[215 Ill. Comp. Stat. § 5/131.12a.]

§ 5/131.12a. Acquisitions involving companies not otherwise covered: Insurance Holding Company Systems

(1) Definitions. 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 or control of the insurance in force of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, the transaction of bulk reinsurance and the act of merging or consolidating.

(b) An "involved company" includes a company which either acquires or is acquired, is affiliated with an acquirer or acquired or is the result of a merger.

(2) Scope.

(a) Except as exempted in paragraph (b) of this subsection (2), this Section applies to any acquisition in which there is a change in control of a company authorized to do business in this State.

(b) This Section shall not apply to the following:

(i) an acquisition subject to approval or disapproval by the Director pursuant to Section 131.8;

(ii) a purchase of securities solely for investment purposes so long as such securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this State. If a purchase of securities results in a presumption of control under subsection (b) of Section 131.1, it is not solely for investment purposes unless the commissioner of the company's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the Director of this State;

(iii) 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 pre-acquisition notification is filed with the Director in accordance with subsection (3)(a) of this Section, 30 days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this Section if the acquisition would otherwise be excluded from this Section by any other subparagraph of subsection (2)(b);

(iv) the acquisition of already affiliated persons;

(v) an acquisition if, as an immediate result of the acquisition,

(A) in no market would the combined market share of the involved companies exceed 5% of the total market,

(B) there would be no increase in any market share, or

(C) in no market would the combined market share of the involved companies exceed 12% of the total market, and the market share increase by more than 2% of the total market.
For the purpose of this subparagraph (b)(v), "market" means direct written insurance premium in this State for a line of business as contained in the annual statement required to be filed by companies licensed to do business in this State;

(vi) an acquisition for which a pre-acquisition notification would be required pursuant to this Section due solely to the resulting effect on the ocean marine insurance line of business;

(vii) an acquisition of a company whose domiciliary commissioner affirmatively finds that such company is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving such company's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and such findings are communicated by the domiciliary commissioner to the Director of this State.

(3) Pre-acquisition Notification; Waiting Period. An acquisition covered by subsection (2) may be subject to an order pursuant to subsection (5) unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The Director shall give confidential treatment to information submitted under this subsection in the same manner as provided in Section 131.22 of this Article.

(a) The pre-acquisition notification shall be in such form and contain such information as prescribed by the Director, which shall conform substantially to the form of notification adopted by the National Association of Insurance Commissioners relating to those markets which, under subsection (b)(v) of Section (2), cause the acquisition not to be exempted from the provisions of this Section. The Director may require such additional material and information as he deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (4). The required information may include an opinion of an economist as to the competitive impact of the acquisition in this State accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

(b) The waiting period required shall begin on the date of the receipt by the Director of a pre-acquisition notification and shall end on the earlier of the 30th day after the date of such receipt, or termination of the waiting period by the Director. Prior to the end of the waiting period, the Director on a one time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after the receipt of such additional information by the Director or termination of the waiting period by the Director.

(4) Competitive Standard.

(a) The Director may enter an order under subsection (5)(a) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this State or tend to create a monopoly therein or if the company fails to file adequate information in compliance with subsection (3).

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

(i) any acquisition covered under subsection (2) involving 2 or more companies 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 companies possess the following shares of the market:

Company A	Company B
4%	4% or more
10%	2% or more
15%	1% or more

(B) if the market is not highly concentrated and the involved companies possess the following shares of the market:

Company A	Company B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the 4 largest companies is 75% or more of the market. Percentages not shown in the tables are to be interpolated proportionately to the percentages that are shown. If more than 2 companies are involved, exceeding the total of the 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 company with the largest share of the market shall be deemed to be Company A.

(ii) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest companies in the market from the 2 largest to the 8 largest has increased by 7% or more of the market over a period of time extending from any base year 5-10 years prior to the acquisition up to the time of the acquisition. Any acquisition covered under subsection (2) involving 2 or more companies 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 companies involved is one of the companies in a grouping of such large companies showing the requisite increase in the market share, and

(C) another involved company's market is 2% or more.

(iii) For the purpose of subsection (4)(b):

(A) The term "company" includes any company or group of companies under common management, ownership or control.

(B) The term "market" means the relevant product and geographic markets. In determining the relevant product and geographical markets, the Director shall give due consideration to, among other things, 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 with such line being that used in the annual statement required to be filed by companies doing business in this State and the relevant geographical market is assumed to be this State.

(C) The burden of showing prima facie evidence of violation of the competitive standard rests upon the Director.

(iv) Even though an acquisition is not prima facie violative of the competitive standard under subparagraph (b)(i) and (b)(ii) of this subsection the Director may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under subparagraphs (b)(i) and (b)(ii) of this subsection (4), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(c) An order may not be entered under subsection (5)(a) if:

(i) 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 such economies exceed the public benefits which would arise from not lessening competition; or

(ii) the acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits which would arise from not lessening competition.

(5) Orders and Penalties:

(a)(i) If an acquisition violates the standard of this Section, the Director may enter an order

(A) requiring an involved company to cease and desist from doing business in this State with respect to the line or lines of insurance involved in the violation, or

(B) denying the application of an acquired or acquiring company for a license to do business in this State.
(ii) Such an order shall not be entered unless there is a hearing, notice of such hearing is issued prior to the end of the waiting period and not less than 15 days prior to the hearing, and the hearing is concluded and the order is issued no later than 60 days after the end of the waiting period. Every order shall be accompanied by a written decision of the Director setting forth his findings of fact and conclusions of law.

(iii) (Blank).

(iv) An order pursuant to this paragraph shall not apply if the acquisition is not consummated.

(b) Any person who violates a cease and desist order of the Director under paragraph (a) and while such order is in effect may after notice and hearing and upon order of the Director be subject at the discretion of the Director to any one or more of the following:

(i) a monetary penalty of not more than $10,000 for every day of violation or

(ii) suspension or revocation of such person's license.

(c) Any company or other person who fails to make any filing required by this Section and who also fails to demonstrate a good faith effort to comply with any such filing requirement shall be subject to a civil penalty of not more than $50,000.

(6) Inapplicable Provisions. Subsections (2) and (3) of Section 131.23 and Section 131.25 do not apply to acquisitions covered under subsection (2).