

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 112 Session of 2007

INTRODUCED BY EACHUS AND MUNDY, JANUARY 30, 2007

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, FEBRUARY 12, 2007

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, AND FOR <—

1 THE PURPOSES OF THIS ARTICLE ONLY, the following words and
2 phrases shall have the meanings given to them in this section:

3 * * *

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

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

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

18 (3) fraternal benefit societies[; or

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

20 * * *

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

28 * * *

29 "Shareholder." A record holder or record owner of shares of
30 an insurer. The term shall also include any of the following:

<—

~~(1) A member of a non stock insurer under 15 Pa.C.S. Ch. 21 (relating to non stock corporations) or a prior statute.~~

~~(2) A member of a non profit insurer under 15 Pa.C.S. Ch. 51 (relating to general provisions) or a prior statute.~~

~~(3) A subscriber of a reciprocal exchange under Article X or a prior statute.~~

AN INSURER.

(1) THE TERM SHALL INCLUDE ALL OF THE FOLLOWING:

(I) A MEMBER OF AN INSURER THAT IS A DOMESTIC NONSTOCK CORPORATION UNDER 15 PA.C.S. CH. 21 (RELATING TO NONSTOCK CORPORATIONS) OR A PRIOR STATUTE.

(II) A MEMBER, AS DEFINED IN 15 PA.C.S. § 5103 (RELATING TO DEFINITIONS), OF AN INSURER THAT IS A DOMESTIC NONPROFIT CORPORATION UNDER 15 PA.C.S. CH. 51 (RELATING TO GENERAL PROVISIONS) OR A PRIOR STATUTE.

(III) A SUBSCRIBER OF AN INSURER THAT IS A DOMESTIC RECIPROCAL EXCHANGE UNDER ARTICLE X OR A PRIOR STATUTE.

(2) THE TERM SHALL NOT INCLUDE ANY SUBSCRIBER, INSURED OR CUSTOMER OF:

(I) A HOSPITAL PLAN CORPORATION SUBJECT TO 40 PA.C.S. CH. 61 (RELATING TO HOSPITAL PLAN CORPORATIONS);

OR

(II) A PROFESSIONAL HEALTH SERVICE PLAN CORPORATION SUBJECT TO 40 PA.C.S. CH. 63 (RELATING TO PROFESSIONAL HEALTH SERVICES PLAN CORPORATIONS).

* * *

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

Section 1402. Acquisition of Control of or Merger or

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

19 (2) For purposes of this section, a "domestic insurer" shall
20 include any person controlling a domestic insurer unless such
21 person as determined by the department is either directly or
22 through its affiliates primarily engaged in business other than
23 the business of insurance. Such person shall, however, file a
24 preacquisition notification with the department containing the
25 information set forth in section 1403(c)(2) thirty (30) days
26 prior to the proposed effective date of the acquisition. Failure
27 to file is subject to section 1403(e)(3). For purposes of this
28 section, "person" shall not include any securities broker
29 holding, in the usual and customary manner, less than twenty per
30 centum (20%) of the voting securities of an insurance company or

1 of any person which controls an insurance company.

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

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

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

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

23 (2) The source, nature and amount of the consideration used
24 or to be used in effecting the merger, consolidation or other
25 acquisition of control, a description of any transaction wherein
26 funds were or are to be obtained for any such purpose, including
27 any pledge of the insurer's stock or the stock of any of its
28 subsidiaries or controlling affiliates, and the identity of
29 persons furnishing such consideration, provided, however, that
30 where a source of such consideration is a loan made in the

1 lender's ordinary course of business, the identity of the lender
2 shall remain confidential if the person filing such statement so
3 requests.

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

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

15 (5) The number of shares of any security referred to in
16 subsection (a) which each acquiring party proposes to acquire,
17 and the terms of the offer, request, invitation, agreement or
18 acquisition referred to in subsection (a), and a statement as to
19 the method by which the fairness of the proposal was arrived.

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

24 (7) A full description of any contracts, arrangements or
25 understandings with respect to any security referred to in
26 subsection (a) in which any acquiring party is involved,
27 including, but not limited to, transfer of any of the
28 securities, joint ventures, loan or option arrangements, puts or
29 calls, guarantees of loans, guarantees against loss or
30 guarantees of profits, division of losses or profits, or the

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

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

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

14 (10) Copies of all tender offers for, requests or
15 invitations for tenders of, exchange offers for and agreements
16 to acquire or exchange any securities referred to in subsection
17 (a) and, if distributed, of additional soliciting material
18 relating thereto.

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

24 (12) Such additional information as the department may by
25 rule or regulation prescribe as necessary or appropriate for the
26 protection of policyholders of the insurer or in the public
27 interest.

28 (c) If the person required to file the statement referred to
29 in subsection (a) is a partnership, limited partnership,
30 syndicate or other group, the department may require that the

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

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

20 (e) If any offer, request, invitation, agreement or
21 acquisition referred to in subsection (a) is proposed to be made
22 by means of a registration statement under the Securities Act of
23 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), or in circumstances
24 requiring the disclosure of similar information under the
25 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a
26 et seq.), or under a State law requiring similar registration or
27 disclosure, the person required to file the statement referred
28 to in subsection (a) may utilize such documents in furnishing
29 the information called for by that statement.

30 (f) (1) The department shall approve any merger,

1 consolidation or other acquisition of control referred to in
2 subsection (a) unless it finds any of the following:

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

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

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

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

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

21 (iii) The financial condition of any acquiring party is such
22 as might jeopardize the financial stability of the insurer or
23 prejudice the interest of its policyholders.

24 (iv) The plans or proposals which the acquiring party has to
25 liquidate the insurer, sell its assets or consolidate or merge
26 it with any person, or to make any other material change in its
27 business or corporate structure or management, are unfair and
28 unreasonable to policyholders of the insurer and not in the
29 public interest.

30 (v) The competence, experience and integrity of those

1 persons who would control the operation of the insurer are such
2 that it would not be in the interest of policyholders of the
3 insurer and of the public to permit the merger, consolidation or
4 other acquisition of control.

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

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

10 (2) If the merger, consolidation or other acquisition of
11 control is approved, the department shall so notify the person
12 filing the statement and the insurer [whose stock] that is
13 proposed to be acquired, and such a determination is hereafter
14 referred to as an approving determination. Notice shall also be
15 given by the department of any determination which is not an
16 approving determination. If an approving determination is made
17 by the department and not otherwise, the proposed offer and
18 acquisition may thereafter be made and consummated on the terms
19 and conditions and in the manner described in the statement and
20 subject to such conditions as may be prescribed by the
21 department as hereinafter provided. An approving determination
22 by the department shall be deemed to extend to offers or
23 acquisitions made pursuant thereto within one year following the
24 date of determination. The department may, as a condition of its
25 approving determination, require the inclusion in any offer of
26 provisions requiring the offer to remain open a specified
27 minimum length of time, permitting withdrawal of shares
28 deposited prior to the time the offeror becomes bound to
29 consummate the acquisition and requiring pro rata acceptance of
30 any shares deposited pursuant to the offer. The department shall

1 hold a hearing before making the determination required by this
2 subsection if, within ten (10) days following the filing with
3 the department of the statement, written request for the holding
4 of such hearing is made either by the person proposing to make
5 the acquisition, by the insurer [whose stock] that is proposed
6 to be acquired or, if [such] the issuer of stock proposed to be
7 acquired is not an insurer, by the [insurance company] insurer
8 controlled by such issuer. Otherwise, the department shall
9 determine in its discretion whether such a hearing shall be
10 held. Thirty (30) days' notice of any such hearing shall be
11 given to the person proposing to make the acquisition, to the
12 issuer whose stock is proposed to be acquired and, if such
13 issuer is not an insurer, to the insurance company controlled by
14 such issuer. Notice of any such hearing shall also be given to
15 such other persons, if any, as the department may determine.

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

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

24 (1) not having been made or entered into for the purpose and
25 not having the effect of changing or influencing the control of
26 a domestic insurer; or

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

29 (h) The following shall constitute a violation of this
30 section:

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

3 (2) the effectuation or any attempt to effectuate an
4 acquisition of control of or merger or consolidation with a
5 domestic insurer unless the department has given its approval
6 thereto; or

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

8 Section 3. Section 1403(a), (b) and (d), added December 18,
9 1992 (P.L.1519, No.178), are amended to read:

10 Section 1403. Acquisitions Involving Insurers not Otherwise
11 Covered.--(a) As used in this section the following words and
12 phrases shall have the meanings given to them in this
13 subsection:

14 "Acquisition." Any agreement, arrangement or activity the
15 consummation of which results in a person acquiring, directly or
16 indirectly, the control of another person and includes, but is
17 not limited to, the acquisition of voting securities, the
18 acquisition of assets, bulk reinsurance [and], mergers and
19 consolidations.

20 "Involved insurer." Includes an insurer which either
21 acquires or is acquired, is affiliated with an acquirer or
22 acquired or is the result of a merger or consolidation.

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

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

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

29 (ii) A purchase of securities solely for investment purposes
30 so long as such securities are not used by voting or otherwise

1 to cause or attempt to cause the substantial lessening of
2 competition in any insurance market in this Commonwealth. If a
3 purchase of securities results in a presumption of control as
4 described in the definition of "control" in section [1301] 1401,
5 it is not solely for investment purposes unless the insurance
6 department of the insurer's state of domicile accepts a
7 disclaimer of control or affirmatively finds that control does
8 not exist and such disclaimer action or affirmative finding is
9 communicated by the domiciliary insurance department to the
10 Insurance Department of the Commonwealth.

11 (iii) The acquisition of a person by another person when
12 both persons are neither directly nor through affiliates
13 primarily engaged in the business of insurance, if
14 preacquisition notification is filed with the department in
15 accordance with subsection (c)(2) thirty (30) days prior to the
16 proposed effective date of the acquisition. However, such
17 preacquisition notification is not required for exclusion from
18 this section if the acquisition would otherwise be excluded from
19 this section by this paragraph.

20 (iv) The acquisition of already affiliated persons.

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

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

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

27 (C) in no market would:

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

30 (II) the market share increases by more than two per centum

1 (2%) of the total market.

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

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

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

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

19 * * *

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

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

30 (i) Any acquisition covered under subsection (b) involving

1 two or more insurers competing in the same market is prima facie
2 evidence of violation of the competitive standards as follows:

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

5	Insurer A	Insurer B
6	4%	4% or more
7	10%	2% or more
8	15%	1% or more; or

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

11	Insurer A	Insurer B
12	5%	5% or more
13	10%	4% or more
14	15%	3% or more
15	19%	1% or more.

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

25 (ii) There is a significant trend toward increased
26 concentration when the aggregate market share of any grouping of
27 the largest insurers in the market, from the two largest to the
28 eight largest, has increased by seven per centum (7%) or more of
29 the market over a period of time extending from any base year
30 five (5) to ten (10) years prior to the acquisition up to the

1 time of the acquisition. Any acquisition [or merger], merger or
2 consolidation covered under subsection (b) involving two or more
3 insurers competing in the same market is prima facie evidence of
4 violation of the competitive standard in paragraph (1) if:

5 (A) there is a significant trend toward increased
6 concentration in the market;

7 (B) one of the insurers involved is one of the insurers in a
8 grouping of such large insurers showing the requisite increase
9 in the market share; and

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

12 (iii) For the purposes of this paragraph:

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

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

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

29 (iv) Even though an acquisition is not prima facie violative
30 of the competitive standard under subparagraphs (i) and (ii),

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

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

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

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

22 * * *

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

26 SECTION 5. THIS ACT SHALL NOT APPLY TO ANY MERGER, <—
27 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL MADE OR
28 CONSUMMATED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION AND, IF
29 REQUIRED, FOLLOWING THE ISSUANCE OF AN APPROVING DETERMINATION.

30 Section 5 6. This act shall take effect immediately. <—