

ARTICLE IV

Severability, Repeal and Effective Date

Section 61. The provisions of this act shall be severable. If any provision of this act is found by a court of record to be unconstitutional and void, the remaining provisions of the act shall, nevertheless, remain valid, unless the court finds the valid provisions of the act are so essentially and inseparably connected with, and so depend upon the void provision, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one, or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 62. The act of July 2, 1965 (P. L. 176), entitled "An act relating to officers and employes of the General Assembly; fixing the number, qualifications, compensation, mileage and duties of the officers and employes of the Senate and of the House of Representatives; providing for their election or appointment, term of office, or of service, removal and manner of filling vacancies; fixing the salary of the Director of the Legislative Reference Bureau; providing for compilation of lists of employes," is repealed absolutely.

All other acts or parts of acts are repealed in so far as they are inconsistent herewith.

Section 63. This act shall take effect immediately.

APPROVED—The 10th day of January, A. D. 1968.

RAYMOND P. SHAFER

No. 418

AN ACT

SB 1235

Amending the act of May 17, 1921 (P. L. 682), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," authorizing the acquisition of the stock of Pennsylvania insurance companies by Pennsylvania business corporations through exchange of stock and payment of cash to stockholders of such insurance companies not accepting exchange offers, provided that the fairness of the exchange is first approved by the Insurance Commissioner.

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

Section 1. The act of May 17, 1921 (P. L. 682), known as "The Insurance Company Law of 1921," is amended by adding after section 337.4, a new section to read:

Section 337.5. Acquisition of Stock by Business Corporations.—

(a) Any domestic business corporation seeking to acquire in exchange for shares of its capital stock, all of the shares of the capital stock of any insurance company organized under the laws of the Commonwealth of Pennsylvania, may at its option elect to acquire such shares in the manner hereinafter provided.

(b) The board of directors of the corporation seeking to acquire such shares, hereinafter referred to as the acquiring corporation, and the board of directors of the insurance company whose shares are proposed to be acquired, hereinafter referred to as the acquired corporation, shall by resolution approve the terms and conditions of the proposed exchange. Such terms and conditions may fix or provide for the fixing of, record dates for the determination of stockholders to whom offers, notices, and other communications shall be mailed and for the determination of stockholders who shall be entitled to exercise rights hereunder.

(c) The terms and conditions of the proposed issuance and exchange shall be submitted by the acquiring corporation to the Insurance Commissioner for examination and, after holding a hearing at least ten days' notice of which shall have been mailed to all persons or parties to whom it is proposed to issue shares in such exchange and at which such persons or parties shall have the right to appear, the Insurance Commissioner shall either approve or disapprove the fairness of such terms and conditions.

(d) If the fairness of such terms and conditions is approved by the Insurance Commissioner, the acquiring corporation shall submit by mail a written offer to the stockholders of the acquired corporation, which offer shall specify the stock or classes of stock to be acquired, the terms and conditions of the proposed issuance and exchange, the

method of acceptance thereof, and the procedure to be followed to effect the exchange. Any such offer may provide for the payment of cash in lieu of the issuance of fractions of shares of the acquiring corporation.

(e) If prior to the termination date of the exchange offer or any extension thereof, which termination date or extended date shall be no later than one hundred twenty days after the date of the initial mailing of such offer, the offer shall have been accepted by the holders of not less than the percentage of the outstanding shares of capital stock specified in the terms and conditions of the proposed issuance and exchange, which percentage shall in no event be less than eighty percent of the total combined voting power of all classes of stock entitled to vote and at least eighty percent of the total number of shares of all other classes of stock, the acquiring corporation shall, within one hundred fifty days after the date of such initial mailing, notify the acquired corporation of such acceptance and shall furnish to the acquired corporation a list of all stockholders who accepted the offer and of the numbers and classes of shares covered by their respective acceptances. Thereupon, the acquiring corporation shall automatically become the holder of all shares of all classes of capital stock of the acquired corporation included in such list, except to the extent that it shall have notified the acquired corporation that shares are to be issued to specified persons in order to qualify them or to maintain their qualification as directors of the acquired corporation. Certificates representing all outstanding shares of capital stock of the acquired corporation included in such list shall forthwith be issued to the acquiring corporation and such persons as it shall have specified as aforesaid. The formerly outstanding certificates therefor shall represent only the right to receive shares of capital stock of the acquiring corporation (or cash in lieu of fractional shares) as herein-after provided. Within thirty days after the aforesaid notification

from the acquiring corporation, the acquired corporation shall notify by mail each stockholder of the acquired corporation who has not accepted the offer that, subject to the provisions of subsections (f) to (k), inclusive, of this section, a copy of which subsections shall be included with such notice, such stockholder shall have the right to receive payment in cash of the full market value of his shares and shall not be entitled to vote, to receive dividends or other distributions or to exercise any rights with respect to such shares other than those set forth in said subsections.

(f) A stockholder who does not otherwise accept the exchange offer shall be conclusively deemed to have accepted it if, following the mailing of the aforesaid notice by the acquired corporation, any of the following conditions shall occur: (i) he fails to make written demand as provided in subsection (g), below; (ii) he fails to surrender his certificate or certificates for notation as provided in subsection (h), below, unless the acquired corporation elects to waive such failure or relief from such failure is granted by a court of common pleas of the county in which the chief office of the acquired corporation is situate; or (iii) the full market value of his shares not having been agreed upon as provided in subsection (j), below, he fails to comply with the provisions of said paragraph with respect to the filing of a petition for the appointment of appraisers, and the acquired corporation does not elect to waive such failure. If any such stockholder is deemed to have accepted the exchange offer pursuant to the provisions of this subsection (f), the acquiring corporation shall automatically become the holder of all shares of all classes of capital stock of the acquired corporation held by such stockholder, and the acquiring corporation shall issue to such stockholder certificates for the shares of its capital stock and pay cash in lieu of fractional shares as provided in subsection (i), below.

(g) A stockholder of the acquired corporation who wishes to be

paid the full market value of his shares shall make written demand for such payment upon the acquired corporation within thirty days after the mailing of the aforesaid notice by the acquired corporation. A stockholder may demand payment as to all or less than all of those shares registered in his name of which he is not the beneficial owner, but demand may not be made with respect to some but less than all shares of the same class owned by any given beneficial owner of shares, whether or not the shares so owned by him are registered in his name.

(h) Within twenty days after demanding payment for his shares as aforesaid, each stockholder demanding payment shall submit the certificate or certificates representing his shares to the acquired corporation for notation thereon that such demand has been made. If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefore shall bear a similar notation, together with the name of the original holder of such shares who demanded payment as aforesaid and a transferee of such shares shall acquire by such transfer no rights other than those which the stockholder who demanded payment as aforesaid had after making demand for payment of the full market value thereof.

(i) If the acquiring corporation has notified the acquired corporation of the acceptance of the exchange offer by the required percentage of stockholders as provided in subsection (e), above, the acquiring corporation shall cause to be issued in the name of each stockholder who has accepted or is deemed to have accepted such offer, certificates for the shares of its capital stock as provided in the exchange offer, and shall set aside cash, if any, to which he is entitled, which certificates and cash shall be delivered to him if he has already surrendered the certificates for his shares of the acquired corporation for exchange and shall otherwise be held in trust for

delivery to such stockholder upon such surrender. The rights of such a stockholder shall be limited to the right to obtain such certificates and cash, if any.

(j) Any stockholder of the acquired corporation who has not accepted the exchange offer and is not deemed to have accepted it as aforesaid, shall have the right to receive payment for his shares of capital stock of the acquired corporation as hereinafter provided. If within forty days after making demand as aforesaid such stockholder and the acquired corporation have not agreed as to the full market value of such shares, such stockholder may, within sixty days after making such demand, apply by petition to any court of common pleas of the county in which the chief office of the acquired corporation is situate to appoint three disinterested persons to estimate and appraise the shares of such stockholder at the full market value thereof as of the day prior to the day on which the exchange offer was mailed without regard to any appreciation or depreciation in consequence of the exchange offer, which appraisalment, when confirmed by the court, shall be final and conclusive. The full market value of such shares as agreed upon or as determined as aforesaid shall be paid by the acquired corporation to such stockholder upon surrender to the acquired corporation of his certificates for such shares. The acquired corporation may retain, cancel, dispose of or take other action with respect to such shares, provided, that there shall be no reduction in the capital stock of the acquired corporation without compliance with other applicable provisions of law, and that the acquired corporation shall not have power to vote such shares.

(k) Any stockholder who desires to object to or dissent from any proposed exchange authorized herein shall be limited to the rights and remedies prescribed herein and such rights and remedies shall be exclusive.

Section 2. This act shall take effect immediately.

APPROVED—The 11th day of January, A. D. 1968.

RAYMOND P. SHAFER

No. 419

AN ACT

HB 45

Amending the act of April 6, 1911 (P. L. 51), entitled "An act providing for the protection of the public health and the prevention of fraud and deception, by prohibiting the sale, the offering for sale, or exposing for sale, or the having in possession with intent to sell, of adulterated or deleterious sausage; defining sausage; and prescribing the penalty for the violation thereof," further defining sausage and adulteration.

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

Section 1. Section 2 and the third paragraph of section 3, act of April 6, 1911 (P. L. 51), entitled "An act providing for the protection of the public health and the prevention of fraud and deception, by prohibiting the sale, the offering for sale, or exposing for sale, or the having in possession with intent to sell, of adulterated or deleterious sausage; defining sausage; and prescribing the penalty for the violation thereof," amended June 25, 1941 (P. L. 204), are amended to read:

Section 2. Defining sausage. That, for the purpose of the act, sausage or sausage-meat shall be held to be comminuted meat, as defined by the Department of Agriculture from cattle or swine, or a mixture of such meats, either fresh, salted, pickled or smoked, with or without added salt and spices, provided they do not conceal damage or inferiority, [and] with or without the addition of edible animal fats, blood and sugar, or subsequent smoking, and with or without the addition of isolated soy protein, soy protein concentrate or nonfat dry milk as hereinafter authorized. It shall contain no larger amount of water than the meats from which it is prepared contained when in their fresh condition, except as hereinafter permitted. If it bears a name descriptive of kind, composition or origin its contents shall correspond to the kind, composition or origin indicated by such name.

Section 3. That for the purpose of this act sausage shall be deemed to be adulterated:

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Third. If it contains any cereal, vegetable flour, vegetable products, [milk powder,] or cracklings; provided, that sausage may contain