

No. 215

AN ACT

SB 621

Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," further providing for the acquisition of stock by business or insurance corporations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 337.5, act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," added January 11, 1968 (P.L.942, No.418), is amended to read:

Section 337.5. Acquisition of Stock by Business Corporations.—(a) Any **[domestic]** business **or insurance** corporation seeking to acquire in exchange for shares of its capital stock, **other securities, cash, other consideration or any combination thereof**, all of the shares of the capital stock of any insurance company organized under the laws of the Commonwealth of Pennsylvania, may at its option elect to acquire such shares in the manner hereinafter provided.

(b) **[The board of directors of the corporation seeking to acquire such shares, hereinafter referred to as the acquiring corporation, and the board of directors of the insurance company whose shares are proposed to be acquired, hereinafter referred to as the acquired corporation, shall by resolution approve the terms and conditions of the proposed exchange. Such terms and conditions] Where the corporation seeking to acquire such shares, hereinafter referred to as the "acquiring corporation," does not own, directly or indirectly, at least ninety percent of the aggregate issued and outstanding shares of all classes of voting stock of the insurance company whose shares are proposed to be acquired, hereinafter referred to as the "acquired corporation," the boards of directors, trustees or other governing bodies of the acquiring corporation and the acquired corporation, shall by resolution approve a proposed exchange offer. Such proposed offer shall specify the stock or classes of stock to be acquired, the terms and conditions of the offer, the method of acceptance thereof, and the procedure to be followed to effect the exchange, and** may fix or provide for the fixing of, record dates for the determination of stockholders to whom offers, notices, and other communications shall be mailed and for the determination of stockholders who shall be entitled to exercise rights hereunder.

(b.1) Where the acquiring corporation owns, directly or indirectly, ninety percent of the aggregate issued and outstanding shares of all classes of voting stock of the acquired corporation, the board of directors, trustees or other governing body of the acquiring corporation may, by resolution, adopt a plan for the acquisition of minority interests in the acquired corporation. Every plan shall set forth:

- (1) The name of the acquired corporation;*
- (2) The total number of issued and outstanding shares of each class of voting stock of the acquired corporation, the number of its shares owned by the acquiring corporation and, if either of the foregoing is subject to change prior to the effective date of acquisition, the manner in which any change may occur;*
- (3) The terms and conditions of the plan, including the manner and basis of exchanging the shares to be acquired for shares or other securities of the acquiring corporation, for cash, other consideration, or any combination of the foregoing, the proposed effective date of acquisition and a statement clearly describing the rights of dissenting stockholders to demand appraisal;*
- (4) If the acquiring corporation is neither a domestic corporation nor an insurer authorized to do business in this Commonwealth, its agreement to be bound by subsections (g) to (k), inclusive, of this section with respect to the plan, its consent to the enforcement against it in this Commonwealth of the rights of stockholders pursuant to the plan, and a designation of the Insurance Commissioner as the agent upon whom process may be served against the acquiring corporation in the manner set forth in section 210 of The Insurance Department Act of one thousand nine hundred and twenty-one in any action or proceeding to enforce any such rights; and*
- (5) Such other provisions with respect to the plan as the board of directors, trustees or other governing body deems necessary or desirable, or which the Insurance Commissioner may prescribe.*

(c) The terms and conditions of the proposed [issuance and exchange] *offer or plan* shall be submitted by the acquiring corporation to the Insurance Commissioner for examination and, after holding a hearing at least ten days' notice of which shall have been mailed to all [persons or parties to whom it is proposed to issue shares in such exchange] *stockholders of the acquired corporation* and at which such [persons or parties] *stockholders* shall have the right to appear, the Insurance Commissioner shall either approve or disapprove the fairness of such terms and conditions.

(d) If the fairness of such terms and conditions is approved by the Insurance Commissioner, the acquiring corporation shall submit by mail a written offer *or plan of acquisition* to the stockholders of the acquired corporation, [which offer shall specify the stock or classes of stock to be acquired, the terms and conditions of the proposed issuance

and exchange, the method of acceptance thereof, and the procedure to be followed to effect the exchange. Any such offer may provide for the payment of cash in lieu of the issuance of fractions of shares of the acquiring corporation.] *postage prepaid, addressed to each such stockholder at his address of record.*

(e) If prior to the termination date of [the] *an* exchange offer *under subsection (b) above* or any extension thereof, which termination date or extended date shall be no later than one hundred twenty days after the date of the initial mailing of such offer, the offer shall have been accepted by the holders of not less than the percentage of the outstanding shares of capital stock specified in the terms and conditions of the proposed [issuance and exchange] offer, which percentage shall in no event be less than eighty percent of the total combined voting power of all classes of stock entitled to vote and at least eighty percent of the total number of shares of all other classes of stock, the acquiring corporation shall, within one hundred fifty days after the date of such initial mailing, notify the acquired corporation of such acceptance and shall furnish to the acquired corporation a list of all stockholders who accepted the offer and of the numbers and classes of shares covered by their respective acceptances. Thereupon, the acquiring corporation shall automatically become the holder of all shares of all classes of capital stock of the acquired corporation included in such list, except to the extent that it shall have notified the acquired corporation that shares are to be issued to specified persons in order to qualify them or to maintain their qualification as directors of the acquired corporation. Certificates representing all outstanding shares of capital stock of the acquired corporation included in such list shall forthwith be issued to the acquiring corporation and such persons as it shall have specified as aforesaid. The formerly outstanding certificates therefor shall represent only the right to receive shares of capital stock *or other securities* of the acquiring corporation [(or cash in lieu of fractional shares)]-*cash, other consideration or any combination of the foregoing specified in the offer* as hereinafter provided. Within thirty days after the aforesaid notification from the acquiring corporation, the acquired corporation shall notify by mail each stockholder of the acquired corporation who has not accepted the offer that, subject to the provisions of subsections (f), *and (g)* to (k), inclusive, of this section, a copy of which subsections shall be included with such notice, such stockholder shall have the right to receive payment in cash of the full market value of his shares and shall not be entitled to vote, to receive dividends or other distributions or to exercise any rights with respect to such shares other than those set forth in said subsections.

(f) A stockholder who does not otherwise accept [the] *an* exchange offer *described under subsection (b) above* shall be conclusively deemed to have accepted it if, following the mailing of the aforesaid notice by the

acquired corporation, any of the following conditions shall occur: (i) he fails to make written demand as provided in subsection (g), below; (ii) he fails to surrender his certificate or certificates for notation as provided in subsection (h), below, unless the acquired corporation elects to waive such failure or relief from such failure is granted by a court of common pleas of the county in which the chief office of the acquired corporation is situate; or (iii) the full market value of his shares not having been agreed upon as provided in subsection (j), below, he fails to comply with the provisions of said paragraph with respect to the filing of a petition for the appointment of appraisers, and the acquired corporation does not elect to waive such failure. If any such stockholder is deemed to have accepted the exchange offer pursuant to the provisions of this subsection (f), the acquiring corporation shall automatically become the holder of all shares of all classes of capital stock of the acquired corporation held by such stockholder [**and the acquiring corporation shall issue to such stockholder certificates for the shares of its capital stock and pay cash in lieu of fractional shares as provided in subsection (i), below**].

(f.1) On or before the date of acquisition proposed in a plan adopted pursuant to subsection (b.1) above, the acquiring corporation shall file with the Insurance Commissioner a certificate executed by its president and attested by its secretary, or the executive officers corresponding thereto, and subscribed by such officers and affirmed by them as true under the penalties or perjury, and under the seal of the acquiring corporation, attesting to compliance by the acquiring corporation with subsection (d) above.

(f.2) Upon compliance with this subsection and with subsections (a), (b.1), (d) and (g) to (k), inclusive, ownership of the shares to be acquired pursuant to the plan shall vest in the acquiring corporation on the date of acquisition proposed in the plan whether or not the certificates for such shares have been surrendered for exchange and the acquiring corporation shall be entitled to have new certificates registered in its name, except to the extent it shall have notified the acquired corporation that shares are to be issued to specified persons in order to qualify them or to maintain their qualification as directors of the acquired corporation. Stockholders whose shares have been so acquired shall thereafter retain only the right to receive the consideration to be paid in exchange for their shares pursuant to the plan or to demand appraisal pursuant to subsections (g) to (k), inclusive.

(g) A stockholder of the acquired corporation who wishes to be paid the full market value of his shares shall make written demand for such payment upon the acquired corporation *in the case of an exchange offer made pursuant to subsection (b) above* within thirty days after the mailing of the aforesaid notice by the acquired corporation, *or in the case of a plan adopted pursuant to subsection (b.1) above within thirty*

days after the mailing of the plan of acquisition by the acquiring corporation pursuant to subsection (d) above. A stockholder may demand payment as to all or less than all of those shares registered in his name of which he is not the beneficial owner, but demand may not be made with respect to some but less than all shares of the same class owned by any given beneficial owner of shares, whether or not the shares so owned by him are registered in his name.

(h) Within twenty days after demanding payment for his shares as aforesaid, each stockholder demanding payment shall submit the certificate or certificates representing his shares to the acquired corporation for notation thereon that such demand has been made. If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefore shall bear a similar notation, together with the name of the original holder of such shares who demanded payment as aforesaid and a transferee of such shares shall acquire by such transfer no rights other than those which the stockholder who demanded payment as aforesaid had after making demand for payment of the full market value thereof.

(i) If the acquiring corporation has notified the acquired corporation of the acceptance of **[the] an** exchange offer *made pursuant to subsection (b) above* by the required percentage of stockholders as provided in subsection (e), above *or in the case of a plan adopted pursuant to subsection (b.1) above, on or after the date of acquisition proposed in such a plan*, the acquiring corporation shall cause to be issued in the name of each stockholder who has accepted **[or is deemed to have accepted]** such offer, **[certificates] or who has not made timely demand for appraisal certificates** for the shares of its capital stock *or other securities* as provided in the exchange offer **[and] or plan, or** shall set aside cash *or other consideration*, if any, to which he is entitled, which certificates, **[and] cash, or other consideration** shall be delivered to him if he has already surrendered the certificates for his shares of the acquired corporation for exchange and shall otherwise be held in trust for delivery to such stockholder upon such surrender. The rights of such a stockholder shall be limited to the right to obtain such certificates, **[and] cash, [if any] or other consideration.**

(j) Any stockholder of the acquired corporation who has not accepted the exchange offer and is not deemed to have accepted it as aforesaid, *or who has made timely demand for appraisal under subsection (g)*, shall have the right to receive payment for his shares of capital stock of the acquired corporation as hereinafter provided. If within forty days after making demand as aforesaid such stockholder and the acquired corporation have not agreed as to the full market value of such shares, such stockholder may, within sixty days after making such demand, apply by petition to any court of common pleas of the county in which the chief office of the acquired corporation is situate to

appoint three disinterested persons to estimate and appraise the shares of such stockholder at the full market value thereof as of the day prior to the day on which the exchange offer *or plan of acquisition* was mailed without regard to any appreciation or depreciation in consequence of the exchange offer, *or plan of acquisition*, which appraisal, when confirmed by the court, shall be final and conclusive. The full market value of such shares as agreed upon or as determined as aforesaid shall be paid by the acquired corporation to such stockholder upon surrender to the acquired corporation of his certificates for such shares. The acquired corporation may retain, cancel, dispose of or take other action with respect to such shares, provided, that there shall be no reduction in the capital stock of the acquired corporation without compliance with other applicable provisions of law, and that the acquired corporation shall not have power to vote such shares.

(k) Any stockholder who has had his shares of stock appraised, and the appraisal confirmed, as provided in subsection (j) above, shall be reimbursed by the acquiring corporation, in an amount not in excess of ten thousand dollars (\$10,000), for his reasonable expenses, including attorney's fees, in obtaining the appraisal, provided that amount of the appraisal exceeds by ten per centum (10%) the value of the securities, cash or other consideration the stockholder would have received under the terms of the offer or plan. For the purpose of determining if a shareholder is entitled to reimbursement for his expenses, as provided in this subsection, the value of the securities which the shareholder would have received under the terms of the offer or plan shall be deemed to be their average market value on the initial mailing date of an offer or on the effective date of acquisition as set forth in a plan.

[(k)] (l) Any stockholder who desires to object to or dissent from any proposed exchange authorized herein shall be limited to the rights and remedies prescribed herein and such rights and remedies shall be exclusive.

APPROVED—The 2nd day of October, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 215.



Secretary of the Commonwealth.