

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 550 Session of 2007

INTRODUCED BY D. WHITE, ERICKSON, RHOADES, ARMSTRONG, RAFFERTY,  
ORIE, O'PAKE AND VANCE, MARCH 8, 2007

REFERRED TO BANKING AND INSURANCE, MARCH 8, 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  
24 the purposes of this article only, the following words and

1 phrases shall have the meanings given to 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.

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

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

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

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

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

12           (i) a hospital plan corporation subject to 40  
13           Pa.C.S. Ch. 61 (relating to hospital plan corporations);  
14           or

15           (ii) a professional health service plan corporation  
16           subject to 40 Pa.C.S. Ch. 63 (relating to professional  
17           health services plan corporations).

18          \* \* \*

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

22          Section 1402. Acquisition of Control of or Merger or  
23          Consolidation with Domestic Insurer.--(a) (1) No person other  
24          than the issuer shall make a tender offer for or a request or  
25          invitation for tenders of, or enter into any agreement to  
26          exchange securities or seek to acquire or acquire in the open  
27          market or otherwise, any voting security of a domestic insurer  
28          if, after the consummation thereof, such person would directly  
29          or indirectly or by conversion or by exercise of any right to  
30          acquire, be in control of such insurer, and no person shall

1 enter into an agreement to merge or consolidate with or  
2 otherwise to acquire control of a domestic insurer or any person  
3 controlling a domestic insurer unless, at the time any such  
4 offer, request or invitation is made or any such agreement is  
5 entered into or prior to the acquisition of such securities if  
6 no offer or agreement is involved, such person has filed with  
7 the department and has sent to such insurer a statement  
8 containing the information required by this section and such  
9 offer, request, invitation, agreement or acquisition has been  
10 approved by the department in the manner hereinafter prescribed.

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

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

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

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

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

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

26 (3) Fully audited financial information as to the earnings  
27 and financial condition of each acquiring party for the  
28 preceding five (5) fiscal years of each such acquiring party, or  
29 for such lesser period as such acquiring party and any  
30 predecessors thereof shall have been in existence, and similar

1 unaudited information as of a date not earlier than ninety (90)  
2 days prior to the filing of the statement.

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

7 (5) The number of shares of any security referred to in  
8 subsection (a) which each acquiring party proposes to acquire,  
9 and the terms of the offer, request, invitation, agreement or  
10 acquisition referred to in subsection (a), and a statement as to  
11 the method by which the fairness of the proposal was arrived.

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

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

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

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

6 (10) Copies of all tender offers for, requests or  
7 invitations for tenders of, exchange offers for and agreements  
8 to acquire or exchange any securities referred to in subsection  
9 (a) and, if distributed, of additional soliciting material  
10 relating thereto.

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

16 (12) Such additional information as the department may by  
17 rule or regulation prescribe as necessary or appropriate for the  
18 protection of policyholders of the insurer or in the public  
19 interest.

20 (c) If the person required to file the statement referred to  
21 in subsection (a) is a partnership, limited partnership,  
22 syndicate or other group, the department may require that the  
23 information called for by subsection (b)(1) through (12) shall  
24 be given with respect to each partner of such partnership or  
25 limited partnership, each member of such syndicate or group and  
26 each person who controls such partner or member. If any such  
27 partner, member or person is a corporation or the person  
28 required to file the statement referred to in subsection (a) is  
29 a corporation, the department may require that the information  
30 called for by subsection (b)(1) through (12) shall be given with

1 respect to such corporation, each officer and director of such  
2 corporation and each person who is directly or indirectly the  
3 beneficial owner of more than ten per centum (10%) of the  
4 outstanding voting securities of such corporation.

5 (d) If any material change occurs in the facts set forth in  
6 the statement filed with the department and sent to such insurer  
7 pursuant to this section, an amendment setting forth such  
8 change, together with copies of all documents and other material  
9 relevant to such change, shall be filed with the department and  
10 sent to such insurer within two (2) business days after the  
11 person learns of such change.

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

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

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

29 (ii) The effect of the merger, consolidation or other  
30 acquisition of control would be to substantially lessen



1 competition in insurance in this Commonwealth or tend to create  
2 a monopoly therein. In applying the competitive standard in this  
3 subparagraph:

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

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

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

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

16 (iv) The plans or proposals which the acquiring party has to  
17 liquidate the insurer, sell its assets or consolidate or merge  
18 it with any person, or to make any other material change in its  
19 business or corporate structure or management, are unfair and  
20 unreasonable to policyholders of the insurer and not in the  
21 public interest.

22 (v) The competence, experience and integrity of those  
23 persons who would control the operation of the insurer are such  
24 that it would not be in the interest of policyholders of the  
25 insurer and of the public to permit the merger, consolidation or  
26 other acquisition of control.

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

29 (vii) The merger, consolidation or other acquisition of  
30 control is not in compliance with the laws of this Commonwealth,

1 including Article VIII-A.

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

1 determine in its discretion whether such a hearing shall be  
2 held. Thirty (30) days' notice of any such hearing shall be  
3 given to the person proposing to make the acquisition, to the  
4 issuer whose stock is proposed to be acquired and, if such  
5 issuer is not an insurer, to the insurance company controlled by  
6 such issuer. Notice of any such hearing shall also be given to  
7 such other persons, if any, as the department may determine.

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

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

16 (1) not having been made or entered into for the purpose and  
17 not having the effect of changing or influencing the control of  
18 a domestic insurer; or

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

21 (h) The following shall constitute a violation of this  
22 section:

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

25 (2) the effectuation or any attempt to effectuate an  
26 acquisition of control of or merger or consolidation with a  
27 domestic insurer unless the department has given its approval  
28 thereto; or

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

30 Section 3. Section 1403(a), (b) and (d), added December 18,

1 1992 (P.L.1519, No.178), are amended to read:

2 Section 1403. Acquisitions Involving Insurers not Otherwise  
3 Covered.--(a) As used in this section the following words and  
4 phrases shall have the meanings given to them in this  
5 subsection:

6 "Acquisition." Any agreement, arrangement or activity the  
7 consummation of which results in a person acquiring, directly or  
8 indirectly, the control of another person and includes, but is  
9 not limited to, the acquisition of voting securities, the  
10 acquisition of assets, bulk reinsurance [and], mergers and  
11 consolidations.

12 "Involved insurer." Includes an insurer which either  
13 acquires or is acquired, is affiliated with an acquirer or  
14 acquired or is the result of a merger or consolidation.

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

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

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

21 (ii) A purchase of securities solely for investment purposes  
22 so long as such securities are not used by voting or otherwise  
23 to cause or attempt to cause the substantial lessening of  
24 competition in any insurance market in this Commonwealth. If a  
25 purchase of securities results in a presumption of control as  
26 described in the definition of "control" in section [1301] 1401,  
27 it is not solely for investment purposes unless the insurance  
28 department of the insurer's state of domicile accepts a  
29 disclaimer of control or affirmatively finds that control does  
30 not exist and such disclaimer action or affirmative finding is

1 communicated by the domiciliary insurance department to the  
2 Insurance Department of the Commonwealth.

3 (iii) The acquisition of a person by another person when  
4 both persons are neither directly nor through affiliates  
5 primarily engaged in the business of insurance, if  
6 preacquisition notification is filed with the department in  
7 accordance with subsection (c)(2) thirty (30) days prior to the  
8 proposed effective date of the acquisition. However, such  
9 preacquisition notification is not required for exclusion from  
10 this section if the acquisition would otherwise be excluded from  
11 this section by this paragraph.

12 (iv) The acquisition of already affiliated persons.

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

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

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

19 (C) in no market would:

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

22 (II) the market share increases by more than two per centum  
23 (2%) of the total market.

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

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

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

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

\* \* \*

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

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

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

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

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

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

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

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

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

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

(B) one of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite increase

1 in the market share; and

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

4 (iii) For the purposes of this paragraph:

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

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

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

21 (iv) Even though an acquisition is not prima facie violative  
22 of the competitive standard under subparagraphs (i) and (ii),  
23 the department may establish the requisite anticompetitive  
24 effect based upon other substantial evidence. Even though an  
25 acquisition is prima facie violative of the competitive standard  
26 under subparagraphs (i) and (ii), a party may establish the  
27 absence of the requisite anticompetitive effect based upon other  
28 substantial evidence. Relevant factors in making a determination  
29 under this paragraph include, but are not limited to, the  
30 following: market shares, volatility of ranking of market



1 leaders, number of competitors, concentration, trend of  
2 concentration in the industry and ease of entry and exit into  
3 the market.

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

5 (i) the acquisition will yield substantial economies of  
6 scale or economies in resource utilization that cannot be  
7 feasibly achieved in any other way, and the public benefits  
8 which would arise from such economies exceed the public benefits  
9 which would arise from not lessening competition; or  
10 (ii) the acquisition will substantially increase the  
11 availability of insurance, and the public benefits of such  
12 increase exceed the public benefits which would arise from not  
13 lessening competition.

14 \* \* \*

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

18 Section 5. This act shall not apply to any merger,  
19 consolidation or other acquisition of control made or  
20 consummated prior to January 1, 2007, and, if required,  
21 following the issuance of an approving determination.

22 Section 6. This act shall take effect immediately.