SENATE, No. 4270

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED DECEMBER 9, 2021

Sponsored by:
Senator NELLIE POU
District 35 (Bergen and Passaic)

SYNOPSIS

Amends certain requirements concerning insurance holding companies.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning insurance holding companies and amending the change of control provisions in P.L.1970, c.22.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.1970, c.22 (C.17:27A-1) is amended to read as follows:

1. Definitions.

As used in P.L.1970, c. 22 (C.17:27A-1 et seq.), the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

a. An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

b. The term "commissioner" shall mean the Commissioner of Banking and Insurance or the commissioner's deputies.

c. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, the holding of proxies, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10% or more of the voting securities of any other person, or holds or controls sufficient proxies to elect 10% or more of the board of directors of the other person, provided that no such presumption of control shall of itself relieve any person so presumed to have control from any requirement of P.L.1970, c. 22 (C.17:27A-1 et seq.). This presumption may be rebutted by a showing made in the manner provided by subsection j. of section 3 of P.L.1970, c. 22 (C.17:27A-3) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and an opportunity to be heard, **[**and making**]** that a person directly or indirectly, alone or pursuant to an oral or a written agreement, arrangement or understanding with one or more other persons, exercises influence over the management or policies of an insurer that it is necessary or appropriate for the protection of policyholders of the insurer or in the public interest that the person or persons be deemed to control the company. The commissioner shall make specific findings of fact to support **[**such**]** the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

d. An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer. A mutual holding company system resulting from a mutualization and reorganization of a health service corporation pursuant to section 5 of P.L.2020, c.145 (C.17:48E-46.5), shall be an insurance holding company system pursuant to P.L.1970, c. 22 (C.17:27A-1 et seq.).

e. The term "insurer" means any person or persons, corporation, partnership or company authorized by the laws of this State to transact the business of insurance or to operate a health maintenance organization in this State, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

f. A "person" is an individual, a corporation, a limited liability company, partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

g. (Deleted by amendment, P.L.1993, c. 241).

h. A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

i. The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

j. "Acquisition" means any agreement, arrangement or activity, the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, and assets, and bulk reinsurance and mergers.

k. "Health maintenance organization" means any person operating under a certificate of authority issued pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.).

l. "Enterprise risk" means any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's Risk-Based Capital to fall into company action level as set forth in administrative rules adopted by the commissioner which reflect the standards set forth in the Risk-Based Capital For Insurers Model Act adopted by the National Association of Insurance Commissioners or would cause the insurer to be in hazardous financial condition as defined in administrative rules adopted by the commissioner which reflect the standards set forth in the Model Regulation adopted by the National Association of Insurance

Commissioners to define standards and the commissioner's authority over companies deemed to be in a hazardous financial condition.

m. The term “own", "owned," or "owning" by a person means shares:

(1) with respect to which a person has title or to which a person's nominee, custodian, or other agent has title and which such nominee, custodian, or other agent is holding on behalf of the person; or

(2) with respect to which a person:

(a) has purchased or has entered into an unconditional contract, binding on both parties, to purchase the shares, but has not yet received the shares;

(b) owns a security convertible into or exchangeable for the shares and has tendered the security for conversion or exchange;

(c) has an option to purchase or acquire, or rights or warrants to subscribe to, the shares and has exercised such option, rights, or warrants; or

(d) holds a securities futures contract to purchase the shares and has received notice that the position will be physically settled and is irrevocably bound to receive the underlying shares.

To the extent that any affiliates of the stockholder or beneficial owner are acting in concert with the stockholder or beneficial owner, the determination of shares owned by a person may include the effect of aggregating the shares owned by such person’s affiliate or affiliates. Whether shares constitute shares owned by a person shall be decided by the commissioner in the commissioner’s reasonable determination.

(cf: P.L.2020, c.145, s.18)

2. Section 2 of P.L.1970, c.22 (C.17:27A-2) is amended to read as follows:

2. Acquisition of control of or merger with domestic insurer.

a. (1) Filing requirements. No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer , or solicit or seek to acquire or acquire proxies of a domestic insurer, if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement, arrangement or understanding to merge with or otherwise to acquire control of a domestic insurer unless, at the time any **[**such**]** form of initial offer, request, or invitation is made or any such agreement, arrangement or understanding is entered into, or prior to the acquisition of such securities or the solicitation or acquisition of such proxies if no offer **[**or**]**, agreement, arrangement or understanding is involved,

such person has filed with the commissioner and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement **[**or**]**, arrangement, understanding, acquisition or solicitation has been approved by the commissioner in the manner hereinafter prescribed.

For purposes of this subsection, a domestic insurer shall include any other person controlling a domestic insurer.

(2) For purposes of this subsection, 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 30 days prior to the cessation of control. The commissioner shall by regulation 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 enforcement of this subsection a. If the statement referred to in paragraph (1) of this subsection a. is otherwise filed, this paragraph (2) regarding notice of divestiture or acquisition shall not apply.

(3) With respect to a transaction subject to this subsection a., the acquiring person shall also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in section 7 of P.L.1993, c.241 (C.17:27A-4.1). A failure to file the notification may be subject to penalties specified in paragraph (3) of subsection e. of section 7 of P.L.1993, c.241 (C.17:27A-4.1).

b. Content of statement. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following:

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

(i) If such person is an individual, his 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 10 years;

(ii) If such 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 such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (i) of this paragraph.

(2) 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 wherein 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 such consideration, provided, however, that where a source of such 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 such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such 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.

(5) The number of shares of any security referred to in subsection a. which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection a., and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in subsection a. which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) (i) A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection a. 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. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

(ii) The name and address of any person that is owned, directly or indirectly, of record or beneficially, by each acquiring party and that is also a beneficial owner of shares of the company that is the subject of the merger or other acquisition of control referred to in subsection a. of this section; any affiliate of the acquiring party or such beneficial owner referred to in this subparagraph; and any associated person;

(iii) A detailed description of every agreement, arrangement, and understanding between the acquiring party and all associated persons in connection with the merger or other acquisition of control; and

(iv) A detailed description of each proxy, contract, arrangement, understanding, or relationship pursuant to which the acquiring party or any associated persons, or both, have a right to vote, or cause or direct the vote of, any security referred to in subsection a. of this section.

As used in this subparagraph, "associated person" means any person acting in concert, directly or indirectly, pursuant to any agreement, arrangement, or understanding, whether written or oral, with the acquiring party or such beneficial owner referred to in this subparagraph, or any of their respective affiliates, in connection with the merger, consolidation, or other acquisition of control.

(8) A description of the purchase of any security referred to in subsection a. during the 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 therefor.

(9) A description of any recommendations to purchase any security referred to in subsection a. made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) 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 a., and (if distributed) of additional soliciting material relating thereto.

(11) The terms of any agreement, contract or understanding made or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection a. for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(12) An agreement by the person required to file the statement referred to in subsection a. of this section that it will provide the annual enterprise risk report, specified in subsection k. of section 3 of P.L.1970, c.22 (C.17:27A-3), so long as control exists.

(13) An acknowledgement by the person required to file the statement referred to in subsection a. 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.

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

If the person required to file the statement referred to in subsection a. is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by paragraphs (1) through (14) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner

or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection a. is a corporation, the commissioner may require that the information called for by paragraphs (1) through (14) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

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

c. Alternative filing materials. If any offer, request, invitation, agreement or acquisition referred to in subsection a. is proposed to be made by means of a registration statement under the Securities Act of 1933, 48 Stat. 74 (15 U.S.C. s.77a et seq.), or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, 48 Stat. 881 (15 U.S.C. s.78a et seq.), or under a State law requiring similar registration or disclosure, the person required to file the statement referred to in subsection a. may utilize such documents in furnishing the information called for by that statement.

d. Approval by commissioner; hearings.

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

(i) After the change of control the domestic insurer referred to in subsection a. 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 of this subparagraph:

(a) The informational requirements of paragraph (1) of subsection c. and paragraph (2) of subsection d. of section 7 of P.L.1993, c.241 (C.17:27A-4.1) 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 paragraph (3) of subsection d. of section 7 of P.L.1993, c.241 (C.17:27A-4.1) exist; and

(c) The commissioner may condition 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 financial condition of any acquiring party is such that (a) the acquiring party has not been financially solvent on a generally accepted accounting principles basis, or if an insurer, on a statutory accounting basis, for the most recent three fiscal years immediately prior to the date of the proposed acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); (b) the acquiring party has not generated net before-tax profits from its normal business operations for the latest two fiscal years immediately prior to the date of acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); or (c) the acquisition debt of the acquiring party exceeds 50% of the purchase price of the insurer;

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

(vi) 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

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

(2) The public hearing referred to in paragraph (1) shall be held within 60 days after the statement required by subsection a. is filed and at least 20 days' notice thereof shall be given by the commissioner to the person filing the statement and the insurer. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to such other persons as may be designated by the commissioner. The hearing shall, at the commissioner's discretion, be conducted by the commissioner or his designee who shall report to the commissioner and advise him on the nature of the matter delegated. The commissioner shall make a determination or issue an order, based upon that advice and report, as he shall, in his discretion, determine, and that determination or order shall have the same force and effect as if the commissioner had conducted that hearing personally. The commissioner shall make a determination within 45 business days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same

manner as is presently allowed in the Superior Court of this State. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearings.

(3) If the proposed acquisition of control requires the approval of more than one commissioner, the public hearing referred to in paragraph (2) may be held on a consolidated basis upon request of the person filing the statement referred to in subsection a. of this section. That person shall file the statement referred to in subsection a. 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 decision to opt out within 10 days of the receipt of the statement referred to in subsection a. of this section. A hearing conducted on a consolidated basis shall be public, if not conducted on the documents filed in accordance with the applicable state's procedures for such hearings, and shall be held within the United States in accordance with the rules and procedures of the state hosting the consolidated hearing before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence. A commissioner may attend the hearing, in person or by telecommunication.

(4) The commissioner may retain, at the acquiring person's expense, any attorneys, actuaries, accountants and other persons as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

e. (Deleted by amendment, P.L.1993, c.241.)

f. Exemptions. The provisions of this section shall not apply to:

(1) Any transaction which is subject to the provisions of R.S.17:27-1 et seq. or N.J.S.17B:18-60 et seq., concerning the merger or consolidation of two or more insurers; and

(2) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as (a) 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 (b) as otherwise not comprehended within the purposes of this section.

g. Violations. The following shall be violations of this section:

(1) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection a. or b.; or

(2) Subject to subsection f., the effectuation of, or any attempt to effectuate, an acquisition of control of, divestiture of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

h. Jurisdiction; consent to service of process.

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 such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

i. The purpose of this section is to enable the commissioner to review any acquisition of control of a domestic insurer or of any other person controlling a domestic insurer in order to determine whether or not the acquisition of control would be adverse to the public interest or protection of the existing and future policyholders of the company or is being sought by persons who would utilize the control adversely to the public interest or protection of policyholders, and to enable the commissioner to make the findings required pursuant to paragraph (1) of subsection d. of this section.

(cf: P.L.2014, c.81, s.2)

3. Section 8 of P.L.1970, c.22 (C.17:27A-8) is amended to read as follows:

8. Injunctions; prohibitions against voting securities, sequestration of voting securities.

a. Injunctions. Whenever it appears to the commissioner that any person or any director, officer, employee or agent thereof has committed or is about to commit a violation of this chapter or of any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the Superior Court for an order enjoining such person or such director, officer, employee or agent thereof from violating or continuing to violate this chapter or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

b. Voting of securities; when prohibited. No security or proxy which is the subject of any agreement **[**or**]**, arrangement, or understanding regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities, including securities that may be voted pursuant to those proxies, were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this State have so ordered. If an

insurer or the commissioner has reason to believe that any security or proxy of the insurer or other person controlling the insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule, regulation or order issued by the commissioner hereunder the insurer or the commissioner may apply to the Superior Court to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 2 of P.L.1970, c.22 (C.17:27A-2) or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security or proxy so acquired, to void any vote of such security or proxy already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

c. Sequestration of voting securities. In any case where a person has acquired or is proposing to acquire any voting securities or proxies in violation of this chapter or any rule, regulation or order issued by the commissioner hereunder, the Superior Court may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities or proxies of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this chapter. Notwithstanding any other provisions of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers shall be deemed to be in this State.

(cf: P.L.1995, c.338, s.4)

4. This act shall take effect immediately.

STATEMENT

This bill makes certain changes to the law concerning insurance holding companies.

This bill adds a distinct presumption of control when a person solicits proxies for the purpose of electing directors representing 10 percent or more of the board members and adds a definition of “own” or “owned” to include all voting securities underlying convertible securities, options, securities futures contracts, and aggregating shares “owned” by persons acting in concert.

The bill adds to the law additional circumstances under which a person is required to file information with the Department of Banking and Insurance and obtain approval and requires additional information to be included in the filing. The bill clarifies that the purpose of these provisions is to enable the Commissioner of Banking and Insurance to review any acquisition of control of a domestic insurer or of any other person controlling a domestic

insurer in order to determine whether or not the acquisition of control would be adverse to the public interest or protection of the existing and future policyholders of the company or is being sought by persons who would utilize such control adversely to the public interest or protection of policyholders, and to enable the commissioner to make the findings required pursuant to the law.