

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 112 Session of 2007

INTRODUCED BY EACHUS AND MUNDY, JANUARY 30, 2007

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 18, 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 FOR EFFECT OF ACT <—
12 ON EXISTING LAWS AND, in insurance holding companies, for
13 definitions; PROVIDING FOR THE INSURANCE RESTRUCTURING <—
14 EXECUTIVE BOARD AND FOR INSURANCE RESTRUCTURING EXECUTIVE
15 BOARD APPROVAL; FURTHER PROVIDING for acquisition of control
16 of or merger with domestic insurer and for acquisitions
17 involving insurers not otherwise covered; and making an
18 inconsistent repeal.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

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

1 SECTION 1. SECTION 108 OF THE ACT OF MAY 17, 1921 (P.L.682,  
2 NO.284), KNOWN AS THE INSURANCE COMPANY LAW OF 1921, IS AMENDED  
3 TO READ:

4 SECTION 108. EFFECT OF ACT ON EXISTING LAWS.--THE PROVISIONS  
5 OF THIS ACT, SO FAR AS THEY ARE THE SAME AS THOSE OF EXISTING  
6 LAWS, SHALL BE CONSTRUED AS A CONTINUATION OF SUCH LAWS AND NOT  
7 AS NEW ENACTMENTS. THE REPEAL BY THIS ACT OF ANY PROVISION OF  
8 LAW SHALL NOT REVIVE ANY LAW HERETOFORE REPEALED OR SUPERSEDED,  
9 NOR SHALL SUCH REPEAL AFFECT ANY ACT DONE, LIABILITY INCURRED,  
10 OR ANY RIGHT ACCRUED OR VESTED, OR ANY SUIT OR PROSECUTION  
11 PENDING OR TO BE INSTITUTED TO ENFORCE ANY RIGHT OR PENALTY OR  
12 PUNISH ANY OFFENSE UNDER THE AUTHORITY OF THE REPEALED LAWS. THE  
13 PROVISIONS OF THIS ACT SHALL NOT LIMIT THE JURISDICTION AND  
14 AUTHORITY OF THE OFFICE OF ATTORNEY GENERAL, INCLUDING, BUT NOT  
15 LIMITED TO, THE JURISDICTION AND AUTHORITY GRANTED PURSUANT TO  
16 THE ACT OF OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN AS THE  
17 "COMMONWEALTH ATTORNEYS ACT."

18 SECTION 2. THE DEFINITIONS OF "INSURER" AND "PERSON" IN  
19 SECTION 1401 OF THE ACT, AMENDED DECEMBER 20, 2000 (P.L.967,  
20 NO.132), ARE AMENDED AND THE SECTION IS AMENDED BY ADDING A  
21 DEFINITION TO READ:

22 Section 1401. Definitions.--As used in this article, and for  
23 the purposes of this article only, the following words and  
24 phrases shall have the meanings given to them in this section:

25 \* \* \*

26 "Insurer." Any health maintenance organization, preferred  
27 provider organization, company, association [or], exchange,  
28 hospital plan corporation subject to 40 Pa.C.S. Ch. 61 (relating  
29 to hospital plan corporations) or professional health services  
30 plan corporation subject to 40 Pa.C.S. Ch. 63 (relating to

1 professional health services plan corporations), authorized by  
2 the Insurance Commissioner to transact the business of insurance  
3 in this Commonwealth except that the term shall not include:

4 (1) the Commonwealth or any agency or instrumentality  
5 thereof;

6 (2) agencies, authorities or instrumentalities of the United  
7 States, its possessions and territories, the Commonwealth of  
8 Puerto Rico, the District of Columbia or a state or political  
9 subdivision; or

10 (3) fraternal benefit societies[; or

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

12 \* \* \*

13 "Person." An individual, an insurer, a corporation, a  
14 partnership, a limited liability company, an association, a  
15 joint stock company, a trust, an unincorporated organization,  
16 any similar entity or any combination of the foregoing acting in  
17 concert. The term shall not include any joint venture  
18 partnership exclusively engaged in owning, managing, leasing or  
19 developing real or tangible personal property.

20 \* \* \*

21 "Shareholder." A record holder or record owner of shares of  
22 an insurer.

23 (1) The term shall include all of the following:

24 (i) A member of an insurer that is a domestic  
25 nonstock corporation under 15 Pa.C.S. Ch. 21 (relating to  
26 nonstock corporations) or a prior statute.

27 (ii) A member, as defined in 15 Pa.C.S. § 5103  
28 (relating to definitions), of an insurer that is a  
29 domestic nonprofit corporation under 15 Pa.C.S. Ch. 51  
30 (relating to general provisions) or a prior statute.

1           (iii) A subscriber of an insurer that is a domestic  
2           reciprocal exchange under Article X or a prior statute.

3           (2) The term shall not include any subscriber, insured  
4           or customer of:

5           (i) a hospital plan corporation subject to 40  
6           Pa.C.S. Ch. 61 (relating to hospital plan corporations);  
7           or

8           (ii) a professional health service plan corporation  
9           subject to 40 Pa.C.S. Ch. 63 (relating to professional  
10           health services plan corporations).

11           \* \* \*

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

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

1 containing the information required by this section and such  
2 offer, request, invitation, agreement or acquisition has been  
3 approved by the department in the manner hereinafter prescribed.

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

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

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

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

28 (ii) if such person is not an individual, a report of the  
29 nature of its business operations during the past five (5) years  
30 or for such lesser period as the person and any predecessors

1 thereof shall have been in existence; an informative description  
2 of the business intended to be done by the person and the  
3 person's subsidiaries; and a list of all individuals who are or  
4 who have been selected to become directors or executive officers  
5 of the person, or who perform or will perform functions  
6 appropriate to those positions. This list shall include for each  
7 individual the information required by subparagraph (i).

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

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

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

30 (5) The number of shares of any security referred to in

1 subsection (a) which each acquiring party proposes to acquire,  
2 and the terms of the offer, request, invitation, agreement or  
3 acquisition referred to in subsection (a), and a statement as to  
4 the method by which the fairness of the proposal was arrived.

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

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

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

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

29 (10) Copies of all tender offers for, requests or  
30 invitations for tenders of, exchange offers for and agreements

1 to acquire or exchange any securities referred to in subsection  
2 (a) and, if distributed, of additional soliciting material  
3 relating thereto.

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

9 (12) Such additional information as the department may by  
10 rule or regulation prescribe as necessary or appropriate for the  
11 protection of policyholders of the insurer or in the public  
12 interest.

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

28 (d) If any material change occurs in the facts set forth in  
29 the statement filed with the department and sent to such insurer  
30 pursuant to this section, an amendment setting forth such



1 change, together with copies of all documents and other material  
2 relevant to such change, shall be filed with the department and  
3 sent to such insurer within two (2) business days after the  
4 person learns of such change.

5 (e) If any offer, request, invitation, agreement or  
6 acquisition referred to in subsection (a) is proposed to be made  
7 by means of a registration statement under the Securities Act of  
8 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), or in circumstances  
9 requiring the disclosure of similar information under the  
10 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a  
11 et seq.), or under a State law requiring similar registration or  
12 disclosure, the person required to file the statement referred  
13 to in subsection (a) may utilize such documents in furnishing  
14 the information called for by that statement.

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

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

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

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

29 (B) the merger, consolidation or other acquisition shall not  
30 be disapproved if the department finds that any of the

1 situations meeting the criteria provided by section 1403(d)(3)  
2 exist; and

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

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

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

15 (v) The competence, experience and integrity of those  
16 persons who would control the operation of the insurer are such  
17 that it would not be in the interest of policyholders of the  
18 insurer and of the public to permit the merger, consolidation or  
19 other acquisition of control.

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

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

25 (2) If the merger, consolidation or other acquisition of  
26 control is approved, the department shall so notify the person  
27 filing the statement and the insurer [whose stock] that is  
28 proposed to be acquired, and such a determination is hereafter  
29 referred to as an approving determination. Notice shall also be  
30 given by the department of any determination which is not an

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

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

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

9 (1) not having been made or entered into for the purpose and  
10 not having the effect of changing or influencing the control of  
11 a domestic insurer; or

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

14 (h) The following shall constitute a violation of this  
15 section:

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

18 (2) the effectuation or any attempt to effectuate an  
19 acquisition of control of or merger or consolidation with a  
20 domestic insurer unless the department has given its approval  
21 thereto; or

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

23 (I) THE DEPARTMENT SHALL, WITHIN SEVENTY-TWO HOURS OF  
24 RECEIVING A STATEMENT FILED UNDER THIS SECTION, PROVIDE  
25 NOTIFICATION TO THE OFFICE OF ATTORNEY GENERAL THAT THE FILING  
26 WAS RECEIVED.

<—

27 SECTION 4. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:

28 SECTION 1402.1. INSURANCE RESTRUCTURING EXECUTIVE BOARD.--

29 (A) THE INSURANCE RESTRUCTURING EXECUTIVE BOARD IS ESTABLISHED  
30 AND SHALL BE COMPOSED OF THE FOLLOWING MEMBERS:

- 1       (1) THE ATTORNEY GENERAL OR A DESIGNEE.
- 2       (2) THE GOVERNOR OR A DESIGNEE.
- 3       (3) THE SECRETARY OF HEALTH OR A DESIGNEE.
- 4       (4) THE SECRETARY OF PUBLIC WELFARE OR A DESIGNEE.
- 5       (5) THE MAJORITY LEADER OF THE SENATE OR A DESIGNEE.
- 6       (6) THE MINORITY LEADER OF THE SENATE OR A DESIGNEE.
- 7       (7) THE MAJORITY LEADER OF THE HOUSE OF REPRESENTATIVES OR A  
8 DESIGNEE.
- 9       (8) THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES OR A  
10 DESIGNEE.
- 11       (B) THE MEMBERS SHALL SELECT FROM AMONG THEMSELVES A  
12 CHAIRPERSON AND SUCH OFFICERS AS THEY SHALL DETERMINE.
- 13       (C) THE BOARD SHALL MEET AT THE CALL OF THE CHAIRPERSON.
- 14       (D) THREE QUARTERS OF THE MEMBERS OF THE BOARD SHALL  
15 CONSTITUTE A QUORUM. ALL BUSINESS OF THE BOARD SHALL BE  
16 CONDUCTED BY A QUORUM OF THE BOARD, EXCEPT AS PROVIDED UNDER  
17 SUBSECTION (G)(2).
- 18       (E) THE MEMBERS OF THE BOARD SHALL BE ENTITLED TO NO  
19 COMPENSATION FOR THEIR SERVICES AS MEMBERS OF THE BOARD BUT  
20 SHALL BE ENTITLED TO REIMBURSEMENT FOR ALL NECESSARY AND  
21 REASONABLE EXPENSES INCURRED IN CONNECTION WITH THE PERFORMANCE  
22 OF THEIR DUTIES AS MEMBERS OF THE BOARD.
- 23       (F) THE MEMBERS OF THE BOARD SHALL STAND IN A FIDUCIARY  
24 RELATIONSHIP WITH THE COMMONWEALTH.
- 25       (G) THE BOARD SHALL HAVE THE FOLLOWING POWERS AND DUTIES:
- 26       (1) TO HOLD AT LEAST ONE PUBLIC HEARING ON THE MERGER,  
27 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL OF A HOSPITAL PLAN  
28 CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION AT  
29 WHICH THE COMMISSIONER SHALL PRESENT THE COMMISSIONER'S FINDINGS  
30 CONCERNING THE MERGER, CONSOLIDATION OR OTHER ACQUISITION OF

1 CONTROL TO THE EXECUTIVE BOARD.

2 (2) TO MAKE WRITTEN RECOMMENDATIONS TO THE COMMISSIONER.

3 RECOMMENDATIONS UNDER THIS PARAGRAPH SHALL BE APPROVED BY AT

4 LEAST SIX MEMBERS OF THE BOARD.

5 SECTION 1402.2. INSURANCE RESTRUCTURING EXECUTIVE BOARD

6 APPROVAL.--(A) ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION,

7 THE COMMISSIONER SHALL, PRIOR TO APPROVING THE MERGER,

8 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL OF A HOSPITAL PLAN

9 CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION,

10 PRESENT FINDINGS AND RECOMMENDATIONS ON THE MERGER,

11 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL TO THE INSURANCE

12 RESTRUCTURING EXECUTIVE BOARD.

13 (B) THE COMMISSIONER SHALL NOT APPROVE THE MERGER,

14 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL OF A HOSPITAL PLAN

15 CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION

16 WITHOUT A PRIOR WRITTEN RECOMMENDATION OF THE BOARD AUTHORIZING

17 APPROVAL BY THE COMMISSIONER.

18 Section 3 5. Section 1403(a), (b) and (d), added December <—

19 18, 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~~ 6. 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~~ 7. This act shall not apply to any merger, ←  
7 consolidation or other acquisition of control made or  
8 consummated prior to the effective date of this section and, if  
9 required, following the issuance of an approving determination.

10 Section ~~6~~ 8. This act shall take effect immediately. ←