

Amendment No. 470

Assembly Amendment to Assembly Bill No. 435

(BDR 57-1171)

Proposed by: Assembly Committee on Commerce and Labor**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

EWR/JRS



Date: 4/17/2013

A.B. No. 435—Revises provisions governing insurance. (BDR 57-1171)



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

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

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

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

~~[Sections 26 and 27 revise]~~ **Section 27 of this bill revises** the method used to determine whether a dividend or distribution may be paid without requesting approval from the Commissioner. **Section 28** of this bill revises provisions governing the authority of the Commissioner to examine an insurer. **Section 29** of this bill changes the date by which certain insurers are required to submit to the Commissioner a report of the financial condition of the insurer. **Sections 30-34** of this bill revise information which certain groups that conduct business concerning insurance are required to submit to the Commissioner.

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

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

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

2. The Commissioner shall:

(a) In cooperation with the Attorney General, biennially prepare and submit to the Governor, for inclusion in the executive budget, a proposed budget for the program established pursuant to NRS 679B.630; and

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

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

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

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

4. Except as otherwise provided in ~~subsections~~ **subsection 5**, ~~and 6,~~ costs of the program established pursuant to NRS 679B.630 must be paid by the insurers authorized to transact insurance in this State. The Commissioner shall ~~annually~~

determine the total cost of the program and divide that amount among the insurers pro-rata based upon the total amount of premiums charged to the insureds in this State by the insurer.

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

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

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

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

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

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

~~6. 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.~~

~~7. The Commissioner shall adopt regulations to carry out the provisions of this section, including, without limitation, the calculation and collection of the assessment.~~

~~8. 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~~ ~~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~~ ~~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 ~~this State~~ 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 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

1 acceptable as security until its expiration, extension, renewal, modification or
2 amendment, whichever first occurs.

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

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

5 681B.290 1. Except as otherwise provided in subsection 3, on or before
6 March 1 of each year, each domestic insurer, and each foreign insurer domiciled in
7 a state which does not have requirements for reporting risk-based capital, that
8 transacts property, casualty, life or health insurance in this state shall prepare and
9 submit to the Commissioner, and to each person designated by the Commissioner, a
10 report of the level of the risk-based capital of the insurer as of the end of the
11 immediately preceding calendar year. The report must be in such form and contain
12 such information as required by the regulations adopted by the Commissioner
13 pursuant to this section.

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

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

24 (a) A domestic insurer who:

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

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

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

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

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

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

34 686C.035 1. This chapter does not provide coverage for:

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

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

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

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

49 (2) On or after the date on which the association becomes obligated with
50 respect to the policy or contract, exceeds the rate of interest determined by
51 subtracting 3 percentage points from Moody's Corporate Bond Yield Average as
52 most recently available.

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

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

(2) A minimum-premium group insurance plan;

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

(4) A contract for administrative services only.

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

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

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

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

(1) Claims based on marketing materials;

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

(3) Misrepresentations of or regarding policy benefits;

(4) Extra-contractual claims; or

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

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

(j) A portion of a policy or contract to the extent that it provides for interest or other changes in value which are determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the rights of the owner of the policy or contract are subject to forfeiture, determined on the date the member insurer becomes an impaired or insolvent insurer, whichever occurs first. If the interest or changes in value of a policy or contract are credited less frequently than annually, for the purpose of determining the values that have been credited and are not subject to forfeiture, the interest or change in value determined by using procedures stated in the policy or contract must be credited as if the contractual date for crediting interest or changing values was the date of the impairment or insolvency of the insured member, whichever occurs first and is not subject to forfeiture.

(k) An unallocated annuity contract other than an annuity 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.

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

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

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

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

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

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

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

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

(c) With respect to health insurance for any one ~~natural person~~ *life*:

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

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

(3) Five hundred thousand dollars for basic hospital, medical 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 (e)~~ *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

1 cause to be guaranteed, assumed, reinsured or performed, the contractual
2 obligations of the impaired or insolvent insurer under a covered policy or contract
3 which do not materially affect the economic value or economic benefits of the
4 covered policy or contract.

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

6 687C.030 1. It is the policy of this State to opt out of and the Commissioner
7 of Insurance shall by regulation opt out of any uniform standard adopted by the
8 Interstate Insurance Product Regulation Commission which provides less protection
9 than a law of this State or otherwise diminishes the rights of policyholders and
10 persons applying for a policy of insurance in this State.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (a) Nominate candidates for director for election by shareholders or
5 policyholders;

6 (b) Evaluate the performance of each principal officer of the registered
7 domestic insurer; and

8 (c) Make recommendations to the board of directors concerning the selection
9 and compensation of each of those principal officers.

10 6. The provisions of subsections 3, 4 and 5 do not apply to a registered
11 domestic insurer if the registered domestic insurer is controlled by an entity and
12 the board of directors of the controlling entity and the committees thereof meet
13 the requirements of subsections 3, 4 and 5.

14 7. A registered domestic insurer may apply to the Commissioner for a
15 waiver of the provisions of this section if the registered domestic insurer has:

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

18 (1) The Federal Crop Insurance Corporation of the Risk Management
19 Agency of the United States Department of Agriculture; and

20 (2) The National Flood Insurance Program of the Federal Emergency
21 Management Agency of the United States Department of Homeland Security; or

22 (b) In any other circumstances determined by the Commissioner to warrant a
23 waiver.

24 8. In considering whether or not to grant a waiver pursuant to subsection 7,
25 the Commissioner may consider any relevant factors, including, without
26 limitation:

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

28 (b) The volume of business written;

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

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

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

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

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

43 (c) As part of an examination of the registered insurer pursuant to NRS
44 692C.410.

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

47 (a) Establish:

48 (1) The membership of the supervisory college;

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

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

52 (b) Designate a regulatory agency as supervisor of the supervisory college;
53 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 cooperation between regulators, including, without limitation, state, federal and international regulatory agencies which are charged with regulating and supervising an insurer.*

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

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

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

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

1. In common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, amounts which do not exceed the lesser of 10 percent of the insurer's assets or 50 percent of its surplus as regards policyholders, 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. In calculating the amount of such investments ~~the~~:

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

(b) *The following must be included:*

~~the~~ (1) Total ~~net~~ money 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

~~the~~ (2) 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 after its acquisition or formation.

2. Any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries ~~that are engaged exclusively in or organized to engage exclusively in the ownership and management of assets which are authorized as investments of the domestic insurer,~~ if each subsidiary agrees to limit its investments in any asset so that those investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subsection 1 or in chapter 682A of NRS. For the purpose of this subsection, "total investment of the insurer" includes any direct investment by the insurer in an asset and the insurer's proportionate share of any investment in an

asset by any subsidiary of the insurer, which must be calculated by multiplying the amount of the subsidiary's investment by the 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 subsection 1 concerning the proposed transaction. Notice filed pursuant to this subsection is confidential until the conclusion, if any, of the divestiture unless the Commissioner determines that such confidentiality will interfere with the enforcement of this section.*

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

5. For purposes of this section, a domestic insurer includes any other person controlling a domestic insurer unless the other person is directly or through

1 affiliates primarily engaged in a business other than the business of insurance. If a
2 person is directly or through affiliates primarily engaged in a business other than
3 the business of insurance, the person shall, at least 60 days before the proposed
4 effective date of the acquisition, file a notice of intent to acquire with the
5 Commissioner setting forth the information required by NRS 692C.254.

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

9 **Sec. 18.** NRS 692C.190 is hereby amended to read as follows:

10 692C.190 The statement to be filed with the Commissioner hereunder shall be
11 made under oath or affirmation and shall contain the following:

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

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

18 (b) Not an individual, a report of the nature of its business operations during
19 the past 5 years or for such lesser period as such person and any predecessors
20 thereof shall have been in existence, together with an informative description of the
21 business intended to be done by such person and such person's subsidiaries, and a
22 list of all individuals who are or who have been selected to become directors or
23 executive officers of such person or who perform or will perform functions
24 appropriate to such positions. Such list shall include for each such individual the
25 information required by paragraph (a) of this subsection.

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

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

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

40 5. The number of shares of any security referred to in *subsection 1 of* NRS
41 692C.180 which each acquiring party proposes to acquire, and the terms of the
42 offer, request, invitation, agreement or acquisition referred to in *subsection 1 of*
43 NRS 692C.180 and a statement as to the method by which the fairness of the
44 proposal was determined.

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

48 7. A full description of any contracts, arrangements or understandings with
49 respect to any security referred to in *subsection 1 of* NRS 692C.180 in which any
50 acquiring party is involved, including but not limited to transfer of any of the
51 securities, joint ventures, loan or option arrangements, puts or calls, guarantees of
52 loans, guarantees against loss or guarantees of profits, division of losses or profits

1 or the giving or withholding of proxies. Such description shall identify the persons
2 with whom such contracts, arrangements or understandings have been made.

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

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

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

14 11. The terms of any agreement, contract or understanding made with any
15 broker-dealer, as to solicitation of securities referred to in *subsection 1 of* NRS
16 692C.180, for tender, and the amount of any fees, commissions or other
17 compensation to be paid to broker-dealers with regard thereto.

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

21 ➤ If the person required to file the statement referred to in this section is a
22 partnership, limited partnership, syndicate or other group, the Commissioner may
23 require that the information required by ~~subsections 1 to 12, inclusive, of~~ this
24 section, be given with respect to each partner of such partnership or limited
25 partnership, each member of such syndicate or group, and each person who controls
26 such partner or member. If any such partner, member or person is a corporation or
27 the person required to file the statement referred to in *subsection 1 of* NRS
28 692C.180 is a corporation, the Commissioner may require that the information
29 required by ~~subsections 1 to 12, inclusive, of~~ this section, be given with respect to
30 such corporation, each officer and director of such corporation, and each person
31 who is directly or indirectly the beneficial owner of more than 10 percent of the
32 outstanding voting securities of such corporation. If any material change occurs in
33 the facts set forth in the statement filed with the Commissioner and sent to such
34 insurer pursuant to this section, an amendment setting forth such change, together
35 with copies of all documents and other material relevant to such change, shall be
36 filed with the Commissioner and sent to such insurer within 2 business days after
37 the person learns of such change. Such insurer shall send each such amendment to
38 its shareholders.

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

40 692C.200 If any offer, request, invitation, agreement or acquisition referred to
41 in *subsection 1 of* NRS 692C.180 is proposed to be made by means of a registration
42 statement under the Securities Act of 1933, 15 U.S.C. §§ 77a to 77aa, inclusive, or
43 in circumstances requiring the disclosure of similar information under the Securities
44 Exchange Act of 1934, 15 U.S.C. §§ ~~77b~~ 78a et seq., or under any state law
45 requiring similar registration or disclosure, the person required to file the statement
46 referred to in *subsection 1 of* NRS 692C.180 may utilize such documents in
47 furnishing the information called for by that statement.

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

49 692C.210 1. Except as otherwise provided in ~~subsection~~ *subsections 5* ~~and~~
50 *and 7*, the Commissioner shall approve any merger or other acquisition of control
51 referred to in *subsection 1 of* NRS 692C.180 unless, after a public hearing thereon,
52 the Commissioner finds that:

(a) After the change of control, the domestic insurer specified in *subsection 1 of NRS 692C.180* 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;

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

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

(e) The plans or proposals which 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 or not in the public interest;

(f) 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 or of the public to permit the merger or other acquisition of control;

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

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

(1) Misrepresentation of pertinent facts or provisions of 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 ~~42~~ 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

(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 ~~42~~ 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 in effect at the time the Commissioner receives the notice required pursuant to NRS 692C.254.

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

(a) If:

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

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

(b) If:

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

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

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

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

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

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

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

~~It~~ (a) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

~~It~~ (b) The identity of every member of the insurance holding company system.

~~It~~ (c) The following agreements in force, relationships subsisting and transactions currently outstanding between the insurer and its affiliates:

~~It~~ (1) Loans, other investments or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

~~It~~ (2) Purchases, sales or exchanges of assets.

~~It~~ (3) Transactions not in the ordinary course of business.

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

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

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

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

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

~~It~~ (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.

~~It~~ (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 material risks within the insurance holding company system that, to the best of his or her knowledge and belief, may pose enterprise risk to the registered insurer.

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

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

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

~~2-1~~ *(b) Charges or fees for services performed must be reasonable.*

~~3-1~~ *(c) Expenses incurred and payment received must be allocated to the insurer in conformity with customary accounting practices concerning insurance consistently applied.*

~~4-1~~ *(d) The books, accounts and records of each party must be so maintained as to disclose clearly and accurately the precise nature and details of the transactions*

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

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

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

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

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

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

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

(2) With respect to a life insurer, 3 percent of the insurer's admitted assets, computed as of December 31 next preceding the transaction.

(b) A loan or extension of credit to any person who is not an affiliate, if the insurer makes the loan or extension of credit with the agreement or understanding that the proceeds of the transaction, 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 if the transaction equals at least:

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

(2) With respect to life insurers, 3 percent of the insurer's admitted assets, computed as of December 31 next preceding the transaction.

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

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

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

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

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

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

~~13~~ 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. ~~NRS 692C.380 is hereby amended to read as follows:~~

~~692C.380 For purposes of NRS 692C.360 to 692C.400, inclusive, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the [greater] lesser of:~~

~~1. Ten percent of the insurer's surplus as regards policyholders as of December 31 next preceding the dividend or distribution; or~~

~~2. The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, not including realized capital gains if the insurer is not a life insurer, for the 12-month period ending December 31 next preceding the dividend or distribution;~~

~~but does not include pro rata distributions of any class of the insurer's own securities.) (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 examination of insurers, the Commissioner may ~~order~~ *examine* any insurer registered under NRS 692C.260 to 692C.350, inclusive, ~~to produce such records, books or other information papers in its possession or in the possession of its affiliates as may be necessary to ascertain the financial condition or legality of conduct of such insurer.~~ *and any affiliate of the insurer to ascertain the financial condition of the insurer, including, without limitation, the enterprise risk posed to the insurer by a person controlling the insurer, any entity or combination of entities within the insurance holding company system or by the insurance holding company system. The Commissioner may order any insurer registered under NRS 692C.260 to 692C.350, inclusive, to produce any information not in the possession of the insurer if the insurer is able to obtain the information pursuant to any contractual or statutory requirement or any other method. If the insurer is unable to obtain any information requested by the Commissioner pursuant to this section, the insurer shall provide to the Commissioner a statement setting forth the reasons the insurer is unable to obtain the information and the identity of the holder of the information, if known to the insurer. Whenever it appears to the Commissioner that the detailed explanation is without merit, the Commissioner may require, after notice and hearing, the insurer to pay a penalty of \$100 for each day the requested information is not produced or may suspend or revoke the license of the insurer.* In the event such insurer fails to comply with such order, the Commissioner may examine such affiliates to obtain such information.

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

3. The Commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist in the conduct of the examination under ~~subsection~~ *subsections 1 and 5*. Any persons so retained

1 shall be under the direction and control of the Commissioner and shall act in a
2 purely advisory capacity.

3 4. Each ~~registered~~ insurer producing for examination *any information*
4 *pursuant to subsection 1 or any* records, books and papers pursuant to subsection
5 ~~44~~ 5 shall be liable for and shall pay the expense of such examination in
6 accordance with NRS 679B.290.

7 *5. To carry out the provisions of this section and except as otherwise*
8 *provided in subsection 2, the Commissioner may subpoena witnesses, compel*
9 *their attendance, administer oaths, examine any person under oath concerning*
10 *the subject of the examination and require the production of any books, papers,*
11 *records, correspondence or any other documents which the Commissioner deems*
12 *relevant to the examination. If any person fails to obey a subpoena or refuses to*
13 *testify as to any matter relating to the subject of the examination, the*
14 *Commissioner may file a written report describing the refusal and proof of*
15 *service of the subpoena in any court of competent jurisdiction in the county in*
16 *which the examination is being conducted, for such action as the court may*
17 *determine. Failure by the person to obey an order of the court pursuant to this*
18 *section is punishable as contempt of court.*

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

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

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

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

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

41 ~~—(b) The~~

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

45 ~~3-~~ 4. Any captive insurer failing, without just cause beyond the reasonable
46 control of the captive insurer, to file its annual statement as required by subsection
47 1 shall pay a penalty of \$100 for each day the captive insurer fails to file the report,
48 but not to exceed an aggregate amount of \$3,000, to be recovered in the name of the
49 State of Nevada by the Attorney General.

50 ~~4-~~ 5. Any director, officer, agent or employee of a captive insurer who
51 subscribes to, makes or concurs in making or publishing, any annual or other
52 statement required by law, knowing the same to contain any material statement
53 which is false, is guilty of a gross misdemeanor.

1 **Sec. 30.** NRS 695E.080 is hereby amended to read as follows:
2 695E.080 “Plan of operation” means an analysis of the expected activities and
3 results of a risk retention group, including:

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

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

9 3. Pro forma financial statements and projections;

10 4. Appropriate opinions by a qualified, independent casualty actuary,
11 including a determination of minimum premium or participation levels required to
12 commence operations and to prevent a hazardous financial condition;

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

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

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

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

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

26 695E.120 A purchasing group that intends to conduct business in this state
27 shall register with the Commissioner and:

28 1. Furnish notice to the Commissioner that:

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

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

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

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

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

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

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

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

43 (1) Its qualification as a purchasing group;

44 (2) Where the purchasing group is located; and

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

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

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

52 (b) Before and after October 27, 1986, purchased its insurance from an insurer
53 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 ~~+~~, *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.

~~3-1~~ 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.

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

2 695E.150 1. Before transacting insurance in this state, a risk retention group
3 must submit to the Commissioner:

4 ~~1-1~~ (a) A statement of registration identifying:

5 ~~1-1~~ (1) Each state in which the risk retention group is chartered or licensed as
6 a liability insurer;

7 ~~1-1~~ (2) The date of its charter;

8 ~~1-1~~ (3) Its principal place of business; and

9 ~~1-1~~ (4) Such other information, including information concerning its
10 membership, as the Commissioner requires to verify its qualification as a risk
11 retention group;

12 ~~1-2~~ (b) A copy of its plan of operation and any revisions of the plan submitted
13 to its state of domicile, except with respect to any line or classification of liability
14 that was:

15 ~~1-1~~ (1) Defined in the Product Liability Risk Retention Act of 1981 before
16 October 27, 1986; and

17 ~~1-1~~ (2) Offered before that date by a risk retention group that had been
18 chartered and operating for not less than 3 years before that date; and

19 ~~1-3~~ (c) A statement appointing the Commissioner as its agent for service of
20 process pursuant to NRS 680A.250, together with the fee for filing a power of
21 attorney required by subsection 4 of NRS 680B.010.

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

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

27 695E.170 1. A risk retention group and its agents and representatives are
28 subject to the provisions of NRS 686A.010 to 686A.310, inclusive. Any injunction
29 obtained pursuant to those sections must be obtained from a court of competent
30 jurisdiction.

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

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

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

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

45 (1) *The limit of liability;*

46 (2) *The period covered;*

47 (3) *The effective date;*

48 (4) *The name of the risk retention group which issued the policy;*

49 (5) *The gross annual premium charged; and*

50 (6) *The amount of return premiums, if any.*

51 4. *As used in this section, "premiums for direct business" means any*
52 *premium written in this State for a policy of insurance. The term does not include*

- 1 *any premium for reinsurance or for a contract between members of a risk*
- 2 *retention group.*