
By: Delegates Goldwater and Barve

Introduced and read first time: January 20, 1997

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Office of the Attorney General - Approval of Conversions of Nonprofit Corporations to**
3 **For-Profit Stock Corporations and Mutual Corporations**

4 FOR the purpose of requiring certain nonprofit corporations to obtain approval from the
5 Office of the Attorney General prior to entering into an agreement, contract, or
6 transaction to form a for-profit stock corporation or entity or mutual corporation or
7 entity under certain circumstances; specifying the provisions that must be satisfied
8 for the Office to approve the agreement, contract, or transaction; requiring the
9 Office to make a determination on the agreement, contract, or transaction within a
10 specified time; requiring the Office to hold certain hearings on the proposed
11 agreement, contract, or transaction under certain circumstances; specifying certain
12 requirements that must be satisfied by certain nonprofit charitable corporations in
13 order to be able to receive certain charitable trust distributions; authorizing the
14 Office to contract with, consult with, or receive advice from certain persons in order
15 to carry out the provisions of this Act; specifying the requirements of certain
16 nonprofit corporations that convert to a mutual insurer in regard to their charitable
17 trust obligations; requiring the Office to take certain action when it receives certain
18 information concerning the lack of compliance with certain provisions of this Act;
19 specifying the rights of certain persons to judicial review of certain final actions
20 taken by the Office under this Act; providing for the application of this Act;
21 defining certain terms; and generally relating to requiring certain nonprofit
22 corporations to obtain approval from the Office of the Attorney General prior to
23 entering into an agreement, contract, or transaction to form a for-profit stock
24 corporation or entity or mutual corporation or entity.

25 BY adding to

26 Article - State Government
27 Section 6-201 through 6-213 to be under the new subtitle "Subtitle 2. Approval of
28 Conversions of Nonprofit Corporations to For-Profit Stock Corporations and
29 Mutual Corporations"
30 Annotated Code of Maryland
31 (1995 Replacement Volume and 1996 Supplement)

32 BY repealing and reenacting, with amendments,

33 Article - Health - General
34 Section 19-123 and 19-711.1

2

1 Annotated Code of Maryland
2 (1996 Replacement Volume and 1996 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Insurance
5 Section 14-131 and 14-132
6 Annotated Code of Maryland
7 (1995 Volume and 1996 Supplement)
8 (As enacted by Chapter _____ (H.B. 11) of the Acts of the General Assembly of
9 1997)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article - State Government**

13 SUBTITLE 2. APPROVAL OF CONVERSIONS OF NONPROFIT CORPORATIONS TO
14 FOR-PROFIT STOCK CORPORATIONS AND MUTUAL CORPORATIONS.

15 6-201.

16 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

18 (B) "HEALTH INSURER" HAS THE MEANING STATED IN § 14-130 OF THE
19 INSURANCE ARTICLE.

20 (C) "HEALTH MAINTENANCE ORGANIZATION" HAS THE MEANING STATED IN
21 § 19-701 OF THE HEALTH - GENERAL ARTICLE.

22 (D) "HOSPITAL" HAS THE MEANING STATED IN § 19-301 OF THE HEALTH -
23 GENERAL ARTICLE.

24 (E) "MUTUAL INSURER" HAS THE MEANING STATED IN § 1-101 OF THE
25 INSURANCE ARTICLE.

26 (F) "NONPROFIT CORPORATION" MEANS:

27 (1) A NONPROFIT HEALTH MAINTENANCE ORGANIZATION;

28 (2) A NONPROFIT HOSPITAL; OR

29 (3) A NONPROFIT HEALTH SERVICE PLAN.

30 6-202.

31 THIS SUBTITLE DOES NOT APPLY TO THE CONVERSION OF A NONPROFIT
32 HEALTH SERVICE PLAN TO A STOCK HEALTH INSURER OR A MUTUAL HEALTH
33 INSURER UNDER A COURT ORDER IN CONNECTION WITH THE REHABILITATION OR
34 REORGANIZATION OF THE CORPORATION UNDER TITLE 9, SUBTITLE 2 OF THE
35 INSURANCE ARTICLE.

3

1 6-203.

2 (A) ANY NONPROFIT CORPORATION THAT INTENDS TO TRANSFER,
3 RESTRUCTURE, OR CONVERT TO A FOR-PROFIT STOCK CORPORATION OR ENTITY
4 OR A MUTUAL CORPORATION OR ENTITY SHALL OBTAIN WRITTEN APPROVAL FROM
5 THE OFFICE PRIOR TO ENTERING INTO AN AGREEMENT, CONTRACT, OR
6 TRANSACTION TO:

7 (1) SELL, TRANSFER, LEASE, EXCHANGE, OPTION, CONVEY, CONVERT,
8 GIVE, MERGE, RESTRUCTURE, OR OTHERWISE DISPOSE OF ITS ASSETS TO FORM A
9 FOR-PROFIT STOCK CORPORATION OR ENTITY OR MUTUAL CORPORATION OR
10 ENTITY WHEN A MATERIAL AMOUNT OF ITS ASSETS ARE INVOLVED OR WILL BE
11 INVOLVED; OR

12 (2) TRANSFER CONTROL, RESPONSIBILITY, OR GOVERNANCE OF A
13 MATERIAL AMOUNT OF THE ASSETS, OPERATIONS, OR BUSINESS OF THE NONPROFIT
14 CORPORATION TO ANY FOR-PROFIT STOCK CORPORATION OR ENTITY OR MUTUAL
15 BENEFIT CORPORATION OR ENTITY.

16 (B) AT LEAST 90 DAYS BEFORE IT SELLS, TRANSFERS, LEASES, EXCHANGES,
17 OPTIONS, CONVEYS, CONVERTS, GIVES, MERGES, RESTRUCTURES, OR OTHERWISE
18 DISPOSES OF ITS ASSETS, A NONPROFIT CORPORATION SHALL PROVIDE WRITTEN
19 NOTICE TO THE OFFICE OF ITS INTENT TO ENTER INTO AN AGREEMENT, CONTRACT,
20 OR TRANSACTION TO SELL, TRANSFER, LEASE, EXCHANGE, OPTION, CONVEY,
21 CONVERT, GIVE, MERGE, RESTRUCTURE, OR OTHERWISE DISPOSE OF ITS ASSETS TO
22 FORM A FOR-PROFIT STOCK CORPORATION OR ENTITY OR MUTUAL CORPORATION
23 OR ENTITY.

24 (C) (1) WITHIN 90 DAYS OF RECEIPT OF THE WRITTEN NOTICE REQUIRED
25 UNDER SUBSECTION (B) OF THIS SECTION, THE OFFICE SHALL NOTIFY THE
26 NONPROFIT CORPORATION IN WRITING OF ITS DECISION TO APPROVE OR
27 DISAPPROVE OF THE AGREEMENT, CONTRACT, OR TRANSACTION.

28 (2) IF THE OFFICE REQUIRES MORE TIME TO MAKE A DECISION ON THE
29 AGREEMENT, CONTRACT, OR TRANSACTION UNDER PARAGRAPH (1) OF THIS
30 SUBSECTION, THE OFFICE MAY EXTEND THIS PERIOD FOR AN ADDITIONAL 60 DAYS.

31 (D) THE OFFICE HAS THE POWER TO SUBPOENA ADDITIONAL INFORMATION
32 OR WITNESSES, REQUIRE AND ADMINISTER OATHS, AND REQUIRE SWORN
33 STATEMENTS AT ANY TIME PRIOR TO MAKING A DECISION ON THE AGREEMENT,
34 CONTRACT, OR TRANSACTION.

35 6-204.

36 WITHIN 5 WORKING DAYS AFTER SUBMITTING TO THE OFFICE FOR APPROVAL
37 ITS PROPOSED PLAN OF AGREEMENT, CONTRACT, OR TRANSACTION TO SELL,
38 TRANSFER, LEASE, EXCHANGE, OPTION, CONVEY, CONVERT, GIVE, MERGE,
39 RESTRUCTURE, OR OTHERWISE DISPOSE OF ITS ASSETS TO FORM A FOR-PROFIT
40 STOCK CORPORATION OR ENTITY OR MUTUAL CORPORATION OR ENTITY, THE
41 NONPROFIT CORPORATION SHALL PUBLISH NOTICE OF THE PLAN IN A FORM
42 APPROVED BY THE OFFICE IN NEWSPAPERS THAT ARE CIRCULATED AT LEAST ONCE

4

1 A WEEK FOR 3 WEEKS IN THE SERVICE AREAS IN WHICH THE NONPROFIT
2 CORPORATION CONDUCTS BUSINESS.

3 6-205.

4 (A) (1) WITHIN 45 DAYS AFTER RECEIPT OF THE NOTICE UNDER § 6-203(B)
5 OF THIS SUBTITLE, THE OFFICE SHALL HOLD AT LEAST ONE PUBLIC HEARING IN THE
6 SERVICE AREA OF THE NONPROFIT CORPORATION.

7 (2) THE NUMBER OF PUBLIC HEARINGS THAT MUST BE HELD SHALL
8 CORRESPOND TO THE SIZE OF THE COMMUNITY IN THE NONPROFIT
9 CORPORATION'S SERVICE AREA AND THE VALUE OF THE AGREEMENT, CONTRACT,
10 OR TRANSACTION.

11 (3) AT LEAST 21 DAYS PRIOR TO THE PUBLIC HEARING, THE OFFICE:

12 (I) SHALL PROVIDE WRITTEN NOTICE OF THE TIME AND PLACE OF
13 THE HEARING:

14 1. THROUGH PUBLICATION IN ONE OR MORE NEWSPAPERS
15 OF GENERAL CIRCULATION IN THE AFFECTED COMMUNITIES; AND

16 2. TO THE LOCAL GOVERNING BODY IN EACH COUNTY IN
17 THE SERVICE AREA OF THE NONPROFIT CORPORATION; AND

18 (II) MAY PROVIDE WRITTEN NOTICE OF THE TIME AND PLACE OF
19 THE HEARING TO KNOWN AFFECTED PARTIES AND OTHER INTERESTED PERSONS.

20 (B) (1) AT NO COST TO THE PUBLIC, THE OFFICE SHALL PROVIDE ACCESS
21 TO THE RECORDS CONCERNING THE PROPOSED AGREEMENT, CONTRACT, OR
22 TRANSACTION.

23 (2) THE RECORDS SHALL BE:

24 (I) CONSIDERED PUBLIC RECORDS FOR PURPOSES OF TITLE 10,
25 SUBTITLE 6, PART III OF THIS ARTICLE; AND

26 (II) MADE AVAILABLE FOR INSPECTION AT BOTH THE OFFICE AND
27 THE PRINCIPAL OFFICE OF THE NONPROFIT CORPORATION.

28 (C) THE OFFICE MAY CHARGE A NONPROFIT CORPORATION FOR THE COSTS
29 OF PROVIDING THE PUBLIC WITH NOTICE AND REASONABLE ACCESS TO RECORDS
30 RELATED TO THE NONPROFIT CORPORATION'S PROPOSED AGREEMENT, CONTRACT,
31 OR TRANSACTION.

32 6-206.

33 (A) BEFORE APPROVING AN AGREEMENT, CONTRACT, OR TRANSACTION
34 SUBMITTED UNDER § 6-203 OF THIS SUBTITLE, THE OFFICE SHALL DETERMINE THAT
35 IT MEETS THE FOLLOWING REQUIREMENTS:

36 (1) THE TERMS AND CONDITIONS OF THE AGREEMENT, CONTRACT, OR
37 TRANSACTION ARE FAIR AND REASONABLE TO:

38 (I) THE CITIZENS OF THE STATE;

5

1 (II) THE PUBLIC;

2 (III) ENROLLEES AND SUBSCRIBERS AND POTENTIAL ENROLLEES
3 AND SUBSCRIBERS, IF ANY, OF THE NONPROFIT CORPORATION;

4 (IV) POLICYHOLDERS, IF ANY, OF THE NONPROFIT CORPORATION;
5 AND

6 (V) THE NONPROFIT CORPORATION;

7 (2) THE AGREEMENT, CONTRACT, OR TRANSACTION IS IN THE PUBLIC
8 INTEREST;

9 (3) THE PROPOSED PLAN OF THE AGREEMENT, CONTRACT, OR
10 TRANSACTION IS IN COMPLIANCE WITH TITLE 2, SUBTITLE 6 OF THE CORPORATIONS
11 AND ASSOCIATIONS ARTICLE;

12 (4) IF APPLICABLE, THE PROPOSED PLAN OF THE AGREEMENT,
13 CONTRACT, OR TRANSACTION IS APPROVED BY AT LEAST TWO-THIRDS OF THE
14 NONPROFIT CORPORATION'S CERTIFICATE HOLDERS OR POLICYHOLDERS WHO
15 HAVE VOTED ON THE PROPOSAL IN PERSON, BY PROXY, OR BY MAIL UNDER THE
16 NOTICE AND PROCEDURE APPROVED BY THE OFFICE;

17 (5) THE AGREEMENT, CONTRACT, OR TRANSACTION WILL NOT RESULT
18 IN INUREMENT TO ANY INDIVIDUAL OR ENTITY, INCLUDING STOCK OPTIONS,
19 AGREEMENTS NOT TO COMPETE, AND ANY OTHER PRIVATE BENEFIT;

20 (6) THE AGREEMENT, CONTRACT, OR TRANSACTION WILL NOT RESULT,
21 DIRECTLY OR INDIRECTLY, IN ANY BENEFIT TO A DIRECTOR, OFFICER, AGENT, OR
22 EMPLOYEE OF THE NONPROFIT CORPORATION;

23 (7) THE AGREEMENT, CONTRACT, OR TRANSACTION DOES NOT CREATE
24 OR HAVE THE LIKELIHOOD OF CREATING AN ADVERSE EFFECT ON THE
25 AVAILABILITY OF HEALTH CARE SERVICES TO THE AFFECTED COMMUNITY AND
26 SUFFICIENT SAFEGUARDS ARE INCLUDED TO ASSURE THE AFFECTED COMMUNITY
27 WILL HAVE CONTINUED ACCESS TO AFFORDABLE HEALTH CARE;

28 (8) THE NONPROFIT CORPORATION PROPOSING THE PLAN OF THE
29 AGREEMENT, CONTRACT, OR TRANSACTION USED DUE DILIGENCE IN:

30 (I) SELECTING THE FOR-PROFIT STOCK CORPORATION OR ENTITY
31 OR MUTUAL CORPORATION OR ENTITY; AND

32 (II) NEGOTIATING THE TERMS AND CONDITIONS OF THE
33 AGREEMENT, CONTRACT, OR TRANSACTION WHEN DECIDING TO SELL, LEASE,
34 TRANSFER, EXCHANGE, OPTION, CONVEY, CONVERT, GIVE, MERGE, RESTRUCTURE,
35 OR SIMILARLY DISPOSE OF ITS ASSETS;

36 (9) THE AGREEMENT, CONTRACT, OR TRANSACTION INCLUDES THE
37 ESTABLISHMENT OF A CHARITABLE TRUST:

6

1 (I) THAT IS EQUAL TO THE FAIR MARKET VALUE, AS
2 DETERMINED UNDER SUBSECTION (C) OF THIS SECTION, OF THE NONPROFIT
3 CORPORATION; AND

4 (II) UNDER WHICH ITS DISTRIBUTIONS ARE DEDICATED TO AN
5 EXISTING OR NEW TAX-EXEMPT CHARITABLE ORGANIZATION OPERATING UNDER
6 26 U.S.C.A. § 501(C)(3) OF THE FEDERAL INTERNAL REVENUE CODE;

7 (10) THE TERMS OF THE AGREEMENT, CONTRACT, OR TRANSACTION
8 REQUIRE THAT THE DIRECTORS, OFFICERS, AND STAFF OF ANY NONPROFIT
9 CHARITABLE CORPORATION THAT RECEIVES A DISTRIBUTION FROM THE
10 CHARITABLE TRUST SHALL BE AND SHALL REMAIN INDEPENDENT OF THE
11 FOR-PROFIT STOCK CORPORATION OR ENTITY OR MUTUAL BENEFIT CORPORATION
12 OR ENTITY AND THEIR AFFILIATES; AND

13 (11) NO INDIVIDUAL, WHO IS AN OFFICER, DIRECTOR, OR STAFF
14 MEMBER OF THE NONPROFIT CORPORATION, AT THE TIME THE PLAN IS SUBMITTED
15 TO THE OFFICE FOR APPROVAL, OR AT THE TIME OF EXECUTION OF THE
16 AGREEMENT, CONTRACT, OR TRANSACTION, SHALL BE QUALIFIED TO BE AN
17 OFFICER, DIRECTOR, OR STAFF MEMBER OF ANY NONPROFIT CORPORATION
18 RECEIVING A DISTRIBUTION FROM THE CHARITABLE TRUST.

19 (B) FOR PURPOSES OF THIS SECTION, AN AGREEMENT, CONTRACT, OR
20 TRANSACTION IS NOT IN THE PUBLIC INTEREST UNLESS APPROPRIATE STEPS HAVE
21 BEEN TAKEN TO SAFEGUARD THE VALUE OF THE CHARITABLE ASSETS AND ENSURE
22 THAT ANY PROCEEDS OF THE AGREEMENT, CONTRACT, OR TRANSACTION ARE
23 IRREVOCABLY DEDICATED TO CHARITABLE HEALTH CARE PURPOSES.

24 (C) (1) FOR PURPOSES OF SUBSECTION (A) (9) OF THIS SECTION, THE FAIR
25 MARKET VALUE OF THE NONPROFIT CORPORATION SHALL BE DETERMINED AT THE
26 TIME OF THE CONVERSION TO A FOR-PROFIT STOCK CORPORATION OR ENTITY AS
27 IF THERE IS VOTING STOCK OUTSTANDING AND 100% OF THE STOCK WAS FREELY
28 TRANSFERABLE AND AVAILABLE FOR PURCHASE WITHOUT RESTRICTIONS.

29 (2) IN DETERMINING THE FAIR MARKET VALUE OF THE NONPROFIT
30 CORPORATION, CONSIDERATION SHALL BE GIVEN TO MARKET VALUE, INVESTMENT
31 OR EARNINGS VALUE, NET ASSET VALUE, AND A CONTROL PREMIUM, IF ANY.

32 (3) THE OFFICE MAY PERMIT ALL OR A PORTION OF THE
33 CONSIDERATION CONVEYED TO THE CHARITABLE TRUST TO CONSIST OF STOCK OF
34 THE FOR-PROFIT STOCK CORPORATION OR ENTITY.

35 6-207.

36 (A) (1) A NONPROFIT CHARITABLE CORPORATION THAT RECEIVES A
37 DISTRIBUTION OF CHARITABLE ASSETS IN ACCORDANCE WITH AN AGREEMENT,
38 CONTRACT, OR TRANSACTION APPROVED BY THE OFFICE UNDER § 6-206 OF THIS
39 SUBTITLE SHALL:

40 (I) HAVE IN PLACE MECHANISMS TO:

41 1. AVOID CONFLICTS OF INTEREST; AND

7

1 2. PROHIBIT THE MAKING OF GRANTS THAT BENEFIT ITS
2 BOARD OF DIRECTORS AND MANAGEMENT OR THE FOR-PROFIT STOCK
3 CORPORATION OR ENTITY OR MUTUAL CORPORATION OR ENTITY; AND

4 (II) SUBMIT AN ANNUAL REPORT TO THE OFFICE ON ITS
5 GRANT-MAKING AND OTHER CHARITABLE ACTIVITIES RELATED TO ITS USE OF THE
6 CHARITABLE ASSETS RECEIVED.

7 (2) THE ANNUAL REPORT SUBMITTED IN ACCORDANCE WITH
8 PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL BE MADE AVAILABLE TO THE
9 PUBLIC AT BOTH THE OFFICE AND THE PRINCIPAL OFFICE OF THE NONPROFIT
10 CHARITABLE CORPORATION.

11 (B) IN ORDER TO RECEIVE A DISTRIBUTION FROM THE CHARITABLE TRUST
12 ESTABLISHED IN ACCORDANCE WITH THE AGREEMENT, CONTRACT, OR
13 TRANSACTION APPROVED BY THE OFFICER UNDER § 6-206 OF THIS SUBTITLE, THE
14 NONPROFIT CHARITABLE CORPORATION SHALL HAVE A CHARITABLE MISSION AND
15 GRANT-MAKING FUNCTION THAT IS DEDICATED TO SERVING THE STATE'S UNMET
16 HEALTH CARE NEEDS, PARTICULARLY WITH REGARD TO THE MEDICALLY
17 UNINSURED AND UNDERSERVED POPULATION, THAT FOCUSES ON PROMOTING
18 ACCESS TO HEALTH CARE AND IMPROVING QUALITY OF HEALTH CARE.

19 6-208.

20 IN ADDITION TO § 6-206(A) OF THIS SUBTITLE, FOR A NONPROFIT HEALTH
21 SERVICE PLAN CONVERTING TO A FOR-PROFIT STOCK HEALTH INSURER OR A
22 MUTUAL HEALTH INSURER, PRIOR TO APPROVING THE PLAN OF THE AGREEMENT,
23 CONTRACT, OR TRANSACTION AND IN COOPERATION WITH THE INSURANCE
24 COMMISSIONER, THE OFFICE SHALL ENSURE THAT:

25 (1) THE RESULTING STOCK HEALTH INSURER WILL POSSESS SURPLUS IN
26 AN AMOUNT SUFFICIENT TO:

27 (I) COMPLY WITH THE SURPLUS REQUIREMENTS UNDER THE
28 INSURANCE ARTICLE FOR A STOCK HEALTH INSURER; AND

29 (II) PROVIDE FOR THE SECURITY OF THE RESULTING STOCK
30 HEALTH INSURER'S POLICYHOLDERS AND CERTIFICATE HOLDERS; OR

31 (2) THE RESULTING MUTUAL HEALTH INSURER WILL POSSESS SURPLUS
32 IN AN AMOUNT SUFFICIENT TO:

33 (I) COMPLY WITH THE SURPLUS REQUIREMENTS UNDER THE
34 INSURANCE ARTICLE FOR A MUTUAL HEALTH INSURER; AND

35 (II) PROVIDE FOR THE SECURITY OF THE RESULTING MUTUAL
36 HEALTH INSURER'S POLICYHOLDERS AND CERTIFICATE HOLDERS.

37 6-209.

38 (A) TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE, THE OFFICE MAY:

8

1 (1) CONTRACT WITH, CONSULT WITH, OR RECEIVE ADVICE FROM ANY
2 STATE AGENCY ON THOSE TERMS AND CONDITIONS THE OFFICE CONSIDERS
3 APPROPRIATE; AND

4 (2) CONTRACT WITH EXPERTS OR CONSULTANTS TO ASSIST IT IN
5 REVIEWING ANY PROPOSED AGREEMENT, CONTRACT, OR TRANSACTION THAT IT
6 CONSIDERS REASONABLE AND NECESSARY.

7 (B) CONTRACT COSTS UNDER THIS SECTION MAY NOT EXCEED AN AMOUNT
8 THAT IS NECESSARY TO CONDUCT THE REVIEW AND EVALUATION.

9 (C) THE OFFICE MAY CHARGE THE NONPROFIT CORPORATION SUBMITTING
10 THE PROPOSED AGREEMENT, CONTRACT, OR TRANSACTION FOR APPROVAL UNDER
11 § 6-203 OF THIS SUBTITLE AN ASSESSMENT FEE TO PAY THE COST OF EXPERTS OR
12 CONSULTANTS REQUIRED TO ASSIST THE OFFICE IN REVIEWING THE PUBLIC
13 BENEFIT AND CHARITABLE TRUST PROPOSALS IN THE PROPOSED AGREEMENT,
14 CONTRACT, OR TRANSACTION AND TO ASSESS THE FAIR MARKET VALUE OF THE
15 CHARITABLE ASSETS AS REQUIRED UNDER § 6-206 OF THIS SUBTITLE.

16 6-210.

17 (A) (1) A NONPROFIT CORPORATION THAT CONVERTS TO A MUTUAL
18 INSURER RETAINS A CHARITABLE TRUST OBLIGATION TO PRESERVE ITS ASSETS
19 FOR CHARITABLE PURPOSES.

20 (2) THIS OBLIGATION SHALL BE PAID AT ANY TIME THE MUTUAL
21 INSURER ENTERS INTO AN AGREEMENT, CONTRACT, OR TRANSACTION WITH A
22 FOR-PROFIT CORPORATION OR ENTITY OR OTHERWISE GENERATES SUFFICIENT
23 FUNDS TO FULFILL ITS CHARITABLE TRUST OBLIGATION.

24 (3) THE FAIR MARKET VALUE OF THE NONPROFIT CORPORATION ON
25 THE DATE OF CONVERSION TO A MUTUAL INSURER, AUGMENTED BY ANY
26 INCREASE IN VALUE OF THE MUTUAL INSURANCE CORPORATION OR ENTITY
27 ATTRIBUTABLE TO THE USE OF THE CHARITABLE ASSETS OR TO ITS PRIOR STATUS
28 AS A NONPROFIT CORPORATION, SHALL BE THE BASIS FOR THE VALUATION OF THE
29 CHARITABLE TRUST OBLIGATION CONSISTENT WITH § 6-206 OF THIS SUBTITLE.

30 (B) (1) A MUTUAL INSURER THAT ENTERS INTO ANY AGREEMENT,
31 CONTRACT, OR TRANSACTION WITH A NONPROFIT CORPORATION ACQUIRES AND
32 RETAINS A CHARITABLE TRUST OBLIGATION TO PRESERVE THE ASSETS OF THE
33 NONPROFIT CORPORATION FOR CHARITABLE PURPOSES.

34 (2) THIS OBLIGATION SHALL BE PAID AT ANY TIME THE MUTUAL
35 INSURER ENTERS INTO AN AGREEMENT, CONTRACT, OR TRANSACTION WITH A
36 FOR-PROFIT CORPORATION OR ENTITY.

37 (3) THE FAIR MARKET VALUE OF THE NONPROFIT CORPORATION ON
38 THE DATE OF CONVERSION TO A MUTUAL INSURER, AUGMENTED BY ANY
39 INCREASE IN VALUE OF THE MUTUAL INSURER, ATTRIBUTABLE TO THE USE OF THE
40 CHARITABLE TRUST ASSETS OR TO ITS PRIOR STATUS AS A NONPROFIT
41 CORPORATION, SHALL BE THE BASIS FOR THE VALUATION OF THE CHARITABLE
42 TRUST OBLIGATION, CONSISTENT WITH § 6-206 OF THIS SUBTITLE.

9

1 (C) (1) WHENEVER A MUTUAL INSURER ENTERS INTO AN AGREEMENT,
2 CONTRACT, OR TRANSACTION TO DEMUTUALIZE, THE MUTUAL INSURER SHALL
3 SUBMIT TO THE OFFICE AN ASSET DISTRIBUTION PLAN, CONSISTENT WITH § 6-206 OF
4 THIS SUBTITLE, TO FULFILL ITS CHARITABLE OBLIGATIONS.

5 (2) THE OFFICE SHALL HOLD A MINIMUM OF AT LEAST ONE PUBLIC
6 HEARING IN ACCORDANCE WITH § 6-205 OF THIS SUBTITLE.

7 (3) UNLESS IT RECEIVES APPROVAL FROM THE OFFICE THAT ITS
8 PROPOSED AGREEMENT, CONTRACT, OR TRANSACTION TO DEMUTUALIZE IS FAIR
9 AND EQUITABLE TO THE PUBLIC AND SATISFIES THE PROVISIONS OF THIS SUBTITLE,
10 A MUTUAL INSURER MAY NOT DEMUTUALIZE.

11 6-211.

12 THE OFFICE SHALL REQUIRE EACH NONPROFIT CORPORATION OPERATING IN
13 THE STATE TO SUBMIT FOR APPROVAL BY THE OFFICE AN ANNUAL REPORT THAT
14 IDENTIFIES ALL ACTIVITIES UNDERTAKEN BY THE NONPROFIT CORPORATION TO
15 MEET ITS PUBLIC BENEFIT AND COMMUNITY BENEFIT OBLIGATIONS.

16 6-212.

17 (A) WHENEVER THE OFFICE RECEIVES INFORMATION THAT A FOR-PROFIT
18 CORPORATION IS NOT FULFILLING ITS COMMITMENT TO THE AFFECTED
19 COMMUNITY IN ACCORDANCE WITH THE AGREEMENT, CONTRACT, OR
20 TRANSACTION APPROVED BY THE OFFICE UNDER THIS SUBTITLE, AFTER
21 PROVIDING 10 DAYS NOTICE TO THE AFFECTED PARTIES, THE OFFICE SHALL HOLD
22 A PUBLIC HEARING.

23 (B) IF, AFTER THE PUBLIC HEARING, THE OFFICE DETERMINES THAT THE
24 INFORMATION IS TRUE, THE OFFICE SHALL INSTITUTE PROCEEDINGS TO REQUIRE A
25 CORRECTIVE ACTION PLAN FROM THE FOR-PROFIT CORPORATION.

26 (C) THE OFFICE SHALL RETAIN OVERSIGHT OF THE FOR-PROFIT
27 CORPORATION'S OBLIGATIONS UNDER THE CORRECTIVE ACTION PLAN FOR AS
28 LONG AS THE OFFICE CONSIDERS NECESSARY TO ENSURE COMPLIANCE WITH THIS
29 SUBTITLE.

30 6-213.

31 (A) ANY FINAL ACTION TAKEN BY THE OFFICE UNDER THIS SUBTITLE SHALL
32 BE SUBJECT TO JUDICIAL REVIEW BY A COURT OF COMPETENT JURISDICTION AT
33 THE INITIATION OF THE NONPROFIT CORPORATION THAT IS THE SUBJECT OF THE
34 FINAL ACTION OR ANY OTHER PERSON THAT WAS A PARTY TO A PROCEEDING.

35 (B) ANY PERSON ADVERSELY AFFECTED BY A FINAL ACTION TAKEN BY THE
36 OFFICE SHALL BE CONSIDERED A PARTY TO ANY PROCEEDING CONDUCTED BY A
37 COURT OF COMPETENT JURISDICTION, INCLUDING CONSUMERS OR COMMUNITY
38 GROUPS REPRESENTING THE CITIZENS OF THE STATE.

10

1 **Article - Health - General**

2 19-123.

3 (a) Notwithstanding the fact that a merger or consolidation may limit free
4 economic competition, EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,
5 the Commission may approve the merger or consolidation of 2 or more hospitals if the
6 merger or consolidation:

7 (1) Is not inconsistent with the State health plan or any institution-specific
8 plan;

9 (2) Will result in the delivery of more efficient and effective hospital
10 services; and

11 (3) Is in the public interest.

12 (b) Notwithstanding the fact that a merger or consolidation or the joint ownership
13 and operation of major medical equipment may limit free economic competition, a
14 hospital may engage in a merger or consolidation or the joint ownership of major medical
15 equipment that has been approved by the Commission under this section.

16 (C) FOR A MERGER OR CONSOLIDATION THAT WOULD RESULT IN THE
17 CONVERSION OF A NONPROFIT HOSPITAL TO A FOR-PROFIT STOCK CORPORATION
18 OR ENTITY, PRIOR TO THE MERGER OR CONSOLIDATION, A HOSPITAL MUST
19 RECEIVE WRITTEN APPROVAL FOR THE MERGER OR CONSOLIDATION FROM THE
20 OFFICE OF THE ATTORNEY GENERAL IN ACCORDANCE WITH TITLE 6, SUBTITLE 2 OF
21 THE STATE GOVERNMENT ARTICLE.

22 19-711.1.

23 (a) A domestic nonprofit health maintenance organization may become a
24 for-profit health maintenance organization under the plan [and procedure] approved by
25 the [Commissioner] OFFICE OF THE ATTORNEY GENERAL UNDER TITLE 6, SUBTITLE
26 2 OF THE STATE GOVERNMENT ARTICLE.

27 (b) [The Commissioner may not approve any plan or procedure unless:

28 (1) It is equitable to enrollees and shareholders, if any, of the health
29 maintenance organization;

30 (2) It is in compliance with Title 2, Subtitle 6 of the Corporations and
31 Associations Article; and

32 (3) The plan or procedure provides that no part of the assets or surplus of
33 the nonprofit health maintenance organization will inure directly or indirectly to any
34 officer or director of the health maintenance organization.

35 (c) A domestic nonprofit health maintenance organization that becomes a
36 for-profit health maintenance organization shall be given recognition in all respects as a
37 health maintenance organization formed under the laws of this State as of the date of its
38 initial authorization as a nonprofit health maintenance organization.

11

1 [(d)] (C) The certificate of authority, agent appointments, forms, and other filings
2 which are in existence at the time of the conversion from a nonprofit health maintenance
3 organization to a for-profit health maintenance organization shall continue in full force
4 and effect upon conversion if the health maintenance organization at all times remains
5 qualified to engage in business in this State.

6 [(e)] (D) All outstanding contracts of the converting health maintenance
7 organization shall remain in full force and effect and need not otherwise be endorsed
8 unless ordered by the Commissioner.

9 [(f) The Commissioner may conduct a hearing concerning the proposed
10 conversion of a nonprofit health maintenance organization to a for-profit health
11 maintenance organization.]

12 **Article - Insurance**

13 14-131.

14 (a) This section does not apply to the conversion of a corporation authorized
15 under this subtitle to a stock health insurer under a court order in connection with the
16 rehabilitation or reorganization of the corporation under Title 9, Subtitle 2 of this article.

17 (b) A corporation that is incorporated under the laws of the State and is subject to
18 this subtitle may convert to a for-profit stock health insurer subject to the provisions of
19 [this article] TITLE 6, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE under a plan
20 [and procedure] approved by the [Commissioner] OFFICE OF THE ATTORNEY
21 GENERAL.

22 (c) [The Commissioner may not approve a plan or procedure for conversion
23 unless the plan or procedure:

24 (1) is equitable to subscribers and certificate holders, if any, of the
25 corporation;

26 (2) complies with Title 2, Subtitle 6 of the Corporations and Associations
27 Article;

28 (3) provides that none of the assets or surplus of the nonprofit health
29 service plan will inure directly or indirectly to an officer or director of the corporation;

30 (4) is approved by at least two-thirds of the corporation's certificate holders
31 who have voted on the plan or procedure in person, by proxy, or by mail under the notice
32 and procedure approved by the Commissioner; and

33 (5) ensures that the resulting stock health insurer will possess surplus in an
34 amount sufficient to:

35 (i) comply with the surplus requirements under this article for a stock
36 health insurer; and

37 (ii) provide for the security of the resulting stock health insurer's
38 policyholders and certificate holders.

12

1 (d) A corporation that becomes a for-profit stock health insurer under this
2 section does not abandon its corporate status by converting, unless the plan specifically
3 provides otherwise.

4 [(e)] (D) If the corporation remains at all times qualified to engage in business in
5 the State, the certificate of authority, agent appointments, forms, and other filings
6 existing at the time of the conversion shall continue in effect after the conversion.

7 [(f)] (E) All outstanding contracts of the converting corporation shall remain in
8 effect and need not otherwise be endorsed unless ordered by the Commissioner.

9 [(g) The Commissioner or designee of the Commissioner may conduct a hearing
10 on the proposed conversion of a corporation subject to this subtitle into a for-profit stock
11 health insurer.]

12 14-132.

13 (a) This section does not apply to the conversion of a corporation authorized
14 under this subtitle to a mutual health insurer under a court order in connection with the
15 rehabilitation or reorganization of the corporation under Title 9, Subtitle 2 of this article.

16 (b) A corporation that is incorporated under the laws of the State and is subject to
17 this subtitle may convert to a mutual health insurer subject to the provisions of [this
18 article] TITLE 6, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE under a plan [and
19 procedure] approved by the [Commissioner] OFFICE OF THE ATTORNEY GENERAL.

20 (c) [The Commissioner may not approve a plan or procedure for conversion
21 unless the plan or procedure:

22 (1) is equitable to subscribers and certificate holders, if any, of the
23 corporation;

24 (2) complies with Title 2, Subtitle 6 of the Corporations and Associations
25 Article;

26 (3) provides that none of the assets or surplus of the nonprofit health
27 service plan will inure directly or indirectly to an officer or director of the corporation;
28 and

29 (4) is approved by at least two-thirds of the corporation's certificate holders
30 who have voted on the plan or procedure in person, by proxy, or by mail under the notice
31 and procedure approved by the Commissioner;

32 (5) ensures that the resulting mutual health insurer will possess surplus in
33 an amount sufficient to:

34 (i) comply with the surplus requirements under this article for a
35 mutual health insurer; and

36 (ii) provide for the security of the resulting mutual health insurer's
37 policyholders and certificate holders.

13

1 (d) A corporation that becomes a mutual health insurer under this section does
2 not abandon its corporate status by converting, unless the plan specifically provides
3 otherwise.

4 [(e)] (D) If the corporation at all times remains qualified to engage in business in
5 the State, the certificate of authority, agent appointments, forms, and other filings
6 existing at the time of the conversion shall continue in effect after the conversion.

7 [(f)] (E) All outstanding contracts of the converting corporation shall remain in
8 effect and need not otherwise be endorsed unless ordered by the Commissioner.

9 [(g) The Commissioner or designee of the Commissioner may conduct a hearing
10 on the proposed conversion of a corporation subject to this subtitle into a mutual health
11 insurer.]

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 1997.