

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.**

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 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

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.*

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
22 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

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

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

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

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

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

27 (5) Orders and penalties. (a) (II) The commissioner shall not

1 enter an order under this paragraph (a) unless:

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

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

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

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

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

18 **SECTION 2. Applicability.** This act applies to applications for
19 proposed acquisitions of control filed on or after the effective date of this
20 act.

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