



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB2817

Introduced 1/28/2010, by Sen. Mike Jacobs

SYNOPSIS AS INTRODUCED:

215 ILCS 5/131.4a new	
215 ILCS 5/131.11	from Ch. 73, par. 743.11
215 ILCS 5/136	from Ch. 73, par. 748
215 ILCS 5/404	from Ch. 73, par. 1016

Amends the Illinois Insurance Code. Provides that no person possessing a controlling interest in any domestic company may divest, transfer, donate, or otherwise alienate or dispose of a domestic company's securities or enter into agreements for such transactions without obtaining prior written approval from the Director of Insurance. Makes changes concerning annual statements and confidentiality of records. Effective immediately, except that certain provisions take effect on January 1, 2011.

LRB096 18813 RPM 34199 b

1 AN ACT concerning insurance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Sections 131.11, 136, and 404 and by adding Section
6 131.4a as follows:

7 (215 ILCS 5/131.4a new)

8 Sec. 131.4a. Divesture of control of a domestic company.

9 (a) No person possessing a controlling interest in any
10 domestic company may divest, transfer, donate, or otherwise
11 alienate or dispose of a domestic company's securities, in
12 whole or in part, or enter into agreements for such
13 transactions, without obtaining prior written approval of such
14 transactions or agreements from the Director. The request for
15 approval shall be in writing and shall include a copy of any
16 applicable agreement along with a description of the
17 transaction in sufficient detail, satisfactory to the
18 Director, for the Director to determine whether such
19 transaction satisfies the standards set forth in items (a) and
20 (c) through (e) of subsection (1) of Section 131.8 of this
21 Code. This Section shall not diminish an acquiring party's duty
22 to comply with the provisions of this Article.

23 (b) The Director may grant an exemption to the approval

1 required under this Section upon written request of the person
2 divesting, transferring, donating, or otherwise alienating or
3 disposing of the controlling interest, where (i) the acquiring
4 party has filed with the Director the statement required by
5 Section 131.5 or (ii) where the transaction qualifies for
6 exemption under Section 131.10.

7 (c) In the event that the Director denies a request for
8 approval under this Section, the person that filed for the
9 approval may request a hearing in accordance with the
10 provisions of subsection (3) of Section 131.8, where, for
11 purposes of this Section only, references to the statement
12 required by Section 131.5 shall be deemed to refer to a request
13 for approval under this Section.

14 (215 ILCS 5/131.11) (from Ch. 73, par. 743.11)

15 Sec. 131.11.

16 The following are violations of Sections 131.4 through
17 131.12:

18 (1) the failure to file any statement, amendment, or other
19 material required to be filed under Sections 131.4, 131.4a, or
20 131.5; or

21 (2) the effectuation or any attempt to effectuate an
22 acquisition of control of or merger or consolidation with, a
23 domestic company unless the Director has given his approval
24 thereto.

25 (Source: P.A. 77-673.)

1 (215 ILCS 5/136) (from Ch. 73, par. 748)

2 Sec. 136. Annual statement.

3 (1) Every company authorized to do business in this State
4 or accredited by this State shall submit to ~~file with~~ the
5 Director by March 1st in each year ~~2 copies of~~ its financial
6 statement for the year ending December 31st immediately
7 preceding in such manner and in such form as ~~on forms~~
8 prescribed by the Director, which shall conform substantially
9 to the form of statement adopted by the National Association of
10 Insurance Commissioners. Unless the Director provides
11 otherwise, the annual statement is to be prepared in accordance
12 with the annual statement instructions and the Accounting
13 Practices and Procedures Manual adopted by the National
14 Association of Insurance Commissioners. The Director shall
15 have power to make such modifications and additions in this
16 form as he may deem desirable or necessary to ascertain the
17 condition and affairs of the company. The Director shall have
18 authority to extend the time for filing any statement by any
19 company for reasons which he considers good and sufficient. In
20 every statement the admitted assets shall be shown at the
21 actual values as of the last day of the preceding year, in
22 accordance with Section 126.7. The statement shall be verified
23 by oaths of the president and secretary of the company or, in
24 their absence, by 2 other principal officers. In addition, any
25 company may be required by the Director, when he considers that

1 action to be necessary and appropriate for the protection of
2 policyholders, creditors, shareholders, or claimants, to file,
3 within 60 days after mailing to the company a notice that such
4 is required, a supplemental summary statement as of the last
5 day of any calendar month occurring during the 100 days next
6 preceding the mailing of such notice designated by him on forms
7 prescribed and furnished by the Director. The Director may
8 require supplemental summary statements to be certified by an
9 independent actuary deemed competent by the Director or by an
10 independent certified public accountant.

11 (2) The statement of an alien company shall embrace only
12 its condition and transactions in the United States and shall
13 be verified by the oaths of its resident manager or principal
14 representative in the United States, except that in the case of
15 any life company organized under the laws of Canada or any
16 province thereof, the statement may be verified by the oaths of
17 any of its principal officers designated for that purpose by
18 its board of directors.

19 (3) For the information of the public generally the
20 Director shall cause an abstract of the information contained
21 in the annual statement to be made available to the public as
22 soon as practicable after filing with the Department, by
23 printing those abstracts in pamphlet tabular form for free
24 general distribution by the Department, or by such other
25 publication in the city of Springfield or in the city of
26 Chicago as may be reasonably necessary more fully to inform the

1 public of the financial condition of companies transacting
2 business in this State.

3 (4) Each domestic, foreign, and alien insurer authorized to
4 do business in this State or accredited by this State shall
5 participate in the National Association of Insurance
6 Commissioners' Insurance Regulatory Information System,
7 including the payment of all fees and charges of the system.
8 Each company shall, on or before March 1 of each year, file
9 with the National Association of Insurance Commissioners a copy
10 of its annual financial statement along with any additional
11 filings prescribed by the Director for the preceding year. The
12 statement filed with the National Association of Insurance
13 Commissioners shall be in the same format and scope as that
14 required by this Code and shall include a signed jurat page and
15 actuarial certification. Any amendments and addendums to the
16 annual statement shall also be filed with the National
17 Association of Insurance Commissioners. Each company shall
18 also file with the National Association of Insurance
19 Commissioners annual and quarterly financial statement
20 information in computer readable format as required by the
21 Insurance Regulatory Information System. Failure of a company
22 to file financial statement information in computer readable
23 format shall subject the company to the provisions of Section
24 139.

25 (5) All financial analysis ratios and examination synopsis
26 concerning insurance companies that are submitted to the

1 Director by the National Association of Insurance
2 Commissioners' Insurance Regulatory Information System are
3 confidential and may not be disclosed by the Director.

4 (6) Every property and casualty insurance company doing
5 business in this State, unless otherwise exempted by the
6 Director, shall annually submit the opinion of an appointed
7 actuary entitled "Statement of Actuarial Opinion". This
8 opinion shall be filed in accordance with the appropriate
9 National Association of Insurance Commissioners Property and
10 Casualty Annual Statement Instructions.

11 (a) Every property and casualty insurance company
12 domiciled in this State that is required to submit a
13 Statement of Actuarial Opinion shall annually submit an
14 Actuarial Opinion Summary, written by the company's
15 appointed actuary. This Actuarial Opinion Summary shall be
16 filed in accordance with the appropriate National
17 Association of Insurance Commissioners Property and
18 Casualty Annual Statement Instructions and shall be
19 considered as a document supporting the Actuarial Opinion
20 required in this subsection (6). Each foreign and alien
21 property and casualty company authorized to do business in
22 this State shall provide the Actuarial Opinion Summary upon
23 request.

24 (b) An Actuarial Report and underlying workpapers as
25 required by the appropriate National Association of
26 Insurance Commissioners Property and Casualty Annual

1 Statement Instructions shall be prepared to support each
2 Actuarial Opinion. If the insurance company fails to
3 provide a supporting Actuarial Report or workpapers at the
4 request of the Director or the Director determines that the
5 supporting Actuarial Report or workpapers provided by the
6 insurance company is otherwise unacceptable to the
7 Director, the Director may engage a qualified actuary at
8 the expense of the company to review the opinion and the
9 basis for the opinion and prepare the supporting Actuarial
10 Report or workpapers.

11 (c) The appointed actuary shall not be liable for
12 damages to any person (other than the insurance company and
13 the Director) for any act, error, omission, decision, or
14 conduct with respect to the actuary's opinion, except in
15 cases of fraud or willful misconduct on the part of the
16 appointed actuary.

17 (d) The Statement of Actuarial Opinion shall be
18 provided with the Annual Statement in accordance with the
19 appropriate National Association of Insurance
20 Commissioners Property and Casualty Annual Statement
21 Instructions and shall be treated as a public document.
22 Documents, materials, or other information in the
23 possession or control of the Director that are considered
24 an Actuarial Report, workpapers, or Actuarial Opinion
25 Summary provided in support of the opinion, and any other
26 material provided by the company to the Director in

1 connection with the Actuarial Report, workpapers or
2 Actuarial Opinion Summary, must be given confidential
3 treatment, are not subject to subpoena, and may not be made
4 public by the Director or any other persons. This paragraph
5 (d) shall not be construed to limit the Director's
6 authority to release the documents to the Actuarial Board
7 for Counseling and Discipline (ABCD), so long as the
8 material is required for the purpose of professional
9 disciplinary proceedings and that the ABCD establishes
10 procedures satisfactory to the Director for preserving the
11 confidentiality of the documents, nor shall this paragraph
12 (d) be construed to limit the Director's authority to use
13 the documents, materials or other information in
14 furtherance of any regulatory or legal action brought as
15 part of the Director's official duties. Neither the
16 Director nor any person who received documents, materials,
17 or other information while acting under the authority of
18 the Director shall be permitted or required to testify in
19 any private civil action concerning any confidential
20 documents, materials, or information subject to this
21 subsection (6). Except where another provision of this Code
22 expressly prohibits a disclosure of confidential
23 information to the specific officials or organizations
24 described in this subsection, the Director may:

- 25 (i) share documents, materials, or other
26 information, including the confidential and privileged

1 documents, materials or information subject to this
2 paragraph (d) with the insurance department of any
3 other state or country or with law enforcement
4 officials of this or any other state or agency of the
5 federal government at any time, as long as the agency
6 or office receiving the document, material, or other
7 information agrees in writing to hold it confidential
8 and in a manner consistent with this Code;

9 (ii) receive documents, materials, or information,
10 including otherwise confidential and privileged
11 documents, materials, or information, from the
12 National Association of Insurance Commissioners and
13 its affiliates and subsidiaries, and from regulatory
14 and law enforcement officials of other foreign or
15 domestic jurisdictions, and shall maintain as
16 confidential or privileged any document, material, or
17 information received with notice or the understanding
18 that it is confidential or privileged under the laws of
19 the jurisdiction that is the source of the document,
20 material, or information; and

21 (iii) enter into agreements governing sharing and
22 use of information consistent with paragraph (d).

23 (e) No waiver of any applicable privilege or claim of
24 confidentiality in the documents, materials or information
25 shall occur as a result of disclosure to the Director under
26 this Section or as a result of sharing as authorized in

1 subparagraphs (i), (ii), and (iii) of paragraph (d) of
2 subsection (6) of this Section. All 2008 Annual Statements,
3 which are filed in 2009, and all subsequent Annual
4 Statement filings shall be done in accordance with
5 subsection (6) of this Section.

6 (Source: P.A. 96-145, eff. 8-7-09.)

7 (215 ILCS 5/404) (from Ch. 73, par. 1016)

8 Sec. 404. Office of Director; A public office; destruction
9 or disposal of records, papers, documents, and memoranda.

10 (1) (a) The office of the Director shall be a public office
11 and the records, books, and papers thereof on file therein,
12 except those records or documents containing or disclosing any
13 analysis, opinion, calculation, ratio, recommendation, advice,
14 viewpoint, or estimation by any Department staff regarding the
15 financial or market condition of an insurer not otherwise made
16 part of the public record by the Director, shall be accessible
17 to the inspection of the public, except as the Director, for
18 good reason, may decide otherwise, or except as may be
19 otherwise provided in this Code.

20 (b) Except where another provision of this Code expressly
21 prohibits a disclosure of confidential information to the
22 specific officials or organizations described in this
23 subsection, the Director may disclose or share any confidential
24 records or information in his custody and control with any
25 insurance regulatory officials of any state or country, with

1 the law enforcement officials of this State, any other state,
2 or the federal government, or with the National Association of
3 Insurance Commissioners, upon the written agreement of the
4 official or organization receiving the information to hold the
5 information or records confidential and in a manner consistent
6 with this Code.

7 (c) The Director shall maintain as confidential any records
8 or information received from the National Association of
9 Insurance Commissioners or insurance regulatory officials of
10 other states or countries or law enforcement officials of this
11 or any other state or country or agency of the federal
12 government which is confidential in that other jurisdiction.

13 (2) Upon the filing of the examination to which they
14 relate, the Director is authorized to destroy or otherwise
15 dispose of all working papers relative to any company which
16 has been examined at any time prior to that last
17 examination by the Department, so that in such
18 circumstances only current working papers of that last
19 examination may be retained by the Department.

20 (3) Five years after the conclusion of the transactions
21 to which they relate, the Director is authorized to destroy
22 or otherwise dispose of all books, records, papers,
23 memoranda and correspondence directly related to consumer
24 complaints or inquiries.

25 (4) Two years after the conclusion of the transactions
26 to which they relate, the Director is authorized to destroy

1 or otherwise dispose of all books, records, papers,
2 memoranda, and correspondence directly related to all
3 void, obsolete, or superseded rate filings and schedules
4 required to be filed by statute; and all individual company
5 rating experience data and all records, papers, documents
6 and memoranda in the possession of the Director relating
7 thereto.

8 (5) Five years after the conclusion of the transactions
9 to which they relate, the Director is authorized to destroy
10 or otherwise dispose of all examination reports of
11 companies made by the insurance supervisory officials of
12 states other than Illinois; applications, requisitions,
13 and requests for licenses; all records of hearings; and all
14 similar records, papers, documents, and memoranda in the
15 possession of the Director.

16 (6) Ten years after the conclusion of the transactions
17 to which they relate, the Director is authorized to destroy
18 or otherwise dispose of all official correspondence of
19 foreign and alien companies, all foreign companies' and
20 alien companies' annual statements, valuation reports, tax
21 reports, and all similar records, papers, documents and
22 memoranda in the possession of the Director.

23 (7) Whenever any records, papers, documents or
24 memoranda are destroyed or otherwise disposed of pursuant
25 to the provisions of this section, the Director shall
26 execute and file in a separate, permanent office file a

1 certificate listing and setting forth by summary
2 description the records, papers, documents or memoranda so
3 destroyed or otherwise disposed of, and the Director may,
4 in his discretion, preserve copies of any such records,
5 papers, documents or memoranda by means of microfilming or
6 photographing the same.

7 (8) This Section shall apply to records, papers,
8 documents, and memoranda presently in the possession of the
9 Director as well as to records, papers, documents, and
10 memoranda hereafter coming into his possession.

11 (Source: P.A. 89-97, eff. 7-7-95.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law, except that the provisions changing Sec. 136 of
14 the Illinois Insurance Code take effect on January 1, 2011.