

RCW 48.31B.015 Control of insurer—Acquisition, merger, or exchange—Preacquisition notification—Divestment of controlling interest—Jurisdiction of courts. (1) (a) 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 of, seek to acquire, or acquire, in the open market or otherwise, voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly, or by conversion or by exercise of a right to acquire, be in control of the insurer and no person may 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, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner as prescribed in this chapter.

(b) 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, must 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 determines whether the person or persons seeking to divest or acquire a controlling interest in an insurer must file and obtain approval of the transaction. The information remains confidential until the conclusion of the transaction unless the commissioner, in his or her discretion, determines that the confidential treatment interferes with the enforcement of this section. If the statement referred to in (a) of this subsection is otherwise filed, this subsection does not apply.

(c) With respect to a transaction subject to this section, the acquiring person must also file a preacquisition notification with the commissioner, which must contain the information set forth in RCW 48.31B.020(3)(a). A failure to file the notification may be subject to penalties specified in RCW 48.31B.020(5)(c).

(d) For purposes of this section a domestic insurer includes a 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 the purposes of this section, "person" does not include any securities broker holding, in usual and customary broker's function, less than twenty percent of the voting securities of an insurance company or of any person who controls an insurance company.

(2) The statement to be filed with the commissioner under this section must be made under oath or affirmation and must contain the following:

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

(i) If that 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; and

(ii) If that 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 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 must include for each such individual the information required by (a) (i) of this subsection;

(b) 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 where 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 consideration. However, when a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential, if the person filing the statement so requests;

(c) 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 the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement;

(d) Any plans or proposals that 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;

(e) The number of shares of any security referred to in subsection (1) of this section which each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section, and 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) of this section that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) 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 must identify the persons with whom the contracts, arrangements, or understandings have been entered into;

(h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve calendar months preceding the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid;

(i) A description of any recommendations to purchase any security referred to in subsection (1) 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;

(j) 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 (1) of this section, and, if distributed, of additional soliciting material relating to them;

(k) The term of an agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation or securities referred to in subsection (1) of this section for tender, and the amount of fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(l) An agreement by the person required to file the statement referred to in subsection (1) of this section that it will provide the annual report, specified in RCW 48.31B.025(12), for so long as control exists;

(m) An acknowledgment by the person required to file the statement referred to in subsection (1) 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;

(n) Such additional information as the commissioner may prescribe by rule as necessary or appropriate for the protection of policyholders of the insurer or in the public interest;

(o) If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by (a) through (n) of this subsection must 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 a partner or member. If any partner, member, or person is a corporation or the person required to file the statement referred to in subsection (1) of this section is a corporation, the commissioner may require that the information called for by (a) through (n) of this subsection must be given with respect to the corporation, each officer and director of 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;

(p) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer under this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and sent to the insurer within two business days after the person learns of the change.

(3) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) 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 subsection (1) of this section may utilize the documents in furnishing the information called for by that statement.

(4) (a) The commissioner shall approve a merger or other acquisition of control referred to in subsection (1) of this section unless, after a public hearing thereon, he or she finds that:

(i) After the change of control, the domestic insurer referred to in subsection (1) 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 licensed;

(ii) 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 subsection (4) (a) (ii):

(A) The informational requirements of RCW 48.31B.020(3) (a) and the standards of RCW 48.31B.020(4) (b) apply;

(B) The merger or other acquisition may not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by RCW 48.31B.020(4) (c) exist; and

(C) 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;

(iii) 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;

(iv) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, 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;

(v) 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

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

(b) The public hearing referred to in (a) of this subsection must be held within thirty days after the statement required by subsection (1) of this section is filed, and at least twenty days' notice must be given by the commissioner to the person filing the statement. Not less than seven days' notice of the public hearing must be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner must 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 the 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 are entitled to conduct discovery proceedings in the same manner as is presently allowed in the superior court of this state. All discovery proceedings must be concluded not later than three days prior to the commencement of the public hearing.

(c) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in (b) of this subsection may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (1) of this section. Such person shall file the statement referred to in subsection (1) 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 (1) 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 such hearing, in person, or by telecommunication.

(d) 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 rules of this state shall be made not later than sixty days after the date of notification of the change in control submitted pursuant to subsection (1)(a) of this section.

(e) 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.

(5) This section does not apply to:

(a) Any transaction that is subject to RCW 48.31.010, dealing with the merger or consolidation of two or more insurers;

(b) An offer, request, invitation, agreement, or acquisition which the commissioner by order exempts as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.

(6) The following are violations of this section:

(a) The failure to file a statement, amendment, or other material required to be filed under subsection (1) or (2) of this section; or

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

(7) 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 that person arising out of violations of this section, and each such person is deemed to have performed acts equivalent to and constituting an appointment by that person of the commissioner to be the person's true and lawful attorney upon whom may be served all lawful process in an action, suit, or proceeding arising out of violations of this section. Copies of all lawful process must be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at the person's last known address. [2015 c 122 § 3; 1993 c 462 § 4.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.