

CHAPTER 300

**INSURANCE**

**SENATE BILL 96-100**

BY SENATORS Blickensderfer, Matsunaka, and Meiklejohn;  
also REPRESENTATIVES Owen, Foster, Friednash, Kerns, Lawrence, Leyba, Mace, Morrison, Prinster, Schwarz, and Tool.

**AN ACT**

**CONCERNING NONPROFIT HOSPITAL, MEDICAL-SURGICAL, AND HEALTH SERVICE CORPORATIONS.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Part 3 of article 16 of title 10, Colorado Revised Statutes, 1994 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

**10-16-324. Conversion of corporation to a stock insurance company.** (1) IT IS THE INTENT OF THE GENERAL ASSEMBLY BY THE ENACTMENT OF THIS SECTION TO CREATE A PROCEDURE FOR NONPROFIT HOSPITAL, MEDICAL-SURGICAL, AND HEALTH SERVICE CORPORATIONS SUBJECT TO THE PROVISIONS OF PART 1 OF THIS ARTICLE AND THIS PART 3 TO ELECT TO CONVERT TO A STOCK INSURANCE COMPANY SUBJECT TO ARTICLE 3 OF THIS TITLE. THE GENERAL ASSEMBLY IN SO DOING RECOGNIZES THE SUBSTANTIAL AND RECENT CHANGES IN MARKET AND HEALTH CARE CONDITIONS THAT ARE AFFECTING SUCH CORPORATIONS AND FURTHER RECOGNIZES THE NEED FOR EQUAL REGULATORY TREATMENT AND COMPETITIVE EQUALITY FOR HEALTH CARE INSURERS. THE GENERAL ASSEMBLY FURTHER FINDS THAT A PROCEDURE FOR CONVERSION TO A STOCK INSURANCE COMPANY WILL BE IN THE BEST INTERESTS OF POLICYHOLDERS BY PROVIDING GREATER FINANCIAL STABILITY FOR SUCH COMPANY'S POLICYHOLDERS AND A GREATER OPPORTUNITY TO REMAIN A FINANCIALLY INDEPENDENT COLORADO COMPANY.

(2) ANY NONPROFIT HOSPITAL, MEDICAL-SURGICAL, AND HEALTH SERVICE CORPORATION, REFERRED TO IN THIS SECTION AS "CORPORATION", SUBJECT TO THE PROVISIONS OF PART 1 OF THIS ARTICLE AND THIS PART 3 MAY CONVERT, WITHOUT REINCORPORATION, TO A STOCK INSURANCE COMPANY SUBJECT TO ARTICLE 3 OF THIS TITLE UNDER A PLAN THAT COMPLIES WITH THIS SECTION AND HAS BEEN APPROVED BY THE COMMISSIONER PURSUANT TO THIS SECTION.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(3) IN ORDER TO CONVERT TO A STOCK INSURANCE COMPANY, THE CORPORATION SHALL FILE WITH THE COMMISSIONER A PLAN FOR SUCH CONVERSION AND APPLY FOR AN AMENDED CERTIFICATE OF AUTHORITY PURSUANT TO PART 1 OF ARTICLE 3 OF THIS TITLE. THE PLAN SHALL BE AVAILABLE TO THE PUBLIC FOR INSPECTION BOTH AT THE OFFICE OF THE COMMISSIONER AND AT THE OFFICE OF THE PROPONENT OF THE PLAN.

(4) THE PLAN SHALL SET FORTH WITH SPECIFICITY THE TERMS AND CONDITIONS OF THE PROPOSED CONVERSION AND SHALL DO ALL OF THE FOLLOWING:

(a) CERTIFY THAT THE PLAN HAS BEEN ADOPTED BY A MAJORITY VOTE OF THE BOARD OF DIRECTORS OF THE CORPORATION;

(b) ESTABLISH THAT THE PLAN AND THE PROPOSED CONVERSION WILL NOT BE PREJUDICIAL TO THE SUBSCRIBERS OF THE CORPORATION OR THE CITIZENS OF THE STATE OF COLORADO;

(c) PROVIDE A COMPARATIVE PREMIUM RATE ANALYSIS OF THE CORPORATION'S MAJOR PLANS AND PRODUCT OFFERINGS, COMPARING ACTUAL PREMIUM RATES FOR THE THREE-YEAR PERIOD PRIOR TO THE FILING OF THE PLAN AND PROJECTED PREMIUM RATES FOR THE THREE-YEAR PERIOD FOLLOWING ANY PROPOSED CONVERSION. ANY SUCH RATE ANALYSIS SHALL ADDRESS THE PROJECTED IMPACT, IF ANY, OF THE PROPOSED CONVERSION UPON THE COST TO SUBSCRIBERS AS WELL AS THE PROJECTED IMPACT, IF ANY, OF THE PROPOSED CONVERSION UPON THE CORPORATION'S UNDERWRITING PROFIT, INVESTMENT INCOME, AND LOSS AND CLAIM RESERVES, INCLUDING THE EFFECT, IF ANY, OF ADVERSE MARKET OR RISK SELECTION UPON SUCH RESERVES.

(d) PROVIDE FOR THE PROTECTION OF ALL EXISTING CONTRACTUAL RIGHTS OF THE CORPORATION'S SUBSCRIBERS OR CONTRACT HOLDERS FOR MEDICAL AND HOSPITAL SERVICE OR CLAIMS FOR REIMBURSEMENT THEREOF;

(e) (I) SPECIFY A REASONABLE TREATMENT FOR THE BENEFIT OF THE CITIZENS OF THE STATE OF COLORADO OF THE VALUE OF THE CORPORATION ON ALL OF THE FOLLOWING TERMS THAT MUST BE APPROVED BY THE COMMISSIONER:

(A) SUCH TREATMENT SHALL BE DEEMED TO BE REASONABLE IF CONSIDERATION, DETERMINED BY THE COMMISSIONER TO BE EQUAL TO THE FAIR MARKET VALUE OF THE CORPORATION, IS CONVEYED OR ISSUED TO ONE OR MORE QUALIFYING ENTITIES;

(B) THE COMMISSIONER SHALL DETERMINE THE FAIR MARKET VALUE OF THE CORPORATION AT THE TIME OF CONVERSION, DETERMINED AS IF IT HAD VOTING STOCK OUTSTANDING AND ONE HUNDRED PERCENT OF ITS STOCK WERE FREELY TRANSFERABLE AND AVAILABLE FOR PURCHASE WITHOUT RESTRICTIONS. CONSIDERATION SHALL BE GIVEN TO MARKET VALUE, INVESTMENT OR EARNINGS VALUE, NET ASSET VALUE, AND A CONTROL PREMIUM, IF ANY. IF A QUALIFYING ENTITY OR ENTITIES RECEIVE, AT THE TIME OF CONVERSION, ONE HUNDRED PERCENT OF THE SHARES OF THE THEN-OUTSTANDING STOCK OF THE CORPORATION, THE QUALIFYING ENTITY OR ENTITIES SHALL BE REGARDED AS HAVING ACQUIRED THE FAIR MARKET VALUE OF THE CORPORATION, UNLESS THE COMMISSIONER FINDS THAT SUCH OUTSTANDING STOCK DOES NOT REPRESENT THE FAIR MARKET VALUE OF THE

CORPORATION.

(C) NOTHING CONTAINED IN SUB-SUBPARAGRAPHS (A) AND (B) OF THIS SUBPARAGRAPH (I) SHALL REQUIRE THE AUCTION, SALE, OR MARKETING OF THE CORPORATION OR REQUIRE THE COMMISSIONER TO FIX A DOLLAR VALUATION OF THE CORPORATION AT THE TIME OF CONVERSION.

(D) DURING THE FIRST THREE YEARS AFTER CONVERSION, TO AVOID DILUTION OF THE VALUE OF THE QUALIFYING ENTITY'S OWNERSHIP OF STOCK, THE CORPORATION OR ITS AFFILIATES MAY NOT ISSUE STOCK GREATER IN SENIORITY, INCLUDING VOTING RIGHTS, OR DIVIDENDS, THAN THE STOCK, IF ANY, INITIALLY TRANSFERRED TO THE QUALIFYING ENTITY. THE COMMISSIONER MAY WAIVE THE REQUIREMENTS OF THIS SUB-SUBPARAGRAPH (D) REGARDING VOTING RIGHTS, IF THE COMMISSIONER DETERMINES THAT THE CORPORATION HAS TRANSFERRED TO THE QUALIFYING ENTITY OR ENTITIES A BENEFIT EQUIVALENT TO SUCH VOTING RIGHTS.

(E) EACH QUALIFYING ENTITY, ITS DIRECTORS, OFFICERS AND STAFF SHALL BE AND REMAIN INDEPENDENT OF THE CONVERTED STOCK INSURANCE COMPANY AND ITS AFFILIATES AND NO PERSON WHO IS AN OFFICER, DIRECTOR, OR STAFF MEMBER OF THE CORPORATION AT THE TIME THE PLAN IS SUBMITTED, OR AT THE TIME OF CONVERSION OR THEREAFTER SHALL BE QUALIFIED TO BE AN OFFICER, DIRECTOR OR STAFF MEMBER OF THE QUALIFYING ENTITY. NOTHING IN THIS SUB-SUBPARAGRAPH (E) SHALL PROHIBIT A SINGLE MEMBER OF THE BOARD OF EACH QUALIFYING ENTITY, SELECTED BY SUCH QUALIFYING ENTITY, FROM SERVING ON THE BOARD OF THE CORPORATION OR THE BOARD OF A HOLDING COMPANY THAT OWNS THE CORPORATION. NO DIRECTOR, OFFICER, AGENT, OR EMPLOYEE OF THE CORPORATION SHALL BENEFIT DIRECTLY OR INDIRECTLY FROM THE CONVERSION OF THE CORPORATION.

(F) THE CHARITABLE MISSION AND GRANT-MAKING FUNCTIONS OF EACH QUALIFYING ENTITY MUST BE DEDICATED TO PROMOTING OR SERVING THE HEALTH CARE NEEDS OF THE CITIZENS OF COLORADO; EXCEPT THAT IN NO EVENT SHALL ANY QUALIFYING ENTITY USE THE CONSIDERATION (OR ANY PROCEEDS OR GAINS THEREON) TRANSFERRED TO IT BY THE CORPORATION TO COMPETE DIRECTLY AS A LICENSED CARRIER AS DEFINED IN SECTION 10-16-102 (8) WITH THE CORPORATION OR ANY OF ITS AFFILIATES;

(G) THE COMMISSIONER MAY PERMIT ALL OR A PORTION OF THE CONSIDERATION CONVEYED TO ANY QUALIFYING ENTITY TO CONSIST OF STOCK OF THE CORPORATION OR A HOLDING COMPANY WHICH OWNS THE CORPORATION. STOCK TRANSFERRED TO A QUALIFYING ENTITY MAY BE RESTRICTED AS SET OUT IN THE PLAN APPROVED BY THE COMMISSIONER.

(H) FOR A PERIOD OF THREE YEARS FOLLOWING THE CONVERSION NO ENTITY OR PERSON (OTHER THAN A QUALIFYING ENTITY OR THE CORPORATION OR HOLDING COMPANY THAT OWNS THE CORPORATION) TOGETHER WITH ITS AFFILIATES MAY OWN MORE THAN TEN PERCENT OF THE COMBINED VOTING POWER OF THE CORPORATION OR HOLDING COMPANY THAT OWNS THE CORPORATION. THE PROVISIONS OF THIS SUB-SUBPARAGRAPH (H) SHALL CONTINUE TO APPLY EVEN THOUGH THE CORPORATION SHALL NO LONGER BE SUBJECT TO THIS ARTICLE.

(I) AT THE TIME OF THE CONVERSION THE CORPORATION OR A HOLDING COMPANY

THAT OWNS THE CORPORATION MAY ISSUE ADDITIONAL VOTING SHARES OF STOCK THROUGH AN INITIAL PUBLIC OFFERING OR PRIVATE PLACEMENT, WHICH STOCK SHALL NOT BE INCLUDED IN THE CONSIDERATION TRANSFERRED TO A QUALIFYING ENTITY.

(II) (A) FOR PURPOSES OF THIS PARAGRAPH (e), A "QUALIFYING ENTITY" MEANS AN INDEPENDENT TAX-EXEMPT CHARITABLE OR SOCIAL WELFARE ORGANIZATION, OPERATING UNDER SECTIONS 501(c)(3) OR 501(c)(4) OF TITLE 26 OF THE UNITED STATES CODE, THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(B) WHETHER THE QUALIFYING ENTITY IS ORGANIZED UNDER SAID SECTIONS 501 (c) (3) OR 501 (c) (4) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, THE ARTICLES OF INCORPORATION OF THE QUALIFYING ENTITY SHALL CONTAIN AT LEAST THE FOLLOWING PROVISIONS: THE QUALIFYING ENTITY SHALL BE ORGANIZED AND OPERATED EXCLUSIVELY FOR CHARITABLE, EDUCATIONAL, OR SCIENTIFIC PURPOSES CONSISTENT WITH SUBSECTION (4) (e) (I) (F) OF THIS SECTION; THE QUALIFYING ENTITY SHALL ENGAGE IN LOBBYING OR POLITICAL ACTIVITIES ONLY TO THE EXTENT PERMITTED AN ORGANIZATION EXEMPT UNDER SECTION 501 (c) (3) OF THE INTERNAL REVENUE CODE; THE QUALIFYING ENTITY SHALL NOT ENGAGE IN CAMPAIGN ACTIVITY OR THE MAKING OF POLITICAL CONTRIBUTIONS; NO PART OF THE NET EARNINGS OF THE QUALIFIED ENTITY MAY INURE TO THE BENEFIT OF ANY INDIVIDUAL; THE QUALIFYING ENTITY MAY NOT ENGAGE IN ANY SELF DEALING FOR THE BENEFIT OF ITS DIRECTORS, OFFICERS, OR EMPLOYEES; THE QUALIFYING ENTITY SHALL REPORT TO THE PUBLIC AT LEAST ANNUALLY INFORMATION EQUIVALENT TO THAT REQUIRED OF ORGANIZATIONS QUALIFIED UNDER SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED. NOTHING IN THIS SUB-SUBPARAGRAPH (B), HOWEVER, SHALL REQUIRE THAT A QUALIFIED ENTITY DIVEST ITSELF OF STOCK OF THE CORPORATION.

(C) A "QUALIFYING ENTITY" SHALL BE NEWLY ESTABLISHED FOR PURPOSES OF THE CONVERSION AUTHORIZED IN THIS SECTION, UNLESS OTHERWISE APPROVED BY THE COMMISSIONER.

(e) SPECIFY THE PROPOSED AMENDMENTS TO THE CORPORATION'S ARTICLES OF INCORPORATION, BYLAWS, AND OTHER DOCUMENTS OF ORGANIZATION TO EFFECTUATE THE CONVERSION;

(f) SPECIFY THE PROPOSED FORM OF NOTICE OF THE PROPOSED CONVERSION TO BE PUBLISHED AS SET FORTH IN SUBSECTION (6) OF THIS SECTION; AND

(g) PROVIDE SUCH OTHER INFORMATION AS DETERMINED BY THE COMMISSIONER TO BE REASONABLY NECESSARY AND RELEVANT TO THE EVALUATION OF THE PLAN.

(5) THE COMMISSIONER MAY RETAIN, UPON NOTICE TO THE CORPORATION, ANY QUALIFIED EXPERT, SUCH AS ATTORNEYS, ACCOUNTANTS, ACTUARIES, AND FINANCIAL ANALYSTS, NOT OTHERWISE A PART OF THE COMMISSIONER'S STAFF, TO ASSIST IN REVIEWING THE PROPOSED PLAN, WITH SUCH REASONABLE EXPENSES INCURRED DURING THE REVIEW TO BE BORNE BY THE CORPORATION.

(6) WITHIN THIRTY DAYS AFTER FILING THE PLAN OF CONVERSION AND APPLICATION FOR AN AMENDED CERTIFICATE OF AUTHORITY, THE CORPORATION SHALL:

(a) PUBLISH NOTICE, IN A FORM AND IN NEWSPAPERS TO BE APPROVED BY THE COMMISSIONER, OF THE PROPOSED PLAN OF CONVERSION ONCE A WEEK FOR THREE CONSECUTIVE WEEKS IN AT LEAST ONE DAILY NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTIES IN WHICH THE CORPORATION DOES BUSINESS;

(b) CAUSE NOTICE, IN A FORM AND MANNER TO BE APPROVED BY THE COMMISSIONER, OF THE PROPOSED PLAN OF CONVERSION TO BE DELIVERED BY REGULAR MAIL TO ALL CURRENT SUBSCRIBERS; AND

(c) SUBMIT TO THE COMMISSIONER PROOF OF PUBLICATION OF THE NOTICE REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (6) AND PROPERLY EXECUTED AMENDMENTS TO THE CORPORATION'S ARTICLES OF INCORPORATION, BYLAWS, AND OTHER ORGANIZATIONAL DOCUMENTS TO EFFECTUATE THE CONVERSION AUTHORIZED BY THIS SECTION.

(7) THE COMMISSIONER SHALL HOLD A HEARING PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S., BEFORE MAKING A FINAL DECISION TO APPROVE OR DISAPPROVE THE PLAN OF CONVERSION WITHIN SIXTY DAYS AFTER COMPLETION OF PUBLICATION OF NOTICE OF THE HEARING THEREON. THE COMMISSIONER SHALL ISSUE AN ORDER APPROVING OR DISAPPROVING THE PLAN OR APPROVING AN AMENDED PLAN WITHIN SIXTY DAYS AFTER COMPLETION OF THE HEARING.

(8) UPON MUTUAL AGREEMENT OF THE CORPORATION AND THE COMMISSIONER, THE COMMISSIONER MAY ENTER AN ORDER EXTENDING ANY TIME LIMITS WITHIN THIS SECTION.

(9) THE COMMISSIONER SHALL APPROVE THE PLAN OF CONVERSION IF THE COMMISSIONER FINDS THAT:

(a) THE PLAN MEETS THE REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION;

(b) THE PLAN IS FAIR AND REASONABLE AND NOT CONTRARY TO LAW OR TO THE INTERESTS OF SUBSCRIBERS, CONTRACT HOLDERS, OR THE PUBLIC; AND

(c) UPON CONVERSION, THE CORPORATION WILL MEET THE STANDARDS AND CONDITIONS APPLICABLE TO STOCK INSURANCE COMPANIES, INCLUDING MINIMUM SURPLUS REQUIRED OF SUCH COMPANIES.

(10) THE CONVERSION SHALL BECOME EFFECTIVE AS SPECIFIED IN THE PLAN OF CONVERSION AND WHEN THE REVISED ARTICLES OF INCORPORATION HAVE BEEN ADOPTED.

(11) THE CORPORATE EXISTENCE OF THE CORPORATION SHALL NOT TERMINATE UPON CONVERSION AS PROVIDED FOR IN THIS SECTION, BUT THE CONVERTED STOCK COMPANY SHALL BE DEEMED TO BE A CONTINUATION OF THE CORPORATION AND TO HAVE BEEN ORGANIZED ON THE DATE THE CORPORATION WAS ORIGINALLY ORGANIZED. CONVERSION UNDER THIS SECTION WILL NOT CAUSE A DISSOLUTION OF THE CORPORATION.

(12) EXCEPT AS SPECIFICALLY PROVIDED FOR IN THIS SECTION, UPON COMPLETION OF ITS CONVERSION TO A STOCK INSURANCE COMPANY AS PROVIDED IN THIS SECTION,

THE CORPORATION SHALL NO LONGER BE SUBJECT TO THIS ARTICLE AND SHALL BE SUBJECT TO AND COMPLY WITH ALL LAWS AND REGULATIONS APPLICABLE TO A STOCK INSURANCE COMPANY AS PROVIDED IN ARTICLE 3 OF THIS TITLE, INCLUDING ALL OTHER REQUIREMENTS OF A STOCK INSURER AS CONTAINED IN THIS TITLE.

(13) IN THE YEAR OF CONVERSION, THE CORPORATION SHALL BE OBLIGATED TO PAY THE SUBSCRIBER FEE PROVIDED IN SECTION 10-16-110 (1) (c) FOR THE PORTION OF THE YEAR BEFORE THE EFFECTIVE DATE OF THE CONVERSION AND PREMIUM TAXES AS A STOCK INSURER PURSUANT TO SECTION 10-3-209 FOR PREMIUMS COLLECTED OR CONTRACTED FOR THE PORTION OF THE YEAR FROM AND INCLUDING THE EFFECTIVE DATE OF THE CONVERSION.

(14) THE CONVERTED STOCK INSURANCE COMPANY SHALL BE A MEMBER INSURER OF THE "LIFE AND HEALTH INSURANCE PROTECTION ASSOCIATION ACT" AS PROVIDED BY ARTICLE 20 OF THIS TITLE. ALL SUBSCRIBERS OF THE CORPORATION EXISTING ON THE DATE OF CONVERSION WILL BE AFFORDED COVERAGE AND PROTECTION IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE SAID ACT. THE CONVERTED STOCK INSURANCE COMPANY WILL BE SUBJECT TO ASSESSMENTS AS PROVIDED IN ARTICLE 20 OF THIS TITLE, AND ITS SHARE OF ANY CLASS B ASSESSMENT MADE UNDER SECTION 10-20-109 (3) (b) SHALL BE CALCULATED, AS APPLICABLE, BASED UPON ANY COLORADO PREMIUM OR SUBSCRIBER FEES RECEIVED BY IT DURING THE CALENDAR YEARS IMMEDIATELY PRECEDING ITS CONVERSION TO A STOCK INSURANCE COMPANY; EXCEPT THAT NOTHING IN THIS SUBSECTION (14) SHALL REQUIRE THE CONVERTED STOCK INSURANCE COMPANY TO BE ASSESSED FOR INSOLVENCIES RELATING TO MEMBER INSURERS WHO BECAME INSOLVENT INSURERS PRIOR TO THE EFFECTIVE DATE OF THE CONVERSION.

(15) ANY FINAL ACTION BY THE COMMISSIONER PURSUANT TO SUBSECTION (7) OF THIS SECTION SHALL BE SUBJECT TO JUDICIAL REVIEW BY THE COURT OF APPEALS PURSUANT TO SECTION 24-4-106 (11), C.R.S., AT THE INITIATION OF THE CORPORATION SEEKING CONVERSION TO A NEWLY CREATED STOCK INSURANCE COMPANY, OR ANY PERSON THAT WAS A PARTY TO THE AGENCY PROCEEDING AND WAS ADVERSELY AFFECTED OR AGGRIEVED BY THE FINAL AGENCY DECISION. THE REMEDIES SET FORTH IN THIS SUBSECTION (15) ARE EXCLUSIVE REMEDIES FOR ANY PERSON AGGRIEVED BY A FINAL ACTION OF THE COMMISSIONER UNDER THIS SECTION.

**SECTION 2. Repeal.** 10-16-323, Colorado Revised Statutes, 1994 Repl. Vol., is repealed.

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 1996