WEST VIRGINIA CODE: §33-27-3

§33-27-3. Acquisition of control of or merger with domestic insurer; filing requirements; statements; alternative filing material; approval by the commissioner; hearings; notice; mailings to shareholders; expenses; exemptions; violations and jurisdiction.

(a) Filing requirements. --

(1) No person other than the issuer may make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer and a person shall not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless at the time the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer and, to the extent permitted by applicable federal laws, rules and regulations, the insurer has sent to its shareholders a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

(2) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty days prior to the cessation of control. The commissioner shall determine those instances in which the party or parties seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his or her discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in subsection (a) of this section is otherwise filed, this subdivision does not apply.

(3) With respect to a transaction subject to this section, the acquiring person must also file a preacquisition notification with the commissioner, which shall contain the information set forth in subdivision (1), subsection (c), section three-a of this article. A failure to file the notification may subject the person to penalties specified in subdivision (3), subsection (e), section three-a of this article.

(4) For purposes of this section, a "domestic insurer" includes any person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. For purposes of this section, "person" does not include any securities broker holding, in the

WV Legislature

usual and customary broker's function, less than twenty percent of the voting securities of an insurance company or of any person that controls an insurance company.

(b) Content of statement. -- The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) of this section is to be effected (hereinafter called "acquiring party"); and

(A) If such person is an individual, his or her principal occupation and all offices and positions held during the past five years and any conviction of crimes other than minor traffic violations during the past ten years; or

(B) If the person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to those positions. The list shall include for each individual the information required by paragraph (2) of this subdivision;

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration: Provided, That where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing the statement so requests;

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

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

(5) The number of shares of any security referred to in subsection (a) of this section which each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement or acquisition referred to in that subsection and a statement as to the method by which the fairness of the proposal was arrived at;

WV Legislature

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

(7) A full description of any contracts, arrangements or understanding with respect to any security referred to in subsection (a) of this section in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. The description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

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

(9) A description of any recommendations to purchase any security referred to in subsection (a) of this section made during the twelve calendar months preceding the filing of the statement by an acquiring party or by anyone based upon interviews or at the suggestion of the acquiring party;

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

(11) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) of this section for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

(12) An agreement by the person required to file the statement referred to in subsection (a) of this section that it will provide the annual report, specified in subsection (l), section four of this article, for so long as control exists;

(13) An acknowledgment by the person required to file the statement referred to in subsection (a) of this section that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and

(14) Any additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders and security holders of the insurer or in the public interest.

(c) If the person required to file the statement referred to in subsection (a) of this section is

WV Legislature

a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by subdivisions (1) through (14), inclusive, subsection (b) of this section shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group and each person who controls the partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) of this section is a corporation, the commissioner may require that the information called for by subdivisions (1) through (14), inclusive, subsection (b) of this section shall be given with respect to the corporation and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

(d) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to the insurer within two business days after the person learns of the change. The insurer shall send the amendment to its shareholders.

(e) Alternative filing materials. -- If any offer, request, invitation, agreement or acquisition referred to in subsection (a) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in that subsection may utilize such documents in furnishing the information called for by that statement.

(f) (1) Approval by commissioner; hearings. -- The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) of this section unless, after a public hearing thereon, he or she finds that:

(A) After the change of control the domestic insurer referred to in subsection (a) of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently authorized;

(B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein. In applying the competitive standard in this subdivision:

(i) The informational requirements of subdivision (1), subsection (c), section three-a of this article and the standards of subdivision (2), subsection (d), section three-a of this article apply;

(ii) The merger or other acquisition may not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by subdivision (3), subsection (d), section three-a of this article exist; and

(iii) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.

(C) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with the acquiring party;

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

(E) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(F) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(2) The public hearing required by this section shall be held within thirty days after the statement required by subsection (a) of this section is filed, and at least twenty days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons as may be designated by the commissioner. The commissioner shall make a determination within the sixty-day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected has the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the circuit courts of this state: Provided, That all discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(3) If the proposed acquisition of control will require the approval of more than one commissioner, a public hearing pursuant to this subsection may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (a) of this section. That person shall file the statement referred to in subsection (a) of this section with the National Association of Insurance Commissioners within five days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten days of the receipt of the statement referred to in subsection (a) of this section. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner may attend the hearing, in person or by telecommunication.

(4) In connection with a change of control of a domestic insurer, any determination by the

WV Legislature

commissioner that the person acquiring control of the insurer is required to maintain or restore the capital of the insurer to the level required by the laws of this state shall be made not later than sixty days after the date of filing the change in control submitted pursuant to subdivision (1), subsection (a) of this section.

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

(g) Exemptions. –- The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as: (1) Not having been made or entered into for the purpose of, and not having the effect of, changing or influencing the control of a domestic insurer; or (2) as otherwise not comprehended within the purposes of this section.

(h) The following are violations of this section:

(1) The failure to file any statement, amendment or other material required to be filed pursuant to subsection (a) or (b) of this section; or

(2) The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic insurer unless the commissioner has given his or her approval thereto.

(i) Jurisdiction; consent to service of process. -- The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner under this section and over all actions involving such person arising out of violations of this section and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the Secretary of State to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the Secretary of State and transmitted by registered or certified mail by the Secretary of State to such person at his or her last known address.

WV Legislature