

CHAPTER 60D

INSURANCE HOLDING COMPANY SYSTEMS

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Subd. 3. MS 1990 [Repealed, 1991 c 325 art 14 s 18]

Subd. 4. MS 1990 [Repealed, 1991 c 325 art 14 s 18]

Subd. 5. MS 1990 [Repealed, 1991 c 58 s 16; c 325 art 14 s 18]

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Subd. 8. MS 1990 [Repealed, 1991 c 325 art 14 s 18]

60D.03 [Repealed, 1991 c 325 art 14 s 18]

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60D.06 [Repealed, 1991 c 325 art 14 s 18]

60D.07 [Repealed, 1991 c 325 art 14 s 18]

60D.08 [Repealed, 1991 c 325 art 14 s 18]

60D.09 CRIMINAL PROCEEDINGS.

Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of sections 60D.15 to 60D.29, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court for Ramsey county against such insurer or the responsible director, officer, employee or agent thereof. Any person who willfully violates sections 60D.15 to 60D.29 shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

History: 1971 c 288 s 9; 1992 c 464 art 2 s 1

60D.10 [Repealed, 1991 c 325 art 14 s 18]

60D.11 [Repealed, 1991 c 325 art 14 s 18]

60D.12 [Repealed, 1991 c 325 art 14 s 18]

60D.13 [Repealed, 1991 c 325 art 14 s 18]

60D.15 DEFINITIONS.

Subdivision 1. **Terms.** For purposes of this chapter, the terms in subdivisions 2 to 10 have the meanings given them, unless the context otherwise requires.

Subd. 2. **Affiliate.** An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Subd. 3. **Commissioner.** The term “commissioner” means the commissioner of commerce, the commissioner’s deputies, or the commerce department, as appropriate.

Subd. 4. **Control.** The term “control,” including the terms “controlling,” “controlled by,” and “under common control with,” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with, corporate office held by, or court appointment of, the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section 60D.19, subdivision 11, that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

Subd. 5. **Insurance holding company system.** An “insurance holding company system” consists of two or more affiliated persons, one or more of which is an insurer.

Subd. 6. **Insurer.** The term “insurer” means a company qualified and licensed by the commissioner to transact the business of insurance, but does not include an insurance solicitor, agent, or agency. The term also does not include:

- (1) 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; or
- (2) nonprofit medical and hospital service associations.

Subd. 7. **Person.** A “person” is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but does not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

Subd. 8. **Security holder.** A “security holder” of a specified person is one who owns any security of the person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any security of the person.

Subd. 9. **Subsidiary.** A “subsidiary” of a specified person is an affiliate controlled by the person directly or indirectly through one or more intermediaries.

Subd. 10. **Voting security.** The term “voting security” includes any security convertible into or evidencing a right to acquire a voting security.

History: 1991 c 325 art 14 s 2; 1992 c 564 art 1 s 27

60D.16 SUBSIDIARIES OF INSURERS.

Subdivision 1. **Authorization.** A domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

- (1) any kind of insurance business authorized by the jurisdiction in which it is incorporated;
- (2) acting as an insurance broker or as an insurance agent for its parent or for any of its parent’s insurer subsidiaries;
- (3) investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;
- (4) management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
- (5) acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;

(6) rendering investment advice to governments, government agencies, corporations, or other organizations or groups;

(7) rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services;

(8) ownership and management of assets that the parent corporation could itself own or manage;

(9) acting as administrative agent for a governmental instrumentality which is performing an insurance function;

(10) financing of insurance premiums, agents, and other forms of consumer financing;

(11) any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and

(12) owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

Subd. 2. Additional investment authority. In addition to investments in common stock, preferred stock, debt obligations, and other securities otherwise permitted, a domestic insurer may also:

(a) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts that do not exceed the lesser of ten percent of the insurer's assets or 50 percent of the insurer's surplus as regards policyholders, provided that after the investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of these investments, investments in domestic or foreign insurance subsidiaries must be excluded, and there must be included:

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

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

(b) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer provided that the subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph (a) or other statutes applicable to the insurer. For the purpose of this paragraph, "the total investment of the insurer" includes:

(1) any direct investment by the insurer in an asset; and

(2) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which must be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary.

(c) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, if after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Subd. 3. Exemption from investment restrictions. Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subdivision 2 are not subject to any of the otherwise applicable restrictions or prohibitions applicable to these investments of insurers.

Subd. 4. Qualification of investment; when determined. Whether any investment pursuant to subdivision 2 meets the applicable requirements is to be determined before

the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

Subd. 5. Cessation of control. If an insurer ceases to control a subsidiary, it shall dispose of any investment in it made pursuant to this section within three years from the time of the cessation of control or within any further time the commissioner prescribes, unless at any time after the investment has been made, the investment meets the requirements for investment under any other provision of law, and the insurer has notified the commissioner of this fact.

History: 1991 c 325 art 14 s 3

60D.17 ACQUISITION OF CONTROL OF OR MERGER WITH DOMESTIC INSURER.

Subdivision 1. Filing requirements. No person other than the issuer shall: (1) make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the insurer; or (2) 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 the offer, request, or invitation is made or the agreement is entered into, or before the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section.

For purposes of this section, a domestic insurer includes a person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, the person shall file a preacquisition notification with the commissioner containing the information set forth in section 60D.18, subdivision 3, paragraph (b), 30 days before the proposed effective date of the acquisition. Failure to file is subject to section 60D.18, subdivision 5. For the purposes of this section, "person" does not include any securities broker holding, in the usual and customary brokers function, less than 20 percent of the voting securities of an insurance company or of any person that controls an insurance company.

Subd. 2. Content of statement. The statement to be filed with the commissioner shall be made under oath or affirmation and shall contain the following information:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subdivision 1 is to be effected, hereinafter called "acquiring party"; and

(1) if the person is an individual, the principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years; and

(2) if the person is not an individual, a report of the nature of its business operations during the past five years or for a lesser period as the person and any predecessors 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 such person, or who perform or will perform functions appropriate to such positions. The list must include for each individual the information required by clause (1).

(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 this purpose, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration, provided, however, that where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for a lesser period as the acquiring party and any predecessors 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 to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security referred to in subdivision 1 that each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subdivision 1.

(f) The amount of each class of any security referred to in subdivision 1 that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subdivision 1 in which any acquiring party is involved, including but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(h) A description of the purchase of any security referred to in subdivision 1 during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for it.

(i) A description of any recommendations to purchase any security referred to in subdivision 1 made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party.

(j) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subdivision 1 and, if distributed, of additional soliciting material relating to them.

(k) The term of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subdivision 1 for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to it.

(l) Additional information the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subdivision 1 is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by paragraphs (a) to (l) must be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If a partner, member, or person is a corporation, or the person required to file the statement referred to in subdivision 1 is a corporation the commissioner may require that the information called for by paragraphs (a) to (l) be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

If any material change occurs in the facts set forth in the statement filed with the

commissioner and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and sent to the insurer within two business days after the person learns of the change.

Subd. 3. Alternative filing materials. If any offer, request, invitation, agreement, or acquisition referred to in subdivision 1 is proposed to be made by means of a registration statement under the Securities Act of 1933, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subdivision 1 may utilize these documents in furnishing the information called for by that statement.

Subd. 4. Approval by commissioner; hearings. (a) The commissioner shall approve any merger or other acquisition of control referred to in subdivision 1 unless, after a public hearing, the commissioner finds that:

(1) After the change of control, the domestic insurer referred to in subdivision 1 would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed, unless the domestic insurer is in rehabilitation or other court-ordered supervision and the acquiring party commits to a plan that would enable the domestic insurer to satisfy the requirements for the issuance of a license within a reasonable amount of time;

(2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein in applying the competitive standard in this subdivision:

(i) the informational requirements of section 60D.18, subdivision 3, paragraph (b), and the standards of section 60D.18, subdivision 4, paragraph (c), shall apply;

(ii) the merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by section 60D.18, subdivision 4, paragraph (c), exist; and

(iii) the commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(3) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

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

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

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

(b) The public hearing referred to in paragraph (a) must be held 30 days after the statement required by subdivision 1 is filed, and at least 20 days notice of it shall be given by the commissioner to the person filing the statement. Not less than seven days notice of the public hearing shall be given by the person filing the statement to the insurer and to other persons designated by the commissioner. The commissioner shall make a determination within 30 days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected by it may present evidence, examine and cross-examine witnesses, and offer oral and written arguments and may conduct discovery proceedings in the same manner as is presently allowed in the district courts of this state. All discovery proceedings must be concluded not later than three days before the start of the public hearing.

(c) The commissioner may retain at the acquiring person's expense any attorneys,

actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

Subd. 5. Exemptions. This section does not apply to:

(1) Any transaction that is subject to section 60A.16, dealing with the merger or consolidation of two or more insurers.

(2) Any offer, request, invitation, agreement, or acquisition that the commissioner by order exempts from this section as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section.

Subd. 6. Violations. The following are violations of this section:

(1) the failure to file any statement, amendment, or other material required to be filed pursuant to subdivision 1 or 2; or

(2) the effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has approved it.

Subd. 7. Jurisdiction, consent to service of process. The courts of this state have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving the person arising out of violations of this section, and the person is deemed to have performed acts equivalent to and constituting an appointment by the person of the commissioner to be the person's true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at the person's last known address.

History: 1991 c 325 art 14 s 4; 1992 c 540 art 2 s 12; 1992 c 564 art 1 s 28

60D.18 ACQUISITIONS INVOLVING INSURERS NOT OTHERWISE COVERED.

Subdivision 1. Definitions. The following definitions apply for the purposes of this section only:

(a) "Acquisition" means an agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.

(b) An "involved insurer" includes an insurer that either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

Subd. 2. Scope. (a) Except as exempted in paragraph (b), this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

(b) This section does not apply to the following:

(1) an acquisition subject to approval or disapproval by the commissioner pursuant to section 60D.17;

(2) a purchase of securities solely for investment purposes so long as such securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under section 60D.15, subdivision 4, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;

(3) the acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner in accordance with subdivision 3,

paragraph (a), 30 days before the proposed effective date of the acquisition. However, the preacquisition notification is not required for exclusion from this section, if the acquisition would otherwise be excluded from this section by any other clause of this paragraph;

(4) the acquisition of already affiliated persons;

(5) an acquisition if, as an immediate result of the acquisition;

(i) in no market would the combined market share of the involved insurers exceed five percent of the total market;

(ii) there would be no increase in any market share; or

(iii) in no market would the combined market share of the involved insurers exceed 12 percent of the total market; and the market share increases by more than two percent of the total market.

For the purpose of this clause, a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

(6) an acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; and

(7) an acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving the condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.

Subd. 3. Preacquisition notification; waiting period. (a) An acquisition covered by subdivision 2 may be subject to an order pursuant to subdivision 4 unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The commissioner shall give confidential treatment to information submitted under this section in the same manner as provided in section 60D.22.

(b) The preacquisition notification must be in the form and contain the information as prescribed by the National Association of Insurance Commissioners relating to those markets that, under subdivision 2, paragraph (b), clause (5), cause the acquisition not to be exempted from the provisions of this section. The commissioner may require the additional material and information as the commissioner deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subdivision 4. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of the person indicating that person's ability to render an informed opinion.

(c) The waiting period required begins on the date of receipt of the commissioner of a preacquisition notification and ends on the earlier of the 30th day after the date of its receipt, or termination of the waiting period by the commissioner. Before the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

Subd. 4. Competitive standard. (a) The commissioner may enter an order under subdivision 5 with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with subdivision 3.

(b) In determining whether a proposed acquisition would violate the competitive standard of paragraph (a), the commissioner shall consider the following:

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(1) any acquisition covered under subdivision 2 involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:

(i) if the market is highly concentrated and the involved insurers possess the following shares of the market:

INSURER A	INSURER B
4 percent	4 percent or more
10 percent	2 percent or more
15 percent	1 percent or more

(ii) or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

INSURER A	INSURER B
5 percent	5 percent or more
10 percent	4 percent or more
15 percent	3 percent or more
19 percent	1 percent or more

A highly concentrated market is one in which the share of the four largest insurers is 75 percent or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard in paragraph (a). For the purpose of this clause, the insurer with the largest share of the market shall be deemed to be insurer A.

(2) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven percent or more of the market over a period of time extending from any base year five to ten years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subdivision 2 involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in clause (1) if:

- (i) there is a significant trend toward increased concentration in the market;
- (ii) one of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and
- (iii) another involved insurer's market is two percent or more.

(3) For the purposes of paragraph (b):

(i) The term "insurer" includes any company or group of companies under common management, ownership, or control.

(ii) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, the line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state.

(iii) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.

(iv) Even though an acquisition is not prima facie violative of the competitive standard under paragraph (b), clauses (1) and (2), the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under paragraph (b), clauses (1) and (2), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: market shares,

volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(c) An order may not be entered under subdivision 5 if:

(1) the acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

(2) the acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits which would arise from not lessening competition.

Subd. 5. Orders and penalties. If an acquisition violates the standards of this section, the commissioner may enter an order:

(1) requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

(2) denying the application of an acquired or acquiring insurer for a license to do business in this state.

The order must not be entered unless there is a hearing, the notice of the hearing is issued before the end of the waiting period and not less than 15 days before the hearing, and the hearing is concluded and the order is issued no later than 60 days after the end of the waiting period. Every order must be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.

An order entered under this paragraph shall not become final earlier than 30 days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon the plan or other information, the commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.

An order pursuant to this subdivision does not apply if the acquisition is not consummated.

Any person who violates a cease and desist order of the commissioner and while the order is in effect, may after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to any one or more of the following:

(1) a monetary penalty of not more than \$10,000 for every day of violation;

(2) suspension or revocation of the person's license.

Any insurer or other person who fails to make any filing required by this section and who also fails to demonstrate a good faith effort to comply with the filing requirement, is subject to a fine of not more than \$50,000.

Subd. 6. Inapplicable provisions. Sections 60D.24, paragraphs (b) and (c); and 60D.26 do not apply to acquisitions covered under subdivision 2.

History: 1991 c 325 art 14 s 5

60D.19 REGISTRATION OF INSURERS.

Subdivision 1. Registration. Every insurer that is authorized to do business in this state and that is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in:

(1) this section;

(2) section 60D.20, subdivisions 1, paragraph (a); 2; and 4; and

(3) either section 60D.20, subdivision 1, paragraph (b), or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each such change or addition.

Any insurer that is subject to registration under this section shall register within 15 days after it becomes subject to registration, and annually thereafter by March 1 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any insurer authorized to do business in the state that is a member of a holding company system, and that is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subdivision 3 or other information filed by the insurance company with the insurance regulatory authority of domiciliary jurisdiction.

Subd. 2. Information and form required. Every insurer subject to registration shall file the registration statement on a form prescribed by the National Association of Insurance Commissioners, which shall contain the following current information:

(1) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(2) the identity and relationship of every member of the insurance holding company system;

(3) the following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year between the insurer 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 exchange of assets;

(iii) transactions not in the ordinary course of business;

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

(v) all management agreements, service contracts, and all cost-sharing arrangements;

(vi) reinsurance agreements;

(vii) dividends and other distributions to shareholders; and

(viii) consolidated tax allocation agreements;

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

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

Subd. 3. Summary of registration statement. All registration statements must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

Subd. 4. Materiality. No information need be disclosed on the registration statement filed pursuant to subdivision 2 if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise; sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

Subd. 5. [Repealed, 1994 c 425 s 18]

Subd. 6. Information of insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer where such information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

Subd. 7. Termination of registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

Subd. 8. **Consolidated filing.** The commissioner may require or allow two or more affiliated insurers subject to registration to file a consolidated registration statement.

Subd. 9. **Alternative registration.** The commissioner may allow an insurer that is authorized to do business in this state and that is part of an insurance holding company system to register on behalf of any affiliated insurer that is required to register under subdivision 1 and to file all information and material required to be filed under this section.

Subd. 10. **Exemptions.** The provisions of this section do not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of this section.

Subd. 11. **Disclaimer.** Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or the disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section that may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

Subd. 12. **Violations.** The failure to file a registration statement or any summary of the registration statement required by this section within the time specified for the filing is a violation of this section.

History: 1991 c 325 art 14 s 6

60D.20 STANDARDS AND MANAGEMENT OF AN INSURER WITHIN A HOLDING COMPANY SYSTEM.

Subdivision 1. **Transactions within a holding company system.** (a) Transactions within a holding company system to which an insurer subject to registration is a party are subject to the following standards:

- (1) the terms shall be fair and reasonable;
- (2) charges or fees for services performed shall be reasonable;
- (3) expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
- (4) the books, accounts, and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including this accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and
- (5) the insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days prior thereto, or a shorter period the commissioner permits, and the commissioner has not disapproved it within this period.

(1) sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments provided the transactions are equal to or exceed: (i) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets, or 25 percent of surplus as regards policyholders; (ii) with respect to life insurers, three percent of the insurer's admitted assets; each as of the 31st day of December next preceding;

(2) loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to

make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided the transactions are equal to or exceed: (i) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders; (ii) with respect to life insurers, three percent of the insurer's admitted assets; each as of the 31st day of December next preceding;

(3) reinsurance agreements or modifications to those agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(4) all management agreements, service contracts and all cost-sharing arrangements; and

(5) any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing contained in this section authorizes or permits any transactions that, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(c) A domestic insurer may not enter into transactions which 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 statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that the separate transactions were entered into over any 12-month period for the purpose, the commissioner may exercise the authority under section 60D.25.

(d) The commissioner, in reviewing transactions pursuant to paragraph (b), shall consider whether the transactions comply with the standards set forth in paragraph (a), and whether they may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities.

Subd. 2. Dividends and other distributions. (a) Subject to the limitations and requirements of this subdivision, the board of directors of any domestic insurer within an insurance holding company system may authorize and cause the insurer to declare and pay any dividend or distribution to its shareholders as the directors deem prudent from the earned surplus of the insurer. An insurer's earned surplus, also known as unassigned funds, shall be determined in accordance with the accounting procedures and practices governing preparation of its annual statement, minus 25 percent of earned surplus attributable to net unrealized capital gains. Dividends which are paid from sources other than an insurer's earned surplus or are extraordinary dividends or distributions may be paid only as provided in paragraphs (d), (e), and (f).

(b) The insurer shall notify the commissioner within five business days following declaration of a dividend declared pursuant to paragraph (a) and at least ten days prior to its payment. The commissioner shall promptly consider the notification filed pursuant to this paragraph, taking into consideration the factors described in subdivision 4.

(c) The commissioner shall review at least annually the dividends paid by an insurer pursuant to paragraph (a) for the purpose of determining if the dividends are reasonable based upon (1) the adequacy of the level of surplus as regards policyholders remaining after the dividend payments, and (2) the quality of the insurer's earnings and extent to which the reported earnings include extraordinary items, such as surplus relief reinsurance transactions and reserve destrengthening.

(d) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until: (1) 30 days after the commissioner

has received notice of the declaration of it and has not within the period disapproved the payment; or (2) the commissioner has approved the payment within the 30-day period.

(e) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of (1) ten percent of the insurer's surplus as regards policyholders as of the 31st day of December next preceding; or (2) 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 the 31st day of December next preceding, but does not include pro rata distributions of any class of the insurer's own securities.

(f) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval, and the declaration shall confer no rights upon shareholders until: (1) the commissioner has approved the payment of such a dividend or distribution; or (2) the commissioner has not disapproved the payment within the 30-day period referred to above.

Subd. 3. Management of domestic insurers subject to registration. (a) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.

(b) Nothing in this chapter precludes a domestic insurer from having or sharing a common management use of personnel, property, or services with one or more other persons under arrangements meeting the standards of subdivision 1, paragraph (a), clause (1).

(c) Not less than one-third of the directors of a publicly traded domestic insurer, and not less than one-third of the members of each committee of the board of directors of any publicly traded domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee of the board.

(d) The board of directors of a publicly traded domestic insurer shall establish an audit committee having a majority of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee shall have responsibility for selecting independent certified public accountants and reviewing the scope and results of the independent audit and any internal audit.

(e) Paragraphs (c) and (d) do not apply to a domestic insurer if the person controlling the insurer is an insurer, or a general business corporation the principal business of which is insurance, having a board of directors and committees of the board that meet the requirements of paragraphs (c) and (d).

Subd. 4. Adequacy of surplus. For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, must be considered:

(1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the several lines of insurance;

(3) the number and size of risks insured in each line of business;

(4) the extent of the geographical dispersion of the insurer's insured risks;

- (5) the nature and extent of the insurer's reinsurance program;
- (6) the quality, diversification and liquidity of the insurer's investment portfolio;
- (7) the recent past and projected future trend in the size of the insurer's investment portfolio;
- (8) the surplus as regards policyholders maintained by other comparable insurers;
- (9) the adequacy of the insurer's reserves;
- (10) the quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants; and
- (11) 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.

History: 1991 c 325 art 14 s 7; 1992 c 464 art 1 s 8; 1993 c 299 s 9,10; 1994 c 425 s 8

60D.21 EXAMINATION.

Subdivision 1. **Power of commissioner.** Subject to the limitation contained in this section and in addition to the powers that the commissioner has under chapter 60A relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under section 60D.19 to produce records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ascertain the financial condition of the insurer or to determine compliance with this chapter. In the event the insurer fails to comply with the order, the commissioner shall have the power to examine the affiliates to obtain the information.

Subd. 2. **Use of consultants.** The commissioner may retain at the registered insurer's expense the attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff that are reasonably necessary to assist in the conduct of the examination under subdivision 1. Any person so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

Subd. 3. **Expenses.** Each registered insurer producing for examination records, books, and papers pursuant to subdivision 1 is liable for and shall pay the expense of the examination in accordance with section 60A.03.

History: 1991 c 325 art 14 s 8

60D.22 CONFIDENTIAL TREATMENT.

All information, documents, and copies of them obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 60D.20 and all information reported pursuant to sections 60D.18 and 60D.19, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected, notice and opportunity to be heard, determines that the interest of policyholders or the public will be served by the publication, in which event the commissioner may publish all or any part in the manner the commissioner considers appropriate.

History: 1991 c 325 art 14 s 9

60D.23 RULES.

The commissioner may adopt the rules and orders that are necessary to carry out the provisions of this chapter.

History: 1991 c 325 art 14 s 10

60D.24 INJUNCTIONS, PROHIBITIONS AGAINST VOTING SECURITIES, SEQUESTRATION OF VOTING SECURITIES.

Subdivision 1. **Injunctions.** Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent of the insurer has committed or is about to commit a violation of this chapter or of any rule or order issued by the commissioner, the commissioner may apply to the district court for the county in which the principal office of the insurer is located or if the insurer has no such office in this state then to the district court for Ramsey county for an order enjoining the insurer or the director, officer, employee, or agent of the insurer from violating or continuing to violate this chapter or any rule or order, and for other equitable relief as the nature of the case and the interest of the insurer's policyholders or the public requires.

Subd. 2. **Voting of securities; when prohibited.** No security that is the subject of any agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule or order issued by the commissioner may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding. No action taken at the meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule or order issued by the commissioner, the insurer or the commissioner may apply to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of section 60D.16 or any rule or order issued by the commissioner to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders and for other equitable relief as the nature of the case and the interest of the insurer's policyholders or the public requires.

Subd. 3. **Sequestration of voting securities.** In any case where a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule or order issued by the commissioner, the district court for Ramsey county or the district court for the county in which the insurer has its principal place of business may, on such notice as the court considers appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue any order with respect thereto as may be appropriate to effectuate the provisions of this chapter.

Notwithstanding any other provisions of law, for the purposes of this chapter the sites of the ownership of the securities of domestic insurers shall be considered to be in this state.

History: 1991 c 325 art 14 s 11

60D.25 RECEIVERSHIP.

Whenever it appears to the commissioner that any person has committed a violation of this chapter that so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders or the public, then the commissioner may proceed as provided in chapter 60B to take possessions of the property of the domestic insurer and to conduct the business of that insurer.

History: 1991 c 325 art 14 s 12

60D.26 RECOVERY.

(a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, (1) from any parent corporation or holding company or person or affili-

ate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock, or (2) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary(s) to a director, officer, or employee, where the distribution or payment pursuant to clause (1) or (2) is made at any time during the one year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of paragraphs (b), (c), and (d).

(b) No such distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time such distributions were paid shall be liable up to the amount of distributions or payments under paragraph (a), the person received. Any person who otherwise controlled the insurer at the time the distributions were declared is liable up to the amount of distributions the person would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(e) To the extent that any person liable under paragraph (c) is insolvent or otherwise fails to pay claims due from it pursuant to this paragraph, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, is jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

History: 1991 c 325 art 14 s 13

60D.27 REVOCATION, SUSPENSION, OR NONRENEWAL OF INSURER'S LICENSE.

Whenever it appears to the commissioner that any person has committed a violation of this chapter that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew the insurer's license or authority to do business in this state for the period the commissioner finds is required for the protection of policyholders or the public. The determination must be accompanied by specific findings of fact and conclusions of law.

History: 1991 c 325 art 14 s 14

60D.28 JUDICIAL REVIEW, MANDAMUS.

(a) Any person aggrieved by any act, determination, rule or order, or any other action of the commissioner pursuant to this chapter may appeal therefrom to the district court for Ramsey county. The court shall conduct its review without a jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulated.

(b) The filing of an appeal pursuant to this section shall stay the application of the rule, order, or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that the stay would be detrimental to the interest of policyholders or the public.

(c) Any person aggrieved by any failure of the commissioner to act or make a determination required by this chapter may petition the district court for Ramsey county

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for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make this determination immediately.

History: *1991 c 325 art 14 s 15*

60D.29 CONFLICT WITH OTHER LAWS.

All laws and parts of laws of this state inconsistent with this chapter are superseded with respect to matters covered by this chapter.

History: *1991 c 325 art 14 s 16*