



IN THE GENERAL ASSEMBLY STATE OF _____

Election of the State Insurance Commissioner and Revolving Door Act

1 Be it enacted by the People of the State of _____, represented in the General
2 Assembly:

3 **Section 1. Title.** This act shall be known as and may be cited as the Election of the State
4 Insurance Commissioner and Revolving Door Act.

5 **Section 2. Purpose.** The Legislature hereby finds and declares that:

- 6 1. Although the U.S. Department of Justice decided to oppose both the proposed Aetna-
7 Humana and Anthem-Cigna mergers, only two state insurance commissioners in the
8 United States decided to oppose the mergers;
- 9 2. In many cases, state insurance commissioners approved these mergers:
 - 10 a. without even notifying the general public that the mergers were being reviewed;
 - 11 b. without holding hearings that would have given consumers and others most
12 affected by the mergers a chance to voice their concerns;
 - 13 c. after holding public hearings before approving the mergers, but in those hearings
14 giving key stakeholders such as patients and physicians much less time to express
15 their concerns about the mergers than the health insurers were given to argue for
16 the mergers;

- 1 d. while refusing to share information received from the insurers in which the
2 insurers purported to describe the anticompetitive effects of the proposed mergers;
3 and
4 e. with little, if any, safeguards that would have protected consumers, even though
5 the commissioner recognized that the mergers would be anticompetitive.
- 6 3. This widespread failure of insurance regulators to protect consumers appears in large part
7 to be due to the close financial ties that insurance regulators often have with the insurers
8 that they are charged with regulating. For example, an October 2016 investigation by the
9 Center for Public Integrity (CPI) found “a pattern of coziness between the insurance
10 industry and state commissioners who regulate them...”¹
- 11 4. The CPI investigation also found that half of the 109 insurance commissioners who left
12 their posts in the last decade went on to work for the insurance industry—many leaving
13 before their terms expired, with only two commissioners moving into consumer
14 advocacy;
- 15 5. The CPI investigation also reported that some insurance regulators who formerly worked
16 for health insurers used their regulatory authority to benefit their former employers;
- 17 6. To ensure that consumers are protected from the anticompetitive effects of health insurer
18 conduct and unlawful activity insurance regulators must be free from undue financial and
19 commercial influence from the health insurers that they regulate;
- 20 7. The election of insurance commissioners, and ethical reforms such as “revolving door”
21 limitations and temporary lobbying restrictions between health insurers and those
22 responsible for regulating the health insurance industry, are two key ways of fostering

¹ See <https://www.publicintegrity.org/2016/10/02/20020/drinks-dinners-junkets-and-jobs-how-insurance-industry-courts-state-commissioners>

1 regulator independence from the financial and commercial influences of the health
2 insurance industry.

3 **Section 3. Definitions.**

4 **1. “Financial interest in a decision”** means a circumstance in which it is reasonably foreseeable
5 that the decision will have a material financial effect on the Insurance Commissioner, employee
6 of _____, (*name of state agency regulating the business of insurance*) or on
7 a member of the Commissioner’s or employee’s immediate family, or on any of the following:

8 (a) any business entity in which the Commissioner or employee, or any member of the
9 Commissioner’s or employee’s immediately family has a direct or indirect investment
10 worth two thousand dollars (\$2,000) or more;

11 (b) any source of income to the Commissioner, employee, or any member of the
12 Commissioner’s or employee’s immediately family member aggregating five hundred
13 dollars (\$500) or more in value provided or promised to, received by, the Commissioner,
14 employee, or any member of the Commissioner’s or employee’s immediately family
15 member within 12 months prior to the time when the decision is made;

16 (c) Any business entity in which the Commissioner, employee, or any member of the
17 Commissioner’s or employee’s immediately family member is a director, officer, partner,
18 trustee, employee, or holds any position of management; or

19 (d) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating
20 two hundred fifty dollars (\$250) or more in value provided to, received by, or promised
21 to the Commissioner, employee, or any member of the Commissioner’s or employee’s
22 immediately family member within 12 months prior to the time when the decision is
23 made.

1 **2. Former client** is any person for whom the person assuming the Office of Insurance
2 Commissioner or employee of (*name of state agency regulating the business of insurance*)
3 served personally as agent, attorney, or consultant within the 2 years prior to the date of his or
4 her assumption of Office or employment.

5 **3. Health insurer** means an entity or person that offers or administers a health insurance plan,
6 coverage or policy in this state, or contracts with physicians and other health care providers to
7 furnish specified health care services to enrollees covered under a health insurance plan or
8 policy.

9 **4. Health insurance plan or policy** means any hospital and medical expense incurred policy,
10 non-profit health care service plan contract, health maintenance organization subscriber contract
11 or any other health care plan, policy, coverage or arrangement that pays for or furnishes medical
12 or health care services, whether by insurance or otherwise, offered in this State.

13 **Section 4. Election of Insurance Commissioner.** The Insurance Commissioner shall be
14 elected by the people in the same time, place, and manner and for the same term as the Governor
15 not to exceed two four-year terms.

16 **Section 5. Revolving Door Prohibitions Concerning Persons Leaving.** (*Name of state agency*
17 *regulating the business of insurance*).

18 **1. Insurance Commissioner Leaving Government.** No Insurance Commissioner for
19 the state of _____ shall engage in lobbying activities or represent
20 clients, including his or her employer, before the (*name of state agency or state agencies*
21 *regulating the business of insurance*) for a period of two years following the end of his or
22 her term as Insurance Commissioner, irrespective of whether or not he or she left that
23 Office prior to the expiration of his or her term in that Office.

1 **2. Employees Leaving Government.** No employee of (*name of state agency regulating*
2 *the business of insurance*) shall engaging in lobbying activities or represent clients,
3 including his or her employer, before (*name of state agency or state agencies regulating*
4 *the business of insurance*) or any employee thereof, for a period of two years following
5 the end of his or her employment with the (*name of state agency regulating the business*
6 *of insurance*).

7 **3. Restriction Concerning Contracts for those Leaving Government.** No person
8 having authority to make purchases involving the (*name of the state agency regulating*
9 *the business of insurance*) or who participates in the negotiation or approval of contracts,
10 grants, or awards involving the (*name of the state agency regulating the business of*
11 *insurance*), shall enter into, solicit, or negotiate or administer a contract, grant, or award
12 involving the (*name of the state agency regulating the business of insurance*) within two
13 years from the date on which his or her term or employment ended.

14 **4. Restrictions concerning involvement in direct regulation.** No Insurance
15 Commissioner or employee of (*name of the state agency regulating the business of*
16 *insurance*) who personally participates in the direct regulation, audit, or investigation of a
17 health insurer shall within two years of his or her departure from such employment or
18 within two years of the end of his or her term as Insurance Commissioner solicit or accept
19 employment with such health insurer.

20 **Section 6. Restrictions concerning those taking positions with the.** (*Name of the state*
21 *agency regulating the business of insurance*).

22 **1. Person Assuming Office of Insurance Commissioner or Employment.** No person
23 assuming the Office of Insurance Commissioner or any other person accepting
24 employment with (*name of the state agency regulating the business of insurance*) shall,

1 for a period of two years following the assumption of that Office or commencement of
2 employment, participate in any particular matter involving specific parties that is directly
3 and substantially related to his former employer or former clients, including regulations
4 and contracts.

5 **2. Restriction specific to persons engaged in lobbying activity.** In addition to
6 complying with the restrictions specified in Section 4.1 above, no person who was
7 engaged in lobbying activity on behalf of a health insurer within the 2 years before the
8 date of his or her assumption of the Office of Insurance Commissioner or employment
9 with (*name of the state agency regulating the business of insurance*), shall:

10 (a) participate in any particular matter on which he or she lobbied within the two
11 years before the date of his or her assumption of Office or employment; or

12 (b) participate in the specific issue area in which that particular matter falls.

13 **3. Restriction Concerning Contracts for those Entering Government.** No person
14 having authority to make purchases involving a former employer or client (*name of the*
15 *state agency regulating the business of insurance*) or who participates in the negotiation
16 or approval of contracts, grants, or awards involving a former employer or client, shall
17 enter into, solicit, or negotiate or administer a contract, grant, or award involving the
18 former employer or client within two years from the date on which his or her
19 employment or representation of the client terminated.

20 **Section 7. Mandatory Recusal.** In any circumstance in which the Insurance Commissioner or
21 employee of (*name of the state agency regulating the business of insurance*) may have a
22 financial interest in a decision concerning one or more health insurers, the Insurance
23 Commissioner or employee must recuse himself or herself from participating in that decision.

1 **Section 8. Enforcement.** A person may in civil court file an application for such temporary
2 restraining orders and preliminary and permanent injunctions as may be appropriate to restrain
3 future, recurring, or continuing conduct by the former employee in breach of the requirements of
4 this Act.

5 **Section 9. Effective.** This Act shall become effective immediately upon being enacted into law.

6 **Section 10. Severability.** If any provision of this Act is held by a court to be invalid, such
7 invalidity shall not affect the remaining provisions of this Act, and to this end the provisions of
8 this Act are hereby declared severable.