until the conclusion, if*
3 *any, of the divestiture unless the Commissioner determines that*
4 *such confidentiality will interfere with the enforcement of this*
5 *section.*

6 4. Upon receiving a statement or notice pursuant to this
7 section by a person seeking to acquire a controlling interest in a
8 domestic insurer or divest a controlling interest in a domestic
9 insurer, the Commissioner shall determine whether or not the
10 person will be required to file for and obtain the approval of the
11 Commissioner for the acquisition or divestiture. As soon as
12 practicable after making that determination, the Commissioner
13 shall notify the person of the results of the determination.

14 5. For purposes of this section, a domestic insurer includes any
15 other person controlling a domestic insurer unless the other person
16 is directly or through affiliates primarily engaged in a business other
17 than the business of insurance. If a person is directly or through
18 affiliates primarily engaged in a business other than the business of
19 insurance, the person shall, at least 60 days before the proposed
20 effective date of the acquisition, file a notice of intent to acquire
21 with the Commissioner setting forth the information required by
22 NRS 692C.254.

23 6. As used in this section, "person" does not include a
24 securities broker who, in the regular course of business as a
25 broker, holds less than 20 percent of the voting securities of an
26 insurer or of any person who controls an insurer.

27 **Sec. 18.** NRS 692C.190 is hereby amended to read as follows:
28 692C.190 The statement to be filed with the Commissioner
29 hereunder shall be made under oath or affirmation and shall contain
30 the following:

31 1. The name and address of each person (hereinafter called the
32 "acquiring party") by whom or on whose behalf the merger or other
33 acquisition of control referred to in *subsection 1 of* NRS 692C.180
34 is to be effected and, if such person is:

35 (a) An individual, the individual's principal occupation and all
36 offices and positions held by the individual during the past 5 years,
37 and any conviction of crimes other than for minor traffic violations
38 during the past 10 years.

39 (b) Not an individual, a report of the nature of its business
40 operations during the past 5 years or for such lesser period as such
41 person and any predecessors thereof shall have been in existence,
42 together with an informative description of the business intended to
43 be done by such person and such person's subsidiaries, and a list of
44 all individuals who are or who have been selected to become
45 directors or executive officers of such person or who perform or will



1 perform functions appropriate to such positions. Such list shall
2 include for each such individual the information required by
3 paragraph (a) of this subsection.

4 2. The source, nature and amount of the consideration used or
5 to be used in effecting the merger or other acquisition of control, a
6 description of any transaction wherein funds were or are to be
7 obtained for any such purpose, and the identity of persons furnishing
8 such consideration, but where a source of such consideration is a
9 loan made in the lender's ordinary course of business, the identity of
10 the lender shall remain confidential, if the person filing such
11 statement so requests.

12 3. Fully audited financial information as to the earnings and
13 financial condition of each acquiring party for the preceding 5 fiscal
14 years of each such acquiring party (or for such lesser period as such
15 acquiring party and any predecessors thereof shall have been in
16 existence), and similar unaudited information as of a date not earlier
17 than 90 days prior to the filing of the statement.

18 4. Any plans or proposals which each acquiring party may
19 have to liquidate such insurer, to sell its assets or merge or
20 consolidate it with any person, or to make any other material change
21 in its business or corporate structure or management.

22 5. The number of shares of any security referred to in
23 **subsection 1 of** NRS 692C.180 which each acquiring party proposes
24 to acquire, and the terms of the offer, request, invitation, agreement
25 or acquisition referred to in **subsection 1 of** NRS 692C.180 and a
26 statement as to the method by which the fairness of the proposal was
27 determined.

28 6. The amount of each class of any security referred to in
29 **subsection 1 of** NRS 692C.180 which is beneficially owned or
30 concerning which there is a right to acquire beneficial ownership by
31 each acquiring party.

32 7. A full description of any contracts, arrangements or
33 understandings with respect to any security referred to in **subsection**
34 **1 of** NRS 692C.180 in which any acquiring party is involved,
35 including but not limited to transfer of any of the securities, joint
36 ventures, loan or option arrangements, puts or calls, guarantees of
37 loans, guarantees against loss or guarantees of profits, division of
38 losses or profits or the giving or withholding of proxies. Such
39 description shall identify the persons with whom such contracts,
40 arrangements or understandings have been made.

41 8. A description of the purchase of any security referred to in
42 **subsection 1 of** NRS 692C.180 during the 12 calendar months
43 preceding the filing of the statement by any acquiring party,
44 including the dates of purchase, names of the purchasers and
45 consideration paid or agreed to be paid therefor.



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9. A description of any recommendations to purchase any security referred to in **subsection 1 of** NRS 692C.180 made during the 12 calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews with or at the suggestion of such acquiring party.

10. Copies of all tenders, offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection 1, and, if distributed, additional soliciting material relating thereto.

11. The terms of any agreement, contract or understanding made with any broker-dealer, as to solicitation of securities referred to in **subsection 1 of** NRS 692C.180, for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

12. Such additional information as the Commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policy holders and security holders of the insurer or for the protection of the public interest.

➤ If the person required to file the statement referred to in this section is a partnership, limited partnership, syndicate or other group, the Commissioner may require that the information required by ~~{subsections 1 to 12, inclusive, of}~~ this section, be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such 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 1 of** NRS 692C.180 is a corporation, the Commissioner may require that the information required by ~~{subsections 1 to 12, inclusive, of}~~ this section, be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of such corporation. If any material change occurs in the facts set forth in the statement filed with the Commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commissioner and sent to such insurer within 2 business days after the person learns of such change. Such insurer shall send each such amendment to its shareholders.

Sec. 19. NRS 692C.200 is hereby amended to read as follows:

692C.200 If any offer, request, invitation, agreement or acquisition referred to in **subsection 1 of** NRS 692C.180 is proposed to be made by means of a registration statement under the Securities Act of 1933, 15 U.S.C. §§ 77a to 77aa, inclusive, or in



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1 circumstances requiring the disclosure of similar information under
2 the Securities Exchange Act of 1934, 15 U.S.C. §§ ~~177b~~ 78a et
3 seq., or under any state law requiring similar registration or
4 disclosure, the person required to file the statement referred to in
5 *subsection 1 of* NRS 692C.180 may utilize such documents in
6 furnishing the information called for by that statement.

7 **Sec. 20.** NRS 692C.210 is hereby amended to read as follows:

8 692C.210 1. Except as otherwise provided in ~~subsection~~
9 *subsections 5* ~~H~~ *and 7*, the Commissioner shall approve any merger
10 or other acquisition of control referred to in *subsection 1 of* NRS
11 692C.180 unless, after a public hearing thereon, the Commissioner
12 finds that:

13 (a) After the change of control, the domestic insurer specified in
14 *subsection 1 of* NRS 692C.180 would not be able to satisfy the
15 requirements for the issuance of a license to write the line or lines of
16 insurance for which it is presently licensed;

17 (b) The effect of the merger or other acquisition of control
18 would be substantially to lessen competition in insurance in this
19 state or tend to create a monopoly;

20 (c) The financial condition of any acquiring party may
21 jeopardize the financial stability of the insurer, or prejudice the
22 interest of its policyholders or the interests of any remaining
23 security holders who are unaffiliated with the acquiring party;

24 (d) The terms of the offer, request, invitation, agreement or
25 acquisition referred to in *subsection 1 of* NRS 692C.180 are unfair
26 and unreasonable to the security holders of the insurer;

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

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

36 (g) If approved, the merger or acquisition of control would
37 likely be harmful or prejudicial to the members of the public who
38 purchase insurance; or

39 (h) The practices of the applicant in managing claims have
40 evidenced a pattern in which the applicant has knowingly
41 committed, or performed with such frequency as to indicate a
42 general business practice of:

43 (1) Misrepresentation of pertinent facts or provisions of
44 policies of insurance as they relate to coverages at issue;



(2) Failure to affirm or deny coverage of claims within a reasonable time after written proofs of loss have been furnished; or

(3) Failure to pay claims in a timely manner.

2. ~~The~~ *Except as otherwise provided in subsection 7, the public hearing specified in subsection 1 must be held within ~~60~~ 30 days after the statement required by subsection 1 of NRS 692C.180 has been filed, and at least 20 days' notice thereof must be given by the Commissioner to the person filing the statement. Not less than 7 days' notice of the public hearing must be given by the person filing the statement to the insurer and to any other person designated by the Commissioner. The insurer shall give such notice to its security holders. The Commissioner shall make a determination within 60 days after the conclusion of the hearing. If the Commissioner determines that an infusion of capital to restore capital in connection with the change in control is required, the requirement must be met within 60 days after notification is given of the determination. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent and any other person whose interests may be affected thereby may present evidence, examine and cross-examine witnesses, and offer oral and written arguments and, in connection therewith, may conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings must be concluded not later than 3 days before the commencement of the public hearing.*

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

4. The period for review by the Commissioner must not exceed the 60 days allowed between the filing of the notice of intent to acquire required pursuant to subsection ~~4~~ 5 of NRS 692C.180 and the date of the proposed acquisition if the proposed affiliation or change of control involves a financial institution, or an affiliate of a financial institution, and an insured.

5. When making a determination pursuant to paragraph (b) of subsection 1, the Commissioner:

(a) Shall require the submission of the information specified in subsection 2 of NRS 692C.254; ~~and~~

(b) *Shall consider:*

(1) The standards set forth in the Horizontal Merger Guidelines issued by the United States Department of Justice and the Federal Trade Commission and in effect at the time the Commissioner receives the statement required pursuant to subsection 1 of NRS 692C.180; and



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(2) The factors described in subsection 3 of NRS 692C.256; and

(c) May condition approval of the merger or acquisition of control in the manner provided in subsection 4 of NRS 692C.258.

6. If, in connection with a change of control of a domestic insurer, the Commissioner determines that the person who is acquiring control of the domestic insurer must maintain or restore the capital of the domestic insurer in an amount that is required by the laws and regulations of this state, the Commissioner shall make the determination not later than 60 days after the notice of intent to acquire required pursuant to subsection ~~4~~ 5 of NRS 692C.180 is filed with the Commissioner.

7. If the proposed merger or other acquisition of control referred to in subsection 1 of NRS 692C.180 requires the approval of the commissioner of more than one state, the public hearing required pursuant to subsection 1 may, upon the request of the person who filed the statement required pursuant to subsection 1 of NRS 692C.180, be consolidated with the hearings required in other states. Not more than 5 days after receiving such a request, the Commissioner shall file with the National Association of Insurance Commissioners a copy of the statement that was filed with the Commissioner pursuant to subsection 1 of NRS 692C.180 by the person requesting a consolidated hearing. The Commissioner may opt out of a consolidated hearing and, if the Commissioner elects to do so, he or she shall provide notice to the person requesting the consolidated hearing not more than 10 days after receiving the statement filed pursuant to subsection 1 of NRS 692C.180. A consolidated hearing must be public and must be held within the United States before participating commissioners of the states in which the insurers are domiciled. Participating commissioners may hear and receive evidence at the hearing.

Sec. 21. NRS 692C.256 is hereby amended to read as follows:

692C.256 1. The Commissioner may issue an order pursuant to NRS 692C.258 relating to an acquisition if:

(a) The effect of the acquisition may substantially lessen competition in any line of insurance in this state or tend to create a monopoly; or

(b) The acquiring person fails to file sufficient materials or information pursuant to NRS 692C.254.

2. In determining whether to issue an order pursuant to subsection 1, the Commissioner shall consider the standards set forth in the Horizontal Merger Guidelines issued by the United States Department of Justice and the Federal Trade Commission and



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1 in effect at the time the Commissioner receives the notice required
2 pursuant to NRS 692C.254.

3 3. The Commissioner shall, before issuing an order specified in
4 subsection 1, consider:

5 (a) If:

6 (1) The acquisition creates substantial economies of scale or
7 economies in the use of resources that may not be created in any
8 other manner; and

9 (2) The public benefit received from those economies
10 exceeds the public benefit received from not lessening competition;
11 or

12 (b) If:

13 (1) The acquisition substantially increases the availability of
14 insurance; and

15 (2) The public benefit received by that increase exceeds the
16 public benefit received from not lessening competition.

17 4. The public benefits set forth in subparagraph 2 of paragraphs
18 (a) and (b) of subsection 3 may be considered together, as
19 applicable, in assessing whether the public benefits received from
20 the acquisition exceed any benefit to competition that would arise
21 from disapproving the acquisition.

22 5. The ~~acquiring person~~ Commissioner has the burden of
23 establishing that the acquisition will ~~not~~ result in a violation of the
24 competitive standard set forth in subsection 1.

25 **Sec. 22.** NRS 692C.270 is hereby amended to read as follows:

26 692C.270 Every insurer subject to registration shall file ~~the~~ :

27 1. A registration statement on a form provided by the
28 Commissioner, which must contain current information about:

29 ~~1-1~~ (a) The capital structure, general financial condition,
30 ownership and management of the insurer and any person
31 controlling the insurer.

32 ~~1-2~~ (b) The identity of every member of the insurance holding
33 company system.

34 ~~1-3~~ (c) The following agreements in force, relationships
35 subsisting and transactions currently outstanding between the
36 insurer and its affiliates:

37 ~~1-4~~ (1) Loans, other investments or purchases, sales or
38 exchanges of securities of the affiliates by the insurer or of the
39 insurer by its affiliates.

40 ~~1-5~~ (2) Purchases, sales or exchanges of assets.

41 ~~1-6~~ (3) Transactions not in the ordinary course of business.

42 ~~1-7~~ (4) Guarantees or undertakings for the benefit of an
43 affiliate which result in an actual contingent exposure of the
44 insurer's assets to liability, other than insurance contracts entered
45 into in the ordinary course of the insurer's business.



~~(e)~~ (5) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles.

~~(f)~~ (6) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company.

~~(g)~~ (7) Any dividend or other distribution made to a shareholder.

~~(h)~~ (8) Any consolidated agreement to allocate taxes.

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

~~(5)~~ (e) Any other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Commissioner.

2. *A statement verifying that:*

(a) *The board of directors of the insurer oversees the corporate governance and internal controls of the insurer; and*

(b) *Officers or senior management of the insurer have approved, implemented and continue to maintain and monitor the corporate governance and internal controls of the insurer.*

3. *Financial statements of the insurance holding company system and all affiliates, if requested by the Commissioner. This requirement may be satisfied by providing the most recent statement filed with the United States Securities and Exchange Commissioner pursuant to the Securities Act of 1933, 15 U.S.C. §§ 78a et seq., by the insurance holding company system or its parent corporation.*

Sec. 23. NRS 692C.290 is hereby amended to read as follows:

692C.290 1. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on forms provided by the Commissioner within 15 days after the end of the month in which it learns of each such change or addition, and not less often than annually, except that, subject to the provisions of NRS 692C.390, each registered insurer shall report all dividends and other distributions to shareholders within 5 business days following the declaration and 10 days before payment.

2. *If the principal of a registered insurer does not file a report of enterprise risk with the commissioner of the lead state of the insurance company system, as determined by the most recent edition of the Financial Analysis Handbook, published by the National Association of Insurance Commissioners, in a calendar year, the principal shall file a report of enterprise risk with the Commissioner. The principal shall include in the report the*



1 *material risks within the insurance holding company system that,*
2 *to the best of his or her knowledge and belief, may pose enterprise*
3 *risk to the registered insurer.*

4 **Sec. 24.** NRS 692C.360 is hereby amended to read as follows:

5 692C.360 1. Material transactions by registered insurers with
6 their affiliates are subject to all of the following standards:

7 ~~11-1~~ (a) The terms must be fair and reasonable.

8 ~~12-1~~ (b) Charges or fees for services performed must be
9 reasonable.

10 ~~13-1~~ (c) Expenses incurred and payment received must be
11 allocated to the insurer in conformity with customary accounting
12 practices concerning insurance consistently applied.

13 ~~14-1~~ (d) The books, accounts and records of each party must be
14 so maintained as to disclose clearly and accurately the precise nature
15 and details of the transactions ~~†~~

16 ~~—5-1~~ *and must include any accounting information required to*
17 *support the reasonableness of any charges or fees.*

18 (e) The insurer's surplus as regards policyholders following any
19 dividends or distributions to shareholder affiliates must be
20 reasonable in relation to the insurer's outstanding liabilities and
21 adequate to its financial needs.

22 2. *The Commissioner may adopt regulations governing*
23 *agreements for sharing the cost of services or management*
24 *between registered insurers and their affiliates.*

25 **Sec. 25.** NRS 692C.363 is hereby amended to read as follows:

26 692C.363 1. ~~1A-1~~ *Except as otherwise provided in subsection*
27 *2, a* domestic insurer shall not enter into any of the following
28 transactions with an affiliate unless the insurer has notified the
29 Commissioner in writing of its intention to enter into the transaction
30 at least ~~160†~~ 30 days previously, or such shorter period as the
31 Commissioner may permit, and the Commissioner has not
32 disapproved it within that period:

33 (a) A sale, purchase, exchange, loan or extension of credit,
34 guaranty or investment if the transaction equals at least:

35 (1) With respect to an insurer other than a life insurer, the
36 lesser of 3 percent of the insurer's admitted assets or 25 percent of
37 surplus as regards policyholders; or

38 (2) With respect to a life insurer, 3 percent of the insurer's
39 admitted assets,

40 ➔ computed as of December 31 next preceding the transaction.

41 (b) A loan or extension of credit to any person who is not an
42 affiliate, if the insurer makes the loan or extension of credit with the
43 agreement or understanding that the proceeds of the transaction, in
44 whole or in substantial part, are to be used to make loans or



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1 extensions of credit to, to purchase assets of, or to make investments
2 in, any affiliate of the insurer if the transaction equals at least:

3 (1) With respect to insurers other than life insurers, the lesser
4 of 3 percent of the insurer's admitted assets or 25 percent of surplus
5 as regards policyholders; or

6 (2) With respect to life insurers, 3 percent of the insurer's
7 admitted assets,

8 ➔ computed as of December 31 next preceding the transaction.

9 (c) ~~A~~ *A pooling agreement or other* agreement for
10 reinsurance or a modification thereto in which the premium for
11 reinsurance or a change in the insurer's liabilities equals at least 5
12 percent of the insurer's surplus as regards policyholders as of
13 December 31 next preceding the transaction, including an agreement
14 which requires as consideration the transfer of assets from an insurer
15 to a nonaffiliate, if an agreement or understanding exists between
16 the insurer and nonaffiliate that any portion of those assets will be
17 transferred to an affiliate of the insurer.

18 (d) An agreement for management, *agreement to allocate taxes,*
19 contract for service, guarantee or arrangement to share costs.

20 (e) A guaranty made by a domestic insurer, *regardless of*
21 *whether the guaranty is quantifiable as to amount,* except that a
22 guaranty that is quantifiable as to amount is not subject to the
23 provisions of this subsection unless the guaranty exceeds the lesser
24 of one-half of 1 percent of the admitted assets of the domestic
25 insurer or 10 percent of its surplus as regards policyholders as of
26 December 31 next preceding the guaranty.

27 (f) Except as otherwise provided in subsection ~~13-1~~ 4, a direct or
28 indirect acquisition of or investment in a person who controls the
29 domestic insurer or an affiliate of the domestic insurer in an amount
30 that, when added to its present holdings, exceeds 2.5 percent of the
31 domestic insurer's surplus to policyholders.

32 (g) A material transaction, specified by regulation, which the
33 Commissioner determines may adversely affect the interest of the
34 insurer's policyholders.

35 2. *A domestic insurer shall not amend or modify any*
36 *agreement with an affiliate to enter into a transaction subject to*
37 *the provisions of subsection 1 unless the insurer notifies the*
38 *Commissioner. The notice must be given not less than 30 days*
39 *before the effective date of the amendment or modification and*
40 *must include, without limitation, the reasons for the amendment*
41 *or modification and the financial impact, if any, of the amendment*
42 *or modification on the domestic insurer. Upon receipt of a notice*
43 *pursuant to this subsection, the Commissioner shall determine*
44 *whether the amendment or modification is subject to the*
45 *provisions of subsection 1 and notify the domestic insurer of*



the Commissioner's determination within 30 days. If the Commissioner does not give such notice within 30 days after receiving the notice from the domestic insurer, the amendment or modification shall be deemed to be approved.

3. This section does not authorize or permit any transaction which, in the case of an insurer not an affiliate, would be contrary to law.

~~3-1~~ 4. The provisions of paragraph (f) of subsection 1 do not apply to a direct or indirect acquisition of or investment in:

(a) A subsidiary acquired in accordance with this section or NRS 692C.140; or

(b) A nonsubsidiary insurance affiliate that is subject to the provisions of this chapter.

Sec. 26. (Deleted by amendment.)

Sec. 27. NRS 692C.390 is hereby amended to read as follows:

692C.390 1. An insurer subject to registration under NRS 692C.260 to 692C.350, inclusive, shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(a) Thirty days after the Commissioner has received notice of the declaration thereof and has not within that period disapproved the payment; or

(b) The Commissioner approves the payment within the 30-day period.

2. A request for approval of an extraordinary dividend or any other extraordinary distribution pursuant to subsection 1 must include:

(a) A statement indicating the amount of the proposed dividend or distribution;

(b) The date established for the payment of the proposed dividend or distribution;

(c) A statement indicating whether the proposed dividend or distribution is to be paid in the form of cash or property and, if it is to be paid in the form of property, a description of the property, its cost and its fair market value together with an explanation setting forth the basis for determining its fair market value;

(d) A copy of a work paper or other document setting forth the calculations used to determine that the proposed dividend or distribution is extraordinary, including:

(1) The amount, date and form of payment of each regular dividend or distribution paid by the insurer, other than any distribution of a security of the insurer, within the 12 consecutive months immediately preceding the date established for the payment of the proposed dividend or distribution;



(2) The amount of surplus, if any, as regards policyholders, including total capital and surplus, as of December 31 next preceding;

(3) If the insurer is a life insurer, the amount of any net gains obtained from the operations of the insurer for the 12-month period ending December 31 next preceding;

(4) If the insurer is not a life insurer, the amount of net income of the insurer less any realized capital gains for the 12-month period ending on the December 31 of the year next preceding and the two consecutive 12-month periods immediately preceding that period; and

(5) If the insurer is not a life insurer, the amount of each dividend paid by the insurer to shareholders, other than a distribution of any securities of the insurer, during the preceding 2 calendar years;

(e) A balance sheet and statement of income for the period beginning on the date of the last annual statement filed by the insurer with the Commissioner and ending on the last day of the month immediately preceding the month in which the insurer files the request for approval; and

(f) A brief statement setting forth:

(1) The effect of the proposed dividend or distribution upon the insurer's surplus;

(2) The reasonableness of the insurer's surplus in relation to the insurer's outstanding liabilities; and

(3) The adequacy of the insurer's surplus in relation to the insurer's financial requirements.

3. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous 2 calendar years that has not already been paid out as dividends. The amount the insurer may carry forward must be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediately preceding calendar years.

4. Each insurer specified in subsection 1 that pays an extraordinary dividend or makes any other extraordinary distribution to its shareholders shall, within 15 days after declaring the dividend or making the distribution, report that fact to the Commissioner. The report must include the information specified in paragraph (d) of subsection 2.

Sec. 28. NRS 692C.410 is hereby amended to read as follows:

692C.410 1. Subject to the limitation contained in this section and in addition to the powers which the Commissioner has under NRS 679B.230 to 679B.287, inclusive, relating to the



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1 examination of insurers, the Commissioner may ~~order~~ *examine*
2 any insurer registered under NRS 692C.260 to 692C.350, inclusive,
3 ~~to produce such records, books or other information papers in its~~
4 ~~possession or in the possession of its affiliates as may be necessary~~
5 ~~to ascertain the financial condition or legality of conduct of such~~
6 ~~insurer~~ *and any affiliate of the insurer to ascertain the financial*
7 *condition of the insurer, including, without limitation, the*
8 *enterprise risk posed to the insurer by a person controlling the*
9 *insurer, any entity or combination of entities within the insurance*
10 *holding company system or by the insurance holding company*
11 *system. The Commissioner may order any insurer registered under*
12 *NRS 692C.260 to 692C.350, inclusive, to produce any information*
13 *not in the possession of the insurer if the insurer is able to obtain*
14 *the information pursuant to any contractual or statutory*
15 *requirement or any other method. If the insurer is unable to*
16 *obtain any information requested by the Commissioner pursuant*
17 *to this section, the insurer shall provide to the Commissioner a*
18 *statement setting forth the reasons the insurer is unable to obtain*
19 *the information and the identity of the holder of the information,*
20 *if known to the insurer. Whenever it appears to the Commissioner*
21 *that the detailed explanation is without merit, the Commissioner*
22 *may require, after notice and hearing, the insurer to pay a penalty*
23 *of \$100 for each day the requested information is not produced or*
24 *may suspend or revoke the license of the insurer.* In the event such
25 insurer fails to comply with such order, the Commissioner may
26 examine such affiliates to obtain such information.

27 2. The Commissioner shall exercise his or her power under
28 ~~subsection~~ *subsections 1 and 5* only if the examination of the
29 insurer under NRS 679B.230 to 679B.287, inclusive, is inadequate
30 or the interests of the policyholders of such insurer may be
31 adversely affected.

32 3. The Commissioner may retain at the registered insurer's
33 expense such attorneys, actuaries, accountants and other experts not
34 otherwise a part of the Commissioner's staff as may be reasonably
35 necessary to assist in the conduct of the examination under
36 ~~subsection~~ *subsections 1 and 5*. Any persons so retained shall
37 be under the direction and control of the Commissioner and shall act
38 in a purely advisory capacity.

39 4. Each ~~registered~~ insurer producing for examination *any*
40 *information pursuant to subsection 1 or any* records, books and
41 papers pursuant to subsection ~~4~~ *5* shall be liable for and shall pay
42 the expense of such examination in accordance with NRS 679B.290.

43 5. *To carry out the provisions of this section and except as*
44 *otherwise provided in subsection 2, the Commissioner may*
45 *subpoena witnesses, compel their attendance, administer oaths,*



1 *examine any person under oath concerning the subject of the*
2 *examination and require the production of any books, papers,*
3 *records, correspondence or any other documents which the*
4 *Commissioner deems relevant to the examination. If any person*
5 *fails to obey a subpoena or refuses to testify as to any matter*
6 *relating to the subject of the examination, the Commissioner may*
7 *file a written report describing the refusal and proof of service of*
8 *the subpoena in any court of competent jurisdiction in the county*
9 *in which the examination is being conducted, for such action as*
10 *the court may determine. Failure by the person to obey an order of*
11 *the court pursuant to this section is punishable as contempt of*
12 *court.*

13 *6. A person subpoenaed under subsection 5 is entitled to*
14 *witness fees and mileage as allowed for testimony in a court of*
15 *record. The insurer or affiliate being examined must pay the*
16 *witness fees and mileage, as well as any other expense incurred in*
17 *securing the attendance of witnesses for the examination in*
18 *accordance with NRS 679B.290.*

19 **Sec. 29.** NRS 694C.400 is hereby amended to read as follows:

20 694C.400 1. On or before ~~June 30~~ **March 1** of each year, a
21 captive insurer shall submit to the Commissioner a report of its
22 financial condition . ~~as prepared by a certified public accountant.~~
23 A captive insurer shall use generally accepted accounting principles
24 and include any useful or necessary modifications or adaptations
25 thereof that have been approved or accepted by the Commissioner
26 for the type of insurance and kinds of insurers to be reported upon,
27 and as supplemented by additional information required by the
28 Commissioner. Except as otherwise provided in this section, each
29 association captive insurer, agency captive insurer, rental captive
30 insurer or sponsored captive insurer shall file its report in the form
31 required by NRS 680A.270. The Commissioner shall adopt
32 regulations designating the form in which pure captive insurers must
33 report.

34 2. A pure captive insurer may apply, in writing, for
35 authorization to file its annual report based on a fiscal year that is
36 consistent with the fiscal year of the parent company of the pure
37 captive insurer. If an alternative date is granted ~~+~~

38 ~~—(a) The~~ , the annual report is due not later than ~~180~~ **60** days
39 after the end of each such fiscal year . ~~+~~ and

40 ~~—(b) The~~

41 **3. A** pure captive insurer shall file on or before March 1 of
42 each year such forms as required by the Commissioner by regulation
43 to provide sufficient detail to support its premium tax return filed
44 pursuant to NRS 694C.450.



~~13-1~~ 4. Any captive insurer failing, without just cause beyond the reasonable control of the captive insurer, to file its annual statement as required by subsection 1 shall pay a penalty of \$100 for each day the captive insurer fails to file the report, but not to exceed an aggregate amount of \$3,000, to be recovered in the name of the State of Nevada by the Attorney General.

~~14-1~~ 5. Any director, officer, agent or employee of a captive insurer who subscribes to, makes or concurs in making or publishing, any annual or other statement required by law, knowing the same to contain any material statement which is false, is guilty of a gross misdemeanor.

Sec. 30. NRS 695E.080 is hereby amended to read as follows:

695E.080 "Plan of operation" means an analysis of the expected activities and results of a risk retention group, including:

1. The coverages, deductibles, limits of coverage, rates and systems of rating classification for each line of insurance the group intends to offer;

2. Historical and expected loss experience of the proposed members, and national experience of similar exposures to the extent that this experience is reasonably available;

3. Pro forma financial statements and projections;

4. 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;

5. Identification of management, underwriting procedures, policies for investment and methods for managerial oversight; ~~and~~

6. Identification of each state in which the group has obtained, or sought to obtain, a charter and a license, and a description of the status of the group in each of those states;

7. Information that is deemed sufficient by the Commissioner to verify that members of the group are engaged in business activities similar or related with respect to the liability to which they are exposed because of any related, similar or common business, trade, product, service, premise or operation; and

8. Such other matters as are prescribed by the Commissioner for liability insurers authorized by the insurance laws of the state in which the risk retention group is chartered.

Sec. 31. NRS 695E.120 is hereby amended to read as follows:

695E.120 A purchasing group that intends to conduct business in this state shall register with the Commissioner and:

1. Furnish notice to the Commissioner that:

(a) Identifies the state in which the group is domiciled;

(b) Specifies the lines and classifications of liability insurance that the purchasing group intends to purchase;



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(c) Identifies the insurer from which the group intends to purchase its insurance and the domicile of the insurer;

(d) Identifies the principal place of business of the group;

(e) Identifies all other states in which the group intends to do business; ~~and~~

(f) *Specifies the method by which insurance will be offered to its members whose risks are resident, located or to be performed in this State;*

(g) *Provides the name, address and telephone number of each person, if any, through whom insurance will be offered to its members whose risks are resident, located or to be performed in this State; and*

(h) Provides such other information as the Commissioner requires to verify and determine:

(1) Its qualification as a purchasing group;

(2) Where the purchasing group is located; and

(3) The appropriate tax treatment of the purchasing group;

and

2. Appoint the Commissioner as its agent solely to receive service of legal process, and pay the fee for filing a power of attorney required by subsection 4 of NRS 680B.010, except that this subsection does not apply to a purchasing group that:

(a) Was domiciled before April 1, 1986, and on and after October 27, 1986, in any state;

(b) Before and after October 27, 1986, purchased its insurance from an insurer licensed in any state;

(c) Was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(d) Does not purchase insurance that was not authorized for an exemption under that act, as in effect before October 27, 1986.

Sec. 32. NRS 695E.140 is hereby amended to read as follows:

695E.140 1. A risk retention group seeking to be chartered in this State must obtain a certificate of authority pursuant to chapter 694C of NRS to transact liability insurance and, except as otherwise provided in this chapter, must comply with:

(a) All of the laws, regulations and requirements applicable to liability insurers in this State ~~and~~, *unless otherwise approved by the Commissioner;* and

(b) The provisions of NRS 695E.150 to 695E.210, inclusive, to the extent that those provisions do not limit or conflict with the provisions with which the group is required to comply pursuant to paragraph (a).

2. *A risk retention group applying to be chartered in this State must submit to the Commissioner in summary form:*



(a) *The identities of:*

(1) *All members of the group;*

(2) *All organizers of the group;*

(3) *Those persons who will provide administrative services to the group; and*

(4) *Any person who will influence or control the activities of the group;*

(b) *The amount and nature of initial capitalization of the group;*

(c) *The coverages to be offered by the group; and*

(d) *Each state in which the group intends to operate.*

3. Before it may transact insurance in any state, the risk retention group must submit to the Commissioner for approval by the Commissioner a plan of operation. 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 within 10 days after 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 is approved by the Commissioner.

~~13-1~~ 4. *A risk retention group chartered in this State must file with the Commissioner on or before February 1 of each year a statement containing information concerning the immediately preceding year, which must be:*

(a) *Submitted in a form prescribed by the National Association of Insurance Commissioners;*

(b) *Prepared in accordance with the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners and effective on January 1, 2001, and as amended by the National Association of Insurance Commissioners after that date; and*

(c) *Submitted on a diskette, if required by the Commissioner.*

5. *The Commissioner shall transmit to the National Association of Insurance Commissioners a copy of:*

(a) *All information submitted by a risk retention group to the Commissioner pursuant to subsections 2 and 4; and*

(b) *Any revisions to a plan of operation submitted to the Commissioner pursuant to subsection 3.*

6. A risk retention group chartered in a state other than Nevada that is seeking to transact insurance as a risk retention group in this State must comply with the provisions of NRS 695E.150 to 695E.210, inclusive.

Sec. 33. NRS 695E.150 is hereby amended to read as follows:

695E.150 1. Before transacting insurance in this state, a risk retention group must submit to the Commissioner:

~~11-1~~ (a) A statement of registration identifying:



~~(a)~~ (1) Each state in which the risk retention group is chartered or licensed as a liability insurer;

~~(b)~~ (2) The date of its charter;

~~(c)~~ (3) Its principal place of business; and

~~(d)~~ (4) Such other information, including information concerning its membership, as the Commissioner requires to verify its qualification as a risk retention group;

~~(2)~~ (b) A copy of its plan of operation and any revisions of the plan submitted to its state of domicile, except with respect to any line or classification of liability that was:

~~(a)~~ (1) Defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

~~(b)~~ (2) Offered before that date by a risk retention group that had been chartered and operating for not less than 3 years before that date; and

~~(3)~~ (c) A statement appointing the Commissioner as its agent for service of process pursuant to NRS 680A.250, together with the fee for filing a power of attorney required by subsection 4 of NRS 680B.010.

2. The Commissioner shall, upon receipt of any revisions of a plan of operation provided by a risk retention group pursuant to paragraph (b) of subsection 1, transmit a copy of those revisions to the National Association of Insurance Commissioners.

Sec. 34. NRS 695E.170 is hereby amended to read as follows:

695E.170 1. A risk retention group and its agents and representatives are subject to the provisions of NRS 686A.010 to 686A.310, inclusive. Any injunction obtained pursuant to those sections must be obtained from a court of competent jurisdiction.

2. All premiums paid for coverages within this state to a risk retention group are subject to the provisions of chapter 680B of NRS. Each risk retention group shall report all premiums paid to it and shall pay the taxes on premiums and any related fines or penalties for risks resident, located or to be performed in the state.

3. Any person acting as an agent or a broker for a risk retention group pursuant to NRS 695E.210 shall:

(a) Report to the Commissioner each premium for direct business for risks resident, located or to be performed in this State which the person has placed with or on behalf of a risk retention group that is not chartered in this State.

(b) Maintain a complete and separate record of each policy obtained from each risk retention group. Each record maintained pursuant to this subsection must be made available upon request by the Commissioner for examination pursuant to NRS 679B.240, and must include, for each policy and each kind of insurance provided therein:



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- 1 (1) *The limit of liability;*
- 2 (2) *The period covered;*
- 3 (3) *The effective date;*
- 4 (4) *The name of the risk retention group which issued the*
- 5 *policy;*
- 6 (5) *The gross annual premium charged; and*
- 7 (6) *The amount of return premiums, if any.*
- 8 4. *As used in this section, “premiums for direct business”*
- 9 *means any premium written in this State for a policy of insurance.*
- 10 *The term does not include any premium for reinsurance or for a*
- 11 *contract between members of a risk retention group.*

