

HOUSE BILL No. 6046

May 9, 2002, Introduced by Reps. Raczkowski, Bishop and George and referred to the Committee on Health Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," (MCL 500.100 to 500.8302) by adding chapter 51A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 51A.

CHANGE OF LEGAL STATUS TRANSACTION

SEC. 5151. AS USED IN THIS CHAPTER:

(A) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE FUND.

(B) "CHANGE OF LEGAL STATUS TRANSACTION" MEANS ANY OF THE FOLLOWING:

(i) THE SALE, TRANSFER, LEASE, EXCHANGE, OPTIONING, CONVEYANCE, OR OTHER DISPOSITION OF A MATERIAL AMOUNT OF THE ASSETS OR OPERATIONS OF A NONPROFIT HEALTH INSURER, TO ANOTHER PERSON.

1 (ii) THE TRANSFER OF CONTROL OR GOVERNANCE OF A MATERIAL
2 AMOUNT OF THE ASSETS OR OPERATIONS OF A NONPROFIT HEALTH INSURER
3 TO ANOTHER PERSON OTHER THAN AS PERMITTED UNDER SECTION 3721.

4 (C) "FUND" MEANS THE MICHIGAN COMMUNITY HEALTH TRUST FUND
5 CREATED IN SECTION 3553.

6 (D) "MEMBER" MEANS A MEMBER OF THE BOARD OF DIRECTORS OF THE
7 FUND.

8 (E) "NONPROFIT HEALTH INSURER" MEANS A NONPROFIT HEALTH
9 INSURER OPERATING PURSUANT TO CHAPTER 37.

10 SEC. 3553. (1) THE MICHIGAN COMMUNITY HEALTH TRUST FUND IS
11 ESTABLISHED AS A TRUST FUND IN THE DEPARTMENT OF TREASURY. THE
12 FUND IS ESTABLISHED FOR THE PURPOSE OF RECEIVING THE FAIR MARKET
13 VALUE OF THE NONPROFIT HEALTH INSURER RESULTING FROM ANY CHANGE
14 OF LEGAL STATUS TRANSACTION. THE BOARD SHALL ADMINISTER THE FUND
15 TO CONTINUE IN PERPETUITY THE CHARITABLE AND BENEVOLENT MISSION
16 AS PRESCRIBED IN FORMER 1980 PA 350 AND CONTINUED UNDER CHAPTER
17 37 OF A NONPROFIT HEALTH INSURER FOLLOWING A CHANGE IN LEGAL
18 STATUS TRANSACTION.

19 (2) THE FUND IS CREATED AS A REVOLVING FUND. ASSETS IN THE
20 FUND SHALL NOT REVERT TO THE GENERAL FUND.

21 (3) EXPENDITURES FROM THE FUND ARE SUBJECT TO APPROPRIATION
22 FOR THE PURPOSES DESCRIBED IN SECTION 3557.

23 SEC. 3555. (1) THE BOARD SHALL NOT BE CREATED UNDER THIS
24 SECTION UNTIL THE COMMISSIONER HAS RECEIVED AN APPLICATION UNDER
25 SECTION 3563 INDICATING THAT A CHANGE OF LEGAL STATUS TRANSACTION
26 IS BEING CONTEMPLATED. UPON RECEIPT OF THE APPLICATION UNDER

1 SECTION 3563, THE COMMISSIONER SHALL NOTIFY THE GOVERNOR OF HIS
2 OR HER NEED TO APPOINT MEMBERS TO THE BOARD.

3 (2) A BOARD OF DIRECTORS SHALL ADMINISTER THE FUND. THE
4 BOARD SHALL BE LOCATED IN THE DEPARTMENT OF TREASURY. THE BOARD
5 SHALL CONSIST OF 3 VOTING MEMBERS WHO ARE RESIDENTS OF THIS STATE
6 AND APPOINTED BY THE GOVERNOR AS FOLLOWS:

7 (A) ONE MEMBER WHO IS 62 YEARS OF AGE OR OLDER.

8 (B) ONE MEMBER WHO HAS TECHNICAL EXPERTISE IN THE AREA OF
9 INSURANCE, ACTUARIAL SCIENCE, LAW, INVESTMENT, OR OTHER RELATED
10 FIELD.

11 (C) ONE MEMBER WHO HAS PRACTICAL EXPERIENCE IN THE AREA OF
12 CONSUMER AND PUBLIC INTEREST ORGANIZATIONS, PUBLIC HEALTH, HEALTH
13 CARE DELIVERY AND FINANCING, PATIENT HEALTH ISSUES, PHILANTHROPIC
14 ADMINISTRATION, OR OTHER RELATED FIELD.

15 (3) THE COMMISSIONER SHALL BE AN EX OFFICIO, NONVOTING
16 MEMBER OF THE BOARD.

17 (4) EACH APPOINTED MEMBER SHALL HAVE A TERM OF 3 YEARS AND
18 MAY BE REAPPOINTED AT THE END OF HIS OR HER TERM. A VACANCY ON
19 THE BOARD SHALL BE FILLED FOR THE REMAINDER OF THE UNEXPIRED TERM
20 IN THE SAME MANNER AND WITH THE SAME RESTRICTIONS AS THE INITIAL
21 APPOINTMENT. EXCEPT AS PROVIDED IN SUBSECTIONS (5) AND (6), A
22 BOARD MEMBER REMAINS A MEMBER UNTIL HIS OR HER SUCCESSOR IS
23 APPOINTED AND TAKES OFFICE.

24 (5) AN INDIVIDUAL APPOINTED TO THE BOARD SHALL NOT BE ANY OF
25 THE FOLLOWING:

26 (A) AN OFFICER OR EMPLOYEE OF THIS STATE OR ANY POLITICAL
27 SUBDIVISION OF THIS STATE.

1 (B) AN OFFICER, DIRECTOR, OR EMPLOYEE OF THE NONPROFIT
2 HEALTH INSURER AT THE TIME THE NONPROFIT HEALTH INSURER APPLIED
3 FOR CHANGE IN LEGAL STATUS TRANSACTION UNDER SECTION 3563.

4 (C) AN OFFICER, DIRECTOR, OR EMPLOYEE OF THE ENTITY SURVIV-
5 ING AFTER A CHANGE IN LEGAL STATUS TRANSACTION OCCURS OR ITS
6 AFFILIATES OR SUCCESSORS.

7 (D) AN OFFICER OR EMPLOYEE OF THE FUND.

8 (6) A MEMBER IS DISQUALIFIED FROM MEMBERSHIP ON THE BOARD
9 AND FROM PARTICIPATING IN ANY BOARD ACTIVITY IMMEDIATELY UPON
10 MEETING SUBSECTION (5)(A) TO (D). THIS SUBSECTION DOES NOT
11 AFFECT ANY ACTION OF THE BOARD TAKEN WHILE A MEMBER WAS A QUALI-
12 FIED MEMBER AND BEFORE THE DATE A MEMBER BECAME DISQUALIFIED
13 UNDER THIS SUBSECTION. ANY ACTION OF THE BOARD TAKEN WHILE A
14 DISQUALIFIED MEMBER WAS ACTING IS NULL AND VOID UNLESS, BY ORDER
15 OF THE COMMISSIONER, THE ACTION IS RATIFIED.

16 (7) A MEMBER SHALL SERVE WITHOUT COMPENSATION FOR HIS OR HER
17 SERVICES AS MEMBER, BUT IS ENTITLED TO REIMBURSEMENT FOR ACTUAL
18 EXPENSES WHILE ENGAGING IN OFFICIAL DUTIES AS MEMBER. A MEMBER
19 MAY ENGAGE IN PRIVATE EMPLOYMENT, OR IN A PROFESSION OR BUSINESS,
20 UNLESS OTHERWISE PROHIBITED BY THIS CHAPTER.

21 (8) THE AFFIRMATIVE VOTE OF ALL 3 VOTING MEMBERS OF THE
22 BOARD IS NECESSARY FOR THE TRANSACTION OF ANY BUSINESS OR THE
23 EXERCISE OF ANY POWER OR FUNCTION OF THE BOARD. THE BOARD MAY
24 DELEGATE TO 1 OR MORE OF ITS MEMBERS OR AGENTS THOSE POWERS THE
25 BOARD CONSIDERS NECESSARY.

26 (9) THE BOARD MAY MAKE AND EXECUTE CONTRACTS AND ALL OTHER
27 INSTRUMENTS AND EXERCISE SUCH OTHER POWERS AND DUTIES IT

1 CONSIDERS NECESSARY. IN DIRECTING INVESTMENTS UNDER THIS
2 CHAPTER, THE BOARD IS NOT LIMITED BY ANY RESTRICTIONS ON INVEST-
3 MENTS CONTAINED IN ANY ACT AND IS SUBJECT ONLY TO THE BOARD'S
4 OBLIGATION AND MISSION UNDER THIS CHAPTER.

5 (10) A BOARD MEMBER OR ANY AGENT OR OTHER PERSON ACTING ON
6 BEHALF OF THE BOARD, WHILE ACTING WITHIN THE SCOPE OF HIS OR HER
7 AUTHORITY, IS NOT SUBJECT TO ANY PERSONAL LIABILITY RESULTING
8 FROM THE CARRYING OUT OF THE POWERS UNDER THIS CHAPTER.

9 SEC. 3557. (1) MONEY IN THE FUND SHALL BE EXPENDED FOR ALL
10 OF THE FOLLOWING PURPOSES:

11 (A) TO SUBSIDIZE THE COST OF INDIVIDUAL MEDIGAP COVERAGE,
12 INCLUDING MEDIGAP COVERAGE PURCHASED BY SENIOR CITIZENS IN THIS
13 STATE.

14 (B) TO EXPAND ACCESS TO HEALTH CARE BY EXTENDING HEALTH
15 INSURANCE COVERAGE TO STATE RESIDENTS WHO CANNOT AFFORD TO PUR-
16 CHASE THEIR OWN COVERAGE OR WHO HAVE COVERAGE INADEQUATE TO MEET
17 THEIR NEEDS.

18 (C) TO EXPAND AND ENHANCE ACCESS TO HEALTH CARE BY AUGMENT-
19 ING AND CREATING HEALTH CARE PROGRAMS THAT DELIVER HEALTH SERV-
20 ICES TO POPULATIONS THAT ARE UNABLE TO ACCESS HEALTH CARE.

21 (D) TO SUPPORT PROGRAMS THAT INFORM AND EDUCATE RESIDENTS OF
22 THIS STATE ABOUT PUBLIC HEALTH ISSUES AND PROGRAMS THAT EMPOWER
23 COMMUNITIES TO ADDRESS PUBLIC HEALTH ISSUES BY BECOMING MORE
24 EFFECTIVE AT IDENTIFYING AND ARTICULATING HEALTH CARE NEEDS AND
25 IMPLEMENTING SOLUTIONS.

1 (E) TO PROMOTE SAFEGUARDS FOR MAINTAINING APPROPRIATE
2 CAPACITY FOR HEALTH SCIENCE RESEARCH AND HEALTH CARE PROVIDER
3 EDUCATION.

4 (F) TO SUPPORT, MAINTAIN, AND IMPLEMENT PROGRAMS OR INITIA-
5 TIVES THAT SERVE THE RESIDENTS OR INSTITUTIONS SERVED BY THE NON-
6 PROFIT HEALTH INSURER PRIOR TO THE CHANGE OF LEGAL STATUS
7 TRANSACTION.

8 (2) THE BOARD SHALL PROVIDE MECHANISMS FOR ONGOING COMMUNITY
9 CONSULTATION AND ENGAGEMENT RELATING TO THE PURPOSES FOR WHICH
10 MONEY IN THE FUND IS TO BE EXPENDED, INCLUDING, BUT NOT LIMITED
11 TO, THE ESTABLISHMENT OF A COMMUNITY ADVISORY BOARD.

12 (3) THE BOARD SHALL FILE AN ANNUAL REPORT WITH THE COMMIS-
13 SIONER AND POST ITS ANNUAL REPORT ELECTRONICALLY ON THE
14 INTERNET. THE ANNUAL REPORT SHALL CONTAIN THE INFORMATION AND BE
15 IN A FORM AS PRESCRIBED BY THE COMMISSION.

16 (4) THE FUND, ITS BOARD, AND ANY DIRECTOR, OFFICER, OR
17 EMPLOYEES OF THE FUND OR BOARD SHALL REMAIN INDEPENDENT OF ANY
18 CONTROL OR INFLUENCE OF THE ENTITY SURVIVING AFTER A CHANGE IN
19 LEGAL STATUS TRANSACTION OR ITS AFFILIATES AND SUCCESSORS. THIS
20 SUBSECTION DOES NOT PREVENT THE BOARD FROM VOTING THE FUND'S
21 EQUITY SHARES IN THE ENTITY SURVIVING AFTER A CHANGE IN LEGAL
22 STATUS TRANSACTION OR ITS AFFILIATES AND SUCCESSORS IN ACCORDANCE
23 WITH THE VOTING AND SHAREHOLDER RIGHTS AGREEMENT ENTERED INTO BY
24 THE BOARD. THE BOARD, IN VOTING THE FUND'S EQUITY SHARE, IS
25 SUBJECT TO THE VOTING AND SHAREHOLDER RIGHTS AGREEMENT AND THE
26 ASSET PRESERVATION AGREEMENT ENTERED INTO BY THE BOARD AND THE
27 NONPROFIT HEALTH INSURER.

1 (5) THE BOARD SHALL ESTABLISH FORMAL MECHANISMS TO AVOID
2 CONFLICTS OF INTEREST AND TO PROHIBIT GRANTS BENEFITING THE
3 ENTITY SURVIVING AFTER A CHANGE IN LEGAL STATUS TRANSACTION OR
4 ITS AFFILIATES AND SUCCESSORS OR ANY OF ITS OFFICERS, DIRECTORS,
5 OR EMPLOYEES.

6 SEC. 3559. (1) THE BOARD SHALL DO ALL OF THE FOLLOWING:

7 (A) IMMEDIATELY TRANSMIT TO THE FUND ANY ASSETS RECEIVED
8 UNDER SECTION 3565.

9 (B) RESERVE A PORTION OF THE FUND INCOME, INCLUDING INTEREST
10 EARNINGS AND REALIZED GAINS, TO GROW THE FUND CORPUS AND RETAIN
11 BUYING POWER AGAINST INFLATION.

12 (C) PAY FOR ANY ADMINISTRATIVE EXPENSES OF THE FUND FROM THE
13 FUND INCOME, INCLUDING INTEREST EARNINGS AND REALIZED GAINS.

14 (D) PROVIDE FOR ANY OTHER EXPENDITURE AS DETERMINED NECES-
15 SARY BY THE BOARD TO IMPROVE ACCESS TO HEALTH CARE FOR MICHIGAN'S
16 UNINSURED AND UNDERINSURED.

17 (2) THE BOARD MAY EMPLOY, HIRE, OR CONTRACT WITH INDEPENDENT
18 FINANCIAL, LEGAL, OR OTHER EXPERTS OR CONSULTANTS THE BOARD CON-
19 SIDERS APPROPRIATE TO ASSIST THE BOARD IN ADMINISTERING THE
20 FUND'S ASSETS AND CARRYING OUT ITS POWERS AND DUTIES UNDER THIS
21 CHAPTER.

22 SEC. 3561. (1) ANY ACTION OR PROCEEDING IN WHICH A QUESTION
23 ARISES CONCERNING THE VALIDITY OF ANY PROVISION IN THIS CHAPTER
24 SHALL BE PREFERRED OVER ALL OTHER CIVIL CAUSES EXCEPT ELECTION
25 CAUSES IN ALL COURTS OF THIS STATE AND SHALL BE HEARD AND DETER-
26 MINED BEFORE ALL OTHER CIVIL BUSINESS PENDING IN THIS STATE
27 EXCEPT ELECTION CAUSES, IRRESPECTIVE OF POSITION ON THE

1 CALENDAR. THE SAME PREFERENCE WILL BE GIVEN UPON APPLICATION OF
2 BOARD COUNSEL IN ANY ACTION OR PROCEEDING QUESTIONING THE VALID-
3 ITY OF ANY PROVISION IN THIS CHAPTER.

4 (2) IF ANY OTHER PROVISION OF LAW CONFLICTS WITH A PROVISION
5 IN THIS CHAPTER, THIS CHAPTER PREVAILS. THIS CHAPTER, BEING NEC-
6 ESSARY FOR THE WELFARE OF THE CITIZENS OF THIS STATE, SHALL BE
7 LIBERALLY CONSTRUED IN ORDER TO EFFECTUATE ITS PURPOSES.

8 SEC. 3563. (1) A NONPROFIT HEALTH INSURER SHALL APPLY FOR
9 AND OBTAIN THE APPROVAL OF THE COMMISSIONER AND THE LEGISLATURE
10 BEFORE ENTERING INTO ANY CHANGE OF LEGAL STATUS TRANSACTION. AT
11 THE TIME OF APPLICATION UNDER THIS SUBSECTION, THE NONPROFIT
12 HEALTH INSURER SHALL PROVIDE THE COMMISSIONER WITH WRITTEN CERTI-
13 FICATION THAT A COPY OF THIS CHAPTER HAS BEEN GIVEN IN ITS
14 ENTIRETY TO EACH MEMBER OF THE BOARD OF TRUSTEES OF THE NONPROFIT
15 HEALTH INSURER.

16 (2) THE APPLICATION SHALL BE ON A FORM PRESCRIBED BY THE
17 COMMISSIONER AND SHALL REQUIRE ALL THE INFORMATION THE COMMIS-
18 SIONER DETERMINES IS NECESSARY. AT A MINIMUM, THE APPLICATION
19 SHALL INCLUDE A DETAILED DESCRIPTION OF THE PROPOSED CHANGE OF
20 LEGAL STATUS TRANSACTION, A PLAN TO EFFECTUATE THE PROPOSED
21 CHANGE OF LEGAL STATUS TRANSACTION, IDENTIFICATION OF ALL OF THE
22 PARTIES INVOLVED IN THE PROPOSED CHANGE OF LEGAL STATUS TRANSAC-
23 TION, AND ALL OTHER DETAILS NECESSARY FOR THE COMMISSIONER TO
24 EVALUATE THE PROPOSED CHANGE OF LEGAL STATUS TRANSACTION UNDER
25 THIS SECTION. AN APPLICATION SHALL NOT BE CONSIDERED RECEIVED
26 UNTIL THE COMMISSIONER HAS ACKNOWLEDGED RECEIPT OF A COMPLETE
27 APPLICATION PURSUANT TO THIS CHAPTER AND ANY RULES PROMULGATED

1 AND ANY OTHER PROCEDURES ESTABLISHED BY THE COMMISSIONER UNDER
2 THIS CHAPTER.

3 (3) BY NOT LATER THAN 30 DAYS AFTER FILING THE APPLICATION
4 UNDER SUBSECTION (1), THE NONPROFIT HEALTH INSURER SHALL DO ALL
5 OF THE FOLLOWING:

6 (A) PUBLISH NOTICE, IN A FORM AND IN NEWSPAPERS TO BE
7 APPROVED BY THE COMMISSIONER, OF THE PROPOSED CHANGE OF LEGAL
8 STATUS TRANSACTION ONCE A WEEK FOR 3 CONSECUTIVE WEEKS IN AT
9 LEAST 1 DAILY NEWSPAPER OF GENERAL CIRCULATION IN SEVERAL GEO-
10 GRAPHIC AREAS OF THIS STATE DESIGNED TO REACH AS MANY CITIZENS OF
11 THIS STATE AS POSSIBLE.

12 (B) CAUSE NOTICE, IN A FORM AND MANNER TO BE APPROVED BY THE
13 COMMISSIONER, OF THE PROPOSED CHANGE OF LEGAL STATUS TRANSACTION
14 TO BE DELIVERED BY REGULAR MAIL TO ALL CURRENT SUBSCRIBERS COV-
15 ERED UNDER A CERTIFICATE ISSUED BY THE NONPROFIT HEALTH INSURER.
16 THE COMMISSIONER MAY PERMIT THE NONPROFIT HEALTH INSURER TO COM-
17 BINE THE NOTICE REQUIRED IN THIS SUBDIVISION WITH OTHER REGULAR
18 MAILINGS TO SUBSCRIBERS IF SPECIAL EMPHASIS IS SHOWN THAT SEPA-
19 RATE ATTENTION IS GIVEN TO THE CHANGE OF LEGAL STATUS
20 TRANSACTION.

21 (C) SUBMIT TO THE COMMISSIONER PROOF OF PUBLICATION OF THE
22 NOTICE REQUIRED IN SUBDIVISION (A) AND PROPERLY EXECUTED AMEND-
23 MENTS TO THE NONPROFIT HEALTH INSURER'S ARTICLES OF INCORPORA-
24 TION, BYLAWS, AND OTHER ORGANIZATIONAL DOCUMENTS TO EFFECTUATE
25 THE NONPROFIT HEALTH INSURER CHANGE OF LEGAL STATUS TRANSACTION.

26 SEC. 3565. (1) BY NOT LATER THAN 6 MONTHS AFTER THE RECEIPT
27 OF A COMPLETE WRITTEN APPLICATION AS PRESCRIBED IN SECTION 3563,

1 THE COMMISSIONER SHALL SUBMIT TO THE LEGISLATURE HIS OR HER
2 DECISION TO APPROVE OR DISAPPROVE THE PROPOSED CHANGE OF LEGAL
3 STATUS TRANSACTION. THE COMMISSIONER MAY EXTEND THIS PERIOD FOR
4 AN ADDITIONAL 120-DAY PERIOD, PROVIDED THE EXTENSION IS NECES-
5 SARY, AS DETERMINED BY THE COMMISSIONER, TO OBTAIN INFORMATION
6 PURSUANT TO SECTION 3573 OR 3575.

7 (2) IF THE COMMISSIONER'S DECISION UNDER SUBSECTION (1) IS
8 TO APPROVE THE PROPOSED CHANGE IN LEGAL STATUS TRANSACTION, THE
9 LEGISLATURE SHALL BY CONCURRENT RESOLUTION VOTE ON WHETHER TO
10 APPROVE OR DISAPPROVE THE COMMISSIONER'S DECISION REGARDING THE
11 PROPOSED CHANGE IN LEGAL STATUS TRANSACTION. IF THE LEGISLATURE
12 BY CONCURRENT RESOLUTION DOES NOT APPROVE THE COMMISSIONER'S
13 DECISION REGARDING THE PROPOSED CHANGE IN LEGAL STATUS TRANSAC-
14 TION, THE NONPROFIT HEALTH INSURER MAY AGAIN SUBMIT AN APPLICA-
15 TION FOR A CHANGE IN LEGAL STATUS TRANSACTION UNDER SECTION
16 3563.

17 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), IF THE
18 APPLICATION FOR THE PROPOSED CHANGE OF LEGAL STATUS TRANSACTION
19 IS APPROVED UNDER SUBSECTIONS (1) AND (2), THE NONPROFIT HEALTH
20 INSURER SHALL PROCEED ACCORDING TO THE APPROVED PLAN. UPON THE
21 COMMISSIONER'S REQUEST AND WITHIN A REASONABLE TIME AFTER RECEIPT
22 OF THE REQUEST, THE NONPROFIT HEALTH INSURER SHALL PROVIDE THE
23 COMMISSIONER WITH REPORTS ON THE STATUS OF THE CHANGE OF LEGAL
24 STATUS TRANSACTION. AS SOON AS PRACTICABLE, THE NONPROFIT HEALTH
25 INSURER SHALL TRANSMIT THE FAIR MARKET VALUE OF THE NONPROFIT
26 HEALTH INSURER TO THE COMMISSIONER FOR DEPOSIT INTO THE FUND.

1 (4) IF REQUESTED BY THE NONPROFIT HEALTH INSURER, THE
2 COMMISSIONER SHALL, AT ANY TIME DURING THE APPROVAL PROCESS UNDER
3 THIS CHAPTER, SUSPEND OR TERMINATE THE REVIEW OF THE PROPOSED
4 CHANGE IN LEGAL STATUS TRANSACTION. UPON A REQUEST FOR A SUSPEN-
5 SION OF THE APPROVAL PROCESS UNDER THIS SUBSECTION BY THE NON-
6 PROFIT HEALTH INSURER, THE TIME PERIODS ESTABLISHED UNDER THIS
7 CHAPTER ARE TOLLED FOR THE ENTIRE PERIOD OF THE SUSPENSION. UPON
8 A REQUEST FOR A TERMINATION OF THE APPROVAL PROCESS UNDER THIS
9 SUBSECTION BY THE NONPROFIT HEALTH INSURER, THE APPLICATION IS
10 CONSIDERED WITHDRAWN. THIS SUBSECTION DOES NOT PRECLUDE A NON-
11 PROFIT HEALTH INSURER FROM AGAIN SUBMITTING AN APPLICATION FOR A
12 CHANGE IN LEGAL STATUS TRANSACTION UNDER SECTION 3563.

13 SEC. 3567. BEFORE ISSUING ANY WRITTEN DECISION UNDER SEC-
14 TION 3565, THE COMMISSIONER SHALL CONDUCT 1 OR MORE PUBLIC HEAR-
15 INGS, 1 OF WHICH SHALL BE HELD IN INGHAM COUNTY. AT THE PUBLIC
16 HEARING, THE COMMISSIONER SHALL RECEIVE WRITTEN AND ORAL COMMENTS
17 FROM INTERESTED PERSONS DESIRING TO MAKE STATEMENTS REGARDING THE
18 PROPOSED CHANGE OF LEGAL STATUS TRANSACTION. FOURTEEN OR MORE
19 DAYS BEFORE THE MEETING, THE COMMISSIONER SHALL CAUSE WRITTEN
20 NOTICE TO BE PROVIDED OF THE TIME AND PLACE OF THE PUBLIC HEARING
21 THROUGH PUBLICATION IN AT LEAST 1 DAILY NEWSPAPER OF GENERAL CIR-
22 CULATION IN SEVERAL GEOGRAPHIC AREAS OF THIS STATE AS DETERMINED
23 NECESSARY BY THE COMMISSIONER TO REACH AS MANY CITIZENS OF THIS
24 STATE AS POSSIBLE.

25 SEC. 3569. (1) BEFORE MAKING A DECISION REGARDING A PRO-
26 POSED CHANGE OF LEGAL STATUS TRANSACTION, THE COMMISSIONER SHALL
27 DETERMINE ALL OF THE FOLLOWING:

1 (A) THAT THE STATE OF MICHIGAN, THROUGH THE FUND, WILL
2 RECEIVE FAIR MARKET VALUE FOR THE NONPROFIT HEALTH INSURER. THE
3 COMMISSIONER SHALL OBTAIN, AT THE NONPROFIT HEALTH INSURER'S
4 COST, AN INDEPENDENT VALUATION CERTIFYING THAT THE CITIZENS OF
5 THIS STATE WILL RECEIVE FAIR MARKET VALUE FOR THE NONPROFIT
6 HEALTH INSURER.

7 (B) THAT THE FAIR MARKET VALUE OF THE NONPROFIT HEALTH
8 INSURER'S ASSETS TO BE TRANSFERRED HAS NOT BEEN MANIPULATED BY
9 THE ACTIONS OF THE PARTIES IN A MANNER THAT WILL CAUSE THE FAIR
10 MARKET VALUE OF THE ASSETS TO DECREASE.

11 (C) THAT THE CHANGE OF LEGAL STATUS TRANSACTION WILL NOT
12 HAVE AN UNREASONABLY ADVERSE IMPACT ON THE STATUS OF COMPETITION
13 FOR HEALTH INSURANCE BETWEEN AND AMONG CARRIERS CURRENTLY OFFER-
14 ING HEALTH INSURANCE TO CITIZENS OF THIS STATE.

15 (D) THAT THE PROPOSED CHANGE OF LEGAL STATUS TRANSACTION
16 WILL NOT RESULT IN A BREACH OF FIDUCIARY DUTY, AS DETERMINED BY
17 THE COMMISSIONER, INCLUDING CONFLICTS OF INTEREST RELATED TO PAY-
18 MENTS OR BENEFITS TO OFFICERS, DIRECTORS, BOARD MEMBERS, EXECU-
19 TIVES, AND EXPERTS EMPLOYED BY OR RETAINED BY THE PARTIES.

20 (E) THAT THE GOVERNING BODY OF THE NONPROFIT HEALTH INSURER
21 EXERCISED DUE DILIGENCE IN DECIDING TO ENTER INTO A CHANGE OF
22 LEGAL STATUS TRANSACTION, SELECTING THE ACQUIRING ENTITY, AND
23 NEGOTIATING THE TERMS AND CONDITIONS OF THE TRANSACTION.

24 (F) THAT THE CHANGE OF LEGAL STATUS TRANSACTION WILL NOT
25 RESULT IN PRIVATE INUREMENT TO ANY PERSON, IN COMPLIANCE WITH
26 THIS CHAPTER.

1 (G) THAT HEALTH CARE PROVIDERS WILL BE OFFERED THE
2 OPPORTUNITY TO INVEST IN OR OWN AN INTEREST IN THE ACQUIRING
3 ENTITY OR A RELATED PARTY AND THAT PROCEDURES OR SAFEGUARDS ARE
4 IN PLACE TO AVOID CONFLICT OF INTEREST IN PATIENT REFERRALS.

5 (H) THAT THE TERMS OF ANY MANAGEMENT OR SERVICES CONTRACT
6 NEGOTIATED IN CONJUNCTION WITH THE PROPOSED CHANGE OF LEGAL
7 STATUS TRANSACTION ARE REASONABLE AND APPROPRIATE.

8 (I) THAT THE COMMISSIONER HAS BEEN PROVIDED WITH SUFFICIENT
9 INFORMATION AND DATA BY THE NONPROFIT HEALTH INSURER TO EVALUATE
10 ADEQUATELY THE PROPOSED CHANGE OF LEGAL STATUS TRANSACTION OR THE
11 EFFECTS OF THE TRANSACTION ON THE PUBLIC, PROVIDED THE COMMISS-
12 SIONER HAS NOTIFIED THE NONPROFIT HEALTH INSURER OR THE ACQUIRING
13 ENTITY OF ANY INADEQUACY OF THE INFORMATION OR DATA AND HAS PRO-
14 VIDED A REASONABLE OPPORTUNITY TO REMEDY SUCH INADEQUACY.

15 (J) ANY OTHER CRITERIA ESTABLISHED AS NECESSARY BY THE COM-
16 MISSIONER PURSUANT TO THIS CHAPTER, ANY RULES PROMULGATED, AND
17 ANY OTHER PROCEDURES ESTABLISHED BY THE COMMISSIONER UNDER THIS
18 CHAPTER.

19 (2) BEFORE MAKING A DECISION REGARDING A PROPOSED CHANGE OF
20 LEGAL STATUS TRANSACTION, THE COMMISSIONER SHALL ALSO DETERMINE
21 THAT THE PROPOSED CHANGE OF LEGAL STATUS TRANSACTION WILL NOT
22 HAVE A SIGNIFICANT EFFECT ON THE AVAILABILITY OR ACCESSIBILITY OF
23 HEALTH CARE SERVICES TO THE CITIZENS OF THIS STATE. IN MAKING
24 THIS DETERMINATION, THE COMMISSIONER SHALL DETERMINE ALL OF THE
25 FOLLOWING:

26 (A) THAT SUFFICIENT SAFEGUARDS ARE INCLUDED TO ASSURE THE
27 CONTINUED ACCESS TO AFFORDABLE HEALTH CARE.

1 (B) THAT THE PROPOSED CHANGE OF LEGAL STATUS TRANSACTION
2 DOES NOT CREATE OR WILL NOT HAVE THE LIKELIHOOD OF CREATING AN
3 ADVERSE EFFECT ON THE ACCESS TO OR AVAILABILITY OR COST OF HEALTH
4 CARE SERVICES.

5 (C) ANY OTHER DETERMINATION THE COMMISSIONER CONSIDERS
6 APPROPRIATE.

7 SEC. 3571. IN A CHANGE OF LEGAL STATUS TRANSACTION, A NON-
8 PROFIT HEALTH INSURER SHALL NOT ISSUE TO ANY EMPLOYEE OR MEMBER
9 OF THE BOARD OF DIRECTORS OF EITHER THE NONPROFIT HEALTH INSURER
10 OR THE ENTITY SURVIVING AFTER THE CHANGE IN LEGAL STATUS TRANSAC-
11 TION ANY STOCK OPTIONS, WARRANTS, OR STOCK APPRECIATION RIGHTS
12 UNLESS THE VALUE OF THE OPTIONS, WARRANTS, OR RIGHTS IS INITIALLY
13 SET AT THE PUBLICLY TRADED PRICE OF THE STOCK OF THE ENTITY SUR-
14 VIVING AFTER THE CHANGE IN LEGAL STATUS TRANSACTION ON A DATE NO
15 EARLIER THAN 6 MONTHS AFTER THE COMMENCEMENT OF THE INITIAL
16 PUBLIC OFFERING. IN NO EVENT SHALL A DIRECTOR, EXECUTIVE, OR
17 SENIOR LEVEL MANAGEMENT OF THE NONPROFIT HEALTH INSURER IN ITS
18 CHANGE OF LEGAL STATUS TRANSACTION RECEIVE ANY STOCK OPTIONS,
19 WARRANTS, OR STOCK APPRECIATION RIGHTS IN HIS OR HER CAPACITY AS
20 A DIRECTOR, EXECUTIVE, OR SENIOR LEVEL MANAGEMENT OF THE NON-
21 PROFIT HEALTH INSURER. AS USED IN THIS SECTION, "EXECUTIVE OR
22 SENIOR LEVEL MANAGEMENT" MEANS THOSE INDIVIDUALS IDENTIFIED AS
23 ELIGIBLE UNDER THE COMPENSATION PLAN OF THE NONPROFIT HEALTH
24 INSURER AS APPROVED BY THE COMMISSIONER UNDER SECTION 3726.

25 SEC. 3573. THE COMMISSIONER MAY REQUIRE THAT THE NONPROFIT
26 HEALTH INSURER APPLYING UNDER SECTION 3563 PROVIDE INFORMATION
27 THAT THE COMMISSIONER REASONABLY CONSIDERS NECESSARY TO COMPLETE

1 THE REQUIRED REVIEW DESCRIBED IN SECTION 3569 OF ANY PROPOSED
2 CHANGE OF LEGAL STATUS TRANSACTION. A FAILURE BY THE NONPROFIT
3 HEALTH INSURER APPLYING UNDER SECTION 3563 TO PROVIDE TIMELY
4 INFORMATION AS REQUIRED BY THE COMMISSIONER IS A SUFFICIENT
5 GROUND FOR THE COMMISSIONER TO DISAPPROVE THE PROPOSED CHANGE OF
6 LEGAL STATUS TRANSACTION.

7 SEC. 3575. (1) WITHIN THE TIME PERIODS DESIGNATED IN SEC-
8 TION 3565, THE COMMISSIONER, IN ADDITION TO THE REQUIRED CERTIFI-
9 CATION IN SECTION 3569(1)(A), MAY DO ANY OF THE FOLLOWING TO
10 ASSIST IN THE REVIEW OF THE PROPOSED CHANGE OF LEGAL STATUS
11 TRANSACTION:

12 (A) CONTRACT WITH, CONSULT, AND RECEIVE ADVICE FROM ANY
13 STATE OR UNITED STATES AGENCY ON TERMS AND CONDITIONS THE COMMIS-
14 SIONER CONSIDERS APPROPRIATE.

15 (B) IN THE COMMISSIONER'S SOLE DISCRETION, CONTRACT WITH
16 EXPERTS OR CONSULTANTS THE COMMISSIONER CONSIDERS APPROPRIATE TO
17 ASSIST THE COMMISSIONER IN REVIEWING THE PROPOSED CHANGE OF LEGAL
18 STATUS TRANSACTION.

19 (2) THE REASONABLE AND NECESSARY EXPENSES OF THE COMMIS-
20 SIONER IN OBTAINING ADVICE UNDER SUBSECTION (1)(A) OR (B) SHALL
21 BE PAID BY THE NONPROFIT HEALTH INSURER APPLYING FOR A CHANGE IN
22 LEGAL STATUS TRANSACTION UNDER SECTION 3563. ANY CONTRACT COSTS
23 INCURRED BY THE COMMISSIONER UNDER THIS SECTION OR SECTION 3569
24 SHALL NOT EXCEED AN AMOUNT THAT IS REASONABLE AND NECESSARY TO
25 CONDUCT THE REVIEW OF THE PROPOSED CHANGE OF LEGAL STATUS
26 TRANSACTION.

1 (3) THE COMMISSIONER IS ENTITLED TO REIMBURSEMENT FROM THE
2 NONPROFIT HEALTH INSURER APPLYING UNDER SECTION 3563 FOR ALL
3 REASONABLE AND ACTUAL COSTS INCURRED BY THE COMMISSIONER IN HOLD-
4 ING PUBLIC HEARINGS UNDER THIS CHAPTER AND REVIEWING ANY PROPOSED
5 CHANGE OF LEGAL STATUS TRANSACTION UNDER THIS CHAPTER, INCLUDING
6 ATTORNEY FEES AT THE BILLING RATE USED BY THE COMMISSIONER TO
7 BILL STATE AGENCIES FOR LEGAL SERVICES. THE NONPROFIT HEALTH
8 INSURER APPLYING UNDER SECTION 3563 SHALL, UPON REQUEST, PAY THE
9 COMMISSIONER PROMPTLY FOR ALL SUCH COSTS.

10 (4) THE FAILURE BY THE NONPROFIT HEALTH INSURER APPLYING
11 UNDER SECTION 3563 TO PROMPTLY REIMBURSE THE COMMISSIONER FOR ALL
12 COSTS UNDER THIS SECTION IS SUFFICIENT GROUND FOR THE COMMIS-
13 SIONER TO DISAPPROVE THE PROPOSED CHANGE OF LEGAL STATUS
14 TRANSACTION.

15 (5) THE COMMISSIONER IS EXEMPT FROM THE PROVISIONS OF THE
16 MANAGEMENT AND BUDGET ACT, 1984 PA 431, MCL 18.1101 TO 18.1594,
17 OR ANY OTHER STATE LAW FOR PURPOSES OF ENTERING INTO CONTRACTS
18 PURSUANT TO THIS CHAPTER. THE NONPROFIT HEALTH INSURER APPLYING
19 UNDER SECTION 3563, UPON REQUEST, SHALL PAY THE COMMISSIONER
20 PROMPTLY FOR ALL COSTS OF CONTRACTS ENTERED INTO BY THE COMMIS-
21 SIONER UNDER THIS CHAPTER.

22 SEC. 3677. ALL INFORMATION SUBMITTED TO THE COMMISSIONER BY
23 ANY PERSON, INCLUDING A NONPROFIT HEALTH INSURER APPLYING UNDER
24 SECTION 3563, IN CONNECTION WITH THE COMMISSIONER'S REVIEW OF THE
25 PROPOSED CHANGE OF LEGAL STATUS TRANSACTION PURSUANT TO THIS
26 CHAPTER IS A PUBLIC RECORD AND IS SUBJECT TO THE FREEDOM OF

1 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, EXCEPT FOR
2 THE FOLLOWING AS DESIGNATED BY THE COMMISSIONER:

3 (A) PROPRIETARY INFORMATION.

4 (B) INFORMATION THAT CONTAINS TRADE SECRETS.

5 (C) OTHER COMMERCIALY COMPETITIVE INFORMATION.

6 SEC. 3579. A CHANGE OF LEGAL STATUS TRANSACTION ENTERED
7 INTO IN VIOLATION OF THE APPLICATION, REVIEW, OR APPROVAL
8 REQUIREMENTS OF THIS CHAPTER IS NULL AND VOID. EACH MEMBER OF
9 THE GOVERNING BOARD AND THE CHIEF FINANCIAL OFFICERS OF THE PAR-
10 TIES TO THE NONPROFIT HEALTH INSURER CHANGE OF LEGAL STATUS
11 TRANSACTION ENTERED INTO IN VIOLATION OF THE APPLICATION, REVIEW,
12 OR APPROVAL REQUIREMENTS OF THIS CHAPTER ARE SUBJECT TO A CIVIL
13 FINE OF UP TO \$1,000,000.00, THE AMOUNT TO BE DETERMINED BY THE
14 INGHAM COUNTY CIRCUIT COURT. UPON RECEIPT OF INFORMATION THAT A
15 CHANGE OF LEGAL STATUS TRANSACTION HAS BEEN ENTERED INTO IN VIO-
16 LATION OF THE APPLICATION, REVIEW, OR APPROVAL REQUIREMENTS OF
17 THIS CHAPTER, THE COMMISSIONER SHALL REQUEST THE ATTORNEY GENERAL
18 TO INSTITUTE PROCEEDINGS TO IMPOSE THE CIVIL FINE.

19 SEC. 3581. ANY FINAL DECISION OF THE COMMISSIONER PURSUANT
20 TO THIS CHAPTER IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO SECTION
21 28 OF ARTICLE VI OF THE STATE CONSTITUTION OF 1963 AT THE INITIA-
22 TION OF THE NONPROFIT HEALTH INSURER OR ANY PERSON THAT WAS A
23 PARTY TO THE PROCEEDING AND WAS ADVERSELY AFFECTED OR AGGRIEVED
24 BY THE FINAL DECISION OF THE COMMISSIONER.

25 Enacting section 1. This amendatory act does not take
26 effect unless Senate Bill No. _____ or House Bill No. 6045

1 (request no. 06816'02 *) of the 91st Legislature is enacted into
2 law.