

# **A MODEL NONPROFIT CONVERSION ACT**

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**Consumers Union of U.S., Inc.  
West Coast Office 2007**

## A Model Nonprofit Conversion Act

An Act concerning conversion transactions where nonprofit assets are transferred to another nonprofit with a different mission or a for-profit corporation.

### Digest

The Legislature recognizes the substantial changes in market and health care conditions that are affecting nonprofit corporations, and further recognizes the need for equal regulatory treatment and competitive equality for nonprofits. This bill subjects a nonprofit corporation to requirements before the nonprofit corporation enters into any agreement or transaction to sell, transfer, lease, exchange, option, convey, convert, give, enter a joint venture, merge or otherwise dispose of a material amount of its assets to a for-profit corporation or entity or to a mutual corporation or entity or to another nonprofit corporation or entity with a different mission. The Legislature recognizes the vital service hospitals, medical-surgical facilities, health maintenance organizations, health service corporations, and other nonprofit health providers/insurers provide and therefore includes special protections for the public when this type of conversion is proposed.

### SECTION 1: DEFINITIONS

The following terms have the following meanings.

1. **“Acquiror”** means the for profit or nonprofit corporation which gain(s) an ownership or control in a nonprofit corporation.
2. **“Applicant”** is the nonprofit corporation that is seeking approval under this Act.
3. **“Control”** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services or otherwise, including but not limited to situations in which the power is the result of an official position of the person or a corporate office held by a person.
4. **“ Conversion transaction”** means a substantial change in a nonprofit's mission, or the sale, transfer, lease, exchange, transfer by exercise of an option, optioning, conveyance, conversion, merger, affiliation, mutualization, joint venture or other disposition resulting in the transfer of control or governance of 10% or more of the assets or operations of a nonprofit or \$5 million<sup>1</sup>, whichever is less. A disposition or transfer constitutes a conversion transaction regardless of whether it occurs directly or indirectly and whether it occurs in a single transaction or a related series of transactions. If exercise of an option constitutes a conversion transaction, any consideration received for the granting of the option must be considered part of the transaction for purposes of applying the review criteria in Section 5.

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<sup>1</sup> States may want to specify a higher or lower threshold, depending on amount of assets held by nonprofit organizations in the state.

A change in the service area of the nonprofit shall be considered a substantial change in the mission. "Conversion transaction" does not include a transaction that supports or continues the charitable mission of the nonprofit, including but not limited to:

- a. Granting of encumbrances in the ordinary course of business, such as security interests or mortgage deeds with respect to assets owned by the nonprofit or any wholly owned subsidiary to secure indebtedness for borrowed money, the net proceeds of which are paid solely to the nonprofit or its wholly owned subsidiaries or are applied to the nonprofit's charitable mission, and the foreclosing or other exercise of remedies permitted with respect to such encumbrances;
  - b. Sales or transfers in the ordinary course of business for full fair market value of any interest in property owned by the nonprofit or any wholly owned subsidiary, the net proceeds of which are paid solely to the nonprofit or any wholly owned subsidiary; or
  - c. Awards, grants or payments to or on behalf of intended beneficiaries, consistent with the nonprofit's charitable purpose.
5. **"Demutualize"** is when a mutual corporation becomes a for-profit corporation.
  6. **"Full fair market value"** means the most likely value or range of values that assets, tangible or intangible, being sold would have in a competitive and open market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably and in their own best interests and a reasonable time being allowed for exposure in the open market. In no instance will the full fair market value be less than the independent appraisal of the full fair market value.
  7. **"Independent appraisal of the full fair market value"** means an appraisal conducted by persons independent of all parties to a proposed conversion transaction and experienced and expert in the area of appraisal of the type and form of property being valued. The appraisal must be conducted using professionally accepted standards for the type and form of property being valued. The appraisal must contain a complete and detailed description of the elements that make up the appraisal values produced and detailed support for the conclusions reached in the appraisal.
  8. **"Mutualization"** is when a nonprofit corporation becomes a mutual corporation.
  9. **"Mutual Corporation"** is a corporation that operates without issuing stock and is organized to benefit its policyholders who have an economic interest in or own the corporation.
  10. **"Nonprofit"** is a corporation formed or operating for charitable or public benefit purposes.
  11. **"Person"** means an individual, partnership, trust, estate, corporation, association, joint venture, joint-stock company or other organization.

## SECTION 2. NOTICE AND APPROVAL FOR CONVERSION TRANSACTION

1. **Notice or approval required.**<sup>2</sup> Prior to completing a conversion transaction, an applicant must:
  - a. If the full, fair market value of assets to be converted in the transaction is \$5,000,000 or more, obtain approval from the Attorney General in accordance with Section 4; or
  - b. If the value of the transaction is less than \$5,000,000, provide notice to the Attorney General in accordance with Section 3.
2. **Appraisal required.** Full, fair market value must be determined by an independent appraisal for all conversion transactions. If the appraisal provides a range of values, the highest point of the range determines which Section of the law applies to the transaction pursuant to Section 2 (1).
3. **Failure to comply with this Section or Sections 3 to 7.** A transaction consummated in violation of any provision of this Section or Sections 3 to 7 is voidable. Officers and directors who receive private inurement or excess benefits from such a transaction are subject to the civil penalties provided in Section 10.

## SECTION 3. CONVERSION TRANSACTIONS LESS THAN \$5,000,000<sup>3</sup>

The applicant shall provide written notice to the Attorney General of its intent to enter into a conversion transaction if the value of the transaction is less than \$5,000,000 and the applicant has not engaged in a similar transaction in the previous five (5) years. For purposes of review under this Act, the Attorney General has the authority to aggregate all transactions in the last five (5) years as provided for in Section 1 (2). The notice must include the name of the applicant, an independent valuation of the assets to be converted and the entity to which the assets will be transferred. The Attorney General may commission an independent appraisal of the assets. Sixty (60) days after providing notice to the Attorney General in accordance with this Section, the applicant is deemed to be in compliance with Section 2 and this Section unless the Attorney General notifies the applicant within those sixty (60) days that he or she is commissioning an independent appraisal of the value of the transaction, or related series of transactions over the past five years or that the filing otherwise fails to comply with this Act.

The Attorney General is not required to take any action on notices received under this Section for transactions under \$5,000,000, except that, upon request of an applicant that has properly provided notice under this Section, the Attorney General shall issue a letter indicating that the applicant has complied with its obligation under this Section, Section 2 and Sections 4-7.

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## SECTION 4. ATTORNEY GENERAL APPROVAL

1. **Filing with Attorney General.** To obtain approval of a conversion transaction when the independent appraisal of the full fair market value of the assets to be converted is \$5,000,000<sup>4</sup> or more, an applicant must file a written request for approval with the Attorney General.
  - a. Notice to the Attorney General shall describe the proposed transaction, including the parties, the value of the transaction, the timing of the transaction, the potential impact on services to the public, the proposed plan for utilizing the proceeds, and contain any other information the Attorney General deems necessary. No filing shall be complete until the Attorney General has deemed the application complete. Failure by the parties to the transaction to provide timely information shall be sufficient grounds for the Attorney General to disapprove the proposed transaction. Any material change in the terms or conditions of the proposed transaction shall be considered a new filing for purposes of this Act.
  - b. Within 120 days of deeming the application complete, the Attorney General shall notify the applicant in writing of the decision to approve, disapprove or conditionally approve the agreement or transaction. The Attorney General may extend this period for an additional sixty (60) days if any of the following conditions are met:
    - 1) The extension is necessary to obtain relevant information from any state agency, experts or consultants.
    - 2) The proposed agreement or transaction is substantially modified after the first public meeting conducted by the Attorney General in accordance with Section 4 (5) of this Act.
    - 3) The proposed agreement or transaction involved a multi-facility system serving multiple communities, rather than a single facility.
2. **Attorney General approval.** The Attorney General shall approve a conversion transaction if the applicant proves by clear and convincing evidence that the criteria set forth in Section 5 have been met. A final action by the Attorney General pursuant to this Section shall be subject to judicial review by the court at the initiation of the applicant or any person that was a party to the Attorney General's proceeding pursuant to Section 8 (1) of this Act.
3. **Public notice.** Within five (5) days of filing the request for approval under this Act, an applicant shall publish notice to the public, approved by the Attorney General, of its intent to enter into a conversion transaction. Notice shall be published once per week for three (3) weeks in a newspaper of general circulation in the applicant's service area, at the applicant's place of business in a manner such that anyone walking into the building will see the notice, on the applicant's web site, on the Attorney General's web site, and in papers designated by

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the Secretary of State. The notice shall also be sent to all who request notice of such transactions. The notice shall:

- a. describe the proposed transaction, including the parties, the value of the transaction, the timing of the transaction, the potential impact on services to the public and the proposed plan for utilizing the proceeds. The public notice shall also provide information on opportunities for the public to intervene under Section 8 of this Act and to provide comment on the proposal to the Attorney General.
- b. be published in all languages spoken by 5% (five per cent) or more of the service population, or 1000 people in the service area, whichever is less.

**4. Public comment.** The Attorney General shall accept public comments regarding a proposed conversion transaction under this Section for at least sixty (60) days starting from the day proper notice has been provided to the public of the proposed conversion, as provided in Section 4 (3).

**5. Public hearings.** No later than forty-five (45) days after the Attorney General has deemed the application complete, the Attorney General shall conduct a reasonable number of, and at least one, public hearing(s), which must be held in the service area(s) of the applicant. At the public hearing, the Attorney General shall hear comments from interested persons regarding the proposed nonprofit conversion transaction. The Attorney General shall ensure that the communities affected by the transaction have an opportunity to participate in the public hearing process. Among the factors to be considered in defining a reasonable number of public hearings are the size of the applicant's service area and the nature and value of the transaction. Any person may file written comments, provide exhibits, and make a statement at the hearing. Each party to the transaction must ensure that at least one person representing the party is present at any public hearing that the Attorney General convenes.

**6. Notice of public hearings.** Notice shall be published once per week for three (3) weeks in a newspaper of general circulation in the applicant's service area, at the applicant's place of business in a manner that anyone walking into the building will see the notice, on the applicant's web site, on the Attorney General's web site, and to all those who request notice of such transactions and in papers designated by the Secretary of State. The notice shall:

- a. describe the proposed transaction, including the parties, the value of the transaction, the timing of the transaction, the potential impact on services to the public and the proposed plan for utilizing the proceeds. The public notice shall also provide information on opportunities for the public to provide comment on the proposal to the Attorney General; and
- b. be published in all languages spoken by 5% (five per cent) or more of the service population, or 1000 people in the service area, whichever is less.

**7. Maintenance of public comments.** The Attorney General shall make available to the public all written and oral comments made in advance of and at the public hearing, including all

questions posed, and shall require answers of the appropriate parties. The comments and answers shall be filed in the office of the Attorney General and in the public library(ies) for the community(ies) served by the applicant, and a copy shall be made available upon request to the Attorney General.

8. **Inquiry during public hearing.** As part of the public hearing process, the Attorney General shall solicit comments and input regarding the potential risks and benefits of the conversion on the community's access to services and/or health insurance coverage.
9. **Discovery authority.** The Attorney General shall have the power to subpoena additional information or witnesses, require and administer oaths, and require sworn statements at any time prior to making a recommendation on a conversion application.
10. **Public records.** All documents submitted to the Attorney General by a person filing a request under Section 4 (1), in connection with the Attorney General's review of a proposed conversion transaction are public records. Documents, including but not limited to all applications, reports, plans, valuations, conflict-of-interest issues, depositions, interrogatories, budgets, audits, and listings of staff and board members, relating to the proposed conversion or related transactions pursuant to a conversion review by the Attorney General are public records.
11. **Public access to records.** The Attorney General shall provide prompt and reasonable access to the records concerning the proposed transaction to the public at no charge. The records shall be considered public records and be made available to the public at both the Attorney General's office and the office of the applicant. Access to these records shall be available at least 21 days before a public hearing is held and at least thirty (30) days before the end of the public comment period. The Attorney General shall post the conversion plan, the plan for distribution of proceeds, the valuation and any other documents submitted in accordance with a conversion review that are in electronic format on the Attorney General's web site as soon as feasible after the documents are filed with the Attorney General. The Attorney General may charge the parties to the transaction for the costs of providing the public with notice and reasonable access to records relating to the proposed agreement or transaction of the applicant.
12. **Contracts with consultants; reimbursement for costs.** To assist in the review of a proposed conversion transaction pursuant to this Section, the Attorney General shall contract with an expert to provide an independent valuation, and shall also contract with an expert to provide an independent health impact statement when the applicant is a nonprofit hospital, medical-surgical facility, health maintenance organization, health services corporation or other nonprofit health provider or insurer. The Attorney General may contract with additional experts or consultants to provide additional information about due diligence, foundation issues, compensation or other issues the Attorney General considers appropriate. If a public hearing has already been held prior to the completion of any of the expert analysis, the Attorney General shall hold another hearing specifically to address the expert analysis.

- a. Contract costs incurred by the Attorney General pursuant to this Subsection may not exceed an amount that is reasonable and necessary to conduct the review of the proposed conversion transaction. The applicant filing an action under Section 4 (1) shall pay the Attorney General promptly upon request for all costs of contracts entered into by the Attorney General.
- b. The Attorney General is exempt from the provisions of applicable state laws regarding public bidding procedures for purposes of entering into contracts pursuant to this Subsection.

## SECTION 5. REVIEW CRITERIA

1. **Required determinations.** The Attorney General shall not approve a proposed conversion transaction unless the applicant proves by a preponderance of the evidence that:
  - a. The nonprofit mission of the applicant has become impossible, impractical, or unlawful;
  - b. The nonprofit will receive full, fair market value. The full, fair market value must be based upon an appraisal conducted in accordance with Section 5 (5) and must use the projected closing date of the conversion transaction as the valuation date;
  - c. The proposed distribution of proceeds of the transaction complies with Section 6;
  - d. The conversion transaction is in the public interest. An agreement or transaction is not in the public interest unless appropriate steps have been taken to safeguard the value of the charitable assets and ensure that any proceeds of the transaction are irrevocably dedicated to the charitable purposes;
  - e. The conversion transaction will not result in a violation of anti-trust laws and will not reduce competition; and
  - f. If the nonprofit applicant is a health plan, hospital, or clinic, the transaction must preserve or improve the availability, affordability, and quality of health care of the community. (See 5(4) below)
2. **Considerations.** Before determining whether the criteria in Section 5 (1) are met, the Attorney General shall find that:
  - a. The nonprofit will receive the full, fair market value;
  - b. The terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit;
  - c. The full, fair market value of the nonprofit's assets to be transferred has not been manipulated by the actions of the parties in a manner that causes the full, fair market value of the assets to decrease;
  - d. The agreement or transaction will not result in private inurement to any person or entity;
  - e. The proposed conversion transaction will not result in a breach of fiduciary duty or violate any statutory or common-law duty or obligation on the part of the directors, trustees or other parties involved in the transaction, including but not limited to conflicts

of interest related to payments or benefits to officers, directors, board members, executives and experts employed or retained by the parties;

- f. The governing body of the nonprofit exercised due diligence in deciding to dispose of the nonprofit's assets, selecting the acquiring entity and negotiating the terms and conditions of the disposition;
  - g. The Attorney General has been provided with sufficient information and data by the applicant to evaluate adequately the agreement or transaction and the effects of the agreement or transaction on the public;
  - h. The proceeds of the conversion of the nonprofit are distributed either to an existing or new foundation or nonprofit organization pursuant to Section 6;
  - i. The proceeds of the proposed conversion transaction will be used in accordance with the rules of any constructive, implied, or express trust under which the assets were held by the nonprofit applicant, including any geographical service boundaries of the trust, and that the proceeds will be controlled as funds independent of the acquiring entity and any entity related to the acquiring entity;
  - j. The entity surviving after the conversion transaction will be financially viable, competently managed and will have a governance structure that includes some measure of local governance.
  - k. The transaction will, at a minimum, maintain the availability and accessibility of services to the affected community;
  - l. The conversion plan and transaction complies with all applicable laws, including the State's Nonprofit Corporation Act and state tax code;
  - m. The conversion plan has been approved by a vote of not less than 2/3 of the applicant's board of directors or trustees; and
  - n. The purchase and sale agreement does not contain a confidentiality agreement pertaining to the offer or an agreement limiting the capacity of the Board of Directors to solicit or accept additional offers.
- 3. Review of possible anti-trust laws violations** The Attorney General shall seek an opinion from the Federal Trade Commission on whether the proposed conversion transaction would violate any anti-trust laws or decrease competition.
- 4. Special requirements for health care entities<sup>5</sup>** Where the applicant is a nonprofit hospital, medical-surgical facility, health maintenance organization, health service corporation or other nonprofit health provider/insurer, the Attorney General shall determine the effect the proposed transaction will have on the availability and accessibility of health care services to the affected community and the for-profit's ability to maintain and improve health care access and coverage. The Attorney General shall not consent to a health facility agreement or transaction in which the seller restricts the type or level of medical services that may be provided at the health facility that is the subject of the agreement or transaction. Before approving the transaction, the Attorney General shall find that:

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<sup>5</sup> In some states, the Insurance Commissioner will be the appropriate regulator to enforce the special requirements for health care entities as specified in this Act.

- a. sufficient safeguards are in place to ensure the affected community has continued access to affordable, quality health care;
- b. the acquiring entity has made a commitment to provide health care to the disadvantaged, the uninsured, and the underinsured at a level comparable to the level historically provided by the converting healthcare entity;
  - 1) Before approving the transaction, the Attorney General shall require a written and legally enforceable commitment from the for-profit to maintain and/or improve the level of health services to the community and the public as determined by the assessment and the public hearing. The commitment must address any deficiencies or shortcomings identified by the Attorney General through the independent health impact assessment process. The final plan from the acquiror shall include, but not be limited to, the following:
    - a) a long-term commitment to maintain the same level or increased level of indigent care services that the nonprofit applicant has provided on average over the past ten years;
    - b) long-term commitments to preserve essential community services, for example, emergency room care, and coverage for otherwise uninsured or high risk individuals.
    - c) The parties to the transaction have submitted a health impact study that outlines how the for-profit entity will ensure that health care will not be harmed by the proposed transaction. The health impact study must include a business plan including the five-year profit goals and methods for achieving these goals through financial, operational and administrative management. The applicant must submit a comparative premium rate analysis of the applicant's and the acquiror 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. As part of the public hearing conducted pursuant to Section 4 (5) of this Act, the Attorney General shall solicit comments and input regarding the potential risks and benefits of the conversion on health care access and quality as raised by the health impact assessment. If a public hearing has already been held prior to the completion of the assessment, the Attorney General shall hold another hearing specifically to address the assessment.
    - d) The Attorney General shall review the health impact study submitted by the parties. To facilitate the review, s/he shall conduct an independent community health impact assessment to ensure that the health impact plan submitted by the parties meets the needs of the affected community. The Attorney General's independent assessment process must:
      - (1) Interview affected community members, their representatives, and individuals to assess community needs and potential risks regarding health access and coverage affected by the conversion; and

(2) Determine the level, quality, and importance to the community of health services that the nonprofit applicant has historically provided, including but not limited to, indigent care, emergency room services, outpatient services, community education and training, and preventive programs.

e) Any other criteria the Attorney General and/or the court considers necessary to determine whether the standards for approval have been met

**5. Valuation.** The Attorney General shall contract with an independent expert to conduct an independent appraisal of the full fair market value of assets to be converted. To the extent that the appraisal is based on a capitalization of the *pro forma* income of the converted assets, the appraisal must indicate the basis for determination of the income to be derived from any proceeds of the sale of stock and demonstrate the appropriateness of the earnings-multiple used, including assumptions made regarding future earnings growth.

- a. To the extent that an appraisal under this Subsection is based on the comparison of the capital stock of the converted entity with outstanding capital stock of existing stock entities offering comparable products, the existing stock entities must be reasonably comparable to the converting entity in terms of such factors as size, market area, competitive conditions, profit history and expected future earnings.
- b. If the value of assets being converted is \$5,000,000<sup>6</sup> or more, the appraisal must include any element of value arising from the accomplishment or expectation of the conversion transaction, including any value attributable to projected operating efficiencies to result from the conversion, net of the cost of changes to produce such efficiencies.
- c. An appraiser under this Subsection may not serve as an underwriter or selling agent under the same conversion plan and an affiliate of an appraiser may not act as an underwriter or selling agent unless procedures are followed and representations and warranties made to ensure that an appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or in any way have an impact on the appraisal.
- d. An appraiser may not receive any other fee except the fee for services rendered in connection with the appraisal.
- e. If a public hearing has already been held prior to the completion of the valuation, the Attorney General shall hold another hearing specifically to address the valuation.

## SECTION 6. DISTRIBUTION OF PROCEEDS

**1. Requirements.** The proceeds of a conversion transaction must be distributed to an existing or new foundation or other nonprofit organization that meets the following requirements.

- a. The foundation or nonprofit organization must operate pursuant to 26 United States Code, Section 501(c)(3) or 501(c)(4), and, regardless of whether the foundation is classified as a private foundation under 26 United States Code, Section 509, the

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foundation or nonprofit must operate in accordance with the restrictions and limitations that apply to private foundations in 26 United States Code, Sections 4941 to 4945.

- b. The foundation or nonprofit organization must have a mission statement that is as close as possible to the mission of the converting nonprofit.
- c. The foundation or nonprofit organization's assets may not be used to supplant government funds.
- d. The foundation or nonprofit organization shall not be an agent or instrumentality of the government.
- e. The foundation or nonprofit organization and its directors, officers and staff must be and must remain independent of the for-profit company and its affiliates. A person who is an officer, director or staff member of a nonprofit submitting a conversion plan, at the time the plan is submitted or at the time of the conversion transaction or within five (5) years thereafter, is not qualified to be an officer, director or staff member of the foundation. A director, officer, agent or employee of the nonprofit submitting the plan or the foundation receiving the charitable assets may not benefit directly or indirectly from the transaction. Public officials, elected or appointed, may not serve as an officer, director or staff member of the foundation, or nonprofit organization.
- f. A foundation or nonprofit organization must have or establish formal mechanisms to avoid conflicts of interest and to prohibit grants benefiting the for-profit corporation or members of the board of directors and management of the for-profit corporation.
- g. Trustees or directors of the foundation or nonprofit organization shall reflect the geographic, ethnic, gender, age, socioeconomic and other factors that the board considers to represent the diversity of nonprofit applicant's service area. In addition, trustees or directors shall have the following qualifications and qualities: (a) interest in and concern for the foundation or nonprofit organization and its mission, (b) objectivity and impartiality, (c) willingness and ability to commit time and thought to the foundation or nonprofit organization's affairs, and (d) commitment to the foundation or nonprofit organization's as a whole and not to a special interest.
- h. Boards of trustees or directors shall include persons with special knowledge, expertise and skills in investments and asset management, finance, and nonprofit administration.
- i. The Attorney General shall retain oversight and monitoring authority over the charitable corporation that receives the proceeds of a proposed transaction.

## **SECTION 7. PREVIOUS MUTUALIZATION WITH NO CHARITABLE TRUST SET ASIDE<sup>7</sup>**

(1) Where a nonprofit corporation with a charitable trust mutualized prior to the effective date of this Act, the Attorney General shall apply the following conditions:

- (a) Any nonprofit corporation which becomes a mutual company without satisfying its charitable trust obligation retains an obligation to preserve its assets for charitable purposes, as required by Sections 5 and 6 of this Act. This obligation shall be paid any time the

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<sup>7</sup> States may have to amend their mutualization and demutualization statutes to reflect these provisions.

mutual company enters into an agreement or transaction with a for-profit corporation or otherwise generates sufficient funds to fulfill its charitable trust obligation. The fair market value of the nonprofit corporation on the date of conversion to a mutual company, augmented by any increase in value of the mutual company attributable to the use of the charitable trust assets or to its prior status as a nonprofit corporation, shall be the basis for the valuation of the trust obligation, consistent with Section 5 (5) of this Act.

(b) At such time that the mutual company, which was formerly a nonprofit charitable corporation, enters into an agreement or transaction to demutualize, it shall submit an asset distribution plan to fulfill its charitable obligations, consistent with the requirements under Sections 4- 6 of this Act. The Attorney General shall hold public hearings consistent with 4 (5) of this Act. No agreement or transaction of a mutual company to demutualize shall occur until the Attorney General has made a determination that the agreement or transaction is fair and equitable to the public, and that it has complied with the other provisions of this Act.

## SECTION 8. INTERVENTION AND JUDICIAL REVIEW

- 1. Right to intervene.** Except as provided in Section 8 (4) of this Act, the Attorney General, on timely application shall allow any person with a significant interest in the outcome of a conversion proceeding to intervene as a party to that proceeding. Any person who petitions the Attorney General pursuant to the state constitution will be considered a party with respect to the rights granted in this Section. Policyholders, consumer advocates, and community representatives shall all be considered persons with a significant interest. Any person whose significant interest is determined to be affected may present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and in connection therewith may conduct discovery proceedings in the same manner as is allowed in the court of this state. The specific intervention provisions of this Act shall control in the event of a conflict with the requirements of general state administrative law.
- 2. Intervenor Funding.** The Attorney General shall award reasonable advocacy and witness fees and expenses to any party that demonstrates that (1) the party represents the interests of consumers, and, (2) the party has made a substantial contribution on behalf of consumers to the adoption of any regulation or to an order or decision made by the Attorney General under this law. Where such advocacy occurs in response to an application for approval of a conversion transaction, the award shall be paid by the applicant.
- 3. Regulations.** On or before [*insert date*], the Attorney General shall adopt regulations detailing the specifications for eligibility to intervene, rates of compensation, and procedures for seeking compensation.
- 4. Attorney general power to consolidate intervenors.** This Section does not limit the power of the Attorney General to consolidate parties with similar interests for the purpose of intervention.

5. **Right to Appeal.** A final action by the attorney general shall be subject to judicial review by the court in the county where charitable assets are located or services rendered at the initiation of the applicant or any person that was a party to the proceeding, pursuant to Section 8 (1) of this Act.

## SECTION 9. ATTORNEY GENERAL AUTHORITY

1. **Rules.** The Office of the Attorney General may adopt rules it considers appropriate to implement Sections 1 through 11.
2. **Attorney General authority not limited.** Sections 1 through 11 do not limit the common law authority of the Attorney General to protect charitable trusts and charitable assets in this state. The penalties and remedies provided in Section 10 are in addition to, and are not a replacement for, any other civil or criminal action the Attorney General may take under common law or statute, including an action to rescind the conversion transaction or to obtain injunctive relief or a combination of injunctive relief and other remedies available under common law or statute.

## SECTION 10. PENALTIES

1. **Attorney General to bring action.** The Attorney General may initiate an action in court to:
  - a. Void a conversion transaction pursuant to Section 10 (2). Such an action may be brought in the court in the county in which the nonprofit assets to be transferred are located;
  - b. Seek a civil penalty against an individual pursuant to Section 10 (3). Such an action must be brought in the court in the county in which the nonprofit assets to be transferred are located or in the county in which the individual resides; and
  - c. Obtain on behalf of the nonprofit the return or repayment of any property or consideration received as private inurement or an excess benefit in violation of nonprofit corporate standards.
2. **Transaction voidable.** The court may void a conversion transaction entered into in violation of applicable provisions of this Act. If the court voids the transaction, it may also grant any orders necessary to restore the nonprofit to its former position, including removing the board of the nonprofit or voiding contracts.
3. **Penalties against individuals.** An individual officer, director, trustee or manager in a position to exercise substantial influence over the affairs of a nonprofit is subject to a civil penalty if that person receives property or consideration from the nonprofit that constitutes private inurement in the standards established under the State's Nonprofit Corporation Code or similar statute for conduct by directors or officers or for avoiding conflicts of interest.

The civil penalty under this subsection is a fine of up to \$100,000, plus 100% of the excess benefit or private inurement received, and may be recovered in addition to costs and fees incurred by the Attorney General in bringing the action.

## SECTION 11. OVERSIGHT AND REPORTING

- 1. Corrective oversight.** The Attorney General may collect funds from the acquiror necessary to monitor the acquiror's compliance with the conditions of the conversion. If the Attorney General receives information indicating that the acquiror is not fulfilling its commitments to the affected community under this Act, the Attorney General shall hold a public hearing upon ten (10) days notice to the affected parties and consistent with the public hearing requirements of Section 4 (5) of this Act. If, after such hearing, the Attorney General determines that the information is true, the Attorney General shall institute proceedings to require a corrective action plan from the acquiror. The Attorney General shall retain oversight of the acquiror's obligations under the corrective action plan for as long as necessary to ensure compliance with this Act.
- 2. Annual reporting.** The foundation or nonprofit organization established to receive the proceeds of the sale shall provide the Attorney General with an annual report of its grant-making and other charitable activities related to its use of the charitable assets received. The annual report shall be made available to the public at both the Attorney General's office and the office of the foundation or new nonprofit organization, and on the foundation or new nonprofit organization's web site, if any.
- 3. Oversight and monitoring of foundation.** The Attorney General shall retain oversight and monitoring authority over the existing or new foundation or other nonprofit organization that receives the proceeds of the sale.

## SECTION 12: EMERGENCY ACT

Since an emergency exists, this Act takes effect when passed and approved according to law.