

**304.37-120 Preacquisition notification -- Review -- Exceptions -- Jurisdiction of Kentucky courts.**

- (1) No person other than the issuer shall make a tender offer for, a request or invitation for tenders of, enter into any agreement to exchange securities, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic insurer if, after the consummation, the person would, directly or indirectly, or by conversion, or by exercise of any right to acquire, be in control of the insurer. No person shall enter into an agreement to merge with or to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time of the offer, request, or invitation is made, or any agreement is entered into, or prior to the acquisition of these 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 in the manner prescribed in this section.
  - (a) For purposes of this section a domestic insurer shall include any 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" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.
  - (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, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty (30) days prior to the cessation of control. The commissioner shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his or her discretion, determines that confidential treatment will interfere with the enforcement of this section. If the statement referred to in this subsection is otherwise filed, this paragraph shall not apply.
  - (c) With respect to a transaction subject to this section, the acquiring person shall also file a preacquisition notification with the commissioner, which shall contain the information set forth in KRS 304.37-130. A failure to file the notification may be subject to penalties specified in KRS 304.37-130.
- (2) The statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:
  - (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
    1. If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the

past ten (10) years; or

2. If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for a lesser period that 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 these functions. The list shall include for each individual the information required by subparagraph 1. of this paragraph;
- (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 in which funds were or are to be obtained for merger or other acquisition of control, 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 the consideration; but if a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall 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 (5) fiscal years of each acquiring party, or for a lesser period that the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;
  - (d) Any plans or proposals which 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 the acquiring party proposes to acquire, and 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 used to determine the fairness of the proposal;
  - (f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned, or concerning any security referred to in subsection (1) of this section which there is a right to acquire beneficial ownership of 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, such as 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 shall identify the persons with whom these 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 (12) calendar months preceding the filing of the statement by any 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 (12) calendar months preceding the filing of the statement, by any 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 of additional soliciting material distributed which relates;
- (k) The term of any agreement, contract, or understanding made with, or proposed to be made with any broker-dealer, as to solicitation of securities referred to in subsection (1) of this section for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to subsection (1) of this section;
- (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 KRS 304.37-020 for so long as control exists;
- (m) An acknowledgement 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) Any additional information as the commissioner may by regulation prescribe 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 paragraphs (a) to (m) of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or other group, and each person who controls the 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 paragraphs (a) to (l) of this subsection shall 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 (10%) of the outstanding voting securities of the corporation; and
- (p) If any material change occurs in the facts in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment stating the change, with copies of all documents and other materials relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) 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 those documents in furnishing the information required by the statement referred to in subsection (1) of this section.
- (4) (a) The commissioner shall approve any merger or other acquisition of control referred to in subsection (1) of this section unless, after a public hearing the commissioner finds that:
  1. 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 issuance of a certificate of authority to write the line or lines of insurance for which it is presently authorized;
  2. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in Kentucky or tend to create a monopoly. In applying the competitive standard in this paragraph:
    - a. The informational requirements of KRS 304.37-130(3)(a) and the standards of KRS 304.37-130(4)(b) shall apply;
    - b. The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by KRS 304.37-130(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;
  3. The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;
  4. 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;
  5. The competence, experience, and integrity of persons who would control the operation of the insurer 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
  6. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.
- (b) The public hearing required by this section shall be conducted as directed in Subtitle 2 of this chapter.
- (c) 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 that may be necessary to assist the

commissioner in reviewing the proposed acquisition of control.

- (5) The provisions of this section shall not apply to:
- (a) Any transaction which is subject to the provisions of KRS 304.24-390, dealing with the merger or consolidation of a domestic insurer; or
  - (b) Any offer, request, invitation, agreement, or acquisition which the commissioner, by order, shall exempt from the section as not having been made or entered into for the purpose of and not having the effect of changing or influencing the control of, a domestic insurer, or not comprehended within the purposes of this section; or
  - (c) Any acquisition of stock of a former mutual by an affiliate company that occurs in connection with the conversion of a mutual insurer to a stock insurer under KRS 304.24-600 to 304.24-625, provided that no person acquires control of the parent company. For purposes of this paragraph, "former mutual" has the meaning provided in KRS 304.24-601.
- (6) The following shall be violations of this section:
- (a) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (1) or (2) of this section; or
  - (b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his or her approval.
- (7) The courts of this state shall have 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 overall actions involving such person arising out of violations of this section. Each person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the Secretary of State to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of the violations of this section. Copies of all lawful process shall be served on the Secretary of State and transmitted to the person at his or her last known address by the Secretary of State in the same manner as service of process on foreign insurers.

**Effective:** July 12, 2012

**History:** Amended 2012 Ky. Acts ch. 74, sec. 17, effective July 12, 2012. -- Amended 2010 Ky. Acts ch. 24, sec. 1483, effective July 15, 2010. -- Amended 2000 Ky. Acts ch. 42, sec. 15, effective July 14, 2000. -- Created 1992 Ky. Acts ch. 267, sec. 2, effective July 14, 1992.