

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL NO. 167

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Conroy” and substitute “Conroy, Busch, Barve, Crumlin, Donoghue, Eckardt, Exum, Frank, Fulton, Gordon, Kach, Kirk, V. Mitchell, and Walkup”.

AMENDMENT NO. 2

On page 1, in line 13, after “licenses” insert “or certificates of authority”; in line 14, after “a” insert “certain public or”; strike the second “charitable” and substitute “certain”; and in line 19, strike “6.5-306” and substitute “6.5-307”.

On page 2, in line 20, after “14-131” insert “and 14-132”.

On page 3, in line 13, strike “AND” and substitute a semicolon.

On page 5, in line 15, strike “WHO” and substitute “THAT”.

On page 6, in line 7, strike “ENROLLEE” and substitute “MEMBER OR SUBSCRIBER”; and in line 17, strike “WHO” and substitute “THAT”.

AMENDMENT NO. 3

On pages 2 and 3, strike in their entirety the lines beginning with line 23 on page 2 through line 8 on page 3, inclusive.

AMENDMENT NO. 4

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:

(Over)

(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 OR SIGNIFICANT PORTION OF THE ASSETS OF THE NONPROFIT HEALTH ENTITY ARE INVOLVED OR WILL BE INVOLVED IN THE AGREEMENT OR TRANSACTION;

(2) A TRANSFER OF OWNERSHIP, CONTROL, RESPONSIBILITY, OR GOVERNANCE OF A SUBSTANTIAL OR SIGNIFICANT PORTION 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.”.

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

“(I) “PUBLIC ASSETS” INCLUDE:

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

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

(3) ASSETS OWNED BY A GOVERNMENTAL ENTITY.”.

#### AMENDMENT NO. 5

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. 6

On page 5, in line 15, after “(A)” insert “(1)”; and after line 17, insert:

“(2) THE APPLICATION SUBMITTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE IN ADDITION TO ANY OTHER FILING REQUIRED BY LAW.”.

AMENDMENT NO. 7

On page 5, in line 30, after “(C)” insert “(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,”; and after line 32, insert:

“(2) THE REGULATING ENTITY MAY NOT BE REQUIRED TO DISCLOSE OR MAKE AVAILABLE FOR PUBLIC INSPECTION UNDER PARAGRAPH (1) OF THIS SUBSECTION ANY INFORMATION THAT IS CONFIDENTIAL OR PROPRIETARY UNLESS DETERMINED BY THE REGULATING ENTITY TO BE IN THE PUBLIC INTEREST.”.

AMENDMENT NO. 8

On page 6, in line 17, after “REQUESTED” insert “IN WRITING”.

AMENDMENT NO. 9

On page 6, strike in their entirety lines 30 and 31, inclusive, and substitute:

“(A) AS SOON AS PRACTICABLE, BUT NO LATER THAN 90 DAYS AFTER RECEIVING A COMPLETE APPLICATION, INCLUDING ALL NECESSARY EXPERT REPORTS, THE APPROPRIATE REGULATING ENTITY SHALL HOLD A PUBLIC HEARING.”;

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

AMENDMENT NO. 10

On page 7, in line 10, after “PUBLIC” insert “OR CHARITABLE”.

AMENDMENT NO. 11

On page 7, in lines 6 and 7, strike “OR CONSULTANTS”; 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 STATE PROCUREMENT LAWS.”;

in line 17, strike “(2)” and substitute “(3)”; in the same line, strike “EMPLOYS” and substitute “CONTRACTS FOR”; in line 18, before “COST” insert “REASONABLE”; and in line 19, after “ASSISTANCE” insert “, AS DETERMINED BY THE REGULATING ENTITY”.

AMENDMENT NO. 12

On page 7, in line 20, strike “95” and substitute “60”; in the same line, strike “RECEIVING AN APPLICATION” and substitute “THE RECORD, INCLUDING THE PUBLIC HEARING PROCESS, HAS BEEN CLOSED”; in line 24, before “IF” insert “(1) UNLESS THE APPROPRIATE REGULATING ENTITY EXTENDS FOR GOOD CAUSE UNDER PARAGRAPH (2) OF THIS SUBSECTION THE TIME FOR MAKING A DETERMINATION UNDER SUBSECTION (F) OF THIS SECTION,”; in the same line, strike “95” and substitute “60”; in line 25, strike “ITS RECEIPT” and substitute “THE RECORD, INCLUDING THE PUBLIC HEARING PROCESS, HAS BEEN CLOSED”; and after line 25, insert:

“(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AT ITS DISCRETION, THE REGULATING ENTITY MAY EXTEND FOR GOOD CAUSE FOR A 60-DAY PERIOD THE TIME FOR MAKING A DETERMINATION UNDER SUBSECTION (F) OF THIS SECTION.

(3) THE REGULATING ENTITY IS LIMITED TO A MAXIMUM OF TWO 60-DAY EXTENSIONS FOR MAKING A DETERMINATION ON THE SAME APPLICATION.”.

AMENDMENT NO. 13

On page 8, in line 1, strike “SAFEGUARD” and substitute “ENSURE THAT”; in the same line, after “PUBLIC” insert “OR CHARITABLE”; in the same line, after “ASSETS” insert “IS SAFEGUARDED”; in line 3, strike “100% OF THE PROCEEDS OF AN ACQUISITION” and substitute “THE FAIR VALUE OF THE PUBLIC OR CHARITABLE ASSETS”; in lines 4 and 5, strike “IS TRANSFERRED” and substitute “WILL BE DISTRIBUTED”; in lines 7 and 11, in each instance, strike “PROCEEDS OF AN ACQUISITION” and substitute “FAIR VALUE OF THE”.

PUBLIC OR CHARITABLE ASSETS"; in line 8, strike "IS TRANSFERRED" and substitute "WILL BE DISTRIBUTED"; in line 12, before the second "NONPROFIT" insert "PUBLIC OR"; in the same line, strike "IS TRANSFERRED" and substitute "WILL BE DISTRIBUTED"; in line 15, strike "CITIZENS OF THE STATE" and substitute "AFFECTED COMMUNITY WITHIN THIS STATE"; in lines 16 and 18, in each instance, after "CARE" insert "IN THE AFFECTED COMMUNITY WITHIN THIS STATE"; and strike in their entirety lines 20 through 22, inclusive, and substitute:

"(3) ENSURE THAT NO PART OF THE PUBLIC OR CHARITABLE ASSETS OF THE ACQUISITION INURE DIRECTLY OR INDIRECTLY TO AN OFFICER, DIRECTOR, OR TRUSTEE OF A NONPROFIT HEALTH ENTITY."

AMENDMENT NO. 14

On page 8, before line 23, insert:

"(C) THE REGULATING ENTITY MAY DETERMINE THAT A DISTRIBUTION OF ASSETS OF A NONPROFIT HEALTH ENTITY OR A VOTE OF ITS CERTIFICATE HOLDERS AS PROVIDED UNDER § 6.5-303(2)(III) OF THIS SUBTITLE IS NOT REQUIRED UNDER THIS SECTION IF THE TRANSACTION IS:

(1) DETERMINED NOT 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 THE NONPROFIT HEALTH ENTITY OR AN AFFILIATE OR THE ASSETS OF SUCH AN ENTITY THAT IS DETERMINED AS IF THE ENTITY HAD VOTING STOCK OUTSTANDING AND 100% OF ITS STOCK WAS FREELY

(Over)

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)”; in line 34, strike “MARKET”; and in line 35, after “PUBLIC” insert “OR CHARITABLE”.

On page 9, in line 1, strike “CHARITABLE FUNDS” and substitute “PUBLIC OR CHARITABLE ASSETS”; and in line 10, strike “MARKET”.

AMENDMENT NO. 15

On page 10, in line 16, strike “ADMINISTRATION” and substitute “REGULATING ENTITY”.

AMENDMENT NO. 16

On page 10, 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 ANY OTHER REMEDIES AUTHORIZED BY LAW, REQUIRE THE FOLLOWING:

(1) THE DIVESTITURE OF THE ACQUISITION;

(2) THAT THE ENTITY FULLY COMPLY WITH THIS TITLE;

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

(4) THAT THE CERTIFICATE OF AUTHORITY OF THE ENTITY TO OPERATE AS A NONPROFIT HEALTH SERVICE PLAN OR A NONPROFIT HEALTH MAINTENANCE ORGANIZATION IN THIS STATE BE REVOKED OR SUSPENDED; OR

(5) THE PAYMENT OF A PENALTY AS PROVIDED FOR IN § 4-113(D)(1) OF THE INSURANCE ARTICLE FOR EACH VIOLATION OF SUBSECTION (B) OR (C) OF THIS SECTION.”.

AMENDMENT NO. 17

On page 10, in line 37, before “NONPROFIT” insert “PUBLIC OR”; and in line 38, after “OF” insert “PUBLIC OR”.

On page 11, in line 2, strike “MECHANISMS” and substitute “PROCEDURES”; in lines 5, 6, 9, and 15, in each instance, before “NONPROFIT” insert “PUBLIC OR”; in lines 5 and 6, in each instance, after “ENTITY’S” insert “OR TRUST’S”; in line 11, strike “ON” and substitute “REGARDING”; and in lines 10 and 12, in each instance, before “CHARITABLE” insert “PUBLIC OR”.

AMENDMENT NO. 18

On page 11, after line 15, insert:

“6.5-307.

(Over)

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

AMENDMENT NO. 19

On page 15, after line 17, insert:

“[14-132.

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

(b) A corporation that is incorporated under the laws of the State and is subject to this subtitle may convert to a mutual health insurer subject to the provisions of this article under a plan and procedure approved by the Commissioner.

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

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

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

(3) provides that none of the assets or surplus of the nonprofit health service plan



will inure directly or indirectly to an officer or director of the corporation; and

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

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

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

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

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

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

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

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