

CHAPTER 173

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 98-1221

BY REPRESENTATIVES Kaufman, K. Alexander, Chavez, Clarke, George, Hagedorn, Lawrence, Leyba, Udall, S. Williams, and Zimmerman;
also SENATORS Wham, Reeves, and Rupert.

AN ACT

CONCERNING A PROCESS FOR ATTORNEY GENERAL REVIEW OF SIGNIFICANT TRANSACTIONS EFFECTING
THE TRANSFER OF ASSETS OR CONTROL OF A HOSPITAL.

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

SECTION 1. Title 6, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 19**Transactions Involving Licensed Hospitals**

PART 1

GENERAL PROVISIONS

6-19-101. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT ALL LICENSED AND CERTIFIED HOSPITALS PROVIDE A SERVICE TO THE PUBLIC BY MAKING HEALTH CARE SERVICES AVAILABLE TO THE COMMUNITIES THEY SERVE.

(2) FURTHERMORE, FOR PURPOSES OF THE ATTORNEY GENERAL'S AUTHORITY OVER THE TRANSFER OF NONPROFIT HOSPITAL ASSETS, ALL NONPROFIT HOSPITALS SHALL BE DEEMED TO HOLD ALL OF THEIR ASSETS IN TRUST, AND THOSE ASSETS SHALL BE DEEMED TO BE DEDICATED TO THE SPECIFIC CHARITABLE PURPOSES SET FORTH IN THE ARTICLES OF INCORPORATION OR OTHER ORGANIC DOCUMENTS OF THE NONPROFIT ENTITIES THAT HOLD THEM IN TRUST. THE PUBLIC IS THE BENEFICIARY OF THIS TRUST. NONPROFIT HOSPITALS HAVE A SUBSTANTIAL AND BENEFICIAL EFFECT ON THE

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

PROVISION OF HEALTH CARE TO THE PEOPLE OF COLORADO, PROVIDING AS PART OF THEIR CHARITABLE PURPOSES UNCOMPENSATED CARE TO THE UNINSURED OR UNDERINSURED AND INCLUDING, BUT NOT LIMITED TO, PROVIDING MONEYS AND SUPPORT FOR HEALTH RELATED RESEARCH AND EDUCATION OR OTHER COMMUNITY BENEFITS. THE GENERAL ASSEMBLY ALSO FINDS THAT TRANSFERS OF THE ASSETS OF NONPROFIT HOSPITALS TO THE FOR-PROFIT SECTOR MAY DIRECTLY AFFECT THE CHARACTER AND EXTENT OF THE CHARITABLE USE OF THOSE ASSETS OR THE PROCEEDS FROM THE ASSETS. THE PUBLIC ALSO HAS AN INTEREST IN KNOWING THAT THE TRANSFER OF THE ASSETS OF A NONPROFIT HOSPITAL, OR THE PROCEEDS FROM THE ASSETS, PRESERVES, TO THE EXTENT PRACTICABLE, THEIR CHARITABLE PURPOSE. THE GENERAL ASSEMBLY BELIEVES IT IS IN THE BEST INTEREST OF THE PUBLIC TO ENSURE THAT THE PUBLIC INTEREST IS FULLY PROTECTED WHENEVER THE ASSETS OF A HOSPITAL ARE TRANSFERRED TO A FOR-PROFIT ENTITY EXCEPT IN THE ORDINARY COURSE OF BUSINESS.

(3) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT ALL TRANSFERS OF HOSPITAL ASSETS OR CONTROL HAVE THE POTENTIAL TO IMPACT THE COMMUNITIES THEY SERVE. THIS ARTICLE IS INTENDED TO PROTECT THE PUBLIC INTEREST, TO ASSURE THAT NONPROFIT ASSETS OF HOSPITALS ARE PRESERVED TO SERVE THE CHARITABLE PURPOSES TO WHICH THEY WERE DEDICATED, AND TO PROVIDE THE PUBLIC NOTICE OF ALL TRANSFERS OF ASSETS OF HOSPITALS THAT CONSTITUTE COVERED TRANSITIONS AS DEFINED IN THIS ARTICLE, AND SHALL BE CONSTRUED WITH THESE PURPOSES IN MIND.

6-19-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COVERED TRANSACTION" MEANS ANY TRANSACTION THAT WOULD RESULT IN THE SALE, TRANSFER, LEASE, EXCHANGE, OR OTHER DISPOSITION OF FIFTY PERCENT OR MORE OF THE ASSETS OF A HOSPITAL. A SERIES OF TRANSACTIONS TAKING PLACE IN ANY FIVE-YEAR PERIOD, WHICH WOULD RESULT IN THE AGGREGATE OF THE TRANSFER OF FIFTY PERCENT OR MORE OF A HOSPITAL'S ASSETS, SHALL IN ALL CIRCUMSTANCES BE DEEMED TO BE A COVERED TRANSACTION. "COVERED TRANSACTION" SHALL ALSO INCLUDE THE SALE, TRANSFER, OR OTHER DISPOSITION OF THE CONTROL OF A PARENT COMPANY, HOLDING COMPANY, OR OTHER ENTITY CONTROLLING A HOSPITAL. FOR THE PURPOSES OF THIS SUBSECTION (1), "FIFTY PERCENT OR MORE OF THE ASSETS" SHALL BE BASED ON THE FAIR MARKET VALUE OF ALL OF THE ASSETS OF THE HOSPITAL.

(2) "FOR-PROFIT ENTITY" MEANS A BUSINESS CORPORATION, GENERAL PARTNERSHIP, LIMITED PARTNERSHIP, LIMITED LIABILITY LIMITED PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED PARTNERSHIP ASSOCIATION, AND COOPERATIVE.

(3) "HOSPITAL" MEANS A LICENSED OR CERTIFIED HOSPITAL AS DESCRIBED IN SECTION 25-1-107 (1) (I) (I) AND (1) (I) (II).

6-19-103. Procedures for covered transactions - notice - attorney general powers. (1) THE PARTIES TO A COVERED TRANSACTION SHALL PROVIDE NOTICE OF SUCH TRANSACTION TO THE ATTORNEY GENERAL NO LATER THAN SIXTY DAYS PRIOR TO THE TRANSACTION CLOSING OR EFFECTIVE DATE OF THE TRANSACTION. THE

NOTICE TO THE ATTORNEY GENERAL SHALL BE IN WRITING, SHALL INCLUDE THE INFORMATION REQUIRED IN SECTION 6-19-202, 6-19-302, OR 6-19-402, AS APPLICABLE, AND SHALL CONTAIN A CERTIFICATION THAT PUBLIC NOTICE OF THE TRANSACTION WILL BE GIVEN WITHIN SEVEN DAYS AFTER THE NOTIFICATION TO THE ATTORNEY GENERAL.

(2) WHENEVER THE ATTORNEY GENERAL HAS REASON TO BELIEVE THAT A PERSON HAS ENGAGED IN OR IS ENGAGING IN A COVERED TRANSACTION WITHOUT COMPLYING WITH THE PROVISIONS OF THIS ARTICLE, THE ATTORNEY GENERAL MAY APPLY FOR AND OBTAIN, IN AN ACTION IN THE APPROPRIATE DISTRICT COURT OF THIS STATE, A TEMPORARY RESTRAINING ORDER OR INJUNCTION, OR BOTH, PURSUANT TO THE COLORADO RULES OF CIVIL PROCEDURE, PROHIBITING SUCH PERSON FROM CONTINUING SUCH NONCOMPLIANCE OR ENGAGING THEREIN OR DOING ANY ACT IN FURTHERANCE THEREOF. THE COURT MAY MAKE SUCH FURTHER ORDERS OR JUDGMENTS, AT LAW OR IN EQUITY, AS MAY BE NECESSARY TO REMEDY SUCH NONCOMPLIANCE.

6-19-104. Attorney general - affect on powers. (1) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED AS LIMITING THE ATTORNEY GENERAL'S COMMON LAW POWERS.

(2) NOTHING IN THIS ARTICLE SHALL AFFECT THE REGULATORY AUTHORITY OF ANY GOVERNMENT AGENCY OTHER THAN THE DEPARTMENT OF LAW.

PART 2

NONPROFIT TO NONPROFIT TRANSACTIONS

6-19-201. Scope of part 2. THIS PART 2 APPLIES TO COVERED TRANSACTIONS INVOLVING A NONPROFIT HOSPITAL AND ANOTHER NONPROFIT ENTITY.

6-19-202. Notice. NOTICE SHALL BE PROVIDED BY THE PARTIES TO A COVERED TRANSACTION ACCORDING TO SECTION 6-19-103, AND SHALL INCLUDE A STATEMENT ON THE CHARITABLE PURPOSES OF EACH NONPROFIT ENTITY ENTERING INTO THE COVERED TRANSACTION AS WELL AS A STATEMENT CONCERNING THE RELATIONSHIP OF THESE PURPOSES TO THE HOSPITAL INVOLVED IN THE TRANSACTION. THE STATEMENT MAY INCLUDE A CERTIFICATION BY THE CHIEF EXECUTIVE OFFICER AS APPROVED BY THE BOARD OF DIRECTORS OR BOARD OF TRUSTEES OF THE NONPROFIT ENTITY TRANSFERRING ITS ASSETS THAT THERE WILL BE NO MATERIAL CHANGE IN THE CHARITABLE PURPOSES TO WHICH THE TRANSFERRED ASSETS ARE DEDICATED AS A RESULT OF THE TRANSACTION.

6-19-203. Attorney general review and assessment. (1) A COVERED TRANSACTION UNDER THIS PART 2 THAT WILL NOT RESULT IN A MATERIAL CHANGE IN THE CHARITABLE PURPOSES TO WHICH THE ASSETS OF THE HOSPITAL HAVE BEEN DEDICATED, AND WILL NOT RESULT IN A TERMINATION OF THE ATTORNEY GENERAL'S JURISDICTION OVER THOSE ASSETS CAUSED BY A TRANSFER OF A MATERIAL AMOUNT OF THOSE ASSETS OUTSIDE OF THE STATE OF COLORADO, SHALL PROCEED WITHOUT FURTHER REVIEW.

(2) (a) WHEN A TRANSACTION COVERED BY THIS PART 2 WILL RESULT IN A MATERIAL CHANGE IN THE CHARITABLE PURPOSES TO WHICH THE ASSETS OF THE

HOSPITAL HAVE BEEN DEDICATED, OR A TERMINATION OF THE ATTORNEY GENERAL'S JURISDICTION OVER THE HOSPITAL ASSETS CAUSED BY A TRANSFER OF A MATERIAL AMOUNT OF THOSE ASSETS OUTSIDE THE STATE OF COLORADO, THE ATTORNEY GENERAL MAY EXERCISE HIS OR HER COMMON LAW AUTHORITY TO ASSESS AND REVIEW OR CHALLENGE THE TRANSACTION AS DEEMED APPROPRIATE BY THE ATTORNEY GENERAL. IF THE ATTORNEY GENERAL DECIDES TO CONDUCT AN ASSESSMENT OR REVIEW THE FOLLOWING PROVISIONS SHALL APPLY TO SUCH ACTIONS OF THE ATTORNEY GENERAL:

(b) THE ATTORNEY GENERAL SHALL PERFORM A REVIEW AND ASSESSMENT TO THE EXTENT PRACTICABLE AND WITH DUE CONSIDERATION TO THE FINANCIAL CIRCUMSTANCES OF THE PARTIES TO THE TRANSACTION. THE ATTORNEY GENERAL IS FURTHER AUTHORIZED TO:

(I) HIRE EXPERTS, AT THE EXPENSE OF THE PARTIES TO THE TRANSACTION, AS SIMILARLY PROVIDED FOR IN SECTION 6-19-406 (1) (b) AND TO ACCEPT AND EXPEND GRANTS OR DONATIONS, OR BOTH, AS SIMILARLY PROVIDED FOR IN SECTION 6-19-406 (1) (e);

(II) CONTRACT AND CONSULT WITH OTHER STATE AGENCIES AS SIMILARLY PROVIDED FOR IN SECTION 6-19-406 (1) (a);

(III) REQUIRE PRODUCTION OF MATERIAL DOCUMENTATION, SUCH AS THE PROPOSED AGREEMENTS RELATING TO THE PROPOSED TRANSACTION, AGREEMENTS REGARDING COLLATERAL TRANSACTIONS RELATING TO THE PROPOSED TRANSACTION, AND ANY REPORTS OF FINANCIAL AND ECONOMIC ANALYSIS THAT THE NONPROFIT ENTITY REVIEWED OR RELIED ON IN NEGOTIATING THE PROPOSED TRANSACTION. THESE DOCUMENTS SHALL BE TREATED IN THE SAME MANNER AS SET FORTH IN SECTION 6-19-404 (4); AND

(IV) HOLD A PUBLIC HEARING AS SIMILARLY PROVIDED FOR IN SECTION 6-19-404 (1). THE ATTORNEY GENERAL SHALL PROVIDE A WRITTEN DETERMINATION, WITHIN THE TIME FRAMES OR EXTENDED TIME FRAMES AS SIMILARLY PROVIDED FOR IN SECTION 6-19-402 (2).

(c) THE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO ALLOW A TRANSACTION THAT SATISFIES THE FOLLOWING CRITERIA:

(I) THE ASSETS CONTINUE TO BE DEDICATED TO CHARITABLE PURPOSES;

(II) THE DIRECTORS OR TRUSTEES OF THE PARTIES TO THE TRANSACTION HAVE NOT ACTED UNREASONABLY IN LIGHT OF THE FINANCIAL CIRCUMSTANCES OF THE PARTIES;

(III) THE DIRECTORS OR TRUSTEES OF THE PARTIES TO THE TRANSACTION HAVE NOT ACTED UNREASONABLY IN ACCOMMODATING THE AFFECTED COMMUNITY OR COMMUNITIES; AND

(IV) THE DIRECTORS OR TRUSTEES OF THE PARTIES TO THE TRANSACTION HAVE NOT BREACHED THEIR FIDUCIARY DUTIES OR OTHERWISE ENGAGED IN MISCONDUCT IN SUCH TRANSACTION.

(d) THE ATTORNEY GENERAL SHALL LIBERALLY CONSTRUE THE CRITERIA SET FORTH IN PARAGRAPH (c) OF THIS SUBSECTION (2) IN FAVOR OF ALLOWING A TRANSACTION TO PROCEED.

PART 3

FOR-PROFIT TO FOR-PROFIT TRANSACTIONS

6-19-301. Scope of part 3. THIS PART 3 APPLIES TO COVERED TRANSACTIONS WHERE THE PARTIES INVOLVED IN THE TRANSACTION ARE ALL FOR-PROFIT ENTITIES.

6-19-302. Notice. THE PARTIES TO A COVERED TRANSACTION GOVERNED BY THIS PART 3 SHALL PROVIDE THE NOTICE REQUIRED BY SECTION 6-19-103.

PART 4

NONPROFIT TO FOR-PROFIT TRANSACTIONS

6-19-401. Scope of part 4. THIS PART 4 APPLIES TO COVERED TRANSACTIONS INVOLVING A NONPROFIT HOSPITAL AND A FOR-PROFIT ENTITY.

6-19-402. Notice and filing. (1) THE NOTICE AND FILING PROVIDED TO THE ATTORNEY GENERAL PURSUANT TO SECTION 6-19-103 SHALL INCLUDE ALL PROPOSED AGREEMENTS RELATING TO THE PROPOSED TRANSACTION, ALL AGREEMENTS REGARDING COLLATERAL TRANSACTIONS THAT RELATE TO THE PRINCIPAL TRANSACTION, ANY REPORTS OF FINANCIAL AND ECONOMIC ANALYSIS THAT THE NONPROFIT ENTITY REVIEWED OR RELIED ON IN NEGOTIATING THE PROPOSED TRANSACTION, AND AN EXPLANATION OF HOW THE COMPLETED TRANSACTION WILL COMPLY WITH THE REQUIREMENTS OF SECTION 6-19-403. THE ATTORNEY GENERAL SHALL NOTIFY THE PARTIES TO THE TRANSACTION IF THE FILING IS COMPLETE OR INCOMPLETE WITHIN THIRTY DAYS AFTER THE INITIAL FILING AND SHALL SPECIFY THE OMITTED DOCUMENTATION IF INCOMPLETE. AN INITIAL FILING THAT INCLUDES A SCHEDULE FOR THE SUBMISSION OF SUBSEQUENTLY PRODUCED OR ACQUIRED DOCUMENTS MAY BE DEEMED COMPLETE BY THE ATTORNEY GENERAL.

(2) WITHIN SIXTY DAYS AFTER THE COMPLETE FILING REQUIRED BY THIS SECTION, THE ATTORNEY GENERAL SHALL NOTIFY IN WRITING THE PARTIES TO THE TRANSACTION OF THE RESULTS AND CONCLUSIONS OF THE REVIEW AND ASSESSMENT. THE ATTORNEY GENERAL MAY EXTEND THIS PERIOD FOR AN ADDITIONAL PERIOD OF UP TO NINETY DAYS IF THE ATTORNEY GENERAL DETERMINES, FOR GOOD CAUSE, THAT ADDITIONAL TIME IS WARRANTED AND SO ADVISES THE PARTIES IN WRITING. THE ATTORNEY GENERAL SHALL NOTIFY THE PARTIES OF ANY EXTENSION AS SOON AS POSSIBLE.

6-19-403. Certification and criteria. (1) THE PROPOSED TRANSACTION SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION AND THE PARTIES TO THE TRANSACTION SHALL INCLUDE IN THE FILING REQUIRED BY SECTION 6-19-402, DOCUMENTATION AND CERTIFICATION FROM THE PARTIES, EITHER JOINT OR SEVERAL AS APPROPRIATE, THAT THE COVERED TRANSACTION WILL COMPLY WITH THE FOLLOWING:

(a) THE TRANSACTION SHALL BE IN THE PUBLIC INTEREST. A TRANSACTION IS NOT IN THE PUBLIC INTEREST UNLESS APPROPRIATE STEPS HAVE BEEN TAKEN TO SAFEGUARD THE VALUE OF NONPROFIT HOSPITAL ASSETS BEING TRANSFERRED AND TO ENSURE THAT ANY PROCEEDS OF THE TRANSACTION ARE DEDICATED TO THE CHARITABLE PURPOSES.

(b) THE TRANSACTION RESULTS IN CONTINUING ACCESS TO HEALTH CARE SERVICES FOR THE AFFECTED COMMUNITY.

(c) NO DIRECTOR, OFFICER OF THE BOARD, CHIEF EXECUTIVE OFFICER, CHIEF OPERATING OFFICER, OR CHIEF FINANCIAL OFFICER OF THE NONPROFIT ENTITY SUBMITTING THE FILING OR A NONPROFIT CHARITABLE ORGANIZATION RECEIVING THE PROCEEDS OF THE COVERED TRANSACTION SHALL BENEFIT DIRECTLY OR INDIRECTLY FROM THE TRANSACTION.

(d) THE NONPROFIT ENTITY PROPOSING THE TRANSACTION SHALL USE DUE DILIGENCE IN SELECTING THE FOR-PROFIT ENTITY THAT IS A PARTY TO THE TRANSACTION AND IN NEGOTIATING THE PRICE AND OTHER TERMS AND CONDITIONS OF THE TRANSACTION.

(e) PROCEEDS OF THE COVERED TRANSACTION SHALL BE SET ASIDE IN AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF THE HOSPITAL ASSETS BEING TRANSFERRED. FAIR MARKET VALUE SHALL BE DETERMINED AT THE TIME OF THE TRANSACTION AND INCLUDE CONSIDERATION OF MARKET VALUE, GOING CONCERN VALUE, NET ASSET VALUE, AND ANY OTHER SIGNIFICANT RELEVANT FACTORS.

(f) THE DISTRIBUTION OF THE PROCEEDS OF THE COVERED TRANSACTION SHALL BE MADE ONLY TO ONE OR MORE EXISTING OR NEW CHARITABLE ORGANIZATIONS OPERATING PURSUANT TO 26 U.S.C. SEC. 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(g) EACH NONPROFIT CHARITABLE ORGANIZATION RECEIVING THE PROCEEDS OF THE COVERED TRANSACTION, ITS DIRECTORS, OFFICERS, AND STAFF SHALL BE AND REMAIN INDEPENDENT OF THE PARTIES TO THE TRANSACTION AND THEIR AFFILIATES. EXCEPT AS PROVIDED IN THIS PARAGRAPH (g), NO PERSON WHO IS A DIRECTOR, OFFICER OF THE BOARD, CHIEF EXECUTIVE OFFICER, CHIEF OPERATING OFFICER, OR CHIEF FINANCIAL OFFICER OF ANY PARTY TO THE TRANSACTION SUBMITTING THE NOTICE AND FILING, AT THE TIME THE NOTICE IS SUBMITTED OR AT THE TIME OF THE TRANSACTION, SHALL BE QUALIFIED TO BE AN OFFICER OF THE BOARD, CHIEF EXECUTIVE OFFICER, CHIEF OPERATING OFFICER, OR CHIEF FINANCIAL OFFICER OF THE NONPROFIT CHARITABLE ORGANIZATION RECEIVING THE PROCEEDS OF THE COVERED TRANSACTION. THE NONPROFIT ENTITY THAT IS A PARTY TO THE PROPOSED TRANSACTION SHALL INCLUDE IN ITS NOTICE AND FILING THE PROPOSED MEMBERSHIP OF THE INITIAL BOARD OF DIRECTORS OF THE NONPROFIT CHARITABLE ORGANIZATION THAT IS TO RECEIVE THE PROCEEDS OF THE COVERED TRANSACTION THAT SHALL REPRESENT THE DIVERSE INTERESTS OF THE AFFECTED COMMUNITIES AND INCLUDE PERSONS FROM THE AREA AFFECTED BY THE TRANSACTION. NOTWITHSTANDING THE REQUIREMENTS OF THIS PARAGRAPH (g), EACH NONPROFIT CHARITABLE ORGANIZATION RECEIVING THE PROCEEDS OF THE COVERED TRANSACTION MAY HAVE PERSONS AFFILIATED WITH PARTIES TO THE TRANSACTION OR THEIR AFFILIATES SERVE ON ITS BOARD OF DIRECTORS PROVIDED THAT SUCH PERSONS DO NOT CONSTITUTE

MORE THAN ONE THIRD OF THE MEMBERS OF THE BOARD.

(h) A NONPROFIT CHARITABLE ORGANIZATION RECEIVING THE PROCEEDS OF THE COVERED TRANSACTION SHALL PUT MECHANISMS IN PLACE TO AVOID CONFLICTS OF INTEREST AND TO PROHIBIT GRANTS OR OTHER ACTIONS BENEFITING ITS BOARD OF DIRECTORS OR MANAGEMENT BEYOND THE REASONABLE VALUE OF THEIR SERVICES OR SUBSTANTIALLY BENEFITING THE FOR-PROFIT ENTITY.

(i) THE CHARITABLE MISSION AND FUNCTIONS OF THE NONPROFIT CHARITABLE ORGANIZATION RECEIVING THE PROCEEDS OF THE COVERED TRANSACTION SHALL REFLECT THE HISTORICAL CHARITABLE PURPOSES OF THE NONPROFIT ENTITY PROPOSING THE TRANSACTION.

6-19-404. Attorney general review. (1) NO LATER THAN THIRTY DAYS AFTER THE ATTORNEY GENERAL HAS RECEIVED THE COMPLETED NOTICE AND FILING PURSUANT TO SECTION 6-19-402, THE ATTORNEY GENERAL SHALL HOLD AT LEAST ONE PUBLIC HEARING IN THE SERVICE AREA OF THE HOSPITAL INVOLVED IN THE TRANSACTION, AT WHICH THE ATTORNEY GENERAL SHALL ALLOW ANY PERSON TO EITHER FILE WRITTEN COMMENTS AND EXHIBITS OR APPEAR AND MAKE A STATEMENT ABOUT ANY ASPECT OF THE TRANSACTION, INCLUDING, BUT NOT LIMITED TO, WHETHER THE PROPOSED TRANSACTION COMPLIES WITH THE REQUIREMENTS OF SECTION 6-19-403. AT LEAST SEVEN DAYS PRIOR TO EACH PUBLIC HEARING, THE ATTORNEY GENERAL SHALL SUBMIT A PRESS RELEASE PROVIDING PERTINENT INFORMATION ABOUT THE HEARING, INCLUDING THE TIME AND PLACE OF THE HEARING, TO ONE OR MORE NEWSPAPERS OF GENERAL CIRCULATION IN THE AFFECTED COMMUNITIES AND NOTIFY THE MAYOR OF THE CITY OR CITY AND COUNTY AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY IN WHICH THE HOSPITAL IS LOCATED. THE PUBLIC HEARING SHALL BE A LEGISLATIVE RATHER THAN AN ADJUDICATIVE HEARING.

(2) THE ATTORNEY GENERAL SHALL HAVE THE POWER TO SUBPOENA DOCUMENTS OR WITNESSES, REQUIRE AND ADMINISTER OATHS, AND REQUIRE STATEMENTS AT ANY TIME THAT ARE REASONABLY NECESSARY TO ASSESS AN APPLICATION OR MONITOR COMPLIANCE WITH THIS SECTION.

(3) IF ANY PERSON FAILS TO COOPERATE WITH ANY INVESTIGATION PURSUANT TO THIS SECTION OR FAILS TO OBEY ANY SUBPOENA ISSUED PURSUANT TO THIS SECTION, THE ATTORNEY GENERAL MAY APPLY TO THE APPROPRIATE DISTRICT COURT FOR AN APPROPRIATE ORDER TO EFFECT THE PURPOSES OF THIS SECTION. THE APPLICATION SHALL STATE THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE ORDER APPLIED FOR IS NECESSARY TO CARRY OUT THE ATTORNEY GENERAL'S DUTIES UNDER THIS SECTION. IF THE COURT IS SATISFIED THAT REASONABLE GROUNDS EXIST, THE COURT, IN ITS ORDER, MAY:

(a) REQUIRE THE ATTENDANCE OF OR THE PRODUCTION OF DOCUMENTS BY SUCH PERSON, OR BOTH;

(b) GRANT SUCH OTHER OR FURTHER RELIEF AS MAY BE NECESSARY TO OBTAIN COMPLIANCE BY SUCH PERSON.

(4) EXCEPT FOR DOCUMENTS THE ATTORNEY GENERAL DETERMINES TO BE

CONFIDENTIAL AS A MATTER OF LAW, THE DOCUMENTS FILED PURSUANT TO SECTION 6-19-402 SHALL BE AVAILABLE TO THE PUBLIC FOR REVIEW AND COPYING DURING NORMAL BUSINESS HOURS AT BOTH THE ATTORNEY GENERAL'S OFFICE AND THE OFFICES OF THE PARTIES TO THE TRANSACTION. REASONABLE COSTS OF COPYING SHALL BE BORNE BY THE PARTIES IF COPIES ARE REQUESTED AT THEIR OFFICES.

6-19-405. Post-transaction requirements. FOR A PERIOD OF NOT LESS THAN FIVE YEARS, THE NONPROFIT CHARITABLE ORGANIZATION RECEIVING THE PROCEEDS OF THE COVERED TRANSACTION SHALL PROVIDE THE ATTORNEY GENERAL WITH AN ANNUAL REPORT OF ITS GRANT-MAKING AND OTHER CHARITABLE ACTIVITIES RELATED TO ITS USE OF THE PROCEEDS OF THE COVERED TRANSACTION RECEIVED. FOR A PERIOD OF NOT LESS THAN FIVE YEARS, THE FOR-PROFIT ENTITY SHALL PROVIDE THE ATTORNEY GENERAL WITH AN ANNUAL REPORT DETAILING ITS ACTIVITIES TO SATISFY THE REQUIREMENTS OF SECTION 6-19-403 AT THE TIME OF THE REVIEW AND ASSESSMENT. THESE ANNUAL REPORTS SHALL BE MADE AVAILABLE TO THE PUBLIC AT THE ATTORNEY GENERAL'S OFFICE, THE OFFICE OF THE NONPROFIT CHARITABLE ORGANIZATION, AND THE OFFICES OF THE PARTIES TO THE COVERED TRANSACTION. THE ANNUAL REPORT SHALL BE FILED NO LATER THAN NINETY DAYS AFTER THE YEAR THAT THE REPORT ADDRESSES.

6-19-406. Attorney general powers. (1) THE ATTORNEY GENERAL HAS THE FOLLOWING POWERS:

(a) TO CONTRACT WITH, CONSULT WITH, AND RECEIVE ADVICE FROM ANY STATE AGENCY ON THOSE TERMS AND CONDITIONS THAT THE ATTORNEY GENERAL AND THE EXECUTIVE DIRECTOR DEEM APPROPRIATE;

(b) TO CONTRACT WITH PERSONS INCLUDING, BUT NOT LIMITED TO, ATTORNEYS, ACCOUNTANTS, ACTUARIES, FINANCIAL ANALYSTS, AND HEALTH CARE ANALYSTS AS IS REASONABLE AND NECESSARY TO ASSIST IN REVIEWING A PROPOSED TRANSACTION. CONTRACT COSTS SHALL BE BORNE BY THE PARTIES TO THE TRANSACTION AND SHALL NOT EXCEED AN AMOUNT THAT IS REASONABLY NECESSARY TO CONDUCT THE REVIEW AND ASSESSMENT;

(c) TO ADOPT REGULATIONS OR GUIDELINES AS NECESSARY IN ORDER TO CARRY OUT THE REQUIREMENTS OF THIS SECTION;

(d) THE DISCRETION TO DETERMINE, CONSISTENT WITH THE REQUIREMENTS OF SECTION 6-19-404, THE DEGREE OF ADMINISTRATIVE REVIEW OF THE TRANSACTION THAT IS NECESSARY TO DETERMINE WHETHER THE TRANSACTION CONFORMS WITH THE REQUIREMENTS OF SECTION 6-19-403. THIS DETERMINATION SHALL BE MADE BY TAKING INTO CONSIDERATION, AMONG OTHER THINGS, THE SIZE OF THE TRANSACTION, THE SIZE OF ALL COMMUNITIES AFFECTED BY THE TRANSACTION, THE IMPACT ON THE COMMUNITIES, AND THE PAST PERFORMANCE OF THE FOR-PROFIT ENTITY.

(e) TO ACCEPT AND EXPEND GRANTS OR DONATIONS, OR BOTH, NOT TO EXCEED FIFTY THOUSAND DOLLARS FOR THE PURPOSE OF THE IMPLEMENTATION OF THIS ARTICLE. ANY SUCH GRANTS OR DONATIONS SHALL BE DEPOSITED INTO AND EXPENDED FROM THE NONPROFIT HEALTH CARE ENTITY REVIEW CASH FUND CREATED IN PARAGRAPH (f) OF THIS SUBSECTION (1).

(f) TO REQUEST AND RECEIVE FROM THE FOR-PROFIT ENTITY SUCH SUMS AS MAY BE PRESCRIBED BY THE ATTORNEY GENERAL TO COVER THE NECESSARY AND ACTUAL COSTS FOR MONITORING FOR THE ENSUING FIVE-YEAR PERIOD TO ENSURE THAT THE TRANSACTION REMAINS IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 6-19-403. ANY MONEYS COLLECTED PURSUANT TO THIS PARAGRAPH (f) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE NONPROFIT HEALTH CARE ENTITY REVIEW CASH FUND, WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. THE MONEYS IN SUCH FUND SHALL BE CONTINUOUSLY APPROPRIATED FOR THE DIRECT AND INDIRECT COSTS OF SUCH MONITORING. IN ACCORDANCE WITH SECTION 24-36-114, C.R.S., ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF THIS FUND SHALL BE CREDITED TO THE GENERAL FUND.

(g) TO HOLD A HEARING AFTER TWENTY DAYS' NOTICE TO THE AFFECTED PARTIES IF THE ATTORNEY GENERAL RECEIVES INFORMATION THAT THE ATTORNEY GENERAL DEEMS SUFFICIENT TO INDICATE THAT THE NONPROFIT CHARITABLE ORGANIZATION OR FOR-PROFIT ENTITY MAY NOT BE FULFILLING ITS OBLIGATIONS PURSUANT TO SECTION 6-19-403. IF, AFTER SUCH HEARING, THE ATTORNEY GENERAL DETERMINES THAT PROOF OF THE NONCOMPLIANCE IS PROBABLE, HE OR SHE SHALL INSTITUTE PROCEEDINGS IN DISTRICT COURT TO REQUIRE CORRECTIVE ACTION. THE ATTORNEY GENERAL SHALL RETAIN OVERSIGHT OF THE CORRECTIVE ACTION FOR AS LONG AS NECESSARY TO ENSURE COMPLIANCE. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE ATTORNEY GENERAL'S POWER TO ENFORCE COMPLIANCE WITH THIS SECTION AFTER THE EXPIRATION OF THE FIVE-YEAR PERIOD CONTEMPLATED BY PARAGRAPH (f) OF THIS SUBSECTION (1).

6-19-407. Attorney general review and assessment. (1) THE ATTORNEY GENERAL MAY REVIEW ANY NOTICE AND FILING MADE UNDER THIS PART 4 AND ASSESS WHETHER THE PROPOSED TRANSACTION COMPLIES WITH THE REQUIREMENTS OF SECTION 6-19-403.

(2) IF, AFTER REVIEW AND ASSESSMENT, THE ATTORNEY GENERAL CONCLUDES THAT ALL OF THE REQUIREMENTS OF SECTION 6-19-403 HAVE BEEN MET, THE ATTORNEY GENERAL SHALL ISSUE A WRITTEN ASSESSMENT AND CONCLUSION TO SUCH EFFECT ON THE PROPOSED TRANSACTION. IF THE ATTORNEY GENERAL CONCLUDES AFTER DISCUSSIONS WITH THE PARTIES TO THE TRANSACTION, THAT ALL OF THE REQUIREMENTS OF SECTION 6-19-403 HAVE NOT BEEN MET, OR IF THE ATTORNEY GENERAL IS UNABLE TO CONCLUDE WHETHER OR NOT ALL OF THE REQUIREMENTS OF SECTION 6-19-403 HAVE BEEN MET, THE ATTORNEY GENERAL SHALL ISSUE A WRITTEN ASSESSMENT AND CONCLUSION TO SUCH EFFECT ON THE PROPOSED TRANSACTION. SUCH NONCONCLUSIVE OR NONCOMPLYING ASSESSMENT AND CONCLUSION SHALL INCLUDE SPECIFIC FINDINGS ON EACH OF THE REQUIREMENTS OF SECTION 6-19-403. THE ATTORNEY GENERAL MAY ALSO ISSUE A WRITTEN STATEMENT THAT A FORMAL ASSESSMENT AND REVIEW HAS NOT BEEN DETERMINED NECESSARY FOR THE COVERED TRANSACTION OR THAT THE TRANSACTION DOES NOT CONSTITUTE A COVERED TRANSACTION.

(3) THE ATTORNEY GENERAL MAY CHALLENGE ANY PROPOSED TRANSACTION AT ANY TIME THROUGH INJUNCTION, DECLARATORY ORDER, OR OTHERWISE, IN THE DISTRICT COURT OF THE JURISDICTION IN WHICH THE NONPROFIT ENTITY PROPOSING THE TRANSACTION HAS ITS PRINCIPAL PLACE OF BUSINESS OR WHERE THE HOSPITAL

INVOLVED IN THE TRANSACTION IS LOCATED. IF THE ATTORNEY GENERAL'S ASSESSMENT AND REVIEW UNDER THIS SECTION IS CHALLENGED IN COURT, THE ATTORNEY GENERAL'S CONCLUSIONS SHALL BE THE FOCUS OF THE REVIEW BY THE REVIEWING COURT AND SHALL BE GIVEN STRONG DEFERENCE BY SUCH COURT. THE BURDEN SHALL BE UPON THE PROPONENTS OF THE TRANSACTION TO ESTABLISH THAT THE ATTORNEY GENERAL'S CONCLUSIONS ARE NOT IN CONFORMANCE WITH STATUTORY PROVISIONS. THE COURT SHALL HAVE THE POWER TO ISSUE WHATEVER ORDERS ARE NECESSARY TO ENSURE COMPLIANCE WITH THE PROVISIONS OF SECTION 6-19-403.

SECTION 2. Applicability. This act shall apply to all transactions occurring on or after the effective date of this act.

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: April 30, 1998