

**Effective 10/1/2015**

**31A-16-103 Acquisition of control of, divestiture of control of, or merger with domestic insurer.**

- (1)
- (a) A person may not take the actions described in Subsection (1)(b) or (c) unless, at the time any offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of securities if no offer or agreement is involved:
    - (i) the person files with the commissioner a statement containing the information required by this section;
    - (ii) the person provides a copy of the statement described in Subsection (1)(a)(i) to the insurer; and
    - (iii) the commissioner approves the offer, request, invitation, agreement, or acquisition.
  - (b) Unless the person complies with Subsection (1)(a), a person other than the issuer may not make a tender offer for, a request or invitation for tenders of, or enter into any agreement to exchange securities, or seek to acquire or acquire in the open market or otherwise, any voting security of a domestic insurer if after the acquisition, the person would directly, indirectly, by conversion, or by exercise of any right to acquire be in control of the insurer.
  - (c) Unless the person complies with Subsection (1)(a), a person may not enter into an agreement to merge with or otherwise to acquire control of:
    - (i) a domestic insurer; or
    - (ii) any person controlling a domestic insurer.
  - (d) For purposes of this section, a 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 30 days before the cessation of control. The commissioner shall determine those instances in which the one or more persons 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 the commissioner's discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in Subsection (1)(a) is otherwise filed, this Subsection (1)(d) does not apply.
  - (e) With respect to a transaction subject to this section, the acquiring person shall also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in Section 31A-16-104.5. A failure to file the notification may be subject to penalties specified in Section 31A-16-104.5.
  - (f)
    - (i) 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.
    - (ii) The controlling person described in Subsection (1)(f)(i) shall file with the commissioner a preacquisition notification containing the information required in Subsection (2) 30 calendar days before the proposed effective date of the acquisition.
    - (iii) For the purposes of this section, "person" does not include any securities broker that in the usual and customary brokers function holds less than 20% of:
      - (A) the voting securities of an insurance company; or
      - (B) any person that controls an insurance company.
    - (iv) This section applies to all domestic insurers and other entities licensed under:
      - (A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

- (B)Chapter 7, Nonprofit Health Service Insurance Corporations;
- (C)Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- (D)Chapter 9, Insurance Fraternal; and
- (E)Chapter 11, Motor Clubs.

(g)

- (i) An agreement for acquisition of control or merger as contemplated by this Subsection (1) is not valid or enforceable unless the agreement:
    - (A) is in writing; and
    - (B) includes a provision that the agreement is subject to the approval of the commissioner upon the filing of any applicable statement required under this chapter.
  - (ii) A written agreement for acquisition or control that includes the provision described in Subsection (1)(g)(i) satisfies the requirements of this Subsection (1).
- (2) The statement to be filed with the commissioner under Subsection (1) shall be made under oath or affirmation and shall contain the following information:
- (a) the name and address of the "acquiring party," which means each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to be effected; and
    - (i) if the person is an individual:
      - (A) the person's principal occupation;
      - (B) a listing of all offices and positions held by the person during the past five years; and
      - (C) any conviction of crimes other than minor traffic violations during the past 10 years; and
    - (ii) if the person is not an individual:
      - (A) a report of the nature of its business operations during:
        - (I) the past five years; or
        - (II) for any lesser period as the person and any of its predecessors has been in existence;
      - (B) an informative description of the business intended to be done by the person and the person's subsidiaries;
      - (C) a list of all individuals who are or who have been selected to become directors or executive officers of the person, or individuals who perform, or who will perform functions appropriate to such positions; and
      - (D) for each individual described in Subsection (2)(a)(ii)(C), the information required by Subsection (2)(a)(i) for each individual;
  - (b)
    - (i) the source, nature, and amount of the consideration used or to be used in effecting the merger or acquisition of control;
    - (ii) a description of any transaction in which funds were or are to be obtained for the purpose of effecting the merger or acquisition of control, including any pledge of:
      - (A) the insurer's stock; or
      - (B) the stock of any of the insurer's subsidiaries or controlling affiliates; and
    - (iii) the identity of persons furnishing the consideration;
  - (c)
    - (i) fully audited financial information, or other financial information considered acceptable by the commissioner, of the earnings and financial condition of each acquiring party for:
      - (A) the preceding five fiscal years of each acquiring party; or
      - (B) any lesser period the acquiring party and any of its predecessors shall have been in existence; and
    - (ii) unaudited information:
      - (A) similar to the information described in Subsection (2)(c)(i); and

- (B) prepared within the 90 days prior to the filing of the statement;
- (d) any plans or proposals which each acquiring party may have to:
  - (i) liquidate the insurer;
  - (ii) sell its assets;
  - (iii) merge or consolidate the insurer with any person; or
  - (iv) make any other material change in the insurer's:
    - (A) business;
    - (B) corporate structure; or
    - (C) management;
- (e)
  - (i) the number of shares of any security referred to in Subsection (1) that each acquiring party proposes to acquire;
  - (ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (1); and
  - (iii) a statement as to the method by which the fairness of the proposal was arrived at;
- (f) the amount of each class of any security referred to in Subsection (1) that:
  - (i) is beneficially owned; or
  - (ii) concerning which there is a right to acquire beneficial ownership by each acquiring party;
- (g) a full description of any contract, arrangement, or understanding with respect to any security referred to in Subsection (1) in which any acquiring party is involved, including:
  - (i) the transfer of any of the securities;
  - (ii) joint ventures;
  - (iii) loan or option arrangements;
  - (iv) puts or calls;
  - (v) guarantees of loans;
  - (vi) guarantees against loss or guarantees of profits;
  - (vii) division of losses or profits; or
  - (viii) the giving or withholding of proxies;
- (h) a description of the purchase by any acquiring party of any security referred to in Subsection (1) during the 12 calendar months preceding the filing of the statement including:
  - (i) the dates of purchase;
  - (ii) the names of the purchasers; and
  - (iii) the consideration paid or agreed to be paid for the purchase;
- (i) a description of:
  - (i) any recommendations to purchase by any acquiring party any security referred to in Subsection (1) made during the 12 calendar months preceding the filing of the statement; or
  - (ii) any recommendations made by anyone based upon interviews or at the suggestion of the acquiring party;
- (j)
  - (i) copies of all tender offers for, requests for, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection (1); and
  - (ii) if distributed, copies of additional soliciting material relating to the transactions described in Subsection (2)(j)(i);
- (k)
  - (i) the term of any agreement, contract, or understanding made with, or proposed to be made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for tender; and

- (ii) the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to any agreement, contract, or understanding described in Subsection (2)(k)(i);
  - (l) an agreement by the person required to file the statement referred to in Subsection (1) that it will provide the annual report, specified in Section 31A-16-105, for so long as control exists;
  - (m) an acknowledgment by the person required to file the statement referred to in Subsection (1) 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
  - (n) any additional information the commissioner requires by rule, which the commissioner determines to be:
    - (i) necessary or appropriate for the protection of policyholders of the insurer; or
    - (ii) in the public interest.
- (3) The department may request:
- (a)
    - (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
    - (ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.
  - (b) Information obtained by the department from the review of criminal history records received under Subsection (3)(a) shall be used by the department for the purpose of:
    - (i) verifying the information in Subsection (2)(a)(i);
    - (ii) determining the integrity of persons who would control the operation of an insurer; and
    - (iii) preventing persons who violate 18 U.S.C. Sec. 1033 from engaging in the business of insurance in the state.
  - (c) If the department requests the criminal background information, the department shall:
    - (i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection (3)(a)(i);
    - (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(a)(ii); and
    - (iii) charge the person required to file the statement referred to in Subsection (1) a fee equal to the aggregate of Subsections (3)(c)(i) and (ii).
- (4)
- (a) If the source of the consideration under Subsection (2)(b)(i) 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.
  - (b)
    - (i) Under Subsection (2)(e), the commissioner may require a statement of the adjusted book value assigned by the acquiring party to each security in arriving at the terms of the offer.
    - (ii) For purposes of this Subsection (4)(b), "adjusted book value" means each security's proportional interest in the capital and surplus of the insurer with adjustments that reflect:
      - (A) market conditions;
      - (B) business in force; and
      - (C) other intangible assets or liabilities of the insurer.
  - (c) The description required by Subsection (2)(g) shall identify the persons with whom the contracts, arrangements, or understandings have been entered into.
- (5)

- (a) If the person required to file the statement referred to in Subsection (1) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that all the information called for by Subsection (2), (3), or (4) shall be given with respect to each:
  - (i) partner of the partnership or limited partnership;
  - (ii) member of the syndicate or group; and
  - (iii) person who controls the partner or member.
- (b) If any partner, member, or person referred to in Subsection (5)(a) is a corporation, or if the person required to file the statement referred to in Subsection (1) is a corporation, the commissioner may require that the information called for by Subsection (2) shall be given with respect to:
  - (i) the corporation;
  - (ii) each officer and director of the corporation; and
  - (iii) each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of the corporation.
- (6) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to Subsection (2), an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two business days after the filing person learns of such change.
- (7) If any offer, request, invitation, agreement, or acquisition referred to in Subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933, or under circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, a person required to file the statement referred to in Subsection (1) may use copies of any registration or disclosure documents in furnishing the information called for by the statement.
- (8)
  - (a) The commissioner shall approve any merger or other acquisition of control referred to in Subsection (1) unless, after a public hearing on the merger or acquisition, the commissioner finds that:
    - (i) after the change of control, the domestic insurer referred to in Subsection (1) 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 licensed;
    - (ii) the effect of the merger or other acquisition of control would:
      - (A) substantially lessen competition in insurance in this state; or
      - (B) tend to create a monopoly in insurance;
    - (iii) the financial condition of any acquiring party might:
      - (A) jeopardize the financial stability of the insurer; or
      - (B) prejudice the interest of:
        - (I) its policyholders; or
        - (II) any remaining securityholders who are unaffiliated with the acquiring party;
    - (iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (1) are unfair and unreasonable to the securityholders of the insurer;
    - (v) 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:
      - (A) unfair and unreasonable to policyholders of the insurer; and
      - (B) not in the public interest; or

- (vi) 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 the policyholders of the insurer and the public to permit the merger or other acquisition of control.
- (b) For purposes of Subsection (8)(a)(iv), the offering price for each security may not be considered unfair if the adjusted book values under Subsection (2)(e):
  - (i) are disclosed to the securityholders; and
  - (ii) determined by the commissioner to be reasonable.
- (9)
  - (a) The public hearing referred to in Subsection (8) shall be held within 30 days after the statement required by Subsection (1) is filed.
  - (b)
    - (i) At least 20 days notice of the hearing shall be given by the commissioner to the person filing the statement.
    - (ii) Affected parties may waive the notice required by this Subsection (9)(b).
    - (iii) Not less than seven days notice of the public hearing shall be given by the person filing the statement to:
      - (A) the insurer; and
      - (B) any person designated by the commissioner.
  - (c) The commissioner shall make a determination within 30 days after the conclusion of the hearing.
  - (d) 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 by the hearing may:
    - (i) present evidence;
    - (ii) examine and cross-examine witnesses; and
    - (iii) offer oral and written arguments.
  - (e)
    - (i) A person or insurer described in Subsection (9)(d) may conduct discovery proceedings in the same manner as is presently allowed in the district courts of this state.
    - (ii) All discovery proceedings shall be concluded not later than three days before the commencement of the public hearing.
- (10) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in Subsection (9)(a) may be held on a consolidated basis upon request of the person filing the statement referred to in Subsection (1). The person shall file the statement referred to in Subsection (1) 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 10 days of the receipt of the statement referred to in Subsection (1). 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. The commissioners shall hear and receive evidence. A commissioner may attend a hearing under this Subsection (10) in person or by telecommunication.
- (11) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than 60 days after the date of notification of the change in control submitted pursuant to Subsection (1).
- (12)

- (a) The commissioner may retain technical experts to assist in reviewing all, or a portion of, information filed in connection with a proposed merger or other acquisition of control referred to in Subsection (1).
  - (b) In determining whether any of the conditions in Subsection (8) exist, the commissioner may consider the findings of technical experts employed to review applicable filings.
  - (c)
    - (i) A technical expert employed under Subsection (12)(a) shall present to the commissioner a statement of all expenses incurred by the technical expert in conjunction with the technical expert's review of a proposed merger or other acquisition of control.
    - (ii) At the commissioner's direction the acquiring person shall compensate the technical expert at customary rates for time and expenses:
      - (A) necessarily incurred; and
      - (B) approved by the commissioner.
    - (iii) The acquiring person shall:
      - (A) certify the consolidated account of all charges and expenses incurred for the review by technical experts;
      - (B) retain a copy of the consolidated account described in Subsection (12)(c)(iii)(A); and
      - (C) file with the department as a public record a copy of the consolidated account described in Subsection (12)(c)(iii)(A).
- (13)
- (a)
    - (i) If a domestic insurer proposes to merge into another insurer, any securityholder electing to exercise a right of dissent may file with the insurer a written request for payment of the adjusted book value given in the statement required by Subsection (1) and approved under Subsection (8), in return for the surrender of the security holder's securities.
    - (ii) The request described in Subsection (13)(a)(i) shall be filed not later than 10 days after the day of the securityholders' meeting where the corporate action is approved.
  - (b) The dissenting securityholder is entitled to and the insurer is required to pay to the dissenting securityholder the specified value within 60 days of receipt of the dissenting security holder's security.
  - (c) Persons electing under this Subsection (13) to receive cash for their securities waive the dissenting shareholder and appraisal rights otherwise applicable under Title 16, Chapter 10a, Part 13, Dissenters' Rights.
  - (d)
    - (i) This Subsection (13) provides an elective procedure for dissenting securityholders to resolve their objections to the plan of merger.
    - (ii) This section does not restrict the rights of dissenting securityholders under Title 16, Chapter 10a, Utah Revised Business Corporation Act, unless this election is made under this Subsection (13).
- (14)
- (a) All statements, amendments, or other material filed under Subsection (1), and all notices of public hearings held under Subsection (8), shall be mailed by the insurer to its securityholders within five business days after the insurer has received the statements, amendments, other material, or notices.
  - (b)
    - (i) Mailing expenses shall be paid by the person making the filing.
    - (ii) As security for the payment of mailing expenses, that person shall file with the commissioner an acceptable bond or other deposit in an amount determined by the commissioner.

- (15) This section does not apply to any offer, request, invitation, agreement, or acquisition that the commissioner by order exempts from the requirements of this section as:
- (a) 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
  - (b) otherwise not comprehended within the purposes of this section.
- (16) The following are violations of this section:
- (a) the failure to file any statement, amendment, or other material required to be filed pursuant to Subsections (1), (2), and (5); or
  - (b) 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 the commissioner's approval to the acquisition or merger.
- (17)
- (a) The courts of this state are vested with jurisdiction over:
    - (i) a person who:
      - (A) files a statement with the commissioner under this section; and
      - (B) is not resident, domiciled, or authorized to do business in this state; and
    - (ii) overall actions involving persons described in Subsection (17)(a)(i) arising out of a violation of this section.
  - (b) A person described in Subsection (17)(a) is considered to have performed acts equivalent to and constituting an appointment of the commissioner by that person, to be that person's lawful agent upon whom may be served all lawful process in any action, suit, or proceeding arising out of a violation of this section.
  - (c) A copy of a lawful process described in Subsection (17)(b) shall be:
    - (i) served on the commissioner; and
    - (ii) transmitted by registered or certified mail by the commissioner to the person at that person's last-known address.

Amended by Chapter 244, 2015 General Session