

## CHAPTER 189

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**INSURANCE**


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**HOUSE BILL 08-1131**

BY REPRESENTATIVE(S) McGihon, Carroll M., Ferrandino, Hodge, Labuda, McFadyen, and Peniston;  
also SENATOR(S) Hagedorn, Boyd, and Tapia.

**AN ACT**

**CONCERNING PROCEDURES REQUIRED FOR THE APPROVAL BY THE COMMISSIONER OF INSURANCE  
OF CHANGES IN CONTROL OF INSURERS.**

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

**SECTION 1.** The introductory portion to 10-3-803 (5) and 10-3-803 (6), Colorado Revised Statutes, are amended, and the said 10-3-803 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**10-3-803. Acquisition of control of or merger with domestic insurer.**

(4.5) (a) THE COMMISSIONER SHALL CONDUCT AN INDEPENDENT INVESTIGATION TO DETERMINE THE IMPACT OF A PROPOSED MERGER ON COMPETITION:

(I) WHEN THE PROPOSED MERGER INVOLVES A TRANSACTION THAT THE COMMISSIONER DETERMINES UNDER SECTION 10-3-803.5 (2) WOULD PRESENT PRIMA FACIE EVIDENCE OF A VIOLATION OF THE COMPETITIVE STANDARD; AND

(II) IF THE MERGER OR ACQUISITION INVOLVES A DOMESTIC ENTITY AUTHORIZED UNDER ARTICLE 16 OF THIS TITLE OR SECTION 6-18-302 (1) (b) (IV), C.R.S., OR A DOMESTIC INSURER AUTHORIZED UNDER SECTION 10-3-102 THAT WRITES MORE THAN FIFTY PERCENT OF ITS BUSINESS AS HEALTH INSURANCE COVERAGE.

(b) THE INVESTIGATION SHALL INCLUDE AN ANALYSIS OF THE PROBABLE EFFECTS OF THE MERGER ON CONSUMERS AND ON SUPPLIERS OF SERVICES. THE COMMISSIONER SHALL NOT RELY SOLELY ON REPRESENTATIONS OF INSURERS TO DETERMINE WHETHER THE MERGER WILL PRODUCE ECONOMIES OF SCALE OR ECONOMIES IN RESOURCE UTILIZATION THAT CANNOT BE ACHIEVED FEASIBLY IN ANY OTHER WAY. THE INVESTIGATION SHALL ALSO INCLUDE, BUT NOT BE LIMITED TO, REVIEWING THE MARKET CONDUCT EXAMINATION AND FINANCIAL EXAMINATION

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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.*

REPORTS FOR THIS STATE OR ANY OTHER STATE, CONSUMER COMPLAINT INFORMATION FROM RECORDS MAINTAINED BY THE DIVISION OR ANY OTHER STATE REGULATORY AGENCY, AND ANY INFORMATION FROM ANY STATE OR FEDERAL AGENCY RELATED TO THE APPLICANT. THE INVESTIGATION SHALL COMMENCE NO LATER THAN FIFTEEN DAYS AFTER THE FILING OF THE FORM E BY THE APPLICANT.

(c) THE COMMISSIONER SHALL MAKE PUBLIC THE REPORT OF THE INDEPENDENT INVESTIGATION CONDUCTED PURSUANT TO THIS SUBSECTION (4.5) NO LATER THAN FIVE BUSINESS DAYS AFTER THE SUBMISSION OF SUCH REPORT TO THE COMMISSIONER, SUBJECT TO THE PROVISIONS OF THE COLORADO "OPEN RECORDS ACT", ARTICLE 72 OF TITLE 24, C.R.S.

(d) THE COMMISSIONER SHALL ISSUE AN EXECUTIVE SUMMARY, SUBJECT TO THE PROVISIONS OF THE COLORADO "OPEN RECORDS ACT", ARTICLE 72 OF TITLE 24, C.R.S., OF THE COMPETITIVE IMPACT ANALYSIS FILED BY THE APPLICANT TO THE TRANSACTION NO LATER THAN FIFTEEN BUSINESS DAYS AFTER THE ANALYSIS IS FILED WITH THE DIVISION. THE COMPETITIVE IMPACT ANALYSIS SHALL BE FILED BY THE APPLICANT AT THE SAME TIME THE APPLICANT FILES ITS FORM E WITH THE DIVISION.

(e) ALL DATA AND REPORTS PERTAINING TO THE PROPOSED MERGER AND COLLECTED OR USED BY THE COMMISSIONER IN HIS OR HER INVESTIGATION AND ANALYSIS SHALL BE MADE AVAILABLE TO THE PUBLIC; EXCEPT THAT, IN THE COMMISSIONER'S DISCRETION, SPECIFIC ITEMS OF PROPRIETARY INFORMATION MAY BE REDACTED. IF THE INSURER CLAIMS THAT INFORMATION PROVIDED IS PROPRIETARY, THE INSURER HAS THE BURDEN OF PROOF ON THAT ISSUE.

(f) THE INDEPENDENT INVESTIGATION PURSUANT TO THIS SUBSECTION (4.5) SHALL BE COMPLETED NO LATER THAN THE DAY ON WHICH THE APPLICATION IS DEEMED COMPLETE BY THE DIVISION OF INSURANCE. THE COMMISSIONER SHALL COORDINATE THE COMPLETION OF THIS INDEPENDENT INVESTIGATION WITH THE EXPERTS RETAINED PURSUANT TO SUBSECTION (6) OF THIS SECTION. ANY EXPENSES ASSOCIATED WITH THE INDEPENDENT INVESTIGATION SHALL BE BORNE BY THE APPLICANT PURSUANT TO SUBSECTION (6) OF THIS SECTION.

(5) The commissioner shall approve any merger or other acquisition of control referred to in subsection (1) of this section unless, after a AN INDEPENDENT INVESTIGATION PURSUANT TO SUBSECTION (4.5) OF THIS SECTION, AND public hearing thereon, he THE COMMISSIONER finds that:

(6) (a) THE COMMISSIONER SHALL PROVIDE PUBLIC NOTICE OF THE FILING OF AN APPLICATION OF MERGER OR ACQUISITION NO LATER THAN FIVE BUSINESS DAYS AFTER THE RECEIPT OF THE INITIAL APPLICATION. THE COMMISSIONER SHALL ALSO PROVIDE A GENERAL STATEMENT TO THE PUBLIC OF THE PROCESS AND PROCEDURES CONCERNING A MERGER OR ACQUISITION OF A DOMESTIC INSURER. THIS STATEMENT SHALL BE A CLEAR AND CONCISE STATEMENT OF HOW THE PUBLIC MAY PARTICIPATE IN THE REVIEW OF A MERGER OR ACQUISITION TRANSACTION INCLUDING A PUBLIC HEARING OR PROVIDING WRITTEN COMMENTS TO THE COMMISSIONER.

(b) NO LATER THAN FIFTEEN BUSINESS DAYS AFTER THE INITIAL APPLICATION FOR A MERGER PURSUANT TO THIS SECTION, THE COMMISSIONER AND THE APPLICANT

SHALL ESTABLISH THE ELEMENTS OF A PUBLIC NOTICE OF THE TRANSACTION. THE NOTICE WILL BE PROVIDED AND MADE PUBLIC NO LATER THAN SEVEN DAYS AFTER THE APPLICATION IS DEEMED COMPLETE BY THE DIVISION.

(c) The public hearing referred to in subsection (5) of this section shall be held within thirty days after the statement required by subsection (1) of this section is filed, and at least twenty days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of such public hearing shall be given, ~~by the person filing the statement~~ PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (6), to the insurer and to ~~such other persons as may be designated by the commissioner~~ THE PUBLIC. The insurer shall give such notice to its security holders. The commissioner shall make a determination within thirty days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and, in connection therewith, are entitled to conduct discovery proceedings in the same manner as is presently allowed in the district courts of this state. All discovery proceedings shall be concluded ~~not~~ NO later than three days prior to the commencement of the public hearings. The commissioner may retain, at the acquiring party's expense, any attorneys, actuaries, accountants, and other experts as may reasonably be necessary to assist the commissioner in reviewing the proposed acquisition of control.

(d) THERE SHALL BE A PERIOD OF TEN BUSINESS DAYS FOR SUBMISSION OF WRITTEN PUBLIC COMMENT AFTER THE HEARING TO RESPOND TO TESTIMONY FROM THE APPLICANT. THE COMMISSIONER SHALL REVIEW ALL RESPONSES AND PROVIDE A REPORT SUMMARIZING ALL PUBLIC TESTIMONY.

(11) IF THE PROCEDURES SET FORTH IN THIS SECTION ARE NOT FOLLOWED PRIOR TO THE ISSUANCE OF THE ORDER OF THE COMMISSIONER THAT APPROVES OR DISAPPROVES THE MERGER, THE AGGRIEVED PARTY MAY SEEK REMEDIES PURSUANT TO SECTION 10-3-813.

(12) NOTHING IN THIS SECTION SHALL LIMIT THE COMMISSIONER'S ABILITY TO CONDUCT A HEARING FOR TRANSACTIONS THAT DO NOT MEET THE REQUIREMENTS IN SUBSECTION (4.5) OF THIS SECTION.

**SECTION 2.** 10-3-803.5 (1) (d) and (4), Colorado Revised Statutes, are amended to read:

**10-3-803.5. Standards for determining whether competition will be lessened.**  
(1) As used in this section:

(d) "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the national association of insurance commissioners. ~~and~~ THE COMMISSIONER SHALL ALSO GIVE DUE CONSIDERATION to information, if any, submitted by parties to the acquisition OR BY MEMBERS OF THE PUBLIC; EXCEPT THAT THE COMMISSIONER SHALL NOT RELY SOLELY ON INFORMATION SUBMITTED BY

PARTIES TO THE ACQUISITION. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business which line is that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state.

(4) The commissioner shall not disapprove an acquisition or merger on the ground that it would tend to lessen competition if:

(a) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be achieved feasibly in any other way, and the public benefits ~~which~~ THAT would arise from such economies exceed the public benefits ~~which~~ THAT would arise from not lessening competition. ~~or~~ THE COMMISSIONER SHALL NOT RELY SOLELY ON INFORMATION SUBMITTED BY REPRESENTATIVES OF THE INSURERS IN MAKING THIS DETERMINATION.

(b) The acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits ~~which~~ THAT would arise from not lessening competition.

**SECTION 3. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 25, 2008