

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3086 Session of
2006

INTRODUCED BY EACHUS, NOVEMBER 21, 2006

REFERRED TO COMMITTEE ON INSURANCE, NOVEMBER 21, 2006

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," further providing, in insurance
12 holding companies, for definitions, for acquisition of
13 control of or merger with domestic insurer and for
14 acquisitions involving insurers not otherwise covered; and
15 making an inconsistent repeal.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. The definitions of "insurer" and "person" in
19 section 1401 of the act of May 17, 1921 (P.L.682, No.284), known
20 as The Insurance Company Law of 1921, amended December 20, 2000
21 (P.L.967, No.132), are amended and the section is amended by
22 adding a definition to read:

23 Section 1401. Definitions.--As used in this article the
24 following words and phrases shall have the meanings given to

1 them in this section:

2 * * *

3 "Insurer." Any health maintenance organization, preferred
4 provider organization, company, association [or], exchange,
5 hospital plan corporation subject to 40 Pa.C.S. Ch. 61 (relating
6 to hospital plan corporations) or professional health services
7 plan corporation subject to 40 Pa.C.S. Ch. 63 (relating to
8 professional health services plan corporations), authorized by
9 the Insurance Commissioner to transact the business of insurance
10 in this Commonwealth except that the term shall not include:

11 (1) the Commonwealth or any agency or instrumentality
12 thereof;

13 (2) agencies, authorities or instrumentalities of the United
14 States, its possessions and territories, the Commonwealth of
15 Puerto Rico, the District of Columbia or a state or political
16 subdivision; or

17 (3) fraternal benefit societies[; or

18 (4) nonprofit medical and hospital service associations].

19 * * *

20 "Person." An individual, an insurer, a corporation, a
21 partnership, a limited liability company, an association, a
22 joint stock company, a trust, an unincorporated organization,
23 any similar entity or any combination of the foregoing acting in
24 concert. The term shall not include any joint venture
25 partnership exclusively engaged in owning, managing, leasing or
26 developing real or tangible personal property.

27 * * *

28 "Shareholder." A record holder or record owner of shares of
29 an insurer. The term shall also include a member or subscriber
30 of a non-stock insurer.

1 * * *

2 Section 2. Section 1402 of the act, amended or added
3 December 18, 1992 (P.L.1519, No.178) and December 21, 1998
4 (P.L.1108, No.150), is amended to read:

5 Section 1402. Acquisition of Control of or Merger with
6 Domestic Insurer.--(a) (1) No person other than the issuer
7 shall make a tender offer for or a request or invitation for
8 tenders of, or enter into any agreement to exchange securities
9 or seek to acquire or acquire in the open market or otherwise,
10 any voting security of a domestic insurer if, after the
11 consummation thereof, such person would directly or indirectly
12 or by conversion or by exercise of any right to acquire, be in
13 control of such insurer, and no person shall enter into an
14 agreement to merge or consolidate with or otherwise to acquire
15 control of a domestic insurer or any person controlling a
16 domestic insurer unless, at the time any such offer, request or
17 invitation is made or any such agreement is entered into or
18 prior to the acquisition of such securities if no offer or
19 agreement is involved, such person has filed with the department
20 and has sent to such insurer a statement containing the
21 information required by this section and such offer, request,
22 invitation, agreement or acquisition has been approved by the
23 department in the manner hereinafter prescribed.

24 (2) For purposes of this section, a "domestic insurer" shall
25 include any person controlling a domestic insurer unless such
26 person as determined by the department is either directly or
27 through its affiliates primarily engaged in business other than
28 the business of insurance. Such person shall, however, file a
29 preacquisition notification with the department containing the
30 information set forth in section 1403(c)(2) thirty (30) days

1 prior to the proposed effective date of the acquisition. Failure
2 to file is subject to section 1403(e)(3). For purposes of this
3 section, "person" shall not include any securities broker
4 holding, in the usual and customary manner, less than twenty per
5 centum (20%) of the voting securities of an insurance company or
6 of any person which controls an insurance company.

7 (b) The statement to be filed with the department under this
8 section shall be made under oath or affirmation and shall
9 contain the following information:

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

14 (i) if such person is an individual, his principal
15 occupation and all offices and positions held during the past
16 five (5) years, and any conviction of crimes other than minor
17 traffic violations during the past ten (10) years; or

18 (ii) if such person is not an individual, a report of the
19 nature of its business operations during the past five (5) years
20 or for such lesser period as the person and any predecessors
21 thereof shall have been in existence; an informative description
22 of the business intended to be done by the person and the
23 person's subsidiaries; and a list of all individuals who are or
24 who have been selected to become directors or executive officers
25 of the person, or who perform or will perform functions
26 appropriate to those positions. This list shall include for each
27 individual the information required by subparagraph (i).

28 (2) The source, nature and amount of the consideration used
29 or to be used in effecting the merger, consolidation or other
30 acquisition of control, a description of any transaction wherein

1 funds were or are to be obtained for any such purpose, including
2 any pledge of the insurer's stock or the stock of any of its
3 subsidiaries or controlling affiliates, and the identity of
4 persons furnishing such consideration, provided, however, that
5 where a source of such consideration is a loan made in the
6 lender's ordinary course of business, the identity of the lender
7 shall remain confidential if the person filing such statement so
8 requests.

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

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

20 (5) The number of shares of any security referred to in
21 subsection (a) which each acquiring party proposes to acquire,
22 and the terms of the offer, request, invitation, agreement or
23 acquisition referred to in subsection (a), and a statement as to
24 the method by which the fairness of the proposal was arrived.

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

29 (7) A full description of any contracts, arrangements or
30 understandings with respect to any security referred to in

1 subsection (a) in which any acquiring party is involved,
2 including, but not limited to, transfer of any of the
3 securities, joint ventures, loan or option arrangements, puts or
4 calls, guarantees of loans, guarantees against loss or
5 guarantees of profits, division of losses or profits, or the
6 giving or withholding of proxies. Such description shall
7 identify the persons with whom such contracts, arrangements or
8 understandings have been entered into.

9 (8) A description of the purchase of any security referred
10 to in subsection (a) during the twelve calendar months preceding
11 the filing of the statement, by any acquiring party, including
12 the dates of purchase, names of the purchasers and consideration
13 paid or agreed to be paid therefor.

14 (9) A description of any recommendations to purchase any
15 security referred to in subsection (a) made during the twelve
16 calendar months preceding the filing of the statement, by any
17 acquiring party, or by anyone based upon interviews or at the
18 suggestion of such acquiring party.

19 (10) Copies of all tender offers for, requests or
20 invitations for tenders of, exchange offers for and agreements
21 to acquire or exchange any securities referred to in subsection
22 (a) and, if distributed, of additional soliciting material
23 relating thereto.

24 (11) The term of any agreement, contract or understanding
25 made with or proposed to be made with any broker-dealer as to
26 solicitation of securities referred to in subsection (a) for
27 tender and the amount of any fees, commissions or other
28 compensation to be paid to broker-dealers with regard thereto.

29 (12) Such additional information as the department may by
30 rule or regulation prescribe as necessary or appropriate for the

1 protection of policyholders of the insurer or in the public
2 interest.

3 (c) If the person required to file the statement referred to
4 in subsection (a) is a partnership, limited partnership,
5 syndicate or other group, the department may require that the
6 information called for by subsection (b)(1) through (12) shall
7 be given with respect to each partner of such partnership or
8 limited partnership, each member of such syndicate or group and
9 each person who controls such partner or member. If any such
10 partner, member or person is a corporation or the person
11 required to file the statement referred to in subsection (a) is
12 a corporation, the department may require that the information
13 called for by subsection (b)(1) through (12) shall be given with
14 respect to such corporation, each officer and director of such
15 corporation and each person who is directly or indirectly the
16 beneficial owner of more than ten per centum (10%) of the
17 outstanding voting securities of such corporation.

18 (d) If any material change occurs in the facts set forth in
19 the statement filed with the department and sent to such insurer
20 pursuant to this section, an amendment setting forth such
21 change, together with copies of all documents and other material
22 relevant to such change, shall be filed with the department and
23 sent to such insurer within two (2) business days after the
24 person learns of such change.

25 (e) If any offer, request, invitation, agreement or
26 acquisition referred to in subsection (a) is proposed to be made
27 by means of a registration statement under the Securities Act of
28 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), or in circumstances
29 requiring the disclosure of similar information under the
30 Securities Exchange Act of 1934 (48 Stat. 881, 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 such documents in furnishing the information called for by that statement.

(f) (1) The department shall approve any merger, consolidation or other acquisition of control referred to in subsection (a) unless it finds any of the following:

(i) 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.

(ii) The effect of the merger, consolidation or other acquisition of control would be to substantially lessen competition in insurance in this Commonwealth or tend to create a monopoly therein. In applying the competitive standard in this subparagraph:

(A) the informational requirements of section 1403(c)(2) and the standards of section 1403(d)(2) shall apply;

(B) the merger, consolidation or other acquisition shall not be disapproved if the department finds that any of the situations meeting the criteria provided by section 1403(d)(3) exist; and

(C) the department may condition the approval of the merger, consolidation or other acquisition on the removal of the basis of disapproval within a specified period of time.

(iii) 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.

(iv) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge

1 it with any person, or to make any other material change in its
2 business or corporate structure or management, are unfair and
3 unreasonable to policyholders of the insurer and not in the
4 public interest.

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

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

12 (vii) The merger, consolidation or other acquisition of
13 control is not in compliance with the laws of this Commonwealth,
14 including Article VIII-A.

15 (2) If the merger, consolidation or other acquisition of
16 control is approved, the department shall so notify the person
17 filing the statement and the insurer [whose stock] that is
18 proposed to be acquired, and such a determination is hereafter
19 referred to as an approving determination. Notice shall also be
20 given by the department of any determination which is not an
21 approving determination. If an approving determination is made
22 by the department and not otherwise, the proposed offer and
23 acquisition may thereafter be made and consummated on the terms
24 and conditions and in the manner described in the statement and
25 subject to such conditions as may be prescribed by the
26 department as hereinafter provided. An approving determination
27 by the department shall be deemed to extend to offers or
28 acquisitions made pursuant thereto within one year following the
29 date of determination. The department may, as a condition of its
30 approving determination, require the inclusion in any offer of

1 provisions requiring the offer to remain open a specified
2 minimum length of time, permitting withdrawal of shares
3 deposited prior to the time the offeror becomes bound to
4 consummate the acquisition and requiring pro rata acceptance of
5 any shares deposited pursuant to the offer. The department shall
6 hold a hearing before making the determination required by this
7 subsection if, within ten (10) days following the filing with
8 the department of the statement, written request for the holding
9 of such hearing is made either by the person proposing to make
10 the acquisition, by the insurer [whose stock] that is proposed
11 to be acquired or, if [such] the issuer of stock proposed to be
12 acquired is not an insurer, by the [insurance company] insurer
13 controlled by such issuer. Otherwise, the department shall
14 determine in its discretion whether such a hearing shall be
15 held. Thirty (30) days' notice of any such hearing shall be
16 given to the person proposing to make the acquisition, to the
17 issuer whose stock is proposed to be acquired and, if such
18 issuer is not an insurer, to the insurance company controlled by
19 such issuer. Notice of any such hearing shall also be given to
20 such other persons, if any, as the department may determine.

21 (3) The department may retain at the acquiring person's
22 expense any attorneys, actuaries, accountants and other experts
23 not otherwise a part of the department's staff as may be
24 reasonably necessary to assist the department in reviewing the
25 proposed acquisition of control.

26 (g) The provisions of this section shall not apply to any
27 offer, request, invitation, agreement or acquisition which the
28 department by order shall exempt therefrom as:

29 (1) not having been made or entered into for the purpose and
30 not having the effect of changing or influencing the control of

1 a domestic insurer; or

2 (2) as otherwise not comprehended within the purposes of
3 this section.

4 (h) The following shall constitute a violation of this
5 section:

6 (1) the failure to file any statement, amendment or other
7 material required to be filed pursuant to subsection (a) or (b);

8 (2) the effectuation or any attempt to effectuate an
9 acquisition of control of or merger or consolidation with a
10 domestic insurer unless the department has given its approval
11 thereto; or

12 (3) a violation of section 819-A.

13 Section 3. Section 1403(a), (b) and (d), added December 18,
14 1992 (P.L.1519, No.178), are amended to read:

15 Section 1403. Acquisitions Involving Insurers not Otherwise
16 Covered.--(a) As used in this section the following words and
17 phrases shall have the meanings given to them in this
18 subsection:

19 "Acquisition." Any agreement, arrangement or activity the
20 consummation of which results in a person acquiring, directly or
21 indirectly, the control of another person and includes, but is
22 not limited to, the acquisition of voting securities, the
23 acquisition of assets, bulk reinsurance and mergers and
24 consolidations.

25 "Involved insurer." Includes an insurer which either
26 acquires or is acquired, is affiliated with an acquirer or
27 acquired or is the result of a merger or consolidation.

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

(2) This section shall not apply to any of the following:

(i) An acquisition subject to approval or disapproval by the department pursuant to section 1402.

(ii) 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 Commonwealth. If a purchase of securities results in a presumption of control as described in the definition of "control" in section [1301] 1401, it is not solely for investment purposes unless the insurance department 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 insurance department to the Insurance Department of the Commonwealth.

(iii) 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 preacquisition notification is filed with the department in accordance with subsection (c)(2) thirty (30) days prior to the proposed effective date of the acquisition. However, such preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by this paragraph.

(iv) The acquisition of already affiliated persons.

(v) An acquisition if, as an immediate result of the acquisition:

(A) in no market would the combined market share of the involved insurers exceed five per centum (5%) of the total market;

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

2 (C) in no market would:

3 (I) the combined market share of the involved insurers
4 exceeds twelve per centum (12%) of the total market; and

5 (II) the market share increases by more than two per centum
6 (2%) of the total market.

7 For the purpose of this subparagraph, a market means direct
8 written insurance premium in this Commonwealth for a line of
9 business as contained in the annual statement required to be
10 filed by insurers licensed to do business in this Commonwealth.

11 (vi) An acquisition for which a preacquisition notification
12 would be required pursuant to this section due solely to the
13 resulting effect on the ocean marine insurance line of business.

14 (vii) An acquisition of an insurer whose domiciliary
15 insurance department affirmatively finds that such insurer is in
16 failing condition; there is a lack of feasible alternative to
17 improving such condition; the public benefits of improving such
18 insurer's condition through the acquisition exceed the public
19 benefits that would arise from not lessening competition; and
20 such findings are communicated by the domiciliary insurance
21 department to the Insurance Department of the Commonwealth.

22 (3) Sections 1409(b) and (c) and 1411 shall not apply to
23 acquisitions provided for in this subsection.

24 * * *

25 (d) (1) The department may enter an order under subsection
26 (e)(1) with respect to an acquisition if there is substantial
27 evidence that the effect of the acquisition may be substantially
28 to lessen competition in any line of insurance in this
29 Commonwealth or tend to create a monopoly therein or if the
30 insurer fails to file adequate information in compliance with

1 subsection (c).

2 (2) In determining whether a proposed acquisition would
3 violate the competitive standard of paragraph (1), the
4 department shall consider the following:

5 (i) Any acquisition covered under subsection (b) involving
6 two or more insurers competing in the same market is prima facie
7 evidence of violation of the competitive standards as follows:

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

10	Insurer A	Insurer B
11	4%	4% or more
12	10%	2% or more
13	15%	1% or more; or

14 (B) if the market is not highly concentrated and the
15 involved insurers possess the following shares of the market:

16	Insurer A	Insurer B
17	5%	5% or more
18	10%	4% or more
19	15%	3% or more
20	19%	1% or more.

21 A highly concentrated market is one in which the share of the
22 four largest insurers is seventy-five per centum (75%) or more
23 of the market. Percentages not shown in the tables are
24 interpolated proportionately to the percentages that are shown.
25 If more than two insurers are involved, exceeding the total of
26 the two columns in the table is prima facie evidence of
27 violation of the competitive standard in paragraph (1). For the
28 purpose of this subparagraph, the insurer with the largest share
29 of the market shall be deemed to be insurer A.

30 (ii) There is a significant trend toward increased

1 concentration when the aggregate market share of any grouping of
2 the largest insurers in the market, from the two largest to the
3 eight largest, has increased by seven per centum (7%) or more of
4 the market over a period of time extending from any base year
5 five (5) to ten (10) years prior to the acquisition up to the
6 time of the acquisition. Any acquisition [or merger], merger or
7 consolidation covered under subsection (b) involving two or more
8 insurers competing in the same market is prima facie evidence of
9 violation of the competitive standard in paragraph (1) if:

10 (A) there is a significant trend toward increased
11 concentration in the market;

12 (B) one of the insurers involved is one of the insurers in a
13 grouping of such large insurers showing the requisite increase
14 in the market share; and

15 (C) another involved insurer's market is two per centum (2%)
16 or more.

17 (iii) For the purposes of this paragraph:

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

20 (B) The term "market" means the relevant product and
21 geographical markets. In determining the relevant product and
22 geographical markets, the department shall give due
23 consideration to, among other things, the definitions or
24 guidelines, if any, promulgated by the NAIC and to information,
25 if any, submitted by parties to the acquisition. In the absence
26 of sufficient information to the contrary, the relevant product
27 market is assumed to be the direct written insurance premium for
28 a line of business, such line being that used in the annual
29 statement required to be filed by insurers doing business in
30 this Commonwealth and the relevant geographical market is

1 assumed to be this Commonwealth.

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

4 (iv) Even though an acquisition is not prima facie violative
5 of the competitive standard under subparagraphs (i) and (ii),
6 the department may establish the requisite anticompetitive
7 effect based upon other substantial evidence. Even though an
8 acquisition is prima facie violative of the competitive standard
9 under subparagraphs (i) and (ii), a party may establish the
10 absence of the requisite anticompetitive effect based upon other
11 substantial evidence. Relevant factors in making a determination
12 under this paragraph include, but are not limited to, the
13 following: market shares, volatility of ranking of market
14 leaders, number of competitors, concentration, trend of
15 concentration in the industry and ease of entry and exit into
16 the market.

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

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

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

27 * * *

28 Section 4. The act of December 19, 1990 (P.L.834, No.198),
29 known as the GAA Amendments Act of 1990, is repealed insofar as
30 it is inconsistent with this act.

1 Section 5. This act shall take effect immediately.