

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 22, 2017
Date

Committee on Business, Labor, & Technology.

After consideration on the merits, the Committee recommends the following:

SB17-198 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

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

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

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

1 (II) Before the end of the waiting period, the commissioner, on a
2 one-time basis, may require the submission of additional needed
3 information relevant to the proposed acquisition, in which event the
4 waiting period ends on the earlier of the thirtieth day after receipt of the
5 additional information by the commissioner or termination of the waiting
6 period by the commissioner.

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

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

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

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

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

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

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

41 (IV) IF THE COMMISSIONER ALLOWS FOR PUBLIC COMMENT AS

1 PART OF THE REVIEW OF A MERGER, THE WAITING PERIOD ENDS ON THE
2 EARLIER OF THE THIRTIETH DAY AFTER THE DATE OF RECEIPT OF THE
3 PREACQUISITION NOTIFICATION OR TERMINATION OF THE WAITING PERIOD
4 BY THE COMMISSIONER. IF THE COMMISSIONER HOLDS A HEARING AS PART
5 OF THE REVIEW OF A MERGER, THE WAITING PERIOD ENDS ON THE DATE OF
6 THE HEARING.

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

10 (VI) NOTHING IN THIS SECTION PREVENTS AN APPLICANT FROM
11 MAKING THE PREACQUISITION NOTIFICATION AVAILABLE FOR
12 CONFIDENTIAL STAKEHOLDER INSPECTION.

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

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

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

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

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

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

31 **SECTION 2. Applicability.** This act applies to applications for
32 proposed acquisitions of control filed on or after the effective date of this
33 act.

34 **SECTION 3. Safety clause.** The general assembly hereby finds,
35 determines, and declares that this act is necessary for the immediate
36 preservation of the public peace, health, and safety."

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