

BY: Finance Committee

AMENDMENTS TO SENATE BILL NO. 143

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 13, after "licenses" insert "or certificates of authority, impose certain penalties, or take certain other actions"; in line 14, strike "charitable" and substitute "certain"; and in line 19, strike "6.5-306" and substitute "6.5-307".

AMENDMENT NO. 2

On pages 3 and 4, strike in their entirety the lines beginning with line 16 on page 3 through line 6 on page 4, inclusive, and substitute:

"(B) "ACQUISITION" MEANS:

(1) A SALE, LEASE, TRANSFER, MERGER, OR JOINT VENTURE THAT RESULTS IN THE DISPOSAL OF THE ASSETS OF A NONPROFIT HEALTH ENTITY TO A FOR-PROFIT CORPORATION OR ENTITY OR TO A MUTUAL BENEFIT CORPORATION OR ENTITY WHEN A SUBSTANTIAL AMOUNT OF THE ASSETS OF THE NONPROFIT HEALTH ENTITY ARE INVOLVED OR WILL BE INVOLVED IN THE AGREEMENT OR TRANSACTION;

(2) THE TRANSFER OF OWNERSHIP, CONTROL, RESPONSIBILITY, OR GOVERNANCE OF A SUBSTANTIAL AMOUNT OF THE ASSETS, OPERATIONS, OR BUSINESS OF THE NONPROFIT HEALTH ENTITY TO ANY FOR-PROFIT CORPORATION OR ENTITY OR TO ANY MUTUAL BENEFIT CORPORATION OR ENTITY;

(3) A PUBLIC OFFERING OF STOCK; OR

(4) A CONVERSION TO A FOR-PROFIT ENTITY."

(Over)

AMENDMENT NO. 3

On page 4, strike line 23 in its entirety and substitute:

“(I) “PUBLIC ASSETS” MEANS ASSETS:

(1) HELD FOR THE BENEFIT OF THE PUBLIC OR THE COMMUNITY;

(2) IN WHICH THE PUBLIC HAS AN OWNERSHIP INTEREST; OR

(3) OWNED BY A GOVERNMENTAL ENTITY.”.

AMENDMENT NO. 4

On page 5, after line 12, insert:

“6.5-104.

NOTHING IN THIS TITLE SHALL IMPAIR THE RIGHTS AND POWERS OF A COURT AND THE ATTORNEY GENERAL WITH RESPECT TO ANY ASSET DEVOTED TO CHARITY OR WITH RESPECT TO ANY CHARITABLE TRUST.”.

AMENDMENT NO. 5

On page 5, in line 15, after “(A)” insert “(1)”; in the same line, strike “WHO” and substitute “THAT”; after line 17 insert:

“(2) THIS APPLICATION SHALL BE IN ADDITION TO ANY OTHER FILING REQUIRED BY LAW.”;

and in line 30, after the comma, insert “AND SUBJECT TO THE PROVISIONS OF § 7-106 OF THE INSURANCE ARTICLE.”.

AMENDMENT NO. 6

On page 6, strike in their entirety lines 1 through 5, inclusive; in line 6, strike “(2)” and substitute “(D)”; in line 17, strike “WHO” and substitute “THAT”; in the same line, after “REQUESTED” insert “IN WRITING”; in line 30, strike “WITHIN 65 DAYS AFTER RECEIVING AN APPLICATION” and substitute:

“(1) AS SOON AS PRACTICABLE BUT NO LATER THAN 90 DAYS AFTER RECEIVING A COMPLETED APPLICATION, INCLUDING ALL NECESSARY EXPERT REPORTS”;

after line 31, insert:

“(2) IF THE NONPROFIT HEALTH ENTITY IS A HOSPITAL, THE REGULATING ENTITY SHALL HOLD THE PUBLIC HEARING IN THE JURISDICTION IN WHICH THE HOSPITAL IS LOCATED.”;

and in line 35, strike “A” and substitute “THE”.

AMENDMENT NO. 7

On page 7, in lines 6 and 7, strike “OR CONSULTANTS”; in line 10, after “PUBLIC” insert “OR CHARITABLE”; after line 16, insert:

“(2) THE SELECTION OF AN EXPERT BY A REGULATING ENTITY UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE SUBJECT TO THE PROVISIONS OF DIVISION II OF THE STATE FINANCE AND PROCUREMENT ARTICLE.”;

in line 17, strike “(2)” and substitute “(3)”; in line 18, strike “COST” and substitute “REASONABLE COST, AS DETERMINED BY THE REGULATING ENTITY,”; in line 20, strike “WITHIN 95 DAYS AFTER RECEIVING AN APPLICATION,” and substitute “SUBJECT TO SUBSECTION (G) OF THIS SECTION, WITHIN 60 DAYS AFTER THE RECORD, INCLUDING THE HEARING PROCESS, HAS BEEN CLOSED,”; strike in their entirety lines 24 and 25 and substitute:

“(G) (1) UNLESS THE REGULATING ENTITY EXTENDS THE TIME FOR GOOD CAUSE, IF AN APPLICATION IS NOT APPROVED OR DISAPPROVED WITHIN 60 DAYS AFTER THE RECORD, INCLUDING THE HEARING PROCESS, HAS BEEN CLOSED, THE APPLICATION SHALL BE DEEMED APPROVED.

(2) FOR GOOD CAUSE, THE REGULATING ENTITY MAY EXTEND THE APPLICATION REVIEW PERIOD FOR UP TO TWO 60-DAY PERIODS BEYOND THE

(Over)

INITIAL 60 DAYS.”;

and in line 31, after “TO” insert “ENSURE THAT”.

AMENDMENT NO. 8

On page 8, strike beginning with “(1)” in line 1 down through “ACQUISITION” in line 3 and substitute:

“(1) THE VALUE OF PUBLIC ASSETS IS SAFEGUARDED;

(2) (I) THE FAIR VALUE OF THE PUBLIC OR CHARITABLE ASSETS”;

in lines 8 and 12, in each instance, strike “TRANSFERRED” and substitute “DISTRIBUTED”; in line 11, after “A” insert “PUBLIC OR”; in line 20, strike “ENSURE THAT NO PART OF” and substitute “NO PART OF THE PUBLIC ASSETS OR”; in line 22, strike “THROUGH STOCK OPTIONS OR OTHERWISE”; after line 22, insert:

“(C) THE REGULATING ENTITY MAY DETERMINE THAT A TRANSFER OR A DISTRIBUTION OF ASSETS IS NOT REQUIRED UNDER THIS SECTION IF THE TRANSACTION IS:

(1) DETERMINED NOT TO BE AN ACQUISITION;

(2) IN THE ORDINARY COURSE OF BUSINESS; AND

(3) FOR FAIR VALUE.

(D) IN DETERMINING FAIR VALUE, THE APPROPRIATE REGULATING ENTITY MAY CONSIDER ALL RELEVANT FACTORS, INCLUDING, AS DETERMINED BY THE REGULATING ENTITY:

(1) THE VALUE OF A NONPROFIT HEALTH ENTITY OR AN AFFILIATE OR THE ASSETS OF SUCH AN ENTITY DETERMINED AS IF THE ENTITY HAD VOTING STOCK OUTSTANDING AND 100% OF ITS STOCK WERE FREELY TRANSFERABLE AND

AVAILABLE FOR PURCHASE WITHOUT RESTRICTION;

(2) THE VALUE AS A GOING CONCERN;

(3) THE MARKET VALUE;

(4) THE INVESTMENT OR EARNINGS VALUE;

(5) THE NET ASSET VALUE; AND

(6) A CONTROL PREMIUM, IF ANY.”;

in line 23, strike “(C)” and substitute “(E)”; and in line 34, strike “MARKET”.

AMENDMENT NO. 9

On page 10, in line 16, strike “ADMINISTRATION” and substitute “REGULATING ENTITY”; strike in their entirety lines 22 through 35, inclusive, and substitute:

“(B) AN ACQUISITION OF A NONPROFIT HEALTH SERVICE PLAN OR A NONPROFIT HEALTH MAINTENANCE ORGANIZATION MAY NOT OCCUR WITHOUT THE APPROVAL OF THE ADMINISTRATION.

(C) A NONPROFIT HEALTH SERVICE PLAN OR A NONPROFIT HEALTH MAINTENANCE ORGANIZATION MAY NOT BE OPERATED FOR PROFIT.

(D) IF THE COMMISSIONER DETERMINES THAT A NONPROFIT HEALTH SERVICE PLAN OR A NONPROFIT HEALTH MAINTENANCE ORGANIZATION IS IN VIOLATION OF SUBSECTION (B) OR (C) OF THIS SECTION, THE COMMISSIONER MAY, IN ADDITION TO OTHER REMEDIES AUTHORIZED BY LAW, REQUIRE THAT:

(1) THE ENTITY DIVEST THE ACQUISITION;

(2) THE ENTITY FULLY COMPLY WITH THIS TITLE;

(Over)

(3) THE ENTITY FILE A PLAN FOR CONVERSION TO A FOR-PROFIT ENTITY AS REQUIRED UNDER THIS TITLE;

(4) THE CERTIFICATE OF AUTHORITY TO OPERATE A NONPROFIT HEALTH SERVICE PLAN OR A NONPROFIT HEALTH MAINTENANCE ORGANIZATION IN MARYLAND BE REVOKED OR SUSPENDED; OR

(5) A PENALTY BE PAID AS PROVIDED IN § 4-113(D)(1) OF THIS ARTICLE FOR EACH VIOLATION.”;

in line 37, after “NONPROFIT” insert “PUBLIC OR”; and in line 38, after “OF” insert “PUBLIC OR”.

AMENDMENT NO. 10

On page 11, after line 15, insert:

“6.5-307.

(A) THIS TITLE DOES NOT APPLY TO THE ACQUISITION OF A FOREIGN NONPROFIT HEALTH ENTITY OPERATING IN THIS STATE IF THE APPROPRIATE REGULATING ENTITY DETERMINES, BASED ON THE STANDARDS SET FORTH IN THIS TITLE, THAT ANY PUBLIC OR CHARITABLE ASSETS OF THE NONPROFIT HEALTH ENTITY THAT SERVE HEALTH CARE NEEDS IN THIS STATE WILL BE ADEQUATELY PROTECTED.

(B) IF THE APPROPRIATE REGULATING ENTITY DETERMINES UNDER SUBSECTION (A) OF THIS SECTION THAT THIS TITLE DOES NOT APPLY, THE NONPROFIT HEALTH ENTITY SHALL SUBMIT AN INFORMATION COPY OF ITS APPLICATION TO ENGAGE IN AN ACQUISITION TO THE REGULATING ENTITY.”.