Election of the State Insurance Commissioner and Revolving Door Act

Be it enacted by the People of the State of ____________, represented in the General Assembly:

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

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

1. Although the U.S. Department of Justice decided to oppose both the proposed Aetna-Humana and Anthem-Cigna mergers, only two state insurance commissioners in the United States decided to oppose the mergers;

2. In many cases, state insurance commissioners approved these mergers:
   a. without even notifying the general public that the mergers were being reviewed;
   b. without holding hearings that would have given consumers and others most affected by the mergers a chance to voice their concerns;
   c. after holding public hearings before approving the mergers, but in those hearings giving key stakeholders such as patients and physicians much less time to express their concerns about the mergers than the health insurers were given to argue for the mergers;
d. while refusing to share information received from the insurers in which the
insurers purported to describe the anticompetitive effects of the proposed mergers;

and

e. with little, if any, safeguards that would have protected consumers, even though
the commissioner recognized that the mergers would be anticompetitive.

3. This widespread failure of insurance regulators to protect consumers appears in large part
to be due to the close financial ties that insurance regulators often have with the insurers
that they are charged with regulating. For example, an October 2016 investigation by the
Center for Public Integrity (CPI) found “a pattern of coziness between the insurance
industry and state commissioners who regulate them…”¹

4. The CPI investigation also found that half of the 109 insurance commissioners who left
their posts in the last decade went on to work for the insurance industry—many leaving
before their terms expired, with only two commissioners moving into consumer
advocacy;

5. The CPI investigation also reported that some insurance regulators who formerly worked
for health insurers used their regulatory authority to benefit their former employers;

6. To ensure that consumers are protected from the anticompetitive effects of health insurer
conduct and unlawful activity insurance regulators must be free from undue financial and
commercial influence from the health insurers that they regulate;

7. The election of insurance commissioners, and ethical reforms such as “revolving door”
limitations and temporary lobbying restrictions between health insurers and those
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
regulator independence from the financial and commercial influences of the health insurance industry.

Section 3. Definitions.

1. “Financial interest in a decision” means a circumstance in which it is reasonably foreseeable that the decision will have a material financial effect on the Insurance Commissioner, employee of ______________________, *(name of state agency regulating the business of insurance)* or on a member of the Commissioner’s or employee’s immediate family, or on any of the following:
   a. any business entity in which the Commissioner or employee, or any member of the Commissioner’s or employee’s immediately family has a direct or indirect investment worth two thousand dollars ($2,000) or more;
   b. any source of income to the Commissioner, employee, or any member of the Commissioner’s or employee’s immediately family member aggregating five hundred dollars ($500) or more in value provided or promised to, received by, the Commissioner, employee, or any member of the Commissioner’s or employee’s immediately family member within 12 months prior to the time when the decision is made;
   c. Any business entity in which the Commissioner, employee, or any member of the Commissioner’s or employee’s immediately family member is a director, officer, partner, trustee, employee, or holds any position of management; or
   d. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars ($250) or more in value provided to, received by, or promised to the Commissioner, employee, or any member of the Commissioner’s or employee’s immediately family member within 12 months prior to the time when the decision is made.
2. **Former client** is any person for whom the person assuming the Office of Insurance Commissioner or employee of (*name of state agency regulating the business of insurance*) served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her assumption of Office or employment.

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

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

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

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

1. **Insurance Commissioner Leaving Government.** No Insurance Commissioner for the state of _________________ shall engage in lobbying activities or represent clients, including his or her employer, before the (*name of state agency or state agencies regulating the business of insurance*) for a period of two years following the end of his or her term as Insurance Commissioner, irrespective of whether or not he or she left that Office prior to the expiration of his or her term in that Office.
2. Employees Leaving Government. No employee of (name of state agency regulating the business of insurance) shall engaging in lobbying activities or represent clients, including his or her employer, before (name of state agency or state agencies regulating the business of insurance) or any employee thereof, for a period of two years following the end of his or her employment with the (name of state agency regulating the business of insurance).

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

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

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

1. Person Assuming Office of Insurance Commissioner or Employment. No person assuming the Office of Insurance Commissioner or any other person accepting employment with (name of the state agency regulating the business of insurance) shall,
for a period of two years following the assumption of that Office or commencement of employment, participate in any particular matter involving specific parties that is directly and substantially related to his former employer or former clients, including regulations and contracts.

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

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

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

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

Section 7. Mandatory Recusal. In any circumstance in which the Insurance Commissioner or employee of (name of the state agency regulating the business of insurance) may have a financial interest in a decision concerning one or more health insurers, the Insurance Commissioner or employee must recuse himself or herself from participating in that decision.
Section 8. Enforcement. A person may in civil court file an application for such temporary
restraining orders and preliminary and permanent injunctions as may be appropriate to restrain
future, recurring, or continuing conduct by the former employee in breach of the requirements of
this Act.

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

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