

Effective 10/1/2015

31A-16-104.5 Acquisitions involving insurers not otherwise covered.

- (1) The following definitions apply for the purposes of this section only:
- (a) "Acquisition" means an agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person and includes the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.
 - (b) "Insurer" includes any company or group of companies under common management, ownership, or control.
 - (c) "Involved insurer" includes an insurer that either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.
 - (d)
 - (i) "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state.
 - (ii) Notwithstanding Subsection (1)(d)(i), for purposes of Subsection (2)(b), "market" means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.
- (2)
- (a) This section applies to any acquisition in which there is a change in control of an insurer authorized to do business in Utah.
 - (b) This section does not apply to the following:
 - (i) securities purchased solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state;
 - (ii) if a purchase of securities results in a presumption of control under Subsection 31A-1-301(29)(d), it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;
 - (iii) the acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner in accordance with Subsection (3)(a) 30 days before the proposed effective date of the acquisition;
 - (iv) the acquisition of an already affiliated person;
 - (v) an acquisition if, as an immediate result of the acquisition:
 - (A) in no market would the combined market share of the involved insurers exceed 5% of the total market;
 - (B) there would be no increase in any market share; or
 - (C) in no market would the combined market share of the involved insurers exceeds 12% of the total market, and the market share increase by more than 2% of the total market;
 - (vi) an acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; or

- (vii) an acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition, and:
 - (A) there is a lack of feasible alternative to improving such condition;
 - (B) the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and
 - (C) the findings are communicated by the domiciliary commissioner to the commissioner of this state.
- (3) An acquisition covered by Subsection (2) may be subject to an order pursuant to Subsection (5) unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner shall give confidential treatment to information submitted under this Subsection (3) in the same manner as provided in Section 31A-16-109.
 - (a) The pre-acquisition notification shall be in the form and contain such information as prescribed by the National Association of Insurance Commissioners relating to those markets that, under Subsection (2)(b)(v), cause the acquisition not to be exempted from this section. The commissioner may require additional material and information as considered necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of Subsection (4). The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of the economist indicating the economist's ability to render an informed opinion.
 - (b) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the 30th day after the date of receipt, or termination of the waiting period by the commissioner. Before the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.
- (4)
 - (a) The commissioner may enter an order under Subsection (5)(a) 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 state, tend to create a monopoly, or if the insurer fails to file adequate information in compliance with this section.
 - (b) In determining whether a proposed acquisition would violate the competitive standard of Subsection (4)(a), the commissioner shall consider the following:
 - (i) Any acquisition covered under this Subsection (4) involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards if:
 - (A) 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) 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.

- (ii) For purposes of this section, a highly concentrated market is one in which the share of the four largest insurers is 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 Subsection (4)(a).
- (iii) For purposes of this section, the insurer with the largest share of the market shall be considered to be Insurer A.
- (c) 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 7% or more of the market over a period of time extending from any base year 5 to 10 years before the acquisition up to the time of the acquisition. Any acquisition or merger covered under Subsection (1) involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in Subsection (4)(a) if:
- (i) there is a significant trend toward increased concentration in the market;
 - (ii) one of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and
 - (iii) another involved insurer's market is 2% or more.
- (d) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.
- (e) Even though an acquisition is not prima facie violative of the competitive standard under Subsections (4)(b) and (4)(c), the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence.
- (f) Even though an acquisition is prima facie violative of the competitive standard under Subsections (4)(b) and (4)(c), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this Subsection (4)(f) include the following:
- (i) market shares;
 - (ii) volatility of ranking of market leaders;
 - (iii) number of competitors;
 - (iv) concentration or trend of concentration in the industry; and
 - (v) ease of entry and exit into the market.
- (g) An order may not be entered under Subsection (5) if:
- (i) the acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from not lessening competition; or
 - (ii) the acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits that would arise from not lessening competition.
- (5)

- (a) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if an acquisition violates the standards of this section, the commissioner may enter an order:
 - (i) requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or
 - (ii) denying the application of an acquired or acquiring insurer for a license to do business in this state.
- (b) The commissioner shall accompany an order issued under this Subsection (5) with a written decision of the commissioner setting forth findings of fact and conclusions of law.
- (c) An order pursuant to this section may not apply if the acquisition is not consummated.
- (d) A person who violates a cease and desist order of the commissioner under Subsection (5)(a)(i) and while the order is in effect may after notice and hearing and upon order of the commissioner be subject at the discretion of the commissioner to one or more of the following:
 - (i) notwithstanding Section 31A-2-308, a monetary penalty of not more than \$10,000 for every day of violation; or
 - (ii) suspension or revocation of the person's license.
- (e) An insurer or other person who fails to make any filing required by this section, and who fails to demonstrate a good faith effort to comply with a filing requirement, is subject to a fine of not more than \$50,000 notwithstanding Section 31A-2-308.

Enacted by Chapter 244, 2015 General Session