
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 112 Session of
2007

INTRODUCED BY EACHUS AND MUNDY, JANUARY 30, 2007

REFERRED TO COMMITTEE ON INSURANCE, JANUARY 30, 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 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 any of the following:

30 (1) A member of a non-stock insurer under 15 Pa.C.S. Ch.

1 21 (relating to non-stock corporations) or a prior statute.

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

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

6 * * *

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

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

29 (2) For purposes of this section, a "domestic insurer" shall
30 include any person controlling a domestic insurer unless such

1 person as determined by the department is either directly or
2 through its affiliates primarily engaged in business other than
3 the business of insurance. Such person shall, however, file a
4 preacquisition notification with the department containing the
5 information set forth in section 1403(c)(2) thirty (30) days
6 prior to the proposed effective date of the acquisition. Failure
7 to file is subject to section 1403(e)(3). For purposes of this
8 section, "person" shall not include any securities broker
9 holding, in the usual and customary manner, less than twenty per
10 centum (20%) of the voting securities of an insurance company or
11 of any person which controls an insurance company.

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

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

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

23 (ii) if such person is not an individual, a report of the
24 nature of its business operations during the past five (5) years
25 or for such lesser period as the person and any predecessors
26 thereof shall have been in existence; an informative description
27 of the business intended to be done by the person and the
28 person's subsidiaries; and a list of all individuals who are or
29 who have been selected to become directors or executive officers
30 of the person, or who perform or will perform functions

1 appropriate to those positions. This list shall include for each
2 individual the information required by subparagraph (i).

3 (2) The source, nature and amount of the consideration used
4 or to be used in effecting the merger, consolidation or other
5 acquisition of control, a description of any transaction wherein
6 funds were or are to be obtained for any such purpose, including
7 any pledge of the insurer's stock or the stock of any of its
8 subsidiaries or controlling affiliates, and the identity of
9 persons furnishing such consideration, provided, however, that
10 where a source of such consideration is a loan made in the
11 lender's ordinary course of business, the identity of the lender
12 shall remain confidential if the person filing such statement so
13 requests.

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

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

25 (5) The number of shares of any security referred to in
26 subsection (a) which each acquiring party proposes to acquire,
27 and the terms of the offer, request, invitation, agreement or
28 acquisition referred to in subsection (a), and a statement as to
29 the method by which the fairness of the proposal was arrived.

30 (6) The amount of each class of any security referred to in

1 subsection (a) which is beneficially owned or concerning which
2 there is a right to acquire beneficial ownership by each
3 acquiring party.

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

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

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

24 (10) Copies of all tender offers for, requests or
25 invitations for tenders of, exchange offers for and agreements
26 to acquire or exchange any securities referred to in subsection
27 (a) and, if distributed, of additional soliciting material
28 relating thereto.

29 (11) The term of any agreement, contract or understanding
30 made with or proposed to be made with any broker-dealer as to

1 solicitation of securities referred to in subsection (a) for
2 tender and the amount of any fees, commissions or other
3 compensation to be paid to broker-dealers with regard thereto.

4 (12) Such additional information as the department may by
5 rule or regulation prescribe as necessary or appropriate for the
6 protection of policyholders of the insurer or in the public
7 interest.

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

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

30 (e) If any offer, request, invitation, agreement or

1 acquisition referred to in subsection (a) is proposed to be made
2 by means of a registration statement under the Securities Act of
3 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), or in circumstances
4 requiring the disclosure of similar information under the
5 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a
6 et seq.), or under a State law requiring similar registration or
7 disclosure, the person required to file the statement referred
8 to in subsection (a) may utilize such documents in furnishing
9 the information called for by that statement.

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

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

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

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

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

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

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

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

10 (v) The competence, experience and integrity of those
11 persons who would control the operation of the insurer are such
12 that it would not be in the interest of policyholders of the
13 insurer and of the public to permit the merger, consolidation or
14 other acquisition of control.

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

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

20 (2) If the merger, consolidation or other acquisition of
21 control is approved, the department shall so notify the person
22 filing the statement and the insurer [whose stock] that is
23 proposed to be acquired, and such a determination is hereafter
24 referred to as an approving determination. Notice shall also be
25 given by the department of any determination which is not an
26 approving determination. If an approving determination is made
27 by the department and not otherwise, the proposed offer and
28 acquisition may thereafter be made and consummated on the terms
29 and conditions and in the manner described in the statement and
30 subject to such conditions as may be prescribed by the

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

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

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

4 (1) not having been made or entered into for the purpose and
5 not having the effect of changing or influencing the control of
6 a domestic insurer; or

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

9 (h) The following shall constitute a violation of this
10 section:

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

13 (2) the effectuation or any attempt to effectuate an
14 acquisition of control of or merger or consolidation with a
15 domestic insurer unless the department has given its approval
16 thereto; or

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

18 Section 3. Section 1403(a), (b) and (d), added December 18,
19 1992 (P.L.1519, No.178), are amended to read:

20 Section 1403. Acquisitions Involving Insurers not Otherwise
21 Covered.--(a) As used in this section the following words and
22 phrases shall have the meanings given to them in this
23 subsection:

24 "Acquisition." Any agreement, arrangement or activity the
25 consummation of which results in a person acquiring, directly or
26 indirectly, the control of another person and includes, but is
27 not limited to, the acquisition of voting securities, the
28 acquisition of assets, bulk reinsurance [and], mergers and
29 consolidations.

30 "Involved insurer." Includes an insurer which either

1 acquires or is acquired, is affiliated with an acquirer or
2 acquired or is the result of a merger or consolidation.

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

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

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

9 (ii) A purchase of securities solely for investment purposes
10 so long as such securities are not used by voting or otherwise
11 to cause or attempt to cause the substantial lessening of
12 competition in any insurance market in this Commonwealth. If a
13 purchase of securities results in a presumption of control as
14 described in the definition of "control" in section [1301] 1401,
15 it is not solely for investment purposes unless the insurance
16 department of the insurer's state of domicile accepts a
17 disclaimer of control or affirmatively finds that control does
18 not exist and such disclaimer action or affirmative finding is
19 communicated by the domiciliary insurance department to the
20 Insurance Department of the Commonwealth.

21 (iii) The acquisition of a person by another person when
22 both persons are neither directly nor through affiliates
23 primarily engaged in the business of insurance, if
24 preacquisition notification is filed with the department in
25 accordance with subsection (c)(2) thirty (30) days prior to the
26 proposed effective date of the acquisition. However, such
27 preacquisition notification is not required for exclusion from
28 this section if the acquisition would otherwise be excluded from
29 this section by this paragraph.

30 (iv) The acquisition of already affiliated persons.

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

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

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

7 (C) in no market would:

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

10 (II) the market share increases by more than two per centum
11 (2%) of the total market.

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

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

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

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

29 * * *

30 (d) (1) The department may enter an order under subsection

1 (e)(1) with respect to an acquisition if there is substantial
2 evidence that the effect of the acquisition may be substantially
3 to lessen competition in any line of insurance in this
4 Commonwealth or tend to create a monopoly therein or if the
5 insurer fails to file adequate information in compliance with
6 subsection (c).

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

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

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

15	Insurer A	Insurer B
16	4%	4% or more
17	10%	2% or more
18	15%	1% or more; or

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

21	Insurer A	Insurer B
22	5%	5% or more
23	10%	4% or more
24	15%	3% or more
25	19%	1% or more.

26 A highly concentrated market is one in which the share of the
27 four largest insurers is seventy-five per centum (75%) or more
28 of the market. Percentages not shown in the tables are
29 interpolated proportionately to the percentages that are shown.
30 If more than two insurers are involved, exceeding the total of

1 the two columns in the table is prima facie evidence of
2 violation of the competitive standard in paragraph (1). For the
3 purpose of this subparagraph, the insurer with the largest share
4 of the market shall be deemed to be insurer A.

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

15 (A) there is a significant trend toward increased
16 concentration in the market;

17 (B) one of the insurers involved is one of the insurers in a
18 grouping of such large insurers showing the requisite increase
19 in the market share; and

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

22 (iii) For the purposes of this paragraph:

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

25 (B) The term "market" means the relevant product and
26 geographical markets. In determining the relevant product and
27 geographical markets, the department shall give due
28 consideration to, among other things, the definitions or
29 guidelines, if any, promulgated by the NAIC and to information,
30 if any, submitted by parties to the acquisition. In the absence

1 of sufficient information to the contrary, the relevant product
2 market is assumed to be the direct written insurance premium for
3 a line of business, such line being that used in the annual
4 statement required to be filed by insurers doing business in
5 this Commonwealth and the relevant geographical market is
6 assumed to be this Commonwealth.

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

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

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

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

28 (ii) the acquisition will substantially increase the
29 availability of insurance, and the public benefits of such
30 increase exceed the public benefits which would arise from not

1 lessening competition.

2 * * *

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

6 Section 5. This act shall take effect immediately.