

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 17-0901.02 Thomas Morris x4218

SENATE BILL 17-198

SENATE SPONSORSHIP

Priola,

HOUSE SPONSORSHIP

Garnett,

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law requires an opportunity for public notice and a hearing for proposed transactions that would result in the acquisition of control of a domestic insurer, which is one that is incorporated or formed

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
April 11, 2017

pursuant to Colorado law. **Section 1** of the bill expands the public notice for acquisition of a domestic insurer that offers health plans by requiring the commissioner of insurance to make the entire preacquisition notification available for public inspection promptly after filing. **Section 2** requires the commissioner to subject proposed transactions that would result in the acquisition of control of a foreign insurer that offers health plans to public participation requirements that are analogous to those that would be required for domestic insurers that offer health plans.

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

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

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

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

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

1 period by the commissioner; AND

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

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

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

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

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

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

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

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

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

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

25 (VI) NOTHING IN THIS SECTION PREVENTS AN APPLICANT FROM
26 MAKING THE PREACQUISITION NOTIFICATION AVAILABLE FOR
27 CONFIDENTIAL STAKEHOLDER INSPECTION.

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

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

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

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

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

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

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

25 (2) For the 2017-18 state fiscal year, \$9,505 is appropriated to the
26 department of law. This appropriation is from reappropriated funds
27 received from the department of regulatory agencies under subsection (1)

1 of this section and is based on an assumption that the department of law
2 will require an additional 0.1 FTE. To implement this act, the department
3 of law may use this appropriation to provide legal services for the
4 department of regulatory agencies.

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

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