

No. 65

AN ACT

HB 939

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," specifying additional matters to be determined by the Insurance Commissioner prior to his making an approving determination in connection with certain acquisitions of or offers to acquire outstanding capital stock of any Pennsylvania insurance company or of certain other corporations which beneficially own outstanding capital stock of any Pennsylvania insurance company, providing for the further regulation of insurance holding companies which beneficially own or control or are affiliated with insurance companies qualified and licensed to transact the business of insurance in Pennsylvania, prohibiting certain activities, and providing penalties.

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

Section 1. Clause (8) of subsection (a) of section 337.6, act of May 17, 1921 (P.L.682), known as "The Insurance Company Law of 1921," added November 25, 1968 (Act No. 337), is amended to read:

Section 337.6. Approval of the Insurance Commissioner Required in Connection with Certain Acquisitions of or Offers to Acquire the Capital Stock of Certain Corporations.—(a) The following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this subsection:

* * *

(8) "Outstanding capital stock," "outstanding insurance stock," and "outstanding insurance holding company stock" do not include capital stock of an issuer beneficially owned by such issuer: ***Provided, That, for purposes of this definition, capital stock "beneficially owned by such issuer" shall include only stock owned by such issuer or by any wholly owned subsidiary thereof.***

* * *

Section 2. Subsection (c) of section 337.6 of the act, added November 25, 1968 (Act No. 337), is amended by adding a clause to read:

Section 337.6. Approval of the Insurance Commissioner Required in Connection with Certain Acquisitions of or Offers to Acquire the Capital Stock of Certain Corporations.—* * *

(c) There shall be filed with the Insurance Commissioner a statement, signed by the person proposing to make the acquisition, and verified by oath or affirmation, which shall contain the information specified in this

subsection, and copies of all material proposed to be used in connection with the offer or acquisition (which shall set forth the information contained in the statement filed with the Insurance Commissioner), copies of which statement and material and all amendments thereto, shall simultaneously with such filing, also be sent by registered or certified mail to the issuer of the insurance stock or insurance holding company stock proposed to be acquired. The statement filed with the Insurance Commissioner shall be filed on such form or forms, if any, as the Insurance Commissioner shall prescribe, and shall contain the following information and such additional information as the Insurance Commissioner shall by regulation prescribe as appropriate to enable him to make a determination under subsection (d) of this section:

* * *

(9) Complete audited statements as to the earnings and financial condition of such person for the preceding five (5) fiscal years of such person and similar unaudited information as of a date not more than ninety (90) days prior to the filing of the statement with the commissioner.

* * *

Section 3. Subsection (d) of section 337.6 of the act, added November 25, 1968 (Act No. 337), is amended to read:

Section 337.6. Approval of the Insurance Commissioner Required in Connection with Certain Acquisitions of or Offers to Acquire the Capital Stock of Certain Corporations.—* * *

(d) If the Insurance Commissioner shall determine:

(1) That the statement and other material filed pursuant to subsection (c) of this section comply with the requirements of subsection (c) of this section and any regulations promulgated thereunder; **[and]**

(2) That he has no reason to believe that after such acquisition the insurance company whose capital stock is to be acquired or sixty-six and two-thirds per centum (66 2/3%) or more of whose outstanding capital stock of any class is beneficially owned by the insurance holding company whose capital stock is to be acquired will not continue to comply in all respects with the laws and regulations of this Commonwealth governing insurance;

(3) That, upon completion of the acquisition, the insurance company whose capital stock is to be acquired or sixty-six and two-thirds per centum (66 2/3%) or more of whose outstanding capital stock of any class is beneficially owned by the insurance holding company whose capital stock is to be acquired would satisfy the requirements for the issuance of a license to write the line or lines of insurance which it is presently licensed to write in this Commonwealth;

(4) That the effect of the acquisition will not be substantially to lessen competition in insurance in this Commonwealth or to tend to create a monopoly therein;

(5) That the financial condition of the person proposing to make the

acquisition is not such as might jeopardize the financial stability of the insurance company whose capital stock is to be acquired or sixty-six and two-thirds per centum (66 2/3%) or more of whose outstanding capital stock of any class is beneficially owned by the insurance holding company whose capital stock is to be acquired, or prejudice the interests of the policyholders of such insurance company or, in the case of an acquisition of control other than by merger or consolidation, prejudice the interests of any remaining shareholders of such insurance company who are unaffiliated with the person proposing to make the acquisition;

(6) That the plans or proposals which the person proposing to make the acquisition has to liquidate the insurance company whose capital stock is to be acquired or sixty-six and two-thirds per centum (66 2/3%) or more of whose outstanding capital stock of any class is beneficially owned by the insurance holding company whose capital stock is to be acquired, to sell the assets of such insurance company or to merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management, are fair and reasonable to its policyholders and shareholders;

(7) That the competence, experience and integrity of those persons who control or manage the person proposing to make the acquisition and of those persons who would control or manage the operation of such insurance company indicate that it would be in the interest of the policyholders and shareholders of such insurance company and of the general public to permit such acquisition to be made;

(8) That the interests of the policyholders, shareholders and general public would not otherwise be prejudiced or impaired;

he shall so notify the person filing the statement, the issuer whose stock is proposed to be acquired, and, if such issuer is an insurance holding company, the insurance company sixty-six and two thirds per centum (66 2/3%) or more of whose outstanding capital stock of any class is beneficially owned by such insurance holding company, and such a determination is hereafter referred to as an approving determination. Notice shall also be given by the Insurance Commissioner of any determination which is not an approving determination. If an approving determination is made by the Insurance Commissioner, and not otherwise, the proposed offer and acquisition may thereafter be made and consummated on the terms and conditions and in the manner described in the statement, and subject to such conditions as may be prescribed by the Insurance Commissioner as hereinafter provided. An approving determination by the Insurance Commissioner shall be deemed to extend to offers or acquisitions made pursuant thereto within one (1) year following the date of determination. The Insurance Commissioner may, as a condition of his approving determination, require the inclusion in any offer of provisions requiring the offer to remain open a specified minimum length of time, permitting withdrawal of shares deposited prior to the

time the offeror becomes bound to consummate the acquisition, and requiring pro rata acceptance of any shares deposited pursuant to the offer. The Insurance Commissioner shall hold a hearing before making the determination required by this subsection if, within ten (10) days following the filing with the Insurance Commissioner of the statement called for by subsection (c), written request for the holding of such hearing is made either by the person proposing to make the acquisition, by the issuer whose stock is proposed to be acquired, or, if such issuer is an insurance holding company, by the insurance company sixty-six and two-thirds per centum (66 2/3%) or more of whose outstanding capital stock of any class is beneficially owned by such insurance holding company. Otherwise the Insurance Commissioner shall determine in his discretion whether such a hearing shall be held. [Notice] *Sixty (60) days notice* of any such hearing shall be given to the person proposing to make the acquisition, to the issuer whose stock is proposed to be acquired and, if such issuer is an insurance holding company, to the insurance company sixty-six and two-thirds per centum (66 2/3%) or more of whose outstanding capital stock of any class is beneficially owned by such insurance holding company. Notice of any such hearing shall also be given to such other persons, if any, as the Insurance Commissioner may determine.

* * *

Section 4. The act is amended by adding a section to read:

Section 337.7. Insurance Companies Which Are Members of an Insurance Holding Company System Required to Register with Insurance Commissioner; Approval of Insurance Commissioner Required in Connection with Certain Transactions Between Insurance Companies and Insurance Holding Company Systems.—(a) Definitions. As used in this section, the following terms, unless the context shall otherwise require, shall have the respective meanings set forth below:

(1) A "person" is an individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(2) An "affiliate" of, or person "affiliated" with, a specified person, is a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person.

(3) A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

(4) "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control

shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten per centum (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact. The commissioner may, after furnishing all persons in interest notice and an opportunity to be heard, determine that control exists in fact, notwithstanding the absence of a presumption to that effect.

(5) *An “insurance company” or “insurer” includes any company, association or exchange authorized by the commissioner to transact the business of insurance in this Commonwealth, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.*

(6) *An “insurance holding company system” consists of two or more affiliated persons, one or more of which is an insurance company.*

(b) *Registration of Insurers.*

(1) *Registration.—Every insurer which is authorized to do business in this Commonwealth and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer domiciled in a jurisdiction which has adopted and has in force by statute or regulation disclosure requirements and standards substantially similar to those contained in this section.*

For purposes of this subsection, the state of original entry into the United States of an insurer formed under the laws of a nation other than the United States shall be deemed to be its state of domicile. Any insurer which is subject to registration hereunder shall register within sixty (60) days after this section becomes effective, or within fifteen (15) days after it becomes subject to registration, whichever is later, unless the commissioner, for good cause shown, extends the time for registration, and then within such extended time. Nothing herein shall be construed to prohibit the commissioner from requiring any authorized insurer which is a member of an insurance holding company system but which is not subject to registration under this section to submit to him a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its state of domicile.

(2) *Information and Form Required.—Every insurer subject to registration shall file a registration statement on a form prescribed by the commissioner, which shall contain current information about:*

(i) *the capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;*

(ii) *the identity of every member of the insurance holding company system;*

(iii) *the following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its*

affiliates: (A) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer of the insurer by its affiliates; (B) purchases, sales, or exchanges of assets; (C) transactions not in the ordinary course of business; (D) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business; (E) all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles; and (F) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(iv) other material matters concerning transactions between registered insurers and any affiliates as may be required by the commissioner.

No information need be disclosed on the registration statement filed pursuant to this subsection if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one per centum (.5%) or less of an insurer's admitted assets as of the thirty-first day of the preceding December shall not be deemed material for purposes of this section.

(3) Amendments to Registration Statement.—Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each such change or addition on amendment forms prescribed by the commissioner: Provided, however, That each registered insurer shall report all extraordinary dividends and other extraordinary distributions to shareholders promptly to the commissioner upon the declaration thereof as contemplated by subsection (c) of this section.

(4) Termination of Registration.—The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(5) Consolidated Filing.—The commissioner may allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their respective individual registration statements.

(6) Alternative Registration.—The commissioner may allow any insurer which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (b) and to file all information and material required to be filed under this section.

(7) Violations.—Failure to file a registration statement or any

amendment thereto required by this subsection within the time specified for such filing shall constitute a violation of this section.

(c) Standards.

(1) Transactions with Affiliates.—Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(i) the terms shall be fair and reasonable;

(ii) the books, accounts and records of each party shall be so maintained as to disclose clearly and accurately the precise nature and details of the transactions; and

(iii) the insurer's surplus as regards policyholders following any such transaction, including the payment of dividends or distributions to shareholder affiliates, shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) Adequacy of Surplus.—For purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered where appropriate:

(i) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(ii) the extent to which the insurer's business is diversified among the several lines of insurance;

(iii) the number and size of risks insured in each line of business;

(iv) the extent of the geographical dispersion of the insurer's risks;

(v) the nature and extent of the insurer's reinsurance program;

(vi) the quality, diversification, and liquidity of the insurer's investment portfolio;

(vii) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(viii) the surplus as regards policyholders maintained by other comparable insurers;

(ix) the adequacy of the insurer's reserves; and

(x) the quality and liquidity of investments in affiliated persons. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

(3) Dividends and Other Distributions.—No insurer subject to registration under subsection (b) shall pay any extraordinary dividend to its stockholders until:

(i) thirty (30) days after the commissioner has received written notice from the insurer of the declaration thereof and has not within such period disapproved such payment; or

(ii) the commissioner shall have approved such payment within such thirty (30) day period.

For purposes of this provision, an extraordinary dividend is any dividend or other distribution which, together with other dividends and distributions made within the preceding twelve (12) months, exceeds the greater of:

(i) ten per centum (10%) of such insurer's surplus as regards policyholders as shown on its last annual statement on file with the commissioner; or

(ii) the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the period covered by such statement, but shall not include pro rata distributions of any class of the insurer's own securities.

(d) Examination.

(1) Power of Commissioner.—In addition to the powers which the commissioner has under the act of May 17, 1921 (P.L.789), known as "The Insurance Department Act of one thousand nine hundred and twenty-one," relating to the examination of insurers, the commissioner shall have the power to order any insurer registered under subsection (b) to produce such records, books or papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer.

Such books, records, papers and information shall be examined in the manner prescribed in section 213 and section 216 of "The Insurance Department Act of one thousand nine hundred and twenty-one," relating to the time and place of examination.

(2) Use of Consultants.—The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall reasonably be necessary to assist in the conduct of the examination under this subsection. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(3) Expenses.—Each registered insurer producing for examination records, books and papers pursuant to this subsection shall be liable for and shall pay the expense of such examination in accordance with section 216 of "The Insurance Department Act of one thousand nine hundred and twenty-one."

(e) Confidential Treatment. All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to subsection (d) and all information reported pursuant to subsection (b) shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the commissioner or such other person without the prior written consent of the insurer to which it pertains: Provided, That, if the commissioner, after giving the insurer and its

affiliates who would be affected thereby notice and an opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, he may publish all or any part thereof in such manner as he may deem appropriate.

(f) Rules, Regulations and Orders. The commissioner may issue such rules, regulations and orders as shall be necessary to carry out the provisions of this section.

(g) Injunctions. Whenever it appears to the commissioner that any person has committed or is about to commit a violation of this section or of any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the Commonwealth Court or any judge thereof for an order enjoining such person from violating or continuing to violate this section or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(h) Penalties. Upon satisfactory evidence of a violation by any person of this section or of any rule, regulation or order of the commissioner hereunder, the commissioner may, in his discretion, following a hearing in accordance with the Administrative Agency Law, impose a penalty upon such offending person of not more than twenty-five thousand dollars (\$25,000) for each act in violation of this section, or of any rule, regulation or order of the commissioner hereunder. In addition, if such offending person is an insurer, the commissioner may, following such a hearing:

(i) suspend or revoke the license of such offending person; or

(ii) refuse, for a period not to exceed one (1) year thereafter, to issue a new license to such offending person. In determining the nature and amount of any penalty hereunder, consideration shall be given to whether or not such violation was wilful.

(i) Jurisdiction. As to any relief sought by the commissioner under this section, the courts of this Commonwealth are hereby vested with personal jurisdiction over every person who controls or is a director, officer, employe or agent of a person who controls an insurance company organized under the laws of this Commonwealth and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the Secretary of the Commonwealth to be his true and lawful attorney upon whom may be served all lawful processes 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 the Commonwealth and transmitted by registered or certified mail by the Secretary of the Commonwealth to such person at his last known address.

Section 5. All laws and parts of laws of this Commonwealth inconsistent with this act are hereby repealed with respect to matters covered by this act.

Section 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and for this purpose the provisions of this act are declared to be separable.

Section 7. This act shall take effect immediately.

APPROVED—The 29th day of July, A. D. 1971.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 65.

A handwritten signature in black ink, reading "C. McLeod Tucker". The signature is written in a cursive, flowing style.

Secretary of the Commonwealth.