Confidential Legal Citation: TCA 56-2-801

§ 56-2-801. Sharing of confidential information

The commissioner shall maintain as confidential all information received from the National Association of Insurance Commissioners (NAIC), any state or federal agency, and foreign countries that is confidential in those jurisdictions. The commissioner may allow for the sharing of otherwise confidential documents, materials, information, administrative or judicial orders, and other actions with the regulatory officials of any state or federal agency and foreign countries; provided, that the recipients are required, under their respective laws, to maintain such confidentiality. The commissioner may also allow for the sharing of otherwise confidential documents, materials, information, administrative or judicial orders, and other actions with the NAIC; provided, that the NAIC demonstrates by written statement its intent to maintain such confidentiality.

Legal Citation: TCA 56-1-406, 56-2-102, 103, 104 , 113, 114, and 115.

§ 56-1-406. Commissioner; custodian of collateral

The commissioner shall be the custodian of all collateral in the form of stock certificates, bonds, debentures, notes and other evidences of indebtedness deposited or pledged with the commissioner under any existing law, and it shall be the commissioner's official duty safely to keep, surrender and account for the collateral deposited as provided by law, and for the safekeeping of that collateral both the commissioner and the sureties on the commissioner's official bond are liable.

§ 56-2-102. Compliance with laws

(a) No domestic insurance company or foreign insurance company shall commence business in this state until it has complied with § 56-2-101, this section, §§ 56-2-103, 56-2-104, 56-2-113--56-2-115, 56-2-201, and 56-2-301, and has received from the commissioner a certificate of authority to do business.
(b) Any company organized under the laws of any other state or country, and that is admitted to do business in this state for the purpose of writing insurance authorized by this chapter, upon complying with all of the requirements of law relative to the organization of domestic insurance companies and payment of fees by like domestic insurance corporations, and designating its principal place of business at a place in this state, may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction of this state.
(c) A foreign credit life reinsurance company that meets the capital requirements of § 56-2-114(b) and that has at least fifty percent (50%) of its outstanding voting stock owned by persons or entities domiciled in this state, shall be entitled to obtain certificates of its corporate existence and shall be licensed to transact its business in this state, and be subject in all respects to the authority and jurisdiction of this state, if the following conditions are met:
(1) Approval by the commissioner of commerce and insurance in its state of domicile to change its state of domicile to this state;

(2) Submission to the Tennessee commissioner of commerce and insurance of a certificate of good standing from its state of domicile;
(3) Compliance with all of the requirements of law relative to the organization of domestic insurance companies and payment of fees required by domestic insurance companies; and
(4) Designation of a place in this state as its principal place of business.

§ 56-2-103. Filing with commissioner; officers and directors

(a) No domestic or foreign insurance company shall be qualified and authorized to do business in this state until:
(1) It files or deposits with the commissioner a properly certified copy of its charter or deed of settlement and, if a foreign insurance company, a statement of its financial condition and business on December 31 preceding the date on which it applies for permission to transact business, in the form and detail the commissioner requires, signed and sworn to by its president and secretary, or other proper officers, and pays for the filing of the copy and statement the sum of one hundred dollars ($100). If it is a foreign insurance corporation, it shall also file and deposit with the commissioner a certified statement of the secretary of state to the effect that its name complies with the requirements of title 48, chapter 14 or title 48, chapter 54, as applicable;
(2) It satisfies the commissioner that it is fully and legally organized under the laws of the state or foreign nation of its incorporation, and that it possesses and maintains the amount of capital, if a stock company, or surplus funds, if a mutual, reciprocal or Lloyd's plan insurer, required by § 56-2-114 and the amount of additional surplus required by § 56-2-115, to do the kind or kinds of business it proposes to transact;
(3) It, by duly executed instrument filed in the commissioner's office, constitutes and appoints the commissioner, the commissioner's chief deputy, or their successors, its true and lawful attorneys upon either of whom all lawful process in any action or legal proceeding against it may be served, and in the instrument agrees that any lawful process against it, which may be served upon its attorney, shall be of the same force and validity as if served on the company, and that the authority of the instrument shall continue in force, irrevocably, as long as any liability of the company remains outstanding in this state. Any process issued by any court of record in this state and served upon the commissioner or the commissioner's chief deputy by the proper officer of the county in which the commissioner or the chief deputy may have an office shall be deemed a sufficient process on the company, and it is the duty of the commissioner or the chief deputy, promptly, after service of process by any claimant, to forward, by registered mail, an exact copy of the notice to the company. Service of process from any county in this state upon the commissioner or the chief deputy by the proper officer of the county in which the commissioner or the chief deputy may have an office shall establish proper venue in the county from which the process was issued, if the plaintiff resides in that county, whether the insurance company has an office or agency located in one (1) or more other counties of this state or not;
(4)(A) If it is a foreign stock or mutual life insurance company, it satisfies the commissioner that it has and shall maintain on deposit with the state treasurer, or with the proper officer of some other state, securities in the actual cash value of at least two hundred thousand dollars ($200,000) consisting of bonds of the United States, or any agency or instrumentality of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms, bonds of this state, bonds of the state of domicile, or bonds publicly issued by any solvent institution created or existing under the laws of the United States or any state of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms, and the company files with the commissioner the certificate of the official with whom the securities are deposited, stating the time and amount, and that the official is satisfied that they are worth two hundred thousand dollars ($200,000) and

that the deposit is made with the official by the company for the protection of all policyholders and creditors in the United States;
(B) Notwithstanding subdivision (a)(4)(A), the commissioner may decline to accept as a deposit any specific issue of securities that the commissioner has determined may not provide the necessary protection to policyholders and creditors in the United States;
(5) If it is a foreign insurance company, it files a report of its real estate holdings, if required by the commissioner in the commissioner's discretion, so as to give the information required concerning domestic life insurance companies in § 56-3-305. The commissioner may refuse to admit and authorize a foreign insurance company to do business in this state in the event its land and the building or buildings on the land in which it has its principal office, and its other real property used in the transaction of insurance business, exceeds the maximum percentage of its admitted assets prescribed for domestic life insurance companies in § 56-3-305; and
(6) The commissioner shall not approve any articles of incorporation or issue a certificate of authority to any company until finding that:
(A) The company has submitted a plan of operation; and
(B) The incorporators, directors and proposed officers are of known good character and there is no good reason to believe that they are affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions or other insurance or business relations with any person or persons known to have been involved in the improper manipulation of assets, accounts, reinsurance, or any matter inimical to the business of insurance.
(b) The commissioner is authorized to promulgate rules and regulations the commissioner deems reasonable and necessary requiring the furnishing of information relative to election or appointment of new officers and directors by insurance companies licensed to do business in this state. If, after a hearing afforded the officer or director and the insurance company, the commissioner finds that the officer or director is incompetent, untrustworthy, or of known bad character, the commissioner may order the removal of the person as an officer or director of the insurance company. If the insurance company does not comply with the removal order within thirty (30) days after its receipt of the order, the commissioner may suspend the insurance company's certificate of authority to do business in this state until such time as the company is in compliance with the order.

§ 56-2-104. Deposits; principal place of business

(a) Any domestic company shall satisfy the commissioner that:
(1) It is fully and legally organized under the laws of this state to do the business it proposes to transact;
(2)(A) If it is a stock life insurance company or a mutual life insurance company, it has and will maintain on deposit with the state treasurer, or with such other officer designated by law, at least two hundred thousand dollars ($200,000) in cash or its equivalent; but the commissioner may, in the commissioner's discretion, accept as an equivalent bonds of the United States, or any agency or instrumentality of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms, bonds of this state, bonds of the state of domicile, or bonds publicly issued by any solvent institution created or existing under the laws of the United States or any state of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms;
(B) Notwithstanding subdivision (a)(2)(A), the commissioner may decline to accept as a deposit any specific issue of securities that the commissioner has determined may not provide the necessary protection to policyholders and creditors in the United States;
(C)(i) The company shall likewise be required to file with the commissioner the certificate of the official with whom the securities are deposited, stating the time and amount of bonds of the

United States, or any agency or instrumentality of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms, bonds of this state, bonds of the state of domicile, or bonds publicly issued by any solvent institution created or existing under the laws of the United States or any state, which have been included in the three (3) highest grades by any of the recognized securities rating firms, and that the commissioner is satisfied they are worth two hundred thousand dollars ($200,000), and that the deposit was made with the commissioner by the company for the protection of all policyholders and creditors in the United States;

(ii) Notwithstanding subdivision (a)(2)(C)(i), the commissioner may decline to accept as a deposit any specific issue of securities that the commissioner has determined may not provide the necessary protection to policyholders and creditors in the United States;

(D)(i) If the applicant is an insurance company other than a stock or mutual life insurance company, each company shall maintain on deposit at least one hundred thousand dollars ($100,000) in cash or its equivalent for each kind or class of insurance as defined in § 56-2-201; but the commissioner, in the commissioner's discretion, may accept as an equivalent bonds of the United States, or any agency or instrumentality of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms, bonds of this state, bonds of the state of domicile, or bonds publicly issued by any solvent institution created or existing under the laws of the United States or any state, which have been included in the three (3) highest grades by any of the recognized securities rating firms;

(ii) Notwithstanding subdivision (a)(2)(D)(i), the commissioner may decline to accept as a deposit any specific issue of securities that the commissioner has determined may not provide the necessary protection to policyholders and creditors in the United States. The deposits shall be subject to the same conditions as required in the case of stock or mutual life insurance companies; and

(3)(A) The insurer's principal place of business is or will be located and maintained in this state. This subdivision (a)(3)(A) also applies to domestic health maintenance organizations. This subdivision (a)(3)(A) does not apply to:

(i) Any insurer that was a domestic insurer prior to July 1, 1993, and whose primary executive, administrative and home offices were located outside of the state prior to July 1, 1993; or

(ii) Any domestic reciprocal whose primary executive, administrative and home offices, and original books and records, were located and maintained outside the state prior to January 1, 1996;

(B) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority of a domestic company found to be in violation of subdivision (a)(3)(A);

(C) The commissioner, in the commissioner's sole discretion, may waive the requirement in subdivision (a)(3)(A) for any company.

(b)(1) The deposit required by this section is not applicable to foreign stock or mutual life insurance companies, or to domestic or foreign insurance companies writing workers' compensation insurance or fidelity and surety bonds. Companies writing that type or form of insurance shall make deposits in accordance with the requirements of existing laws.

(2) The provisions of this section applicable to domestic insurance companies shall apply to all insurance companies and associations except those specifically exempted in this section, whether the companies are stock or mutual, and it is specifically provided that §§ 56-2-101 -- 56-2-103, this section, §§ 56-2-113 -- 56-2-115, 56-2-201, and 56-2-301 fully apply to all such companies or associations regardless of what law or statute of this state under which the companies or associations may have been organized.

(3) No requirement in this section not in effect on January 1, 1967, shall be considered applicable to any insurance company properly licensed to transact business in this state as of that date, except that any stock casualty company, foreign or domestic, not having at least one hundred thousand dollars ($100,000) in cash or equivalent on deposit for each kind of insurance

as defined in § 56-2-201, shall meet the requirement by December 31, 1978. Domestic stock casualty companies not maintaining capital paid up of at least one hundred thousand dollars ($100,000) shall make a deposit equal to their capital paid up by December 31, 1977.
(4) This section shall not apply to, or affect, or be construed as in anywise applying to, or affecting, domestic state and county mutual fire insurance companies, the organization of which was and is authorized by chapters 19-21 of this title.

§ 56-2-113. Foreign companies; authorization; time in business

(a) No foreign insurance company transacting any of the kinds of insurance as defined in § 56-2-201 shall be admitted and authorized to do business in this state until it can satisfy the commissioner that it has been organized and actively engaged in the insurance business in the state of its incorporation for a period of three (3) years prior to the date of its application to be admitted and authorized to do business in this state.
(b) Subsection (a) does not apply to a foreign insurance company that is:
(1) The wholly-owned subsidiary of an insurance company or health maintenance organization admitted and authorized to do business in this state;
(2) The continuing corporation resulting from a merger or consolidation of insurance companies at least one (1) of which, prior to the merger or consolidation, met all the requirements for admission and authorization to do business in this state, including the requirement of having been actively engaged in the insurance business in its state of incorporation for three (3) years;
(3) The wholly-owned subsidiary of a holding company that also owns one hundred percent (100%) of the common capital stock, excluding qualifying shares required to be held by directors, of an insurance company or health maintenance organization admitted and authorized to do business in this state; or
(4) A foreign insurance company originally chartered and licensed to transact business in this state, and making application to redomesticate to this state upon furnishing the following from the commissioner of commerce and insurance of its state of domicile:
(A) Letter of approval to redomesticate;
(B) Letter of intent to permit the company to transfer its business and assets to this state; and
(C) A certificate of good standing.
(c) "Owned" and "owns," as used in subsection (b), mean ownership either directly or indirectly through one (1) or more intermediaries.
(d) The commissioner, in the commissioner's sole discretion, may waive the requirement in subsection (a) for any company, if the commissioner determines it is in the public interest.

§ 56-2-114. Capital requirements; insurance combinations; reinsurance

(a) An insurer otherwise qualified therefor may be authorized to transact combinations of kinds of insurance while processing and maintaining capital, if a stock company, or surplus funds, if a mutual, reciprocal, or Lloyd's plan insurer, in the amount of one million dollars ($1,000,000).
(b) To transact the business of reinsuring credit life and credit accident insurance and health insurance, an insurer must possess and maintain capital in the amount of one hundred fifty thousand dollars ($150,000); provided, that a company so authorized shall not be authorized to conduct any other line of business unless otherwise qualified.

§ 56-2-115. Surplus funds

In addition to the paid up capital stock or surplus as required under §§ 56-2-103 and 56-2-114(a), all insurance companies doing business in this state shall possess and maintain bona fide surplus funds in the amount of one million dollars ($1,000,000), except for insurance companies authorized under § 56-2-114(b), which shall possess and maintain bona fide surplus funds equaling in amounts not less than fifty percent (50%) of the capital stock or surplus otherwise required by § 56-2-114(b).

West's Tennessee Code Annotated
Title 56. Insurance
Chapter 11. Insurance Holding Companies and Risk Management (Refs & Annos)
Part 1. Insurance Holding Company System Act of 1986 (Refs & Annos)

T. C. A. § 56-11-103

§ 56-11-103. Required filing; approval by commissioner; exemptions; violations; jurisdiction of courts

Effective: July 10, 2016
Currentness

(a)(1) FILING REQUIREMENTS. No person other than the issuer shall make a tender offer for, or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the insurer, and no such person shall 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 any such offer, request, or invitation is made or any such agreement is entered into, or prior to 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 part.

(2) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty (30) days prior to the cessation of control. The commissioner shall determine those instances in which the party or parties seeking to divest or to acquire a controlling interest in an insurer will be required to file for, and obtain approval of, the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in the commissioner's discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to above is otherwise filed, this subdivision (a)(2) shall not apply.

(3) With respect to a transaction subject to this section, the acquiring person must also file a preacquisition notification with the commissioner, which shall contain the information set forth in § 56-11-104(c)(1). A failure to file the notification may be subject to penalties specified in § 56-11-104(e)(3).

(4) As used in this section, “domestic insurer” includes any 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.

(5) For the purposes of this section, “person” does not include any securities broker holding, in the usual and customary broker's function, less than twenty percent (20%) of the voting securities of an insurance company or of any person that controls an insurance company.

(b) CONTENT OF STATEMENT. The statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:

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

(A) If an individual, the person's principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years; and

(B) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as the person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to the positions. The list shall include for each such individual the information required by subdivision (b)(1)(A);

(2) 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 wherein funds were or are to be obtained for any such 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, 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;

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

(4) 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;

(5) The number of shares of any security referred to in subsection (a) that each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a), and a statement as to the method for arriving at the fairness of the proposal;

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

(7) A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection (a) 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 shall identify the persons with whom the contracts, arrangements or understandings have been entered into;

(8) A description of the purchase of any security referred to in subsection (a) during the twelve (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 the security;

(9) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve (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;

(10) 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 subsection (a), and, if distributed, of additional soliciting material relating to the activity;

(11) 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 subsection (a) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard to the agreement;

(12) A nonrefundable fee in an amount that the commissioner shall by rule establish;

(13) Any additional information the commissioner may by rule or regulation 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 subsection (a) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by subdivisions (b)(1)-(15) shall 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 any such partner, member or person is a corporation, or the person required to file the statement referred to in subsection (a) is a corporation, the commissioner may require that the information called for by subdivisions (b)(1)-(15) shall 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 (10%) 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 materials relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change;

(14) An agreement by the person required to file the statement referred to in subsection (a) that it will provide the annual report, specified in § 56-11-105(l), for so long as control exists; and

(15) An acknowledgement by the person required to file the statement referred to in subsection (a) that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer.

(c) ALTERNATIVE FILING MATERIALS. If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933 (15 U.S.C. § 77a et seq.), or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize the documents in furnishing the information called for by that statement.

(d) APPROVAL BY COMMISSIONER; HEARINGS.

(1) The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing, the commissioner finds that:

(A) After the change of control, the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly in this state. In applying the competitive standard in this subdivision (d)(1)(B):

(i) The informational requirements of § 56-11-104(c)(1) and the standards of § 56-11-104(d)(2) 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 § 56-11-104(d)(3) 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;

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

(D) 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;

(E) 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

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

(2) The public hearing referred to in subdivision (d)(1) shall be held within thirty (30) days after the statement required by subsection (a) is filed, and at least twenty (20) days' notice of the public hearing shall be given by the commissioner to the person filing the statement. Not less than seven (7) days' notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within the sixty-day period preceding the effective date of the proposed transaction. 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 the proposed transaction, shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(3) If the proposed acquisition of control will require the approval of more than one (1) commissioner, the public hearing referred to in subdivision (d)(2) may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (a). Such person shall file the statement referred to in subsection (a) with the National Association of Insurance Commissioners (NAIC) within five (5) days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten (10) days of the receipt of the statement referred to in subsection (a). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner may attend such hearing, in person or by telecommunication.

(4) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by this title, shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to § 56-11-103(a)(1).

(5) 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.

(e) EXEMPTIONS. This section does not apply to:

(1) Any transaction that is subject to the provisions of chapter 10 of this title dealing with the merger or consolidation of two (2) or more insurers.

(2) Any offer, request, invitation, agreement or acquisition that the commissioner by order shall exempt therefrom as:

(A) 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

(B) As otherwise not comprehended within the purposes of this section.

(f) 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 subsection (a) or (b); or

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

(g) JURISDICTION; CONSENT TO SERVICE OF PROCESS. The courts of this state are hereby vested with 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 each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a 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.

Credits

1986 Pub.Acts, c. 572, § 3; 1988 Pub.Acts, c. 663, § 3; 2014 Pub.Acts, c. 583, §§ 4 to 9, eff. March 28, 2014.

Formerly § 56-11-203.

T. C. A. § 56-11-103, TN ST § 56-11-103

Current with laws from the 2018 Second Reg. Sess. of the 110th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text.

West's Tennessee Code Annotated
Title 56. Insurance
Chapter 11. Insurance Holding Companies and Risk Management (Refs & Annos)
Part 1. Insurance Holding Company System Act of 1986 (Refs & Annos)

T. C. A. § 56-11-104

§ 56-11-104. Requirements for acquisitions; enforcement by commissioner

Effective: July 10, 2016
Currentness

(a) DEFINITIONS. As used in this section only:

(1) “Acquisition” means any 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; and

(2) “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.

(b) SCOPE.

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

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

(A) A purchase of securities solely for investment purposes so long as the 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 § 56-11-101(b)(3), it is not solely for investment purposes unless the commissioner of insurance of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of commerce and insurance of this state;

(B) 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 of commerce and insurance in accordance with subdivision (c)(1) thirty (30) days prior to the proposed effective date of the acquisition. However, the pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subdivision of this subdivision (b)(2);

(C) The acquisition of already affiliated persons;

(D) 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 (5%) 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 twelve percent (12%) of the total market, and the market share increases by more than two percent (2%) of the total market. For the purpose of this subdivision (b)(2)(D), "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;

(E) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; or

(F) 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 of insurance to the commissioner of commerce and insurance of this state.

(c) PRE-ACQUISITION NOTIFICATION, WAITING PERIOD. An acquisition covered by subsection (b) may be subject to an order pursuant to subsection (e) unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection (c) in the same manner as provided in § 56-11-108.

(1) The pre-acquisition notification shall be in the form and contain the information as prescribed by the National Association of Insurance Commissioners relating to those markets that, under subdivision (b)(2)(D), cause the acquisition not to be exempted from this section. The commissioner may require additional material and information deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (d). 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 the person's ability to render an informed opinion.

(2) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of the receipt, or termination of the waiting period by the commissioner. Prior to 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 thirtieth day after receipt of the additional information by the commissioner, or termination of the waiting period by the commissioner.

(d) COMPETITIVE STANDARD.

(1) The commissioner may enter an order under subdivision (e)(1) 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 subsection (c).

(2) In determining whether a proposed acquisition would violate the competitive standard of subdivision (d)(1), the commissioner shall consider the following:

(A) Any acquisition covered under subsection (b) involving two (2) 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%	4% or more
10%	2% or more
15%	1% or more

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

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two (2) columns in the table is prima facie evidence of violation of the competitive

standard in subdivision (d)(1). For the purpose of this subdivision (d)(2)(A), the insurer with the largest share of the market shall be deemed to be Insurer A.

(B) 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 (2) largest to the eight (8) largest has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (b) involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in subdivision (d)(1) if:

(i) There is a significant trend toward increased concentration in the market;

(ii) One (1) of the insurers involved is one (1) of the insurers in a grouping of the large insurers showing the requisite increase in the market share; and

(iii) Another involved insurer's market is two percent (2%) or more.

(C) As used in this subdivision (d)(2):

(i) “Insurer” includes any company or group of companies under common management, ownership or control;

(ii) “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; and

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

(D) Even though an acquisition is not prima facie violative of the competitive standard under subdivisions (d)(2)(A) and (B), 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 subdivisions (d)(2)(A) and (B), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subdivision (d)(2)(D) 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.

(3) An order may not be entered under subdivision (e)(1) if:

(A) 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 that would arise from the economies exceed the public benefits that would arise from not lessening competition; or

(B) The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits that would arise from not lessening competition.

(e) ORDERS AND PENALTIES.

(1) If an acquisition violates the standards of this section, the commissioner may enter an order 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.

(2) The commissioner may also issue an order denying the application of an acquired or acquiring insurer for a license to do business in this state.

(3) An order shall not be entered unless there is a hearing, notice of the hearing is issued prior to the end of the waiting period and not less than fifteen (15) days prior to the hearing, and the hearing is concluded and the order is issued no later than sixty (60) days after the date of the filing of the pre-acquisition notification with the commissioner. Every order shall be accompanied by a written decision of the commissioner setting forth the commissioner's findings of fact and conclusions of law.

(4) An order pursuant to this subsection (e) shall not apply if the acquisition is not consummated.

(5) Any person who violates a cease and desist order of the commissioner under this section and while the order is in effect may, after notice and hearing, and upon order of the commissioner, be subject to any one (1) or more of the following at the discretion of the commissioner:

(A) A monetary penalty of not more than ten thousand dollars ($10,000) for every day of violation; or

(B) Suspension or revocation of the person's license.

(6) 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 any filing requirement shall be subject to a fine of not more than fifty thousand dollars ($50,000).

(f) INAPPLICABLE PROVISIONS. Sections 56-11-110(b) and (c) and 56-11-112 do not apply to acquisitions covered under subsection (b).

Credits

1986 Pub.Acts, c. 572, § 4; 2014 Pub.Acts, c. 583, §§ 10 to 12, eff. March 28, 2014.

Formerly § 56-11-204.

T. C. A. § 56-11-104, TN ST § 56-11-104

Current with laws from the 2018 Second Reg. Sess. of the 110th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text.

End of Document

West's Tennessee Code Annotated
Title 56. Insurance
Chapter 11. Insurance Holding Companies and Risk Management (Refs & Annos)
Part 1. Insurance Holding Company System Act of 1986 (Refs & Annos)

T. C. A. § 56-11-105

§ 56-11-105. Registration of insurers and health maintenance organizations; statements; disclaimer of affiliation

Effective: April 7, 2016
Currentness

(a)(1) REGISTRATION. Every insurer and every health maintenance organization that is authorized to do business in this state and that is a member of an insurance holding company system or health maintenance organization 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:

(A) This section;

(B) § 56-11-106(a)(1), (b), (d); and

(C) Either § 56-11-106(a)(2) 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 fifteen (15) days after the end of the month in which it learns of each change or addition.

(2) Any insurer or health maintenance organization that is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by April 30 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer or health maintenance organization authorized to do business in the state which is a member of an insurance or health maintenance organization holding company system that is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in § 56-11-105(c), or other information filed by the insurance company or health maintenance organization with the insurance or health maintenance organization regulatory authority of its domiciliary jurisdiction.

(b) INFORMATION AND FORM REQUIRED. Every insurer and every health maintenance organization 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 or health maintenance organization and any person controlling the insurer or health maintenance organization;

(2) The identity and relationship of every member of the insurance holding company system or health maintenance organization 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 or health maintenance organization and its affiliates:

(A) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or health maintenance organization, or of the insurer or health maintenance organization by its affiliates;

(B) Purchases, sales, or exchange of assets;

(C) Transactions not in the ordinary course of business;

(D) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's or the health maintenance organization's assets to liability, other than insurance or provider or enrollee contracts entered into in the ordinary course of the insurer's or health maintenance organization's business;

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

(F) Reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements;

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

(5) If requested by the commissioner, the insurer or health maintenance organization shall include financial statements of, or within an insurance or health maintenance organization holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer or health maintenance organization required to file financial statements pursuant to this subdivision (b)(5) may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;

(6) Other matters concerning transactions between registered insurers or registered health maintenance organizations and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

(7) Statements that the insurer's or health maintenance organization's board of directors oversees corporate governance and internal controls and that the insurer's or health maintenance organization's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

(8) Any other information required by the commissioner by rule or regulation.

(c) SUMMARY OF REGISTRATION STATEMENT. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) MATERIALITY. No information need be disclosed on the registration statement filed pursuant to subsection (b) if the information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (0.5%) or less of an insurer's or health maintenance organization's admitted assets as of December 31 next preceding, shall not be deemed material for purposes of this section.

(e) REPORTING OF DIVIDENDS TO SHAREHOLDERS. Subject to § 56-11-106(b), each registered insurer and each registered health maintenance organization shall report to the commissioner, for informational purposes, all dividends and other distributions to shareholders within five (5) business days following the declaration thereof, and at least ten (10) days prior to their payment. The commissioner shall promulgate rules that establish procedures to:

(1) Consider promptly the informational prepayment notices and the standards set forth in § 56-11-106(b); and

(2) Review annually all ordinary dividends within the preceding twelve (12) months.

(f) INFORMATION OF INSURERS. Any person within an insurance holding company system or health maintenance organization holding company system subject to registration shall be required to provide complete and accurate information to an insurer or health maintenance organization, where the information is reasonably necessary to enable the insurer or health maintenance organization to comply with this part.

(g) TERMINATION OF REGISTRATION. The commissioner shall terminate the registration of any insurer or health maintenance organization that demonstrates that it no longer is a member of an insurance holding company system or health maintenance organization holding company system.

(h) CONSOLIDATED FILING. The commissioner may require or allow two (2) or more affiliated insurers or two (2) or more affiliated health maintenance organizations subject to registration under this section to file a consolidated registration statement.

(i) ALTERNATIVE REGISTRATION. The commissioner may allow an insurer or health maintenance organization that is authorized to do business in this state and that is part of an insurance holding company system or health maintenance organization holding company system to register on behalf of any affiliated insurer or health maintenance organization that is required to register under subsection (a) and to file all information and material required to be filed under this section.

(j) EXEMPTIONS. This section does not apply to any insurer, health maintenance organization, information or transaction if, and to the extent that, the commissioner by rule, regulation, or order may exempt the same from this section.

(k) DISCLAIMER. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or health maintenance organization or such a disclaimer may be filed by the insurer or health maintenance organization or any member of any insurance holding company system or health maintenance organization holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer or health maintenance organization as well as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of any duty to register or report under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

(l) ENTERPRISE RISK FILING. The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(m) VIOLATIONS. The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for the filing is a violation of this section.

Credits

1986 Pub.Acts, c. 572, § 5; 1993 Pub.Acts, c. 253, § 17, eff. July 1, 1993; 1995 Pub.Acts, c. 363, § 16, eff. July 1, 1995; 2000 Pub.Acts, c. 708, § 3d; 2001 Pub.Acts, c. 118, § 2, eff. April 18, 2001; 2014 Pub.Acts, c. 583, § 13, eff. March 28, 2014; 2016 Pub.Acts, c. 735, § 4, eff. April 7, 2016.

Formerly § 56-11-205.

T. C. A. § 56-11-105, TN ST § 56-11-105
Current with laws from the 2018 Second Reg. Sess. of the 110th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text.

End of Document

West's Tennessee Code Annotated
Title 56. Insurance
Chapter 11. Insurance Holding Companies and Risk Management (Refs & Annos)
Part 1. Insurance Holding Company System Act of 1986 (Refs & Annos)

T. C. A. § 56-11-106

§ 56-11-106. Transactions within a holding company system; standards; dividends; management of domestic insurers and health maintenance organizations

Effective: May 3, 2018
Currentness

(a) TRANSACTIONS WITHIN A HOLDING COMPANY SYSTEM.

(1) Transactions within an insurance or health maintenance organization holding company system, to which an insurer or health maintenance organization subject to registration is a party, shall be subject to the following standards:

(A) The terms shall be fair and reasonable;

(B) Agreements for cost sharing services and management shall include such provisions as required by rule and regulation issued by the commissioner;

(C) Charges or fees for services performed shall be reasonable;

(D) Expenses incurred and payment received shall be allocated to the insurer or health maintenance organization in conformity with customary insurance accounting practices, or, in the case of health maintenance organizations, customary accounting practices applicable to health maintenance organizations, consistently applied;

(E) The books, accounts and records of each party to all the transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including the accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and

(F) The insurer's surplus as regards policyholders, or the health maintenance organization's net worth, following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's, or health maintenance organization's, outstanding liabilities and adequate to meet the insurer's or health maintenance organization's financial needs.

(2) The following transactions involving a domestic insurer or a health maintenance organization and any person in its insurance or health maintenance organization holding company system, including amendments

or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subdivisions (a)(2)(A)-(G), may not be entered into unless the insurer or health maintenance organization has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior thereto, or a shorter period that the commissioner may permit, and the commissioner has not disapproved it within the period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any:

(A) Sales, purchases, exchanges, loans, extensions of credit, or investments; provided, that exchanges, loans, extensions of credit, or investments the transactions are equal to or exceed:

(i) With respect to nonlife insurers and health maintenance organizations, the lesser of three percent (3%) of the insurer's or health maintenance organization's admitted assets, or twenty-five percent (25%) of surplus as regards policyholders, or, with respect to health maintenance organizations, net worth as of December 31 next preceding; and

(ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of December 31 next preceding;

(B) Loans or extensions of credit to any person who is not an affiliate, where the insurer or health maintenance organization 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 or health maintenance organization making the loans or extensions of credit; provided, that the transactions are equal to or exceed:

(i) With respect to nonlife insurers and health maintenance organizations, the lesser of three percent (3%) of the insurer's or health maintenance organization's admitted assets, or twenty-five percent (25%) of surplus as regards policyholders, or, with respect to health maintenance organizations, net worth as of December 31 next preceding; and

(ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of December 31 next preceding;

(C) Reinsurance agreements or modifications thereto, including:

(i) All reinsurance pooling agreements;

(ii) Agreements in which the reinsurance premium or a change in the insurer's or health maintenance organization's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three (3) years, equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, or, with respect to health maintenance organizations, net worth, as of December 31 next

preceding, including those agreements that may require as consideration the transfer of assets from an insurer or health maintenance organization to a non-affiliate, if an agreement or understanding exists between the insurer or health maintenance organization and non-affiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer or health maintenance organization;

(D) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements;

(E) Guarantees when made by a domestic insurer or health maintenance organization; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (0.5%) of the insurer's or health maintenance organization's admitted assets, or ten percent (10%) of surplus as regards policyholders, or with respect to health maintenance organizations, net worth, as of December 31 next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this subdivision (a)(2)(E);

(F) Direct or indirect acquisitions or investments in a person that controls the insurer or health maintenance organization or in an affiliate of the insurer or health maintenance organization in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders, or, with respect to health maintenance organizations, net worth. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to § 56-11-102 (or authorized under any other section of this title), or in nonsubsidiary insurance affiliates that are subject to this part, are exempt from this requirement; and

(G) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders or the health maintenance organization's enrollees or providers. Nothing in this subdivision (a)(2) shall be deemed to authorize or permit any transactions that, in the case of an insurer or health maintenance organization that is not a member of the same insurance or health maintenance organization holding company system, would be otherwise contrary to law.

(3) A domestic insurer or a health maintenance organization may not enter into transactions that are part of a plan or series of like transactions with persons within the insurance or health maintenance organization 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 twelve-month period for this purpose, the commissioner may exercise the authority under § 56-11-111.

(4) The commissioner, in reviewing transactions pursuant to subdivision (a)(2), shall consider whether the transactions comply with the standards set forth in subdivision (a)(1), and whether they may adversely affect the interests of policyholders, or, in the case of health maintenance organizations, enrollees or providers.

(5) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer or health maintenance organization in any one (1) corporation if the total investment in the corporation by the

insurance holding company system or health maintenance organization holding company system exceeds ten percent (10%) of the corporation's voting securities.

(b) DIVIDENDS AND OTHER DISTRIBUTIONS.

(1) No domestic insurer and no health maintenance organization shall pay an extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(A) Thirty (30) days after the commissioner has received notice of the declaration thereof and has not within the period disapproved the payment; or

(B) The commissioner shall have approved the payment within the thirty-day period.

(2) 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 twelve (12) months exceeds the greater of:

(A) Ten percent (10%) of the insurer's surplus as regards policyholders, or, with respect to health maintenance organizations, net worth, as of December 31 next preceding; or

(B) The net gain from operations of the insurer, if the insurer is a life insurer, or of the net income, if the insurer is not a life insurer, or a health maintenance organization, not including realized capital gains, for the twelve-month period ending December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's or health maintenance organization's own securities.

(3) Notwithstanding any other law in this title, an insurer or health maintenance organization may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until:

(A) The commissioner has approved the payment of such a dividend or distribution; or

(B) The commissioner has not disapproved the payment within the thirty-day period referred to in subdivision (b)(1).

(4)(A) A domestic insurer or health maintenance organization shall pay a dividend or make a distribution to its shareholders only from the insurer's or health maintenance organization's earned surplus; provided, that the insurer or health maintenance organization may pay a dividend or make a distribution not from earned surplus if the commissioner's approval is first received.

(B) As used in this subdivision (b)(4), “earned surplus” means unassigned surplus as reported in the insurer's or health maintenance organization's most recent financial statement.

(c) MANAGEMENT OF DOMESTIC INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS SUBJECT TO REGISTRATION.

(1) Notwithstanding the control of a domestic insurer or any licensed health maintenance organization by any person, the officers and directors of the insurer or health maintenance organization shall not thereby be relieved of any obligation or liability to which they would otherwise be subject to by law, and the insurer or health maintenance organization shall be managed so as to assure its separate operating identity consistent with this part.

(2) Nothing in this section shall preclude a domestic insurer or any licensed health maintenance organization from having or sharing a common management or cooperative or joint use of personnel, property or services with one (1) or more other persons under arrangements meeting the standards of subdivision (a)(1).

(3) Not less than one-third (1/3) of the directors of a domestic insurer or any licensed health maintenance organization, and not less than one-third (1/3) of the members of each committee of the board of directors of any domestic insurer or health maintenance organization shall be persons who are not officers or employees of the insurer or health maintenance organization or of any entity controlling, controlled by, or under common control with the insurer or health maintenance organization and who are not beneficial owners of a controlling interest in the voting stock of the insurer or health maintenance organization or entity. At least one (1) such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer or any licensed health maintenance organization shall establish one (1) or more committees comprised solely of directors who are not officers or employees of the insurer or health maintenance organization or of any entity controlling, controlled by, or under common control with the insurer or health maintenance organization and who are not beneficial owners of a controlling interest in the voting stock of the insurer or health maintenance organization or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer or health maintenance organization and recommending to the board of directors the selection and compensation of the principal officers.

(5) Subdivisions (c)(3) and (4) shall not apply to a domestic insurer or any licensed health maintenance organization if the person controlling the insurer or health maintenance organization, such as an insurer, a health maintenance organization, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of subdivisions (c)(3) and (4) with respect to such controlling entity.

(6) An insurer or health maintenance organization may make application to the commissioner for a waiver from the requirements of this subsection (c), if the insurer's or health maintenance organization's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than three hundred million ($300,000,000). An insurer or health maintenance organization may also make application to the commissioner for a waiver from

the requirements of this subsection (c) based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

(d) ADEQUACY OF SURPLUS.

(1) For purposes of this part, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:

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

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

(C) The number and size of risks insured in each line of business;

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

(E) The nature and extent of the insurer's reinsurance program;

(F) The quality, diversification and liquidity of the insurer's investment portfolio;

(G) The recent past and projected future trend in the size of the insurer's investment portfolio;

(H) The surplus as regards policyholders maintained by other comparable insurers;

(I) The adequacy of the insurer's reserves; and

(J) 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.

(2) Subdivisions (d)(1)(A)-(J) shall also apply to health maintenance organizations, to the extent appropriate.

Credits

1986 Pub.Acts, c. 572, § 6; 1993 Pub.Acts, c. 253, §§ 18, 22, eff. July 1, 1993; 2000 Pub.Acts, c. 708, § 3(e); 2014 Pub.Acts, c. 583, § 14, eff. March 28, 2014; 2018 Pub.Acts, c. 873, § 15, eff. May 3, 2018.

Formerly § 56-11-206.

T. C. A. § 56-11-106, TN ST § 56-11-106
Current with laws from the 2018 Second Reg. Sess. of the 110th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text.

End of Document

West's Tennessee Code Annotated
Title 56. Insurance
Chapter 11. Insurance Holding Companies and Risk Management (Refs & Annos)
Part 1. Insurance Holding Company System Act of 1986 (Refs & Annos)

T. C. A. § 56-11-107

§ 56-11-107. Information about insurer's financial condition; examinations

Effective: March 28, 2014
Currentness

(a) POWER OF COMMISSIONER. Subject to the limitation contained in this section, and in addition to the powers that the commissioner has under chapters 1 and 32 of this title, relating to the examination of insurers or health maintenance organizations, the commissioner also has the power to examine any insurer or health maintenance organization registered under § 56-11-105 and its affiliates to ascertain the financial condition of the insurer or health maintenance organization, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance or health maintenance organization holding company system, or by the insurance or health maintenance organization holding company system on a consolidated basis.

(b) ACCESS TO BOOKS AND RECORDS.

(1) The commissioner may order any insurer or health maintenance organization registered under § 56-11-105 to produce any records, books, or other information papers in the possession of the insurer or health maintenance organization or its affiliates that are reasonably necessary to determine compliance with this title.

(2) To determine compliance with this title, the commissioner may order any insurer or health maintenance organization registered under § 56-11-105 to produce information not in the possession of the insurer or health maintenance organization if the insurer or health maintenance organization can obtain access to such information pursuant to contractual relationships, statutory obligations, or other methods. In the event the insurer or health maintenance organization cannot obtain the information requested by the commissioner, the insurer or health maintenance organization shall provide the commissioner a detailed explanation of the reason that the insurer or health maintenance organization cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer or health maintenance organization to pay a penalty of one hundred dollars ($100) for each day's delay, or may suspend or revoke the insurer's license.

(c) USE OF CONSULTANTS. The commissioner may retain, at the registered insurer or health maintenance organization's expense, attorneys, actuaries, accountants and other experts, not otherwise a part of the commissioner's staff, that shall be reasonably necessary to assist in the conduct of the examination under subsection (a). Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(d) EXPENSES. Each registered insurer or health maintenance organization producing for examination records, books and papers pursuant to subsection (a) shall be liable for and shall pay the expense of the examination in accordance with chapters 1 and 32 of this title.

(e) COMPELLING PRODUCTION. In the event the insurer fails to comply with an order, the commissioner shall have the power to examine the affiliates to obtain the information. The commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. Such person shall be entitled to the same fees and mileage, if claimed, as a witness in courts of this state, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

Credits

1986 Pub.Acts, c. 572, § 7; 2000 Pub.Acts, c. 708, § 3f; 2014 Pub.Acts, c. 583, § 15, eff. March 28, 2014.

Formerly § 56-11-207.

T. C. A. § 56-11-107, TN ST § 56-11-107

Current with laws from the 2018 Second Reg. Sess. of the 110th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Tennessee Code Annotated
Title 56. Insurance
Chapter 11. Insurance Holding Companies and Risk Management (Refs & Annos)
Part 1. Insurance Holding Company System Act of 1986 (Refs & Annos)

T. C. A. § 56-11-108

§ 56-11-108. Confidentiality of information obtained by commissioner

Effective: May 3, 2018
Currentness

(a) Documents, materials, or other information in the possession or control of the department that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to § 56-11-107, and all information reported or provided to the department pursuant to §§ 56-11-103(b)(13)-(15), 56-11-105, 56-11-106, and 56-11-116(d), are confidential by law and privileged, are not subject to § 10-7-503 or § 56-1-602, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer or health maintenance organization to which it pertains unless the commissioner, after giving the insurer or health maintenance organization and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, enrollees, providers, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof, in the manner the commissioner may deem appropriate.

(b) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this part shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a).

(c) In order to assist in the performance of the commissioner's duties, the commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (a), with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners (NAIC) and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in § 56-11-116; provided, that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.

(2) Notwithstanding subdivision (c)(1), may only share confidential and privileged documents, material, or information reported pursuant to § 56-11-105(l) with commissioners of states having statutes or regulations substantially similar to subsection (a) and who have agreed in writing not to disclose such information;

(3) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(4) Shall enter into written agreements with the NAIC governing sharing and use of information provided pursuant to this part consistent with this subsection (c) that shall:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this part, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators;

(B) Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this part remains with the commissioner and the NAIC's use of the information is subject to the direction of the commissioner;

(C) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to this part is subject to a request or subpoena to the NAIC for disclosure or production; and

(D) Require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this part.

(d) The sharing of information by the commissioner pursuant to this part shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of this part.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (c).

(f) Documents, materials or other information in the possession or control of the NAIC pursuant to this part shall be confidential by law and privileged, shall not be subject to § 10-7-503 or § 56-1-602, shall not

be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

Credits

1986 Pub.Acts, c. 572, § 8; 2000 Pub.Acts, c. 708, § 3g; 2014 Pub.Acts, c. 583, § 16, eff. March 28, 2014; 2018 Pub.Acts, c. 873, § 14, eff. May 3, 2018.

Formerly § 56-11-208.

T. C. A. § 56-11-108, TN ST § 56-11-108

Current with laws from the 2018 Second Reg. Sess. of the 110th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text.

End of Document