

IC 27-3-3

Chapter 3. Acquisition of Certain Minority Interests in Subsidiary Domestic Stock Insurance Companies

IC 27-3-3-1

Definitions

Sec. 1. As used in this chapter:

- (a) "Commissioner" means the insurance commissioner of this state.
- (b) "Domestic insurer" means a stock insurance company organized under the laws of this state.
- (c) "Parent corporation" means a corporation organized for any purpose under the laws of this state or any other jurisdiction that owns, directly or indirectly, at least ninety percent (90%) of the issued and outstanding voting stock of a domestic insurer.
- (d) "Subsidiary insurer" means a domestic insurer, at least ninety percent (90%) of the issued and outstanding voting stock of which is owned by a parent corporation.
- (e) "Voting stock" means shares issued by a domestic insurer, the record holders of which are entitled to vote at each election of directors of the domestic insurer, and securities convertible into or evidencing a right to acquire the shares.

(Formerly: Acts 1973, P.L.278, SEC.1.) As amended by P.L.245-1989, SEC.2.

IC 27-3-3-2

Manner of acquisition

Sec. 2. Any parent corporation may acquire all of the issued and outstanding voting stock of its subsidiary insurer not owned by the parent corporation in exchange for shares or other securities of the parent corporation, or cash, other consideration, or any combination of the foregoing, in the manner provided in this section. The board of directors of the parent corporation, by resolution approved by a majority of the whole board, shall adopt a plan of acquisition setting forth:

- (1) the name of the subsidiary insurer;
- (2) the designation and a description of the voting rights of each class, and any series thereof, of voting stock of the subsidiary insurer;
- (3) the total number of issued and outstanding shares of each class, and any series thereof, of voting stock of the subsidiary insurer, the number of such shares owned by the parent corporation and, if either of the foregoing is subject to change prior to the proposed acquisition, the manner in which any change may occur;
- (4) the terms and conditions of the acquisition, including the consideration to be paid and the proposed effective date of acquisition, and a statement clearly describing the rights of shareholders dissenting from the plan of acquisition;
- (5) if the parent corporation is not authorized to do business in

this state, its consent to the enforcement against it in this state of the rights of shareholders pursuant to the plan of acquisition or the rights of shareholders dissenting from that plan, and a designation of the commissioner as the agent upon whom process may be served against the parent corporation in any action or proceeding to enforce those rights; and

(6) such other provisions with respect to the acquisition as the board of directors of the parent corporation deems necessary or appropriate.

(b) Upon adoption of a plan of acquisition, the parent corporation shall submit that plan to the commissioner in duplicate, certified by the secretary or an assistant secretary of the parent corporation as having been adopted in accordance with the provisions of this chapter. Within thirty (30) days from the date the plan is submitted to the commissioner, he shall endorse his approval or disapproval and the date thereof on both copies of the plan, file one (1) copy of the plan in his offices, and deliver the other copy to the parent corporation. No plan of acquisition shall take effect unless the approval of the commissioner has been obtained. The commissioner shall approve the plan of acquisition if he is satisfied that the plan complies with this chapter and that the terms and conditions of the plan of acquisition are fair and reasonable. If the commissioner disapproves the plan, he shall advise the parent corporation in writing of the reasons for his disapproval. The commissioner's disapproval of a plan of acquisition shall be subject to judicial review upon the petition of the parent corporation in accordance, so far as practical, with IC 4-21.5-5.

(c) If the commissioner approves the plan of acquisition, and if the plan has not been abandoned, the parent corporation shall deliver a copy of the plan or a summary thereof approved by the commissioner to each person who, as of the date of delivery, is a holder of record of voting stock to be acquired pursuant to the plan. Delivery shall be made either in person or by depositing a copy of the plan or an approved summary thereof in the United States mails, postage prepaid, addressed to the shareholder at his address of record as furnished by the subsidiary insurer or its transfer agent. The parent corporation shall thereafter file with the commissioner an affidavit of its secretary or assistant secretary setting forth that the delivery was made and the date of delivery.

(d) Notwithstanding approval by the commissioner of the plan of acquisition or delivery of the plan or of an approved summary thereof to shareholders, the plan of acquisition may be abandoned at any time prior to the proposed effective date of acquisition pursuant to a provision for abandonment, if any, contained in the plan.

(e) Upon compliance with the requirements of this section and if the plan of acquisition has not been abandoned, ownership of the voting stock to be acquired pursuant to the plan shall automatically vest in the parent corporation on the date of acquisition proposed in the plan, without any physical transfer or deposit of certificates representing that voting stock, and the parent corporation shall be

entitled to have new certificates therefor registered in its name. Shareholders whose voting stock is so acquired shall cease to be shareholders and shall have only the right to receive the consideration to be paid in exchange for their voting stock pursuant to the plan of acquisition.

(Formerly: Acts 1973, P.L.278, SEC.1.) As amended by P.L.7-1987, SEC.144.

IC 27-3-3-3

Dissent and demand by subsidiary stockholder; withdrawal; notice and offer; acceptance; appraisal; procedure

Sec. 3. Within thirty (30) days after delivery of the plan of acquisition or an approved summary thereof to shareholders as hereinabove provided, any shareholder of the subsidiary insurer may notify the subsidiary insurer in writing of his dissent from the plan and of his demand for payment of fair value of his voting stock, and, if the acquisition proposed in the plan is effected, the subsidiary insurer shall pay to each dissenting shareholder, upon surrender of the certificate or certificates representing the affected voting stock, the fair value thereof as of the day prior to the date on which the plan of acquisition was adopted by the board of directors of the parent corporation, excluding any appreciation or depreciation in anticipation of, or resulting from, that corporate action. Dissent and demand under this section shall be accompanied by the certificate or certificates representing the dissenting shareholder's voting stock for notation thereon that dissent and demand have been made, unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. Dissent and demand shall only be made jointly by holders of voting stock jointly held. Any shareholder failing to make the dissent and demand accompanied by certificates representing his voting stock within the thirty (30) day period shall be bound by the terms and conditions of the plan of acquisition. Any shareholder making dissent and demand accompanied by certificates representing his voting stock shall thereafter have no rights with respect to that voting stock except the right to receive payment therefor under this section, and a transferee of voting stock shall acquire by the transfer no rights other than those which the original dissenting shareholder had after making dissent and demand.

No dissent and demand may be withdrawn unless the president or a vice-president of the subsidiary insurer shall consent thereto in writing. If, however, dissent and demand is withdrawn upon such consent, or if the plan of acquisition is abandoned, or if a dissenting shareholder fails to submit for notation or surrender for payment the certificate or certificates representing his voting stock at the time and in the manner required by this section, or if a dissenting shareholder does not file a petition for a determination of fair value of his voting stock within the time and in the manner provided in this section and the subsidiary insurer does not file a petition for such determination, or if a court of competent jurisdiction determines that a dissenting shareholder is not entitled to the relief provided by this section, then

the right of the dissenting shareholder to be paid the fair value of his voting stock shall cease and his status and rights shall be the same as a shareholder failing to make dissent and demand, without prejudice to any corporate proceedings which may have been taken during the interim.

Within sixty (60) days after the acquisition proposed in the plan is effected, the subsidiary insurer shall give written notice thereof to each shareholder who has made dissent and demand as in this section provided, and shall make a written offer to each such dissenting shareholder to pay for his voting stock a specified price deemed by the subsidiary insurer to be the fair value thereof. This notice and offer shall be made when deposited in the United States mails, postage prepaid, addressed to the dissenting shareholder at his address of record. If the offer is accepted in writing by the dissenting shareholder, the subsidiary insurer shall pay the specified price to the dissenting shareholder upon surrender of the certificate or certificates representing his voting stock. Upon such payment the dissenting shareholder shall cease to have any interest in such voting stock and such voting stock shall be retired by the subsidiary insurer pursuant to IC 1971, 27-1-8-12.

If within thirty (30) days after the date of the mailing of the written offer the subsidiary insurer and a dissenting shareholder do not agree in writing upon the fair value, the subsidiary insurer or the dissenting shareholder may, within ninety (90) days after the date of the mailing of the written offer, petition the circuit or superior court of the county in which the principal office of the subsidiary insurer is located to appraise the fair value of the voting stock as of the day prior to the date on which the plan of acquisition was adopted by the board of directors of the parent corporation, excluding any appreciation or depreciation in anticipation of, or resulting from, that corporate action. If more than one (1) petition is filed, the petitions may be consolidated or joint hearings may be held thereon. The practice, procedure and judgment in the circuit or superior court shall be the same, so far as practical, as that under the eminent domain laws in this state. The judgment of the circuit or superior court shall be final. A judgment shall be payable only upon and concurrently with the surrender by such dissenting shareholder to the subsidiary insurer of the certificate or certificates representing the voting stock. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in the voting stock and such voting stock shall be retired by the subsidiary insurer pursuant to IC 1971, 27-1-8-12.

This section shall provide the exclusive method for dissenting from a plan of acquisition effected pursuant to this chapter and demanding payment of fair value of the voting stock acquired or to be acquired under such a plan.

(Formerly: Acts 1973, P.L.278, SEC.1.)

IC 27-3-3-4

Parent and subsidiary as separate corporations

Sec. 4. Notwithstanding a plan of acquisition effected pursuant to this chapter, the parent corporation and its subsidiary insurer shall in all respects stand before the law as separate and distinct corporations, with neither of the corporations having any liability to the creditors, policyholders, if any, or shareholders of the other, notwithstanding any actions or omissions of the officers, directors, or shareholders of either or both of the corporations.

(Formerly: Acts 1973, P.L.278, SEC.1.)

IC 27-3-3-5

Application of chapter

Sec. 5. The method authorized by this chapter for acquiring voting stock of a subsidiary insurer is not exclusive, but is in addition to any other lawful method for the acquisition of such voting stock.

(Formerly: Acts 1973, P.L.278, SEC.1.)