

## CHAPTER 300

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**INSURANCE**

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## SENATE BILL 17-198

BY SENATOR(S) Priola;  
also REPRESENTATIVE(S) Garnett, Gray, Jackson, Rosenthal, Valdez, Van Winkle, Williams D., Winter.

**AN ACT**

**CONCERNING PUBLIC PARTICIPATION IN THE REVIEW BY THE COMMISSIONER OF INSURANCE OF THE ACQUISITION OF CONTROL OF AN INSURER THAT OFFERS HEALTH PLANS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 10-3-803.5, **amend** (3)(a), (3)(c), and (5)(a)(II); and **add** (3)(d) as follows:

**10-3-803.5. Acquisitions involving insurers not otherwise covered - definitions.** (3) (a) An acquisition covered by subsection (2) of this section may be subject to an order pursuant to subsection (5) of this section unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection (3) in the same manner as otherwise provided in this part 8; EXCEPT THAT THE NOTICE REQUIRED BY SUBSECTION (3)(d)(I) OF THIS SECTION MUST INCLUDE THE INFORMATION SPECIFIED IN SUBSECTION (3)(d)(I) OF THIS SECTION IF THE PREACQUISITION NOTIFICATION PRESENTS PRIMA FACIE EVIDENCE OF A VIOLATION OF THE COMPETITIVE STANDARD SPECIFIED IN SUBSECTION (4)(b) OF THIS SECTION.

(c) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3)(d) OF THIS SECTION:

(I) The waiting period begins on the date of receipt by the commissioner of a preacquisition notification and ends on the earlier of the thirtieth day after the date of receipt or termination of the waiting period by the commissioner; AND

(II) Before the end of the waiting period, the commissioner, on a one-time basis, may require the submission of additional needed information relevant to the

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

proposed acquisition, in which event the waiting period ends on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

(d) IF THE PROPOSED ACQUISITION INVOLVES ONE OR MORE HEALTH INSURERS:

(I) THE COMMISSIONER SHALL PROVIDE PUBLIC NOTICE OF THE FILING OF AN APPLICATION FOR AN ACQUISITION OF CONTROL REFERRED TO IN SUBSECTION (2)(a) OF THIS SECTION NO LATER THAN FIVE BUSINESS DAYS AFTER THE RECEIPT OF THE PREACQUISITION NOTIFICATION REQUIRED BY SUBSECTION (3)(a) OF THIS SECTION. IF THE PREACQUISITION NOTIFICATION PRESENTS PRIMA FACIE EVIDENCE OF A VIOLATION OF THE COMPETITIVE STANDARD SPECIFIED IN SUBSECTION (4)(b) OF THIS SECTION, THE NOTICE MUST INCLUDE:

(A) THE RELEVANT PRODUCT FOR WHICH PRIMA FACIE EVIDENCE OF THE VIOLATION OF THE COMPETITIVE STANDARD WAS PRESENTED IN THE PREACQUISITION NOTICE;

(B) THE RELEVANT GEOGRAPHIC MARKET FOR WHICH PRIMA FACIE EVIDENCE OF THE VIOLATION OF THE COMPETITIVE STANDARD WAS PRESENTED IN THE PREACQUISITION NOTICE; AND

(C) AS SPECIFIED IN SUBSECTION (4)(b)(I)(A) OR (4)(b)(I)(B) OF THIS SECTION, THE SHARES OF THE MARKET IN WHICH PRIMA FACIE EVIDENCE OF THE VIOLATION OF THE COMPETITIVE STANDARD WAS PRESENTED IN THE PREACQUISITION NOTICE.

(II) THE COMMISSIONER SHALL REVIEW THE IMPACT OF A PROPOSED ACQUISITION ON COMPETITION WHEN THE PROPOSED ACQUISITION INVOLVES A TRANSACTION THAT THE COMMISSIONER DETERMINES WOULD PRESENT PRIMA FACIE EVIDENCE OF A VIOLATION OF THE COMPETITIVE STANDARD SPECIFIED IN SUBSECTION (4) OF THIS SECTION. THE REVIEW MUST INCLUDE A PUBLIC HEARING OR AN OPPORTUNITY FOR THE PUBLIC TO SUBMIT WRITTEN COMMENTS TO THE COMMISSIONER.

(III) THE WAITING PERIOD BEGINS ON THE DATE OF RECEIPT BY THE COMMISSIONER OF A PREACQUISITION NOTIFICATION AND, EXCEPT AS SPECIFIED IN SUBSECTION (3)(d)(IV) OF THIS SECTION, ENDS ON THE EARLIER OF THE THIRTIETH DAY AFTER THE DATE OF RECEIPT OF THE PREACQUISITION NOTIFICATION OR TERMINATION OF THE WAITING PERIOD BY THE COMMISSIONER.

(IV) IF THE COMMISSIONER ALLOWS FOR PUBLIC COMMENT AS PART OF THE REVIEW OF A MERGER, THE WAITING PERIOD ENDS ON THE EARLIER OF THE THIRTIETH DAY AFTER THE DATE OF RECEIPT OF THE PREACQUISITION NOTIFICATION OR TERMINATION OF THE WAITING PERIOD BY THE COMMISSIONER. IF THE COMMISSIONER HOLDS A HEARING AS PART OF THE REVIEW OF A MERGER, THE WAITING PERIOD ENDS ON THE DATE OF THE HEARING.

(V) BEFORE THE END OF THE WAITING PERIOD, THE COMMISSIONER, ON A ONE-TIME BASIS, MAY REQUIRE THE SUBMISSION OF ADDITIONAL NEEDED INFORMATION RELEVANT TO THE PROPOSED ACQUISITION.

(VI) NOTHING IN THIS SECTION PREVENTS AN APPLICANT FROM MAKING THE

PREACQUISITION NOTIFICATION AVAILABLE FOR CONFIDENTIAL STAKEHOLDER INSPECTION.

(5) **Orders and penalties.** (a) (II) The commissioner shall not enter an order under this paragraph (a) unless:

(A) There is a hearing on the proposed order;

(B) EXCEPT FOR A HEARING HELD PURSUANT TO SUBSECTION (3)(d) OF THIS SECTION, notice of the hearing is issued before the end of the waiting period and not less than fifteen days before the hearing; ~~and~~

(C) FOR A HEARING HELD PURSUANT TO SUBSECTION (3)(d) OF THIS SECTION, NOTICE OF THE HEARING IS ISSUED BY THE LATER OF THE THIRTIETH DAY AFTER RECEIPT BY THE COMMISSIONER OF A PREACQUISITION NOTIFICATION OR BY THE DATE THE COMMISSIONER SETS FOR THE RECEIPT OF PUBLIC COMMENTS;

~~(D)~~ (D) EXCEPT FOR A HEARING HELD PURSUANT TO SUBSECTION (3)(d) OF THIS SECTION, the hearing is concluded and the order is issued no later than sixty days after the date of the filing of the preacquisition notification with the commissioner; AND

(E) FOR A HEARING HELD PURSUANT TO SUBSECTION (3)(d) OF THIS SECTION, THE HEARING IS CONCLUDED AND THE ORDER IS ISSUED NO LATER THAN SIXTY DAYS AFTER THE END OF THE WAITING PERIOD.

**SECTION 2. Appropriation.** (1) For the 2017-18 state fiscal year, \$9,505 is appropriated to the department of regulatory agencies for use by the executive director's office. This appropriation is from the division of insurance cash fund created in section 10-1-103 (3), C.R.S. To implement this act, the office may use this appropriation for legal services.

(2) For the 2017-18 state fiscal year, \$9,505 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of regulatory agencies under subsection (1) of this section and is based on an assumption that the department of law will require an additional 0.1 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of regulatory agencies.

**SECTION 3. Applicability.** This act applies to applications for proposed acquisitions of control filed on or after the effective date of this act.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 2, 2017