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SENATE FILE 1203

By COMMITTEE ON COMMERCE
(Committee on Commerce)

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Vote: Ayes.....46..... Nays.....0..... Vote: Ayes.....78..... Nays.....0.....
Approved.....April 14, 1970.....

A BILL FOR

1 An Act to regulate insurance holding company systems.

2 *Be It Enacted by the General Assembly of the State of Iowa:*

3 Section 1. **Definitions.**

4 For the purpose of this Act, unless the context otherwise
5 requires:

6 1. Affiliate of, or a person affiliated with, a specific
7 person, shall mean a person who directly, or indirectly through
8 one or more intermediaries, controls, or is controlled by, or
9 is under common control with, the person specified.

10 2. The term "commissioner" shall mean the insurance commis-
11 sioner, his deputies, or the insurance department, as appro-
12 priate.

13 3. Control, including controlling, controlled by, and under
14 common control with, shall mean the possession, direct or in-
15 direct, of the power to direct or cause the direction of the
16 management and policies of a person, whether through the owner-
17 ship of voting securities, by contract other than a commercial
18 contract for goods or nonmanagement services, or otherwise,
19 unless the power is solely the result of an official position
20 with or a corporate office held by the person. Control shall
21 be presumed to exist if any person, directly or indirectly,
22 owns, controls, holds with the power to vote, or holds proxies
23 representing, ten percent or more of the voting securities of
24 any other person. This presumption may be rebutted by showing
25 that control does not exist in fact.

1 4. Insurance holding company system shall consist of two
2 or more affiliated persons, one or more of which is an insurer.

3 5. Insurer shall mean a company qualified and licensed by
4 the insurance department of Iowa to transact the business of
5 insurance in this state by certificate issued pursuant to chap-
6 ters five hundred eight (508), five hundred fifteen (515), five
7 hundred eighteen A (518A), and five hundred twenty (520) of the
8 Code, except that it shall not include:

9 a. Agencies, authorities or instrumentalities of the United
10 States, its possessions and territories, the Commonwealth of
11 Puerto Rico, the District of Columbia, or a state or political
12 subdivision of a state.

13 b. Fraternal benefit societies.

14 c. Nonprofit medical, hospital or dental service associa-
15 tions.

16 6. A "person" is an individual, a corporation, a partner-
17 ship, an association, a joint stock company, a trust, an unin-
18 corporated organization, any similar entity or any combination
19 of the foregoing acting in concert, but shall not include any
20 securities broker performing no more than the usual and cus-
21 tomary broker's function.

22 7. A "subsidiary" of a specified person is an affiliate
23 controlled by such person directly, or directly through one
24 or more intermediaries.

25 8. A "securityholder" of a specified person is one who
26 owns any security of such person, including common stock,
27 preferred stock, debt obligations, and any other security
28 convertible into or evidencing the right to acquire any of
29 the foregoing.

30 9. The term "voting security" shall include any security
31 convertible into or evidencing a right to acquire a voting
32 security.

33 **Sec. 2. Subsidiaries of insurers.**

34 1. Authorization. Any domestic insurer, either by itself
35 or in cooperation with one or more persons, subject to the

- 1 limitations set forth herein or elsewhere in this Act, may organ-
2 ize or acquire one or more subsidiaries engaged or registered to
3 engage in one or more of the following businesses or activities:
- 4 a. Any kind of insurance business authorized by the juris-
5 diction in which it is incorporated.
 - 6 b. Acting as an insurance broker or as an insurance agent for
7 its parent or for any of its parent's insurer subsidiaries or
8 intermediate insurer subsidiaries.
 - 9 c. Investing, reinvesting or trading in securities for
10 its own account, that of its parent, any subsidiary of its
11 parent, or any affiliate or subsidiary.
 - 12 d. Management of any investment company subject to or
13 registered pursuant to the Investment Company Act of 1940,
14 as amended, including related sales and services.
 - 15 e. Acting as a broker dealer subject to or registered
16 pursuant to the Securities Exchange Act of 1934 as amended.
 - 17 f. Rendering financial services and/or advice to individ-
18 uals, governments, government agencies, corporations, or other
19 organizations or groups.
 - 20 g. Rendering other services related to the operations of
21 an insurance business including, but not limited to, actuarial,
22 loss prevention, safety engineering, data processing, account-
23 ing, claims, appraisal, and collection services.
 - 24 h. Ownership and management of assets which the parent
25 corporation could itself own and manage.
 - 26 i. Acting as administrative agent for a government instru-
27 mentality which is performing an insurance function.
 - 28 j. Financing of insurance premiums, agents and other forms
29 of consumer financing.
 - 30 k. Any other business or service activity reasonably ancil-
31 lary to an insurance business.
- 32 1. Owning a corporation or corporations engaged or organized
33 to engage exclusively in one or more of the businesses specified
34 in paragraphs a to k inclusive.
- 35 2. Exception. Nothing contained in subsection one (1) of

1 this section shall prohibit a domestic insurer, either by itself
2 or in cooperation with one or more persons, from investing
3 amounts up to a total of ten percent of surplus in one or more
4 subsidiaries or affiliates organized to do any lawful business.

5 3. Additional investment authority. In addition to invest-
6 ments in common stock, preferred stock, debt obligations and
7 other securities permitted under all other sections of this
8 Title, a domestic insurer may also:

9 a. Invest, in common stock, preferred stock, debt obliga-
10 tions, and other securities of one or more subsidiaries, amounts
11 which do not exceed the lesser of ten percent of such insurer's
12 assets or fifty percent of such insurer's surplus as regards
13 policyholders, provided that after such investments the in-
14 surer's surplus as regards policyholders will be reasonable in
15 relation to the insurer's outstanding liabilities and adequate
16 to its financial needs. In calculating the amount of such in-
17 vestments both of the following shall be included:

18 (1) Total net monies or other consideration expended and
19 obligations assumed in the acquisition or formation of a sub-
20 sidiary, including all organizational expenses and contribu-
21 tions to capital and surplus of such subsidiary whether or
22 not represented by the purchase of capital stock or issuance
23 of other securities.

24 (2) All amounts expended in acquiring additional common
25 stock, preferred stock, debt obligations, and other securities
26 and all contributions to the capital or surplus, of a subsidiary
27 subsequent to its acquisition or formation.

28 b. If the insurer's total liabilities, as calculated for
29 National Association of Insurance Commissioners annual state-
30 ment purposes, are less than ten percent of assets, invest any
31 amount in common stock, preferred stock, debt obligations, and
32 other securities of one or more subsidiaries, provided that
33 after such investment the insurer's surplus as regards policy-
34 holders, considering such investment as if it were a disallowed
35 asset, will be reasonable in relation to the insurer's outstand-

1 ing liabilities and adequate to its financial needs.

2 c. Invest any amount in common stock, preferred stock,
3 debt obligations and other securities of one or more sub-
4 sidiaries provided that each such subsidiary agrees to limit
5 its investments in any asset so that such investments will not
6 cause the amount of the total investment of the insurer to ex-
7 ceed any of the investment limitations specified in paragraph
8 a of this subsection or in chapters five hundred eleven (511),
9 five hundred fifteen (515), five hundred eighteen A (518A),
10 and five hundred twenty (520) of the Code applicable to the
11 insurer. For the purpose of this paragraph, "total invest-
12 ment of the insurer" shall include both:

- 13 (1) Any direct investment by the insurer in an asset.
14 (2) The insurer's proportionate share of any investment
15 in an asset by any subsidiary of the insurer, which shall be
16 calculated by multiplying the amount of the subsidiary's in-
17 vestment by the percentage of the insurer's ownership of such
18 subsidiary.

19 d. With the approval of the commission, invest any amount
20 in common stock, preferred stock, debt obligations, or other
21 securities of one or more subsidiaries, provided that after
22 such investment the insurer's surplus as regards policyholders
23 will be reasonable in relation to the insurer's outstanding
24 liabilities and adequate to its financial needs.

25 e. Invest any amount in the common stock, preferred stock,
26 debt obligations, or other securities of any subsidiary ex-
27 clusively engaged in holding title to or holding title to and
28 managing or developing real or personal property, if after con-
29 sidering as a disallowed asset so much of the investment as is
30 represented by subsidiary assets which if held directly by the
31 insurer would be considered as a disallowed asset, the insurer's
32 surplus as regards policyholders will be reasonable in relation
33 to the insurer's outstanding liabilities and adequate to its
34 financial needs, and if following such investment all voting
35 securities of such subsidiary would be owned by the insurer.

1 4. Exemption from investment restrictions. Investments in
2 common stock, preferred stock, debt obligations or other securi-
3 ties of subsidiaries made pursuant to subsection three (3) of
4 this section hereof shall not be subject to any of the other-
5 wise applicable restrictions or prohibitions contained in the
6 Code applicable to such investments of insurers.

7 5. Qualification of investment: when determined. Whether
8 any investment pursuant to subsection three (3) of this section
9 meets the applicable requirements thereof is to be determined
10 immediately after such investment is made, taking into account
11 the then outstanding principal balance on all previous invest-
12 ments in debt obligations, and the value of all previous invest-
13 ments in equity securities as of the date they were made.

14 6. Cessation of control. If an insurer ceases to control
15 a subsidiary, it shall dispose of any investment therein made
16 pursuant to this section within three years from the time of
17 the cessation of control or within such further time as the
18 commissioner may prescribe, unless at any time after such in-
19 vestment shall have been made, such investment shall have met
20 the requirements for investment under any other section of the
21 Code, and the insurer has notified the commissioner thereof.

22 **Sec. 3. Acquisition of control of or merger with domestic**
23 **insurer.**

24 1. Filing requirements. No person other than the issuer
25 shall make a tender offer for or a request or invitation for
26 tenders of, or enter into any agreement to exchange securities
27 for, seek to acquire, or acquire, in the open market or other-
28 wise, any voting security of a domestic insurer if, after the
29 consummation thereof, such person would, directly or indirectly,
30 or by conversion or by exercise of any right to acquire, be in
31 control of such insurer, and no person shall enter into an
32 agreement to merge with or otherwise to acquire control of a
33 domestic insurer unless, at the time any such offer, request,
34 or invitation is made or any such agreement is entered into,
35 or prior to the acquisition of such securities if no offer or

1 agreement is involved, such person has filed with the commis-
2 sioner and has sent to such insurer, and such insurer has sent
3 to its shareholders, a statement containing the information
4 required by this section and such offer, request, invitation,
5 agreement or acquisition has been approved by the commissioner
6 in the manner hereinafter prescribed.

7 a. For purposes of this section: a domestic insurer
8 shall include any other person controlling a domestic insurer
9 unless such other person is either directly or through its af-
10 filiates primarily engaged in business other than the business
11 of insurance.

12 2. Content of statement. The statement to be filed with
13 the commissioner hereunder shall be made under oath or affirma-
14 tion and shall contain the following information:

15 a. The name and address of each person by whom or on whose
16 behalf the merger or other acquisition of control referred to in
17 subsection one (1) of this section is to be affected, herein-
18 after called "acquiring party".

19 (1) If such person is an individual, his principal occupa-
20 tion and all offices and positions held during the past five
21 years, and any conviction of crimes other than minor traffic
22 violations during the past ten years.

23 (2) If such person is not an individual, a report of the
24 nature of its business operations during the past five years
25 or for such lesser period as such person and any predecessors
26 thereof shall have been in existence; an informative descrip-
27 tion of the business intended to be done by such person and
28 such person's subsidiaries; and a list of all individuals who
29 are or who have been selected to become directors or executive
30 officers of such person, or who perform or will perform func-
31 tions appropriate to such positions. Such list shall include
32 for each such individual the information required by subpara-
33 graph (1) of this subsection.

34 b. The source, nature and amount of the consideration used
35 or to be used in effecting the merger or other acquisition of

1 control, a description of any transaction wherein funds were
2 or are to be obtained for any such purpose, and the identity
3 of persons furnishing such consideration, provided, however,
4 that where a source of such consideration is a loan made in
5 the lender's ordinary course of business, the identity of the
6 lender shall remain confidential, if the person filing such
7 statements so requests.

8 c. Fully audited financial information as to the earnings
9 and financial condition of each acquiring party for the preced-
10 ing five fiscal years of each such acquiring party, or for
11 such lesser period as such acquiring party and any predecessors
12 thereof shall have been in existence, and similar unaudited in-
13 formation as of a date not earlier than ninety days prior to
14 the filing of the statement.

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

19 e. The number of shares of any security referred to in sub-
20 section one (1) of this section which each acquiring party pro-
21 poses to acquire, and the terms of the offer, request, invita-
22 tion, agreement, or acquisition referred to in subsection one
23 (1) of this section, and a statement as to the method by which
24 the fairness of the proposal was arrived at.

25 f. The amount of each class of any security referred to in
26 subsection one (1) of this section which is beneficially owned
27 or concerning which there is a right to acquire beneficial
28 ownership by each acquiring party.

29 g. A full description of any contracts, arrangements or
30 understandings with respect to any security referred to in sub-
31 section one (1) of this section in which any acquiring party
32 is involved, including but not limited to transfer of any of
33 the securities, joint ventures, loan or option arrangements,
34 puts or calls, guarantees of loans, guarantees against loss or
35 guarantees of profits, division of losses or profits, or the

1 giving or withhold of proxies. Such description shall
2 identify the persons with whom such contracts, arrangements or
3 understandings have been entered into.

4 h. A description of the purchase of any security referred
5 to in subsection one (1) of this section during the twelve
6 calendar months preceding the filing of the statement, by any
7 acquiring party, including the dates of purchase, names of the
8 purchasers, and consideration paid or agreed to be paid there-
9 for.

10 i. A description of any recommendations to purchase any
11 security referred to in subsection one (1) of this section
12 made during the twelve calendar months preceding the filing
13 of the statement, by acquiring party, or by anyone based
14 upon interview or at the suggestion of such acquiring party.

15 j. Copies of all tender offers for, requests or invitations
16 for tenders of, exchange offers for, and agreements to acquire
17 or exchange any securities referred to in subsection one (1)
18 of this section, and, if distributed, of additional soliciting
19 materials relating thereto.

20 k. The terms of any agreement, contract or understanding
21 made with any broker-dealer as to solicitations of securities
22 referred to in subsection one (1) of this section for tender,
23 and the amount of any fees, commissions or other compensation
24 to be paid to broker-dealers with regard thereto.

25 l. Such additional information as the commissioner may by
26 rule or regulation prescribe as necessary or appropriate for
27 the protection of policyholders and securityholders of the in-
28 surer or in the public interest.

29 If the person required to file the statement referred to in
30 subsection one (1) of this section is a partnership, limited
31 partnership, syndicate or other group, the commissioner may
32 require that the information called for by paragraphs a through
33 l of this subsection shall be given with respect to each
34 partner of such partnership or limited partnership, each mem-
35 ber of such syndicate or group, and each person who controls

1 such partner or member. If any such partner, member or person
2 is a corporation or the person required to file the statement
3 referred to in subsection one (1) of this section is a corpora-
4 tion, the commissioner may require that the information called
5 for by paragraphs a through l of this subsection shall be given
6 with respect to such corporation, each officer and director of
7 such corporation, and each person who is directly or indirectly
8 the beneficial owner of more than ten percent of the outstand-
9 ing voting securities of such corporation. If any material
10 change occurs in the facts set forth in the statement filed
11 with the commissioner and sent to such insurer pursuant to
12 this section, an amendment setting forth such change, together
13 with copies of all documents and other material relevant to
14 such change, shall be filed with the commissioner and sent to
15 such insurer within two business days after the person learns
16 of such change. Such insurer shall send such amendment to its
17 shareholders.

18 3. Alternative filing materials. If any offer, request,
19 invitation, agreement or acquisition referred to in subsection
20 one (1) of this section is proposed to be made by means of a
21 registration statement under the Securities Act of 1933 or in
22 circumstances requiring the disclosure of similar information
23 under the Securities Exchange Act of 1934, or under a state
24 law requiring similar registration, or disclosure, the person
25 required to file the statement referred to in subsection one
26 (1) of this section may utilize such documents in furnishing
27 the information called for by that statement.

28 4. Approval by the commissioner: hearings.

29 a. The commissioner shall approve any merger or other
30 acquisition of control referred to in subsection one (1) of
31 this section unless, after a public hearing thereon, he finds
32 any of the following:

33 (1) After the change of control the domestic insurer re-
34 ferred to in subsection one (1) of this section would not be
35 able to satisfy the requirements for the issuance of a license

- 1 to write the line or lines of insurance for which it is pres-
2 ently licensed.
- 3 (2) The effect of the merger or other acquisition of con-
4 trol would be substantially to lessen competition in insurance
5 in this state or tend to create a monopoly therein.
- 6 (3) The financial condition of any acquiring party is such
7 as might jeopardize the financial stability of the insurer, or
8 prejudice the interest of its policyholders or the interests of
9 any remaining securityholders who are unaffiliated with such
10 acquiring party.
- 11 (4) The terms of the offer, request, invitation, agreement
12 or acquisition referred to in subsection one (1) of this sec-
13 tion are unfair and unreasonable to the securityholders of the
14 insurer.
- 15 (5) The plans or proposals which the acquiring party has
16 to liquidate the insurer, sell its assets or consolidate or
17 merge it with any person, or to make any other material change
18 in its business or corporate structure or management, are un-
19 fair and unreasonable to policyholders of the insurer and not
20 in the public interest.
- 21 (6) The competence, experience and integrity of those per-
22 sons who would control the operation of the insurer are such
23 that it would not be in the interest of policyholders of
24 the insurer and of the public to permit the merger or other
25 acquisition of control.
- 26 b. The public hearing referred to in paragraph a of this
27 subsection shall be held within thirty days after the statement
28 required by subsection one (1) of this section is filed, and
29 at least twenty days' notice thereof shall be given by the
30 commissioner to the person filing the statement. Not less
31 than seven days' notice of such public hearing shall be given
32 by the person filing the statement to the insurer and to such
33 other persons as may be designated by the commissioner. The
34 insurer shall give such notice to its securityholders. The
35 commissioner shall make a determination within thirty days

1 after the conclusion of such hearing. At such hearing, the
2 person filing the statement, the insurer, any person to whom
3 notice of hearing was sent, and any other person whose in-
4 terests may be affected thereby shall have the right to present
5 evidence, examine and cross-examine witnesses, and offer oral
6 and written arguments and in connection therewith shall be
7 entitled to conduct discovery proceedings in the same manner
8 as is presently allowed in the district court of this state.
9 All discovery proceedings shall be concluded not later than
10 three days prior to the commencement of the public hearing.

11 5. Mailings to shareholders; payment of expenses. All
12 statements, amendments, or other material filed pursuant to
13 subsections one (1) or two (2) of this section, and all notices
14 of public hearings held pursuant to subsection four (4) of
15 this section, shall be mailed by the insurer to its share-
16 holders within five business days after the insurer has re-
17 ceived such statements, amendments, other material, or notices.
18 The expenses of mailing shall be borne by the person making
19 the filing. As security for the payment of such expenses, such
20 person shall file with the commissioner an acceptable bond or
21 other deposit in an amount to be determined by the commissioner.

22 6. Exemptions. The provisions of this section shall not
23 apply to:

24 a. Any offers, requests, invitations, agreements or acqui-
25 sitions by the person referred to in subsection one (1) of this
26 section of any voting security referred to in subsection one
27 (1) of this section which, immediately prior to the consumma-
28 tion of such offer, request, invitation, agreement or acqui-
29 sition, was not issued and outstanding.

30 b. Any offer, request, invitation, agreement or acquisition
31 which the commissioner by order shall exempt therefrom for one
32 of the following reasons:

33 (1) It has not been made or entered into for the purpose
34 and does not have the effect of changing or influencing the
35 control of a domestic insurer.

1 (2) It is otherwise not comprehended within the purposes of
2 this section.

3 7. Violations. The following shall be violations of this
4 section:

5 a. The failure to file any statement, amendment, or other
6 material required to be filed pursuant to subsection one (1)
7 or two (2) of this section.

8 b. The effectuation or any attempt to effectuate an acquisi-
9 tion or control of, or merger with, a domestic insurer unless
10 the commissioner has given his approval thereto.

11 8. Jurisdiction; consent to service of process. The courts
12 of this state are hereby vested with jurisdiction over every
13 person not resident, domiciled, or authorized to do business
14 in this state who files a statement with the commissioner under
15 this section, and over all actions involving such person aris-
16 ing out of violations of this section, and each such person
17 shall be deemed to have performed acts equivalent to and con-
18 stituting an appointment by such a person of the commissioner
19 to be his true and lawful attorney upon whom may be served all
20 lawful process in any action, suit or proceeding arising out
21 of violations of this section. Copies of all such lawful
22 process shall be served on the commissioner and transmitted
23 by registered or certified mail by the commissioner to such
24 person at his last known address.

25 **Sec. 4. Registration of insurers.**

26 1. Registration. Every insurer which is authorized to do
27 business in this state and which is a member of an insurance
28 holding company system shall register with the commissioner,
29 except a foreign insurer subject to disclosure requirements
30 and standards adopted by statute or regulation in the jurisdic-
31 tion of its domicile which are substantially similar to those
32 contained in this section. Any insurer which is subject to
33 registration under this section shall register within sixty
34 days after the effective date of this Act or fifteen days after
35 it becomes subject to registration, whichever is later, unless

1 the commissioner for good cause shown extends the time for
2 registration, and then within such extended time. The commis-
3 sioner may require any authorized insurer which is a member
4 of a holding company system which is not subject to registra-
5 tion under this section to furnish a copy of the registration
6 statement or other information filed by such insurance company
7 with the insurance regulatory authority of domiciliary juris-
8 diction.

9 2. Information and form required. Every insurer subject to
10 registration shall file a registration statement on a form pro-
11 vided by the commissioner, which shall contain current informa-
12 tion about:

13 a. The capital structure, general financial condition,
14 ownership and management of the insurer and any person con-
15 trolling the insurer.

16 b. The identity of every member of the insurance holding
17 company system.

18 c. The following agreements in force, relationships sub-
19 sisting, and transactions currently outstanding between such
20 insurer and its affiliates.

21 (1) Loans, other investments, or purchases, sales or ex-
22 changes of securities of the affiliates by the insurer or of
23 the insurer by its affiliates.

24 (2) Purchases, sales, or exchanges of assets.

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

26 (4) Guarantees or undertakings for the benefit of an affli-
27 ate which result in an actual contingent exposure of the in-
28 surer's assets to liability, other than insurance contracts
29 entered into in the ordinary course of the insurer's business.

30 (5) All management and service contracts and all cost
31 sharing arrangements, other than cost allocation arrangements
32 based upon generally accepted accounting principles.

33 (6) Reinsurance agreements covering all or substantially
34 all of one or more lines of insurance of the coding company.

35 d. Other matters concerning transactions between registered

1 insurers and any affiliates as may be included from time to
2 time in any registration forms adopted or approved by the com-
3 missioner.

4 3. Materiality. No information need be disclosed on the
5 registration statement filed pursuant to subsection two (2) of
6 this section if such information is not material for the pur-
7 poses of this section. Unless the commissioner by rule,
8 regulation or order provides otherwise, sales, purchases,
9 exchanges, loans or extensions of credit, or investments, in-
10 volving one-half of one percent or less of an insurer's ad-
11 mitted assets as of the thirty-first day of December next
12 preceding shall not be deemed material for purposes of this
13 section.

14 4. Amendments to registration statements. Each registered
15 insurer shall keep current the information required to be dis-
16 closed in its registration statement by reporting all material
17 changes or additions on amendment forms provided by the commis-
18 sioner within fifteen days after the end of the month in which
19 it learns of each such change or addition, provided, however,
20 that subject to subsection three (3) of section five (5) of
21 this Act, each registered insurer shall so report all dividends
22 and other distributions to shareholders within two business
23 days following the declaration thereof.

24 5. Termination of registration. The commissioner shall
25 terminate the registration of any insurer which demonstrates
26 that it no longer is a member of an insurance holding company
27 system.

28 6. Consolidated filing. The commissioner may require or
29 allow two or more affiliated insurers subject to registration
30 hereunder to file a consolidated registration statement or
31 consolidated reports amending their consolidated registration
32 statement or their individual registration statements.

33 7. Alternative registration. The commissioner may allow
34 an insurer which is authorized to do business in this state
35 and which is part of an insurance holding company system to

1 register on behalf of any affiliated insurer which is required
2 to register under subsection one (1) of this section and to
3 file all information and material required to be filed under
4 this section.

5 8. Exemptions. The provisions of this section shall not
6 apply to any insurer, information or transaction if and to the
7 extent that the commissioner by rule, regulation, or order
8 shall exempt the same from the provisions of this section.

9 9. Disclaimer. Any person may file with the commissioner
10 a disclaimer of affiliation with any authorized insurer or
11 such a disclaimer may be filed by such insurer or any member
12 of an insurance holding company system. The disclaimer shall
13 fully disclose all material relationships and basis for af-
14 filiation between such person and such insurer as well as the
15 basis for disclaiming such affiliation. After a disclaimer
16 has been filed, the insurer shall be relieved of any duty to
17 register or report under this section which may arise out of
18 the insurer's relationship with such person unless and until
19 the commissioner disallows such a disclaimer. The commissioner
20 shall disallow such a disclaimer only after furnishing all
21 parties in interest with notice and opportunity to be heard
22 and after making specific findings of fact to support such
23 disallowance.

24 10. Violations. The failure to file a registration state-
25 ment or any amendment thereto required by this section within
26 the time specified for such filing shall be a violation of
27 this section.

28 Sec. 5. Standards.

29 1. Transactions with affiliates. Material transactions
30 by registered insurers with their affiliates shall be subject
31 to all of the following standards:

32 a. The terms shall be fair and reasonable.

33 b. The books, accounts and records of each party shall
34 be so maintained as to clearly and accurately disclose the
35 precise nature and details of the transactions.

- 1 c. The insurer's surplus as regards policyholders follow-
2 ing any dividends or distributions to shareholder affiliates
3 shall be reasonable in relation to the insurer's outstanding
4 liabilities and adequate to its financial needs.
- 5 2. Adequacy of surplus. For purposes of this Act in deter-
6 mining whether an insurer's surplus as regards policyholders
7 is reasonable in relation to the insurer's outstanding liabili-
8 ties and adequate to its financial needs, the following factors,
9 among others, shall be considered:
- 10 a. The size of the insurer as measured by its assets,
11 capital and surplus, reserves, premium writings, insurance in
12 force and other appropriate criteria.
- 13 b. The extent to which the insurer's business is diversified
14 among the several lines of insurance.
- 15 c. The number and size of risks insured in each line of
16 business.
- 17 d. The extent of the geographical dispersion of the in-
18 surer's insured risks.
- 19 e. The nature and extent of the insurer's reinsurance pro-
20 gram.
- 21 f. The quality, diversification, and liquidity of the in-
22 surer's investment portfolio.
- 23 g. The recent past and projected future trend in the size
24 of the insurer's surplus as regards policyholders.
- 25 h. The surplus as regards policyholders maintained by other
26 comparable insurers.
- 27 i. The adequacy of the insurer's reserves.
- 28 j. The quality and liquidity of investments in subsidiaries
29 made pursuant to section two (2) of this Act. The commissioner
30 may treat any such investment as a disallowed asset for purposes
31 of determining the adequacy of surplus as regards policyholders
32 whenever in his judgment such investment so warrants.
- 33 3. Dividends and other distributions.
- 34 No insurer subject to registration under section four (4)
35 of this Act shall pay any extraordinary dividend or make any

1 other extraordinary distribution to its shareholders until
2 either thirty days after the commissioner has received notice
3 of the declaration thereof and has not within such period dis-
4 approved such payment, or the commissioner shall have approved
5 such payment within such thirty day period.

6 For purposes of this section, an extraordinary dividend or
7 distribution includes any dividend or distribution of cash or
8 other property, whose fair market value together with that of
9 other dividends or distributions made within the preceding
10 twelve months exceeds the greater of either ten percent of
11 such insurer's surplus as regards policyholders as of the
12 thirty-first day of December next preceding, or the net gain
13 from operations of such insurer, if such insurer is a life
14 insurer or the net investment income if such insurer is not
15 a life insurer, for the twelve month period ending the thirty-
16 first day of December next preceding, but shall not include
17 pro rata distributions of any class of the insurer's own
18 securities.

19 Notwithstanding any other provision of law, an insurer may
20 declare an extraordinary dividend or distribution which is
21 conditional upon the commissioner's approval thereof, and
22 such a declaration shall confer no rights upon shareholders
23 until either the commissioner has approved the payment of such
24 dividend or distribution, or the commissioner has not disap-
25 proved such payment within the thirty day period referred to
26 above.

27 **Sec. 6. Examination.**

28 1. Power of commissioner. Subject to the limitation con-
29 tained in this section and in addition to the powers which the
30 commissioner has under chapter five hundred seven (507) of
31 the Code relating to the examination of insurers, the commis-
32 sioner shall also have the power to order any insurer registered
33 under section four (4) of this Act to produce such records,
34 books, or other information papers in the possession of the
35 insurer or its affiliates as shall be necessary to ascertain

1 the financial condition or legality of conduct of such insurer.
2 In the event such insurer fails to comply with such order, the
3 commissioner shall have the power to examine such affiliates
4 to obtain such information.

5 2. Purpose and limitation of examination. The commissioner
6 shall exercise his power under subsection one (1) of this sec-
7 tion only if the examination of the insurer under chapter five
8 hundred seven (507) of the Code is inadequate or the interests
9 of the policyholders of such insurer may be adversely affected.

10 3. Use of consultants. The commissioner may retain at the
11 registered insurer's expense such attorneys, actuaries, accoun-
12 tants and other experts not otherwise a part of the commis-
13 sioner's staff as shall be reasonably necessary to assist in
14 the conduct of the examination under subsection one (1) of this
15 section. Any persons so retained shall be under the direction
16 and control of the commissioner and shall act in a purely
17 advisory capacity.

18 4. Expenses. Each registered insurer producing for examina-
19 tion records, books and papers pursuant to subsection one (1)
20 of this section shall be liable for and shall pay the expense
21 of such examination in accordance with section five hundred
22 seven point seven (507.7) of the Code.

23 **Sec. 7. Confidential treatment.**

24 All information, documents and copies thereof obtained by
25 or disclosed to the commissioner or any other person in the
26 course of an examination or investigation made pursuant to
27 section six (6) of this Act and all information reported pur-
28 suant to section four (4) of this Act, shall be given con-
29 fidential treatment and shall not be subject to subpoena and
30 shall not be made public by the commissioner or any other per-
31 son, except to insurance departments of other states, without
32 the prior written consent of the insurer to which it pertains
33 unless the commissioner, after giving the insurer and its
34 affiliates who would be affected thereby, notice and oppor-
35 tunity to be heard, determines that the interests of policy-

1 holders, shareholders or the public will be served by the
2 publication thereof, in which event he may publish all or any
3 part thereof in such manner as he may deem appropriate.

4 **Sec. 8. Rules and regulations.**

5 The commissioner may, upon notice and opportunity for all
6 interested persons to be heard, issue such rules, regulations,
7 and orders as shall be necessary to carry out the provisions
8 of this Act.

9 **Sec. 9. Injunctions; prohibitions against voting securities;
10 sequestration of voting securities.**

11 1. Injunctions. Whenever it appears to the commissioner
12 that any insurer or any director, officer, employee or agent
13 thereof has committed or is about to commit a violation of
14 this Act or any rule, regulation, or order issued by the com-
15 missioner hereunder, the commissioner may apply to the district
16 court of the county in which the principal office of the in-
17 surer is located or if such insurer has no such office in this
18 state then to the district court of Polk County for an order
19 enjoining such insurer or such director, officer, employee or
20 agent thereof from violating or continuing to violate this
21 Act or any such rule, regulation or order, and for such other
22 equitable relief as the nature of the case and the interests
23 of the insurer's policyholders, creditors and shareholders or
24 the public may require.

25 2. Voting of securities; when prohibited. No security
26 which is the subject of any agreement or arrangement regarding
27 acquisition, or which is acquired or to be acquired, in con-
28 travention of the provisions of this Act or of any rule, reg-
29 ulation or order issued by the commissioner hereunder may be
30 voted at any shareholders' meeting, or may be counted for
31 quorum purposes, and any action of shareholders requiring the
32 affirmative vote of a percentage of shares may be taken as
33 though such securities were not issued and outstanding; but
34 no action taken at any such meeting shall be invalidated by
35 the voting of such securities, unless the action would mate-

1 rially affect control of the insurer or unless the courts of
2 this state have so ordered. If any insurer or the commissioner
3 has reason to believe that any security of the insurer has
4 been or is about to be acquired in contravention of the pro-
5 visions of this Act or of any rule, regulation or order issued
6 by the commissioner hereunder the insurer or the commissioner
7 may apply to the district court of Polk County or to the dis-
8 trict court for the county in which the insurer has its prin-
9 cipal place of business to enjoin any offer, request, invita-
10 tion, agreement or acquisition made in contravention of section
11 three (3) of this Act or any rule, regulation, or order issued
12 by the commissioner thereunder to enjoin the voting of any
13 security so acquired, to void any vote of such security al-
14 ready cast at any meeting of shareholders, and for such other
15 equitable relief as the nature of the case and the interests
16 of the insurer's policyholders, creditors and shareholders or
17 the public may require.

18 3. Sequestration of voting securities. In any case where
19 a person has acquired or is proposing to acquire any voting
20 securities in violation of this Act or any rule, regulation
21 or order issued by the commissioner hereunder, the district
22 court of Polk County or the district court for the county in
23 which the insurer has its principal place of business may, on
24 such notice as the court deems appropriate, upon the applica-
25 tion of the insurer or the commissioner seize or sequester any
26 voting securities of the insurer owned directly or indirectly
27 by such person, and issue such orders with respect thereto as
28 may be appropriate to effectuate the provisions of this Act.
29 Notwithstanding any other provisions of law, for the purposes
30 of this Act the situs of the ownership of the securities of
31 domestic insurers shall be deemed to be in this state.

32 **Sec. 10. Criminal proceedings.**

33 Whenever it appears to the commissioner that any insurer or
34 any director, officer, employee or agent thereof has committed
35 a willful violation of this Act, the commissioner may cause

1 criminal proceedings to be instituted by the district court for
2 the county in which the principal office of the insurer is
3 located or if such insurer has no such office in the state,
4 then by the district court of Polk County against such insurer
5 or the responsible director, officer, employee or agent
6 thereof. Any insurer which willfully violates this Act may
7 be fined not more than one hundred dollars. Any individual
8 who willfully violates this Act may be fined not more than one
9 thousand dollars or, if such willful violation involves the
10 deliberate perpetration of a fraud upon the commissioner,
11 imprisoned not more than two years or both.

12 **Sec. 11. Receivership.**

13 Whenever it appears to the commissioner that any person has
14 committed a violation of this Act which so impairs the finan-
15 cial condition of a domestic insurer as to threaten insolvency
16 or make the further transaction of business by it hazardous to
17 its policyholders, creditors, shareholders or the public, then
18 the commissioner may proceed as provided in section five hun-
19 dred five point nine (505.9) of the Code to take possession
20 of the property of such domestic insurer and to conduct the
21 business thereof.

22 **Sec. 12. Revocation, suspension, or nonrenewal of insurer's**
23 **license.**

24 Whenever it appears to the commissioner that any person has
25 committed a violation of this Act which makes the continued
26 operation of an insurer contrary to the interest of policy-
27 holders or the public, the commissioner may, after giving
28 notice and an opportunity to be heard, determine to suspend,
29 revoke or refuse to renew such insurer's license or authority
30 to do business in this state for such period as he finds is
31 required for the protection of policyholders or the public.
32 Any such determination shall be accompanied by specific find-
33 ings of fact and conclusions of law.

34 **Sec. 13. Judicial review; mandamus.**

35 1. Any person aggrieved by any Act, determination, rule,

1 regulation or order or any action of the commissioner
2 pursuant to this Act may appeal therefrom to the district
3 court of Polk County. The court shall conduct its review with-
4 out a jury and by trial *de novo*, except that if all parties,
5 including the commissioner, so stipulate, the review shall be
6 confined to the record. Portions of the record may be intro-
7 duced by stipulation into evidence in a trial *de novo* as to
8 those parties so stipulating.

9 2. The filing of an appeal pursuant to this section shall
10 stay the application of any rule, regulation, order or other
11 action of the commissioner to the appealing party unless the
12 court, after giving such party notice and an opportunity to
13 be heard, determines that such a stay would be detrimental to
14 the interests of policyholders, shareholders, creditors or the
15 public.

16 3. Any person aggrieved by any failure of the commissioner
17 to act or make a determination required by this Act may peti-
18 tion the district court of Polk County for a writ in the nature
19 of a mandamus or a peremptory mandamus directing the commissioner
20 to act or make such determination forthwith.

EXPLANATION

This bill will provide regulation and control of the type or kind of subsidiaries a domestic insurance company may organize or acquire and the amount of money they may invest in such subsidiaries. It will further provide regulation of certain activities of insurance holding companies and require disclosure of relevant transactions between such holding companies and their insurance company subsidiary.

- 1 Amend Senate File 1203 as follows:
2 1. Page 13, lines 11 and 12, by striking the words
3 "courts of this state are" and inserting in lieu thereof
4 the words "district court is".
5 2. Page 13, line 20, by inserting after the word
6 "process" the words ", notice or demand".
7 3. Page 13, line 22, by inserting after the word
8 "process" the words ", notice or demand".
9 4. Page 21, lines 1 and 2, by striking the words "courts
10 of this state have" and inserting in lieu thereof the
11 words "district court has".

*Adopted
3/5*

Filed - *Adopted 3/5*
February 9, 1970

By COMMERCE ON COMMITTEE

- 1 Amend Senate File 1203, page 13, line 9, by striking
2 the word "or" before the word "control" and inserting in
3 lieu thereof the word "of".

Filed - *Adopted 3-5*
February 12, 1970

By GRIFFIN