

Amendment No. 574

Senate Amendment to Assembly Bill No. 248

(BDR 57-997)

Proposed by: Senate Committee on Commerce and Labor**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date		SENATE ACTION				Initial and Date	
Adopted	☐	Lost	☐	_____		Adopted	☐	Lost	☐	_____	
Concurred In	☐	Not	☐	_____		Concurred In	☐	Not	☐	_____	
Receded	☐	Not	☐	_____		Receded	☐	Not	☐	_____	

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~orange double underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment; and (6) ***green bold dashed underlining*** is newly added transitory language.

DP/WLK



Date: 4/27/2009

A.B. No. 248—Revises provisions governing holding companies. (BDR 57-997)



ASSEMBLY BILL NO. 248—ASSEMBLYMEN SEGERBLOM, BUCKLEY, OCEGUERA,
HORNE, CONKLIN; ANDERSON, KIRKPATRICK AND MORTENSON

MARCH 5, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing holding companies. (BDR 57-997)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to holding companies; revising provisions relating to the approval of certain mergers or acquisitions of control; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~Section 1 of this bill removes the requirement that the Commissioner of Insurance must approve certain mergers or acquisitions of control under certain circumstances and instead authorizes the Commissioner of Insurance to approve those mergers and acquisitions under those circumstances. Section 2 also revises~~ **Sections 1 and 2 of this bill revise** the circumstances under which the Commissioner ~~may~~ **of Insurance shall** approve certain mergers or acquisitions and changes the process used by the Commissioner to approve those mergers or acquisitions. (NRS 692C.210, ~~692C.256~~)

Section 2 of this bill revises existing law so that certain circumstances related to competition which would have prevented the Commissioner from stopping an acquisition will only need to be considered by the Commissioner before stopping an acquisition. **Section 2** also moves the burden from the Commissioner to the acquiring person to prove that no violation of competitive standards will exist after the acquisition. (NRS 692C.256)

Section 3 of this bill allows the Commissioner to consider the effect of an acquisition on the ~~public~~ **of the insurance-buying public** before issuing an order related to that acquisition. (NRS 692C.258)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 692C.210 is hereby amended to read as follows:
692C.210 1. Except as otherwise provided in subsection 5, the Commissioner ~~shall may~~ approve any merger or other acquisition of control referred to in NRS 692C.180 unless, after a public hearing thereon, he finds that:
(a) After the change of control, the domestic insurer specified in NRS 692C.180 would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly;

(c) The financial condition of any acquiring party may jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with the acquiring party;

(d) The terms of the offer, request, invitation, agreement or acquisition referred to in NRS 692C.180 are unfair and unreasonable to the security holders of the insurer;

(e) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer ~~and~~ or not in the public interest;

(f) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer ~~and~~ or of the public to permit the merger or other acquisition of control; ~~for~~

(g) If approved, the merger or acquisition of control would likely be harmful or prejudicial to the members of the public who purchase insurance ~~and~~ ; or

(h) The practices of the applicant ~~does not possess the ability to manage~~ in managing claims ~~according to applicable standards of market conduct~~ have evidenced a pattern in which the applicant has knowingly committed, or performed with such frequency as to indicate a general business practice of:

(1) Misrepresentation of pertinent facts or provisions of policies of insurance as they relate to coverages at issue;

(2) Failure to affirm or deny coverage of claims within a reasonable time after written proofs of loss have been furnished; or

(3) Failure to pay claims in a timely manner.

2. The public hearing specified in subsection 1 must be held within ~~for~~ 60 days after the statement required by NRS 692C.180 has been filed, and at least 20 days' notice thereof must be given by the Commissioner to the person filing the statement. Not less than 7 days' notice of the public hearing must be given by the person filing the statement to the insurer and to any other person designated by the Commissioner. The insurer shall give such notice to its security holders. The Commissioner shall make a determination within ~~for~~ 60 days after the conclusion of the hearing. If he determines that an infusion of capital to restore capital in connection with the change in control is required, the requirement must be met within 60 days after notification is given of the determination. At the 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 may present evidence, examine and cross-examine witnesses, and offer oral and written arguments and, in connection therewith, may conduct discovery proceedings in the same manner as is presently allowed in the district court of this State. All discovery proceedings must be concluded not later than 3 days before the commencement of the public hearing.

3. The Commissioner may retain at the acquiring party's expense attorneys, actuaries, accountants and other experts not otherwise a part of his staff as may be reasonably necessary to assist him in reviewing the proposed acquisition of control.

4. The period for review by the Commissioner must not exceed the 60 days allowed between the filing of the notice of intent to acquire required pursuant to subsection 2 of NRS 692C.180 and the date of the proposed acquisition if the

proposed affiliation or change of control involves a financial institution, or an affiliate of a financial institution, and an insured.

5. When making a determination pursuant to paragraph (b) of subsection 1, the Commissioner:

(a) Shall require the submission of the information specified in subsection 2 of NRS 692C.254; **and**

(b) ~~{Shall not disapprove the merger or acquisition of control if he finds that any of the circumstances specified in subsection 3 of NRS 692C.256 exist; and~~

~~—(c)}~~ May condition his approval of the merger or acquisition of control in the manner provided in subsection 4 of NRS 692C.258.

6. If, in connection with a change of control of a domestic insurer, the Commissioner determines that the person who is acquiring control of the domestic insurer must maintain or restore the capital of the domestic insurer in an amount that is required by the laws and regulations of this State, the Commissioner shall make the determination not later than 60 days after the notice of intent to acquire required pursuant to subsection 2 of NRS 692C.180 is filed with the Commissioner.

Sec. 2. NRS 692C.256 is hereby amended to read as follows:

692C.256 1. The Commissioner may issue an order pursuant to NRS 692C.258 relating to an acquisition if:

(a) The effect of the acquisition may substantially lessen competition in any line of insurance in this State or tend to create a monopoly; or

(b) The acquiring person fails to file sufficient materials or information pursuant to NRS 692C.254.

2. In determining whether to issue an order pursuant to subsection 1, the Commissioner shall consider the standards set forth in the Horizontal Merger Guidelines issued by the United States Department of Justice and the Federal Trade Commission and in effect at the time the Commissioner receives the notice required pursuant to NRS 692C.254.

3. The Commissioner shall ~~{not issue}~~, **before issuing** an order specified in subsection 1 ~~{}~~, **consider**:

(a) If:

(1) The acquisition creates substantial economies of scale or economies in the use of resources that may not be created in any other manner; and

(2) The public benefit received from those economies exceeds the public benefit received from not lessening competition; or

(b) If:

(1) The acquisition substantially increases the availability of insurance; and
(2) The public benefit received by that increase exceeds the public benefit received from not lessening competition.

4. The public benefits set forth in subparagraph 2 of paragraphs (a) and (b) of subsection 3 may be considered together, as applicable, in assessing whether the public benefits received from the acquisition exceed any benefit to competition that would arise from disapproving the acquisition.

5. The ~~{Commissioner}~~ **acquiring person** has the burden of establishing **that the acquisition will not result in** a violation of the competitive standard set forth in subsection 1.

Sec. 3. NRS 692C.258 is hereby amended to read as follows:

692C.258 1. Except as otherwise provided in this section, if the Commissioner determines that an acquisition may substantially lessen competition in any line of insurance in this State, ~~{or}~~ tends to create a monopoly ~~{}~~ **or is not in the ~~{public} interest~~ of members of the public who purchase insurance**, he may issue an order:

1 (a) Requiring an involved insurer to cease and desist from doing business in
2 this State relating to that line of insurance; or

3 (b) Denying the application of an acquired or acquiring insurer for a license or
4 authority to do business in this State.

5 2. The Commissioner shall not issue an order pursuant to subsection 1 unless:

6 (a) He conducts a hearing concerning the acquisition in accordance with NRS
7 679B.310 to 679B.370, inclusive;

8 (b) A notice of the hearing is issued before the expiration of the waiting period
9 for the acquisition specified in NRS 692C.254, but not less than 15 days before the
10 hearing; and

11 (c) The hearing is conducted and the order is issued not later than 60 days after
12 the expiration of the waiting period.

13 3. Each order issued pursuant to subsection 1 must include a written decision
14 of the Commissioner setting forth his findings of fact and conclusions of law
15 relating to the acquisition.

16 4. An order issued pursuant to this section does not become final until 30 days
17 after it is issued, during which time the involved insurer may submit to the
18 Commissioner a plan to remedy, within a reasonable period, the anticompetitive
19 effect of the acquisition ~~or the failure to protect the public interest~~ or of
20 members of the public who purchase insurance. As soon as practicable after
21 receiving the plan, the Commissioner shall, based upon the plan and any
22 information included in the plan, issue a written determination setting forth:

23 (a) The conditions or actions, if any, required to:

24 (1) Eliminate the anticompetitive effect of the acquisition ~~or protect the~~
25 ~~public interest~~ or of members of the public who purchase insurance; and

26 (2) Vacate or modify the order; and

27 (b) The period in which the conditions or actions specified in paragraph (a)
28 must be performed.

29 5. An order issued pursuant to subsection 1 does not apply to an acquisition
30 that is not consummated.

31 6. A person who violates a cease and desist order issued pursuant to this
32 section during any period in which the order is in effect is subject, at the discretion
33 of the Commissioner, to:

34 (a) The imposition of a civil penalty of not more than \$10,000 per day for each
35 day the violation continues;

36 (b) The suspension or revocation of the person's license or certificate of
37 authority; or

38 (c) Both the imposition of a civil penalty pursuant to paragraph (a) and the
39 suspension or revocation of the person's license or certificate of authority pursuant
40 to paragraph (b).

41 7. In addition to any fine imposed pursuant to NRS 692C.480, any insurer or
42 other person who fails to make any filing required by NRS 692C.252 to 692C.258,
43 inclusive, and who fails to make a good faith effort to comply with any such
44 requirement is subject to a fine of not more than \$50,000.

45 8. The provisions of NRS 692C.430, 692C.440 and 692C.460 do not apply to
46 an acquisition to which the provisions of NRS 692C.252 apply.