

Second Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0778.01 Brita Darling x2241

SENATE BILL 22-125

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SENATE SPONSORSHIP

Sonnenberg, Donovan

HOUSE SPONSORSHIP

Will,

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Senate Committees

State, Veterans, & Military Affairs

House Committees

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A BILL FOR AN ACT

101 CONCERNING ALLOWING CERTAIN PUBLIC HEALTH-CARE ENTITIES TO  
102 IMPROVE HEALTH-CARE EFFICIENCY THROUGH COOPERATION.

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>.)*

The bill authorizes county public hospitals and affiliates and health service districts and affiliates authorized under certain statutory provisions, all of which are in rural areas of the state, to engage in activities that might be characterized as anticompetitive or that might result in a monopoly or displace competition.

The activities that a county public hospital or health service district

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

may engage in include, among others, joint ventures, joint purchasing agreements, and joint negotiations.

In exercising these powers, the county public hospital or health service district or its affiliate is performing essential public functions on behalf of the state and is immune from any liability under federal and state antitrust laws.

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

2           **SECTION 1.** In Colorado Revised Statutes, **add** 25-3-304.5 as  
3 follows:

4           **25-3-304.5. Hospital collaboration - anticompetitive affiliations**  
5 **or actions.** (1) A PUBLIC HOSPITAL BOARD OF TRUSTEES MAY ENGAGE  
6 THE HOSPITAL, OR AN AFFILIATE OF THE HOSPITAL THAT IS EITHER UNDER  
7 THE SOLE CONTROL OF THE HOSPITAL OR UNDER THE COMMON CONTROL  
8 OF THE HOSPITAL AND OTHER COUNTY PUBLIC HOSPITALS, IN ACTIVITIES  
9 DESCRIBED IN SUBSECTION (2) OF THIS SECTION, EITHER ON ITS OWN OR IN  
10 COLLABORATION WITH OTHER PERSONS, THAT MIGHT BE CHARACTERIZED  
11 AS ANTICOMPETITIVE, THAT MIGHT RESULT IN THE ACQUISITION OR  
12 MAINTENANCE OF MONOPOLY POWER WITHIN THE MEANING OF STATE AND  
13 FEDERAL ANTITRUST LAWS, OR THAT MIGHT RESULT IN THE DISPLACEMENT  
14 OF COMPETITION IN THE PROVISION OF HOSPITAL, PHYSICIAN, OR OTHER  
15 HEALTH-CARE-RELATED SERVICES.

16           (2) THE ACTIVITIES THAT A PUBLIC HOSPITAL BOARD OF TRUSTEES  
17 MAY ENGAGE IN PURSUANT TO SUBSECTION (1) OF THIS SECTION, EITHER  
18 INDEPENDENTLY OR IN COLLABORATION WITH OTHER PERSONS, INCLUDE,  
19 AT A MINIMUM:

20           (a) JOINT VENTURES;

21           (b) JOINT PURCHASING ARRANGEMENTS;

22           (c) JOINT NEGOTIATIONS WITH PHYSICIANS, HOSPITALS, AND

1 PAYERS, REGARDLESS OF WHETHER SUCH NEGOTIATIONS RESULT IN  
2 SEPARATE OR COMBINED AGREEMENTS;

3 (d) LEASES; AND

4 (e) AGREEMENTS THAT INVOLVE DELIVERY SYSTEM NETWORK  
5 CREATION OR OPERATION.

6 **SECTION 2.** In Colorado Revised Statutes, **add 25-3-316** as  
7 follows:

8 **25-3-316. Legislative declaration - anticompetitive practices**

9 **- state action - immunity - definition.** (1) IN SUPPORT OF AND IN  
10 FURTHERANCE OF THE POWERS GRANTED IN SECTION 25-3-304.5 AND THIS  
11 SECTION, THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

12 (a) A COUNTY PUBLIC HOSPITAL ESTABLISHED PURSUANT TO THIS  
13 PART 3 AND A HOSPITAL AFFILIATE PERFORM ESSENTIAL PUBLIC FUNCTIONS  
14 ON BEHALF OF THE STATE;

15 (b) RURAL COMMUNITIES AND THEIR HOSPITALS ARE GENERALLY  
16 CONSIDERED VULNERABLE DUE TO LOW PATIENT VOLUMES, HIGH  
17 MEDICARE AND MEDICAID PAYER MIX, GEOGRAPHIC ISOLATION,  
18 WORKFORCE SHORTAGES, LIMITED ACCESS TO ESSENTIAL HEALTH-CARE  
19 SERVICES, AGING INFRASTRUCTURE, AND HIGHER INCIDENCE OF CHRONIC  
20 DISEASE;

21 (c) INCREASED COLLABORATION WILL IMPROVE RURAL HOSPITALS'  
22 CHANCES OF SURVIVAL WHILE PRESERVING THE ETHIC OF INDEPENDENT,  
23 LOCALLY CONTROLLED HEALTH CARE;

24 (d) THE EXERCISE OF POWERS CONFERRED ON COUNTY PUBLIC  
25 HOSPITALS AND THEIR HOSPITAL AFFILIATES UNDER THIS PART 3 MAY  
26 COMPEL OR RESULT IN EACH COUNTY PUBLIC HOSPITAL OR HOSPITAL  
27 AFFILIATE ENGAGING IN ACTIVITIES DESCRIBED IN SUBSECTION (2) OF THIS

1 SECTION, ITSELF OR IN COLLABORATION WITH OTHER PERSONS, THAT  
2 MIGHT BE CHARACTERIZED AS ANTICOMPETITIVE, THAT MIGHT RESULT IN  
3 THE ACQUISITION OR MAINTENANCE OF MONOPOLY POWER WITHIN THE  
4 MEANING OF STATE AND FEDERAL ANTITRUST LAWS, OR THAT MIGHT  
5 RESULT IN THE DISPLACEMENT OF COMPETITION IN THE PROVISION OF  
6 HOSPITAL, PHYSICIAN, OR OTHER HEALTH-CARE-RELATED SERVICES;

7 (e) IN CARRYING OUT ITS PUBLIC HEALTH MISSION THROUGH THE  
8 EXERCISE OF THE POWERS GRANTED BY THIS PART 3, INCLUDING, WITHOUT  
9 LIMITATION, THE COLLABORATIVE ACTIVITIES EXPRESSLY AUTHORIZED BY  
10 THIS PART 3, A COUNTY PUBLIC HOSPITAL OR HOSPITAL AFFILIATE AND THE  
11 OTHER PERSONS WITH WHICH IT COLLABORATES ARE IMMUNE FROM  
12 LIABILITY UNDER FEDERAL AND STATE ANTITRUST LAWS TO THE FULLEST  
13 EXTENT ALLOWED BY LAW; AND

14 (f) AS AN EXPRESSION OF THE PUBLIC POLICY OF THE STATE WITH  
15 RESPECT TO THE DISPLACEMENT OF COMPETITION IN THE FIELD OF HEALTH  
16 CARE, EACH COUNTY PUBLIC HOSPITAL OR HOSPITAL AFFILIATE, WHEN  
17 EXERCISING ITS POWERS UNDER THIS PART 3, IS ACTING AS A POLITICAL  
18 SUBDIVISION OF THE STATE, AND AS SUCH, IS NOT SUBJECT TO ACTIVE  
19 SUPERVISION BY THE STATE IN ORDER TO ENJOY IMMUNITY FROM THE  
20 APPLICATION OF STATE AND FEDERAL ANTITRUST LAWS.

21 (2) THE ACTIVITIES THAT A PUBLIC HOSPITAL BOARD OF TRUSTEES  
22 OR HOSPITAL AFFILIATE MAY ENGAGE IN PURSUANT TO SUBSECTION (1)(d)  
23 OF THIS SECTION, EITHER INDEPENDENTLY OR IN COLLABORATION WITH  
24 OTHER PERSONS, INCLUDE, AT A MINIMUM:

- 25 (a) JOINT VENTURES;
- 26 (b) JOINT PURCHASING ARRANGEMENTS;
- 27 (c) JOINT NEGOTIATIONS WITH PHYSICIANS, HOSPITALS, AND

1 PAYERS, REGARDLESS OF WHETHER SUCH NEGOTIATIONS RESULT IN  
2 SEPARATE OR COMBINED AGREEMENTS;

3 (d) LEASES; AND

4 (e) AGREEMENTS THAT INVOLVE DELIVERY SYSTEM NETWORK  
5 CREATION OR OPERATION.

6 (3) AS USED IN THIS SECTION, "HOSPITAL AFFILIATE" MEANS AN  
7 AFFILIATE OF THE COUNTY PUBLIC HOSPITAL THAT IS EITHER UNDER THE  
8 SOLE CONTROL OF THE COUNTY PUBLIC HOSPITAL OR UNDER THE COMMON  
9 CONTROL OF THE COUNTY PUBLIC HOSPITAL AND OTHER COUNTY PUBLIC  
10 HOSPITALS OR HEALTH SERVICE DISTRICTS, AS DEFINED IN SECTION  
11 32-1-103 (9).

12 **SECTION 3.** In Colorado Revised Statutes, **add** 32-1-102.1 as  
13 follows:

14 **32-1-102.1. Legislative declaration - anticompetitive practices**  
15 **- state action - immunity.** (1) IN SUPPORT OF AND IN FURTHERANCE OF  
16 THE POWERS GRANTED IN SECTION 32-1-1003 (6) AND THIS SECTION, THE  
17 GENERAL ASSEMBLY FINDS AND DECLARES THAT:

18 (a) THE ORGANIZATION OF HEALTH SERVICE DISTRICTS AND  
19 HEALTH SERVICE DISTRICT AFFILIATES PROVIDING THE SERVICES AND  
20 HAVING THE PURPOSES, POWERS, AND AUTHORITY GRANTED IN THIS  
21 ARTICLE 1 SERVE A PUBLIC USE AND PROMOTE THE HEALTH, SAFETY,  
22 PROSPERITY, SECURITY, AND GENERAL WELFARE OF THE INHABITANTS OF  
23 THE HEALTH SERVICE DISTRICTS AND OF THE PEOPLE OF THE STATE OF  
24 COLORADO;

25 (b) RURAL ACCESS TO HEALTH CARE IS VULNERABLE DUE TO LOW  
26 PATIENT VOLUMES, HIGH MEDICARE AND MEDICAID PAYER MIX,  
27 GEOGRAPHIC ISOLATION, WORKFORCE SHORTAGES, LIMITED ACCESS TO

1 ESSENTIAL HEALTH-CARE SERVICES, AGING INFRASTRUCTURE, AND HIGHER  
2 INCIDENCE OF CHRONIC DISEASE;

3 (c) INCREASED COLLABORATION WILL HELP MAINTAIN ACCESS TO  
4 HEALTH-CARE SERVICES AND PRESERVE THE ETHIC OF INDEPENDENT,  
5 LOCALLY CONTROLLED HEALTH CARE.

6 (d) THE EXERCISE OF POWERS CONFERRED ON HEALTH SERVICE  
7 DISTRICTS AND HEALTH SERVICE DISTRICT AFFILIATES BY THIS ARTICLE 1  
8 MAY COMPEL EACH HEALTH SERVICE DISTRICT AND HEALTH SERVICE  
9 DISTRICT AFFILIATE TO ENGAGE IN ACTIVITIES DESCRIBED IN SUBSECTION  
10 (2) OF THIS SECTION, ITSELF OR IN COLLABORATION WITH OTHER PERSONS,  
11 THAT MIGHT BE CHARACTERIZED AS ANTICOMPETITIVE, THAT MIGHT  
12 RESULT IN THE ACQUISITION OR MAINTENANCE OF MONOPOLY POWER  
13 WITHIN THE MEANING OF STATE AND FEDERAL ANTITRUST LAWS, OR THAT  
14 MIGHT RESULT IN THE DISPLACEMENT OF COMPETITION IN THE PROVISION  
15 OF HOSPITAL, PHYSICIAN, OR OTHER HEALTH-CARE-RELATED SERVICES.

16 (e) IN CARRYING OUT ITS PUBLIC HEALTH MISSION THROUGH THE  
17 EXERCISE OF THE POWERS GRANTED BY THIS ARTICLE 1, INCLUDING,  
18 WITHOUT LIMITATION, THE COLLABORATIVE ACTIVITIES EXPRESSLY  
19 AUTHORIZED BY THIS ARTICLE 1, A HEALTH SERVICE DISTRICT OR HEALTH  
20 SERVICE DISTRICT AFFILIATE AND THE OTHER PERSONS WITH WHICH IT  
21 COLLABORATES ARE IMMUNE FROM LIABILITY UNDER FEDERAL AND STATE  
22 ANTITRUST LAWS TO THE FULLEST EXTENT ALLOWED BY LAW; AND

23 (f) AS AN EXPRESSION OF THE PUBLIC POLICY OF THE STATE WITH  
24 RESPECT TO THE DISPLACEMENT OF COMPETITION IN THE FIELD OF HEALTH  
25 CARE, EACH HEALTH SERVICE DISTRICT AND HEALTH SERVICE DISTRICT  
26 AFFILIATE, WHEN EXERCISING ITS POWERS UNDER THIS ARTICLE 1, IS  
27 ACTING AS A POLITICAL SUBDIVISION OF THE STATE, AND AS SUCH, IS NOT

1 SUBJECT TO ACTIVE SUPERVISION BY THE STATE IN ORDER TO ENJOY  
2 IMMUNITY FROM THE APPLICATION OF STATE AND FEDERAL ANTITRUST  
3 LAWS.

4 (2) THE ACTIVITIES THAT A HEALTH SERVICE DISTRICT OR HEALTH  
5 SERVICE DISTRICT AFFILIATE MAY ENGAGE IN PURSUANT TO SUBSECTION  
6 (1)(d) OF THIS SECTION, EITHER INDEPENDENTLY OR IN COLLABORATION  
7 WITH OTHER PERSONS, INCLUDE, AT A MINIMUM:

8 (a) JOINT VENTURES;

9 (b) JOINT PURCHASING ARRANGEMENTS;

10 (c) JOINT NEGOTIATIONS WITH PHYSICIANS, HOSPITALS, AND  
11 PAYERS, REGARDLESS OF WHETHER SUCH NEGOTIATIONS RESULT IN  
12 SEPARATE OR COMBINED AGREEMENTS;

13 (d) LEASES; AND

14 (e) AGREEMENTS THAT INVOLVE DELIVERY SYSTEM NETWORK  
15 CREATION OR OPERATION.

16 **SECTION 4.** In Colorado Revised Statutes, 32-1-103, **add** (9.1)  
17 as follows:

18 **32-1-103. Definitions.** As used in this article 1, unless the context  
19 otherwise requires:

20 (9.1) "HEALTH SERVICE DISTRICT AFFILIATE" MEANS AN AFFILIATE  
21 OF A HEALTH SERVICE DISTRICT THAT IS EITHER UNDER THE SOLE CONTROL  
22 OF A HEALTH SERVICE DISTRICT OR UNDER THE COMMON CONTROL OF A  
23 HEALTH SERVICE DISTRICT AND OTHER HEALTH SERVICE DISTRICTS OR  
24 COUNTY PUBLIC HOSPITALS.

25 **SECTION 5.** In Colorado Revised Statutes, 32-1-1003, **add** (6)  
26 as follows:

27 **32-1-1003. Health service districts - additional powers -**

1     **anticompetitive practices.** (6) (a) THE BOARD OF A HEALTH SERVICE  
2 DISTRICT THAT IS CREATED IN ACCORDANCE WITH THIS PART 10 OR AN  
3 AFFILIATE OF A HEALTH SERVICE DISTRICT HAS THE POWER TO ENGAGE THE  
4 HEALTH SERVICE DISTRICT OR HEALTH SERVICE DISTRICT AFFILIATE IN  
5 ACTIVITIES DESCRIBED IN SUBSECTION (6)(b) OF THIS SECTION, EITHER ON  
6 ITS OWN OR IN COLLABORATION WITH OTHER PERSONS, THAT MIGHT BE  
7 CHARACTERIZED AS ANTICOMPETITIVE, THAT MIGHT RESULT IN THE  
8 ACQUISITION OR MAINTENANCE OF MONOPOLY POWER WITHIN THE  
9 MEANING OF STATE AND FEDERAL ANTITRUST LAWS, OR THAT MIGHT  
10 RESULT IN THE DISPLACEMENT OF COMPETITION IN THE PROVISION OF  
11 HOSPITAL, PHYSICIAN, OR OTHER HEALTH-CARE-RELATED SERVICES.

12           (b) THE ACTIVITIES THAT THE BOARD OF A HEALTH SERVICE  
13 DISTRICT OR HEALTH SERVICE DISTRICT AFFILIATE MAY ENGAGE IN  
14 PURSUANT TO SUBSECTION (6)(a) OF THIS SECTION, EITHER  
15 INDEPENDENTLY OR IN COLLABORATION WITH OTHER PERSONS, INCLUDE,  
16 AT A MINIMUM:

17           (I) JOINT VENTURES;

18           (II) JOINT PURCHASING ARRANGEMENTS;

19           (III) JOINT NEGOTIATIONS WITH PHYSICIANS, HOSPITALS, AND  
20 PAYERS, REGARDLESS OF WHETHER SUCH NEGOTIATIONS RESULT IN  
21 SEPARATE OR COMBINED AGREEMENTS;

22           (IV) LEASES; AND

23           (V) AGREEMENTS THAT INVOLVE DELIVERY SYSTEM NETWORK  
24 CREATION OR OPERATION.

25           **SECTION 6. Safety clause.** The general assembly hereby finds,  
26 determines, and declares that this act is necessary for the immediate  
27 preservation of the public peace, health, or safety.