

Act No. 244
Public Acts of 2015
Approved by the Governor
December 22, 2015
Filed with the Secretary of State
December 22, 2015
EFFECTIVE DATE: December 22, 2015

**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2015**

Introduced by Senator Hune

ENROLLED SENATE BILL No. 177

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending sections 1301, 1311, 1312, 1315, 1325, 1333, 1341, 1343, 1351, 1355, and 1371 (MCL 500.1301, 500.1311, 500.1312, 500.1315, 500.1325, 500.1333, 500.1341, 500.1343, 500.1351, 500.1355, and 500.1371), sections 1301, 1312, 1315, 1351, and 1371 as amended by 1992 PA 182, section 1311 as amended by 2010 PA 61, section 1325 as amended by 1994 PA 227, section 1341 as amended by 1994 PA 443, and section 1343 as amended by 1995 PA 219, and by adding sections 1325a and 1357.

The People of the State of Michigan enact:

Sec. 1301. As used in this chapter:

(a) "Enterprise risk" means an activity, circumstance, event, or series of events involving 1 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, but not limited to, anything that would cause the insurer to be hazardous to policyholders, creditors, and the public.

(b) "Insurer" means that term as defined in section 106 and includes a nonprofit dental care corporation operating under 1963 PA 125, MCL 550.351 to 550.373. Insurer does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state, fraternal benefit societies, or nonprofit health care corporations.

(c) "NAIC" means the National Association of Insurance Commissioners.

(d) "Person" means that term as defined in section 114, except that it does not include a securities broker performing no more than the usual and customary broker's function, so long as the securities broker holds less than 10% of the voting securities of an insurer or of any person that controls an insurer.

Sec. 1311. (1) A person other than the issuer shall not make a tender offer for or a request or invitation for tenders of, or enter into an agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, a voting security of a domestic insurer if, after the consummation thereof, the person directly or indirectly, or by conversion or by exercise of a right to acquire, would be in control of the insurer. A person shall not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time an offer, request, or invitation is made or an agreement is entered into, or before the acquisition of the securities if no offer or agreement is involved, the person has filed with the director and has sent to the insurer, which has sent to its shareholders, a statement containing the information required by this chapter and the offer, request, invitation, agreement, or acquisition has been approved by the director in the manner prescribed in this chapter.

(2) If a person has not filed a statement under subsection (1), a controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the director, with a copy to the insurer, a confidential notice of its proposed divestiture at least 30 days before the cessation of control. The director shall determine those instances in which the person or persons seeking to divest or to acquire a controlling interest in an insurer are required to file to obtain approval of the transaction. The information must remain confidential until the conclusion of the transaction unless the director determines that confidential treatment will interfere with enforcement of this section.

(3) The person who proposes to enter into an agreement to merge with or otherwise acquire control of a domestic insurer shall file a notice with the director, in a form and containing the information prescribed by applicable rule promulgated or order issued by the director.

(4) For purposes of this section and sections 1312 to 1319, a domestic insurer includes a person controlling a domestic insurer and any foreign insurer whose written insurance premium in this state for each of the most recent 3 years exceeds the premiums written in its state of domicile and whose written premium in this state was 20% or more of its total written premium in each of the most recent 3 years.

Sec. 1312. (1) The statement filed with the director under section 1311(1) shall be made under oath or affirmation and must contain all of the following information:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control described in section 1311 will be effected, hereinafter referred to in this section and section 1315 as the acquiring party. If the person is an individual, his or her principal occupation, all offices and positions held during the past 5 years, any civil judgments against the person for \$25,000.00 or more in civil fines or penalties or injunctive or other equitable relief, and any conviction of crimes other than minor traffic violations during the past 10 years. If the person is not an individual, a report of the nature of its business operations during the past 5 years or for a lesser period in which the person and any predecessors of the person have been in existence, an informative description of the business intended to be done by the person and the person's subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of the person or who perform or will perform functions appropriate to those positions. The list must include for each individual the individual's principal occupation, all offices and positions held during the past 5 years, any civil judgments against the person for \$25,000.00 or more in civil fines or penalties or injunctive or other equitable relief, and any conviction of crimes other than minor traffic violations during the past 10 years.

(b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for the merger or other acquisition, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration. If a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender must be disclosed but remain confidential if the person filing the statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years or for a lesser period in which the acquiring party and any predecessors of the acquiring party have been in existence and similar unaudited information as of a date not earlier than 90 days before the filing of the statement.

(d) Any plans or proposals that each acquiring party may have under consideration concerning the insurer's business operations, including, but not limited to, plans or proposals to liquidate the insurer, to sell its assets, to merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security described in section 1311 that each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition described in section 1311, and a statement as to how the proposal's fairness was arrived at.

(f) The amount of each class of a security described in section 1311 that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of a contract, arrangement, or understanding concerning a security described in section 1311 in which an acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(h) A description of the purchase of a security described in section 1311 during the 12 calendar months preceding the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for the security.

(i) A description of a recommendation to purchase a security described in section 1311 made during the 12 calendar months preceding the filing of the statement, by an acquiring party or by another person based upon interviews or at the suggestion of the acquiring party.

(j) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange a security described in section 1311 and additional related distributed soliciting material.

(k) The terms of an agreement, contract, or understanding made with or proposed to be made with a broker-dealer as to solicitation of securities described in section 1311 for tender, and the amount of a fee, commission, or other compensation to be paid to a broker-dealer.

(l) Additional information that the director prescribes by order or rule as necessary or appropriate for the protection of the insurer's policyholders and securityholders or in the public interest.

(2) A person required to file the statement described in section 1311 shall do all of the following:

(a) File the annual enterprise risk report under section 1325a, for as long as control exists.

(b) Provide, and ensure that all subsidiaries within its control in the insurance holding company system will provide, information to the director on request as necessary to evaluate enterprise risk to the insurer.

Sec. 1315. (1) The director shall approve a merger or other acquisition of control described in section 1311 of a domestic insurer unless the director determines from information furnished to the director on the merger or other acquisition of control 1 or more of the following:

(a) After the change of control, the domestic insurer described in section 1311 would not be able to satisfy the requirements for the issuance of a certificate of authority to write the types of insurance for which it is presently authorized.

(b) The merger or other acquisition of control would substantially lessen competition in insurance in this state or tend to create a monopoly in this state.

(c) The financial condition of an acquiring party might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of a remaining securityholder who is unaffiliated with the acquiring party.

(d) The terms of the offer, request, invitation, agreement, or acquisition described in section 1311 are unfair and unreasonable to the insurer's policyholders or securityholders.

(e) The acquiring party's plan or proposal to liquidate the insurer, sell its assets, consolidate or merge the insurer with a person, or to make any other material change in its business or corporate structure or management, is unfair and unreasonable to the insurer's policyholders, and not in the public interest.

(f) The competence, experience, and integrity of the persons who would control the operation of the insurer are such that it would not be in the interest of the insurer's policyholders or the general public to permit the merger or other acquisition of control.

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

(2) The director may hold a public hearing to receive evidence and to hear parties affected by the merger or acquisition. A hearing under this subsection must be held within 30 days after the filing of a statement under section 1311. The director shall provide notice of the hearing to the person filing the statement at least 20 days before the hearing. Not less than 7 days' notice of the public hearing shall be given by the person filing the statement to the insurer and to

any other persons designated by the director. If the proposed acquisition of control will require the approval of more than 1 insurance commissioner, the public hearing may be held on a consolidated basis on request of the person filing the statement or as determined by the director. The director may opt out of a consolidated hearing and shall provide notice to the person who filed the statement under section 1311 of the opt-out within 10 days after the receipt of the statement required by section 1311. A hearing conducted on a consolidated basis must be held within the United States before the commissioners of the states in which the insurers are domiciled.

(3) In connection with a change of control of a domestic insurer, a determination by the director that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by this act shall be made not later than 60 days after the date of notification of the change of control submitted under section 1311.

(4) A person aggrieved by the director's order under this section is entitled to a contested case hearing before the director under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The director shall make a final decision within 30 days after the conclusion of the hearing.

Sec. 1325. (1) An insurer subject to registration under section 1324 shall file a registration statement on a form provided by the director containing the following current information:

(a) The capital structure, comprehensive financial condition, ownership, and management of the insurer and a person controlling the insurer.

(b) The identity and relationship of every member of the insurance holding company system.

(c) The following agreements in force, relationships subsisting, and transactions currently outstanding or that have occurred during the last calendar year between the insurer and its affiliates:

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

(ii) Purchases, sales, or exchanges of assets.

(iii) Transactions not in the ordinary course of business.

(iv) Guarantees or undertakings for the benefit of an affiliate that 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.

(v) All management and service contracts and all cost sharing arrangements.

(vi) Reinsurance agreements.

(vii) Dividends and other distributions to shareholders.

(viii) Consolidated tax allocation agreements.

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

(e) A summary outlining all items in the current registration statement representing changes from the prior registration statement.

(f) Other matters concerning transactions between registered insurers and any affiliates as included in any registration forms adopted or approved by the director.

(g) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers and senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

(2) If a person ultimately controlling the insurer or intermediately controlling the insurer is registered on a national stock exchange or is otherwise required to make periodic reports to the United States Securities and Exchange Commission or other instrumentality of a state or the government of the United States or of a foreign nation or jurisdiction regulating the financial conduct of that person, the insurer shall file the reports with the director in addition to other information required by the director. If requested by the director, the insurer must include financial statements of or within an insurance holding company system, including all affiliates. The insurer may satisfy the request by providing the director the most recently filed parent corporation financial statements that have been filed with the United States Securities and Exchange Commission.

Sec. 1325a. (1) Except as otherwise provided in subsection (2), the ultimate controlling person of an insurer subject to registration under section 1324 shall file an annual enterprise risk report with the director or a jurisdiction designated by the director. The report must be appropriate to the nature, scale, and complexity of the operations of the insurance holding company system and must, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report is not subject to subpoena or discovery, is not admissible in evidence in a private civil or administrative action, and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. The ultimate controlling person of an

insurer subject to registration under section 1324 may request an exemption from this section. The ultimate controlling person of the insurer shall file with the director a written statement discussing the reasons why the ultimate controlling person of the insurer should be exempt. The director may grant the exemption if after review of the statement the director finds that compliance with this section would create an undue financial or organizational hardship on the ultimate controlling person.

(2) The ultimate controlling person of an insurance holding company system subject to registration under section 1324 that meets the requirements of this subsection on or before the effective date of the amendatory act that added this section is not required to file an annual enterprise risk report under subsection (1) if all of the following requirements are met:

(a) The ultimate controlling person is exempt from taxation under section 501(c)(5) of the internal revenue code of 1986, 26 USC 501.

(b) The ultimate controlling person was organized under the laws of this state before January 1, 1921.

(c) The director has not approved the controlling person's petition for disclaimer of affiliation or has disallowed a disclaimer of affiliation under section 1332.

(d) The insurer in which the ultimate controlling person owns a controlling interest meets both of the following requirements:

(i) Is registered under section 1324.

(ii) Is a wholly domestic insurer with no more than 10% of its written premium covering risks outside of this state and has not issued policies directly insuring any risk located outside of this state.

Sec. 1333. The failure to file a registration statement, an amendment to or summary of the registration statement, or an enterprise risk report required by sections 1324 to 1332 within the time specified for the filing is a violation of this chapter.

Sec. 1341. (1) Transactions within a holding company system to which an insurer domiciled in this state or a foreign insurer whose written insurance premium in this state for each of the most recent 3 years exceeds the premiums written in its state of domicile and whose written premium in this state was 20% or more of its total written premium in each of the most recent 3 years is a party or with respect to which the assets or liabilities of these insurers are affected are subject to all of the following standards:

(a) The terms must be fair and reasonable.

(b) The charges or fees for services performed must be reasonable.

(c) The expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(d) The books, accounts, and records of each party must be maintained to clearly and accurately disclose the precise nature and details of the transactions including necessary accounting information to support the reasonableness of the charges or fees to the respective parties.

(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 so that the insurer continues to comply with section 403.

(2) The director's prior approval is required for sales, purchases, exchanges, loans, extensions of credit, or investments, involving 5% or more of the insurer's assets at the immediately preceding year's end, between a domestic controlled insurer and a person in its holding company system.

(3) A domestic insurer and a person in its holding company system shall not enter into the following transactions with each other, or modify an existing transaction, unless the insurer notifies the director in writing of its intention to enter into the transaction, or its reason to modify an existing transaction and the modification's financial impact on the insurer, at least 30 days, or a shorter period as the director allows, before entering into or modifying the transaction and the director has not disapproved it within that period:

(a) A sale, purchase, exchange, loan, extension of credit, or investment, if the transaction is equal to or greater than the lesser of 3% of the insurer's assets or 25% of capital and surplus as of December 31 of the immediately preceding year.

(b) A loan or extension of credit to a person who is not an affiliate, if the insurer makes the loan or extends the credit with the agreement or understanding that the proceeds of the transaction, in whole or in substantial part, will be used to make a loan or extend credit to, to purchase an asset of, or to invest in, an affiliate of the insurer making the loan or extending credit if the transaction is equal to or greater than the lesser of 3% of the insurer's assets or 25% of capital and surplus as of December 31 of the immediately preceding year.

(c) A guarantee that is quantifiable and exceeds the lesser of 0.5% of the insurer's admitted assets or 10% of surplus as of December 31 of the immediately preceding year. A guarantee that is not quantifiable under this subdivision is subject to prior approval of the director.

(d) A direct or indirect acquisition of, or investment in, a person that controls the insurer or that controls an affiliate of the insurer, if the amount of the transaction plus the insurer's present holdings in investment exceeds 2.5% of surplus. This subdivision does not apply to a direct or indirect acquisition of, or investments in, a subsidiary acquired under section 1305 or any other section of this chapter, or a nonsubsidiary insurance affiliate that is subject to this act.

(e) A reinsurance treaty or agreement.

(f) Rendering of services on a regular systematic basis.

(g) A tax allocation agreement.

(h) A cost-sharing agreement.

(i) A material transaction, specified by regulation, that the director determines may adversely affect the interests of the insurer's policyholders.

(4) An insurer shall informally notify the director of a termination of transaction under subsection (3) no later than 30 days after the transaction terminates.

(5) Subsection (3) does not authorize or permit a transaction that, for an insurer that is not a member of the same holding company system, would be otherwise contrary to law.

(6) A domestic insurer shall not enter into transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the threshold amount under this chapter and thus avoid the review that would otherwise occur. If the director determines that the separate transactions were entered into over any relevant period for that purpose, he or she may exercise his or her authority under section 1371.

(7) In reviewing a transaction under subsection (2), the director shall consider whether the transaction complies with the standards described in subsection (1) and whether it may otherwise adversely affect the interests of policyholders, creditors, or the public.

(8) A domestic insurer shall notify the director within 30 days of the domestic insurer's investment in any 1 corporation if the insurance holding company system's total investment in the corporation exceeds 10% of the corporation's voting securities.

Sec. 1343. (1) Each year the director shall review the ordinary shareholder dividends paid by domestic insurers to determine whether each insurer's surplus following those dividends is reasonable in relation to the insurer's outstanding liabilities and adequate to its needs so that it continues to comply with section 403. In conducting the review and making the determination, the director shall consider all of the following factors in addition to factors listed in section 436a:

(a) The adequacy of the level of surplus as regards policyholders remaining after the dividend payment or payments.

(b) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items, such as surplus relief reinsurance transactions and reserve destrengthening.

(c) The quality and liquidity of investments in subsidiaries. The director may discount any of those investments or refuse to consider the investment as an asset for purposes of determining the adequacy of surplus as regards policyholders if the investment so warrants.

(2) If the director determines that an insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403, the director shall limit or disallow the payment of shareholder dividends.

(3) Shareholder dividends shall be declared or paid only from earned surplus, unless the director approves the dividend before payment. The director shall consider whether the dividend will be paid from the insurer's net gain from operations if the insurer is a life insurer, or the insurer's net income if the insurer is not a life insurer, for the 12-month period ending December 31 of the immediately preceding year. For purposes of this subsection, earned surplus excludes surplus arising from unrealized capital gains or a revaluation of assets.

(4) A domestic insurer that is a member of an insurance holding company system and declares a shareholder dividend shall report the dividend to the director within 5 business days after declaring the dividend. The insurer shall not pay the dividend until 10 days after the director receives a report under this subsection.

(5) An insurer subject to registration under section 1324 shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the director has received notice of the declaration and has not disapproved or has approved the payment within that period. If the director, applying the criteria in subsection (1), determines that the insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403, the director may, before the expiration of the 30-day period described in this subsection, enter an order prohibiting the payment of the dividend.

(6) An extraordinary dividend or distribution includes a dividend or distribution of cash or other property, whose fair market value plus the fair market value of other dividends or distributions made within the preceding 12 months exceeds the greater of 10% of the insurer's surplus as regards policyholders as of December 31 of the immediately preceding year, or the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending December 31 of the immediately preceding year, but shall not include pro rata distributions of any class of the insurer's own securities.

(7) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional on the director's approval. The declaration does not confer rights on shareholders until the director has approved or has not disapproved the payment of the dividend or distribution within the 30-day period described in subsection (5).

(8) Notwithstanding subsections (5) through (7), a dividend shall not be declared and paid by an insurer to an affiliate if after the payment the insurer could not satisfy the standards described in section 403.

(9) An insurer aggrieved by the director's determination or order under this section is entitled to a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A hearing under this subsection must be held no later than 10 days after receipt of the insurer's request. The director's determination or order shall remain in effect except as modified by the director during the pendency of the hearing and until a final decision by the director. The director shall render a final decision within 30 days after the conclusion of the hearing.

Sec. 1351. (1) Subject to the limitation in this section and in addition to the powers that the director has under chapters 2 and 4 relating to the examination of insurers, the director may order an insurer registered under section 1324 to produce records, books, or other information papers in the possession of the insurer or its affiliates as are necessary to determine the insurer's financial condition, including enterprise risk to the insurer by the ultimate controlling party, or by combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis, or legality of conduct. If the insurer fails to comply with the order, the director may examine the affiliates to obtain the information. The director may order an insurer registered under section 1324 to produce information not in the possession of the insurer if the insurer can obtain access to the information under a contractual relationship, statutory obligation, or other method. If the insurer cannot obtain the information requested by the director, the insurer shall provide the director with a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. If the director determines the detailed explanation is without merit, the director may require, after notice and hearing, the insurer to pay a civil fine of \$1,000.00 for each day's delay or may suspend or revoke the insurer's license.

(2) The director may retain at the registered insurer's expense attorneys, actuaries, accountants, and other experts not otherwise a part of the director's staff as are reasonably necessary to assist in the conduct of the examination under subsection (1). The expense of the attorneys, actuaries, accountants, and other experts shall be certified by the director and paid as provided in sections 216 and 224. The person retained is under the direction and control of the director and shall act in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books, and papers under subsection (1) is liable for and shall pay the expense of the examination under sections 216 and 224.

Sec. 1355. (1) Except as otherwise provided in this subsection, the information, documents, and copies of documents obtained by or disclosed to the director or any other person in the course of an examination or investigation made under sections 1351 and 1357 and the information reported under sections 1324 to 1333 is confidential, is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, is not subject to discovery or admissible in evidence in a private civil or administrative action, and shall not be made public by the director or any other person, without the prior written consent of the insurer to which it pertains. The director may, after giving the insurer and its affiliates who would be affected by the disclosure notice and opportunity to be heard, disclose the information if the director determines that the interests of policyholders, shareholders, or the public will be served by the publication of the information. The director or a person who received documents, materials, or other information while acting under the authority of the director or with whom the documents, materials, or other information is shared under this act shall not testify in a private civil or administrative action concerning confidential documents, materials, or information obtained under sections 1351 and 1357 and information reported under sections 1324 to 1333.

(2) The director may share documents, materials, or other information, including the confidential and privileged documents, materials, or information obtained under sections 1351 and 1357 and information reported under sections 1324 to 1333 with other state, federal, and international regulatory agencies; the NAIC; and state, federal, and international law enforcement authorities, including members of a supervisory college under section 1357, if the regulator, the NAIC, or law enforcement authority agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information and has verified in writing the legal authority to maintain confidentiality. The director may only share confidential and privileged documents, material, or information reported under section 1325a with commissioners of states having statutes or regulations substantially similar to subsection (1) and who have agreed in writing to not disclose the information. The director may receive documents, materials, or information, including

otherwise confidential and privileged documents, materials, or information from the NAIC and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information. The disclosure or sharing of information, a document, or other material to the director or other person under this section is not a waiver of an applicable privilege or claim of confidentiality.

(3) Documents, materials, or other information in the possession or control of the department or the NAIC under this chapter are confidential and privileged, are not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, are not subject to subpoena, and are not subject to discovery or admissible as evidence in a private civil or administrative action. The director shall enter into written agreements with the NAIC governing sharing and use of information provided under this chapter. The written agreement must specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. The agreement must provide that the director owns the information shared with the NAIC and its affiliates and subsidiaries and that the NAIC's use of the information is subject to the direction of the director. The agreement must provide for prompt notice to be given to an insurer whose confidential information in possession of the NAIC under this chapter is subject to a request or subpoena to the NAIC for disclosure or production, and require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in a judicial or administrative action.

(4) The sharing of information by the director under this chapter is not a delegation of regulatory authority or rule-making, and the director is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

Sec. 1357. (1) The director may participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations to determine the insurer's financial condition, business strategy, risk management, risk exposures, governance processes, regulatory position, or legality of conduct. The director may participate in a supervisory college with other regulators including state, federal, and international regulatory agencies, charged with the supervision of the insurer or its affiliates. The authority of the director under this section includes, but is not limited to, initiating a supervisory college, clarifying membership and participation of other supervisors in the supervisory college, clarifying the functions of the supervisory college and roles of other regulators including establishing a groupwide supervisor, coordinating ongoing activities of the supervisory college, and establishing a crisis management plan.

(2) The insurer is liable for and shall pay the reasonable expenses for the director to participate in the supervisory college, including reasonable travel expenses, if the director considers it appropriate to require the insurer to pay these costs.

(3) The director may enter into agreements under section 1355 providing the basis for cooperation and sharing of confidential information with state, federal, and international regulatory agencies that regulate the domestic insurer or affiliates within the insurance holding company system. This section does not delegate to the supervisory college the authority of the director to regulate or supervise the domestic insurer or its affiliates within its jurisdiction.

Sec. 1371. (1) An insurer that does not, without just cause, file a registration statement required under this chapter shall, after notice and hearing, pay a civil fine of \$1,000.00 for each day's delay, up to a maximum of \$50,000.00, to be recovered by the director and paid into the general fund. The director may reduce the penalty if the insurer demonstrates to the director that the civil fine would cause financial hardship to the insurer.

(2) Every director or officer of an insurance holding company system who knowingly violates, knowingly participates in or assents to, or with actual knowledge permits any of the officers or agents of the insurer to engage in material acts, omissions, or transactions or make investments that have not been properly reported or submitted under section 1324, 1341, or 1343, that, with respect to material transactions, violate this chapter, or that result in material false or misleading statements to the director with respect to the financial condition of the insurer or any of its affiliates shall pay, in their individual capacity, a civil forfeiture of not more than \$10,000.00 per violation, after notice and hearing before the director. In determining the amount of the civil forfeiture, the director shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and other matters as justice requires. In addition, a violation of this subsection is grounds for removal of a director or officer from a position of trust or responsibility in an insurer domiciled in this state in accordance with the procedures established in section 250.

(3) If it appears to the director that an insurer subject to this chapter or an insurer's director, officer, employee, or agent has engaged in a transaction or entered into a contract that is subject to section 1341 or 1344 and that would not have been approved had approval been requested, the director may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the director may also order the insurer to void the contract, transaction, or distribution, and restore the status quo if that action is in the best interest of the policyholders, creditors, or the public.

(4) If it appears to the director that an insurer or an insurer's director, officer, employee, or agent has committed a willful violation of this chapter, the director may institute criminal proceedings in the circuit court for the county in which the principal office of the insurer is located or, if the insurer does not have a principal office in this state, in the Ingham county circuit court against the insurer or the insurer's responsible director, officer, employee, or agent. An insurer that willfully violates this chapter may be fined not more than \$50,000.00. An individual who willfully violates this chapter may be fined not more than \$10,000.00 or, if the willful violation involves the deliberate perpetration of a fraud upon the director, imprisoned not more than 2 years, or both.

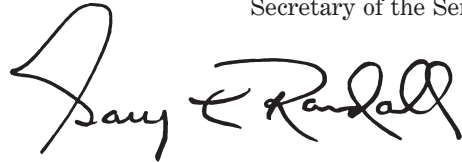
(5) An officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made a false statement, false report, or false filing with the intent to deceive the director in the performance of his or her duties under this chapter, shall be imprisoned for not more than 2 years, or fined \$10,000.00, or both. The officer, director, or employee shall pay a fine in his or her individual capacity.

(6) If the director determines that a person violated section 1311 and the violation prevents the full understanding of the enterprise risk of the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision under chapter 81.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved.....

.....
Governor