

**304.37-130 Acquisition of control or merger of domestic insurers.**

- (1) The following definitions shall apply for the purposes of this section only:
  - (a) "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, such as the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers; and
  - (b) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.
- (2)
  - (a) This section applies to any acquisition in which there is a change of control of an insurer authorized to do business in Kentucky, except as set forth in paragraph (b) of this subsection.
  - (b) This section shall not apply to the following:
    1. An acquisition subject to approval or disapproval of the commissioner pursuant to KRS 304.37-120;
    2. A purchase of securities solely for the 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 Kentucky. If a purchase of securities results in a presumption of control under KRS 304.37-010(8), it is not solely for investment purposes unless the insurance regulatory official 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 insurance regulatory official to the commissioners;
    3. If 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 preacquisition notification is filed with the commissioner in accordance with subsection (3)(a) of this section thirty (30) days prior to the proposed effective date of the acquisition. However, the acquisition notification shall not be required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of this paragraph;
    4. The acquisition of already affiliated persons;
    5. An acquisition if, as an immediate result of the acquisition:
      - a. The combined market share of the involved insurers would not exceed five percent (5%) of the total market;
      - b. There would be no increase in any market share; or
      - c. The combined market share of the involved insurers would not exceed twelve percent (12%) of the total market; and the market share would not increase by more than two percent (2%) of the total market.

For the purpose of this subparagraph (b)5., a market means direct

written insurance premium in Kentucky for a line of business as contained in the annual statement required to be filed by insurers authorized to do business in Kentucky;

6. An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; and
  7. An acquisition of an insurer whose domiciliary insurance regulatory official affirmatively finds that the insurer is in failing condition, there is lack of feasible alternative to improving the condition, the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition, and the findings are communicated by the domiciliary insurance regulatory official to the commissioner.
- (3) An acquisition covered by subsection (2) of this section may be subject to an order pursuant to subsection (5) of this section or KRS 304.37-010 unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in KRS 304.37-050.
- (a) The preacquisition notification shall be in the form and contain the information prescribed by the National Association of Insurance Commissioners relating to those markets which, under subsection (2)(b)5. of this section, cause the acquisition not to be exempted from the provisions of this section. The commissioner may require additional material and information the commissioner deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (4) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in Kentucky accompanied by a summary of the education and experience of the economist indicating his or her ability to render an informed opinion.
  - (b) The waiting period required shall begin on the date of receipt by the commissioner of a preacquisition notification and shall end on the earlier of the thirtieth day after the date of receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner may, on a one-time basis, require the submission of additional needed information relevant to the proposed acquisition; if the submission is required, the waiting period shall end on the earlier of the thirtieth 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) of this section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be to lessen substantially competition in any line of insurance in Kentucky or tend to create a monopoly, or if the insurer fails to file adequate information in compliance with subsection (3) of this section.

(b) In determining whether a proposed acquisition would violate the competitive standard of paragraph (a) of this subsection, the commissioner shall consider the following:

1. Any acquisition covered under subsection (2) of this section involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:

a. If 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. If 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.

A highly concentrated market means one in which the share of the four (4) largest insurers is seventy-five percent (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 (2) insurers are involved, exceeding the total of the two (2) columns in the table is prima facie evidence of violation of the competitive standard in paragraph (a) of this subsection. For the purpose of this subparagraph, the insurer with the largest share of the market shall be deemed to be insurer A;

2. 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 (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (2) of this section involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in paragraph (a) of this subsection if:

a. There is a significant trend toward increased concentration in the market;

b. One of the insurers involved is one of the insurers in a grouping of the large insurers showing the requisite increase in the market share; and

- c. Another involved insurer's market is two percent (2%) or more;
  3. For the purposes of subsection (4)(b) of this section:
    - a. The term "insurer" includes any company or group of companies under common management, ownership or control;
    - b. The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to factors such as 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, the line being that used in the annual statement required to be filed by insurers doing business in Kentucky, and the relevant geographical market is assumed to be Kentucky; and
    - c. The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner; and
  4. Even though an acquisition is not prima facie violative of the competitive standard under paragraph (b) of this subsection, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under paragraph (b) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making this determination shall be such factors as market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry into and exit from the market.
- (c) An order shall not be entered under subsection (5)(a) of this section if:
  1. The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from the economies exceed the public benefits which would arise from not lessening competition; or
  2. The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits which would arise from not lessening competition.
- (5) (a) If an acquisition violates the standards of this section, the commissioner may enter an order:
  1. Requiring an involved insurer to cease and desist from doing business in Kentucky with respect to the line or lines of insurance involved in the violation; or
  2. Denying the application of an acquired or acquiring insurer for a

certificate of authority to do business in Kentucky.

- (b) The order referred to in paragraph (a) of this subsection shall be entered pursuant to a hearing held under Subtitle 2 of this chapter.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1484, effective July 15, 2010. -- Created 1992 Ky. Acts ch. 267, sec. 3, effective July 14, 1992.