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INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE CONVERSION OF A NONPROFIT HOSPITAL TO A FOR-PROFIT CORPORATION OR ENTITY OR A MUTUAL BENEFIT CORPORATION OR ENTITY; PROVIDING DEFINITIONS; PROVIDING FOR NOTICE TO THE ATTORNEY GENERAL; PROVIDING FOR PUBLIC RECORDS, NOTICE, AND HEARINGS; PROVIDING FOR EXPERT ASSISTANCE AND COSTS; AMENDING SECTIONS 35-2-609, 35-2-617, AND 35-2-722, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Purpose.** The purpose of [sections 1 through 8] is to provide a process to notify the attorney general, who has statutory and common-law authority over public and charitable assets, of a proposed conversion transaction in which a nonprofit hospital seeks to dispose of control or governance of all or substantially all of its public assets. [Sections 1 through 8] provide for public notice and a public hearing because the assets of a nonprofit hospital are public assets, and it is intended that the public participate in the review of any proposed conversion transaction.

**NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Conversion" or "conversion transaction" means any action taken by a nonprofit hospital to dispose of control or governance of all or substantially all of its public assets pursuant to an agreement of sale, transfer, lease, exchange, option, or joint venture or to convert to a for-profit entity or to otherwise restructure the nonprofit hospital or its public assets resulting in a change in control or governance of the entity or public assets. For purposes of this definition, a conversion transaction can occur in a single transaction or a series of related transactions.

(2) "Mutual benefit corporation" has the meaning provided in 35-2-114.

(3) "Nonprofit hospital" means a hospital or a critical access hospital, as those terms are defined in 50-5-101, that is a public benefit corporation, a religious corporation, or a mutual benefit corporation to the extent that the corporation holds assets in a charitable trust.



1 (4) "Ordinary course of business" means that the action in question comports with the usual and  
2 customary practices of the kind of business in which the nonprofit hospital is engaged.

3 (5) "Public assets" include:

4 (a) all assets of a public benefit corporation;

5 (b) assets held for the benefit of the public or the community;

6 (c) assets in which the public has an ownership interest;

7 (d) assets owned by a governmental entity; and

8 (e) assets owned by a nonprofit corporation to the extent that the corporation holds assets in a charitable  
9 trust.

10 (6) "Public benefit corporation" has the meaning provided in 35-2-114.

11 (7) "Religious corporation" has the meaning provided in 35-2-114.

12 (8) "Transferee" means the person in a conversion transaction that receives the ownership or control of  
13 the nonprofit hospital that is the subject of the conversion transaction or the ownership or control of the nonprofit  
14 hospital's assets.

15 (9) "Transferor" means the nonprofit hospital that is the subject of the conversion transaction or the  
16 corporation that owns the nonprofit hospital that is the subject of the conversion transaction.

17

18 **NEW SECTION. Section 3. Exclusions from conversion transaction.** The following are not  
19 considered conversion transactions:

20 (1) a transaction in the ordinary course of the nonprofit hospital's business that does not result in a  
21 material change in the nonprofit hospital's ownership, management structure, or nonprofit corporate mission;

22 (2) a transaction or series of transactions in the ordinary course of business of a nonprofit hospital if the  
23 effect of the transaction or series of transactions is not to convert the nonprofit hospital from a nonprofit to a  
24 for-profit entity or a mutual benefit corporation, to transfer the nonprofit hospital's business or operations to a  
25 for-profit entity or a mutual benefit corporation, or to transfer the control or benefit of public assets and the  
26 proceeds of public assets to a for-profit entity or a mutual benefit corporation;

27 (3) a change in the membership of the board of directors or officers of the nonprofit hospital or a wholly  
28 owned subsidiary of the nonprofit hospital if the change in membership does not result in a change in the  
29 nonprofit corporate status of the nonprofit hospital, does not result from a transfer of control, governance, or  
30 ownership of the nonprofit hospital, and does not result from transfer of a power of appointment of directors or

1 officers of the nonprofit hospital or a wholly owned subsidiary of the nonprofit hospital;

2 (4) settlement, satisfaction, or payment of a claim or suit against or debt of the nonprofit hospital or a  
3 wholly owned subsidiary of the nonprofit hospital incurred in the ordinary course of business;

4 (5) execution of a promissory note, guaranty, or other evidence of indebtedness for the amount of a loan,  
5 the proceeds of which are paid solely to the nonprofit hospital or a wholly owned subsidiary of the nonprofit  
6 hospital;

7 (6) any payment, transfer, or other transaction required by law or by order of any authorized  
8 administrative officer or agency, including but not limited to payment of taxes, fees, fines, penalties, or other  
9 assessments to a government or a nonprofit hospital or a transaction ordered by the attorney general;

10 (7) purchases, sales, or transfers in the ordinary course of business for fair market value of cash or cash  
11 equivalents owned by the nonprofit hospital or any wholly owned subsidiary in exchange for goods, products,  
12 services, or an interest in property, including but not limited to stocks, shares, bonds, notes, evidences of  
13 indebtedness, negotiable instruments, or an ownership interest in an entity, to be held by the nonprofit hospital  
14 or its wholly owned subsidiary;

15 (8) granting of an encumbrance in the ordinary course of business, such as a security interest or  
16 mortgage deed with respect to an asset owned by the nonprofit hospital or a wholly owned subsidiary of the  
17 nonprofit hospital to secure indebtedness for borrowed money, the net proceeds of which are paid solely to the  
18 nonprofit hospital or its wholly owned subsidiary, and a foreclosure or other exercise of remedies permitted with  
19 respect to an encumbrance;

20 (9) sale, investment, or transfer in the ordinary course of business for fair market value of an interest in  
21 property owned by the nonprofit hospital or a wholly owned subsidiary, the net proceeds of which are paid solely  
22 to the nonprofit hospital or its wholly owned subsidiary;

23 (10) any transfer of assets between a nonprofit hospital that is a public benefit corporation and a mutual  
24 benefit corporation in which all of the members are public benefit corporations, provided that all assets transferred  
25 by a public benefit corporation in a transaction described in this subsection continue to be managed in a manner  
26 consistent with the public benefit purpose of the transferring public benefit corporation;

27 (11) any transfer of public assets between a nonprofit hospital that is a public benefit corporation and a  
28 separate public benefit corporation if all assets transferred by the nonprofit hospital in a transaction described  
29 in this subsection continue to be managed in a manner consistent with the public benefit purpose of the  
30 transferring public benefit corporation; or

1 (12) any other transaction or proposed transaction for fair market value if:

2 (a) the nonprofit hospital or its wholly owned subsidiary retains or will retain substantially the same  
3 degree of control or governance or the same degree of ownership of the proceeds of the transaction that the  
4 nonprofit hospital or its wholly owned subsidiary held in the assets or operations prior to the transaction or  
5 proposed transaction;

6 (b) the nonprofit hospital maintains its operations as a nonprofit hospital and public assets or the  
7 proceeds of public assets are maintained as public assets; and

8 (c) none of the assets or operations of the nonprofit hospital or its wholly owned subsidiary inure or will  
9 inure directly or indirectly to the benefit of any officer, employee, agent, director, or trustee of the nonprofit hospital  
10 or its wholly owned subsidiary, except for the reasonable value of services rendered pursuant to a valid contract  
11 between the officer, employee, agent, director, or trustee and the nonprofit hospital.

12

13 **NEW SECTION. Section 4. Notice to attorney general.** (1) Prior to completing a conversion  
14 transaction, the proposed transferor shall provide to the attorney general written notice, on a form provided by  
15 the attorney general, of its intent to initiate a conversion transaction. The notice must include:

16 (a) the name of the proposed transferor;

17 (b) the name of the proposed transferee;

18 (c) the names of any other parties to the conversion transaction agreement;

19 (d) the terms of the proposed conversion transaction, including but not limited to a description and  
20 valuation of all consideration proposed to be exchanged as a part of or as a result of the conversion and the  
21 extent to which the assets proposed to be converted are public assets; and

22 (e) a copy of the conversion transaction agreement.

23 (2) The transferor may not transfer any public assets or make any change in its corporate governance  
24 in furtherance of the transaction described in the notice until 60 days following completion of the public hearing  
25 process provided for in [section 6].

26 (3) (a) The attorney general shall notify the transferor and transferee in writing within 15 working days  
27 after receipt of the notice under subsection (1), stating that the notice is considered complete or, if the notice is  
28 incomplete, stating what additional information is required.

29 (b) Upon receipt of notification that the notice is not complete, the transferor and transferee shall provide  
30 the required information or withdraw the notice within 15 working days.

1 (c) If the transferor and transferee supply additional information, the attorney general shall, within 10  
2 working days of receipt of the information, either notify the transferor and transferee in writing that the amended  
3 notice is complete or deny the amended notice without prejudice to later resubmission of a completed notice form.

4 (4) Any material change in the terms or conditions of the proposed conversion transaction is considered  
5 a new filing for the purposes of [sections 1 through 8].

6  
7 **NEW SECTION. Section 5. Attorney general review.** (1) Within 60 days after completion of the public  
8 notice and hearing process provided for in [section 6], the attorney general shall complete a legal review. The  
9 attorney general may exercise the attorney general's common-law and statutory authority over the transferor and  
10 transferee to ensure the proposed conversion transaction is consistent with state and federal law and continues  
11 to protect and preserve the public assets for the benefit of the public.

12 (2) The attorney general may contract with experts as reasonably necessary to assist with conducting  
13 a legal review of the proposed conversion transaction, including but not limited to experts to:

14 (a) perform an independent analysis of the conversion transaction under state and federal antitrust laws;

15 (b) evaluate the impact of the conversion transaction on the affected community;

16 (c) determine whether there has been due diligence by the transferor in evaluating the proposed  
17 conversion transaction; and

18 (d) determine the existence of any conflicts of interest, foundation issues, compensation, or other issues.

19 (3) If the attorney general contracts for expert assistance under subsection (2), the transferor and  
20 transferee shall each pay half of the costs reasonably incurred by the attorney general for the expert services.

21 In addition, the transferor and transferee shall each pay half of the expenses incurred by the attorney general to  
22 provide notice of and conduct the hearing provided for in [section 6]. However, the costs and expenses incurred  
23 by the attorney general and reimbursed by the transferor and transferee may not exceed 5% of the estimated  
24 value of the proposed conversion transaction.

25 (4) The attorney general may, for cause, extend the time for completing a legal review of the proposed  
26 conversion transaction under subsection (1) for a 60-day period if:

27 (a) the extension is necessary to obtain relevant information from any state agency, expert, or consultant;

28 (b) the proposed conversion transaction is substantially modified after the public hearing provided for  
29 in [section 6]; or

30 (c) the proposed conversion transaction involves a multisystem facility serving multiple communities

1 rather than a single facility.

2 (5) Following the hearing, the attorney general may require the transferor to submit a modified proposal  
3 and may hold an additional public hearing if the modified proposal significantly changes the conversion  
4 transaction. If an additional hearing is held, the time deadlines provided in this section run from the conclusion  
5 of the additional hearing.

6 (6) A conversion transaction consummated in violation of any provision of [sections 1 through 8] is  
7 voidable.

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9 **NEW SECTION. Section 6. Public notice -- hearing.** (1) Within 15 working days after notifying the  
10 transferor that the notice provided for in [section 4] is complete, the attorney general shall:

11 (a) publish information regarding the notice on the internet and by a press release to the most widely  
12 circulated newspapers in the nonprofit hospital's service area once a week for 3 weeks; and

13 (b) maintain a list of persons who have requested in writing information regarding the notice of the filing  
14 of an application and notify those persons by e-mail or first-class mail.

15 (2) The information to be published by the attorney general under subsection (1) must:

16 (a) state that a notice for a proposed conversion transaction has been received by the attorney general;

17 (b) state the names of the parties to the conversion transaction;

18 (c) describe the contents of the notice, including the estimated value and timing of the conversion  
19 transaction, the potential impact on services to the public, and the distribution of assets;

20 (d) state the date by which a person is required to submit written comments on the notice provided for  
21 in [section 4]; and

22 (e) provide the date, time, and place of the public hearing on the conversion transaction.

23 (3) As soon as practicable, but no later than 45 days after notifying the transferor that the notice provided  
24 for in [section 4] is complete, the attorney general shall hold a public hearing in the service area of the nonprofit  
25 hospital.

26 (4) Any person may file written comments and exhibits or make a statement at the public hearing.

27 (5) The attorney general shall allow for the receipt of written comments for 5 working days immediately  
28 following the public hearing date.

29 (6) As part of the public hearing process, the attorney general shall solicit comments and input regarding  
30 the potential risks and benefits of the conversion on the community's access to services.

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2           **NEW SECTION. Section 7. Public records.** (1) All documents and records, excluding any proprietary  
3 or confidential information as defined by law and properly labeled by the proposed transferor, submitted to the  
4 attorney general by any person in connection with the attorney general's review of the proposed conversion  
5 transaction are public records to the extent required by the provisions of applicable state law. The contents of the  
6 notice submitted to the attorney general pursuant to [section 4] are a public record, except that any proprietary  
7 information or trade secret that may by law be kept confidential is not a public record. The information the attorney  
8 general is required to publish under [section 6] is not proprietary information or a trade secret.

9           (2) The attorney general shall provide prompt and reasonable public access to the records concerning  
10 the proposed conversion transaction as required by law.

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12           **NEW SECTION. Section 8. Attorney general powers retained.** Subject to the procedural  
13 requirements of [sections 1 through 8], the attorney general retains all powers provided by law for the protection  
14 of public assets.

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16           **Section 9.** Section 35-2-609, MCA, is amended to read:  
17           **"35-2-609. Limitations on mergers by public benefit or religious corporations.** (1) Except as  
18 provided in subsection (4) or (5) or without the prior approval of the district court for the judicial district in which  
19 the corporation's principal office is located or, if the principal office is not located in this state, in Lewis and Clark  
20 County, in a proceeding of which the attorney general has been given written notice, a public benefit corporation  
21 or religious corporation may merge only with:

- 22           (a) a public benefit corporation or religious corporation;
- 23           (b) a foreign corporation that would qualify under this chapter as a public benefit corporation or religious  
24 corporation;
- 25           (c) a wholly owned foreign or domestic business or mutual benefit corporation; if the public benefit  
26 corporation or religious corporation is the surviving corporation and continues to be a public benefit corporation  
27 or religious corporation after the merger; or
- 28           (d) a business or mutual benefit corporation, provided that:
- 29           (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair  
30 market value of the net tangible and intangible assets, including good will, of the public benefit corporation or the

1 fair market value of the public benefit corporation if it were to be operated as a business concern are transferred  
2 or conveyed to one or more persons who would have received its assets under 35-2-725(1)(e) and (1)(f) had it  
3 dissolved;

4 (ii) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or  
5 conveyance in case of merger, in accordance with the condition; and

6 (iii) the merger is approved by a majority of directors of the public benefit corporation or religious  
7 corporation who are not and will not become members or shareholders in or officers, employees, agents, or  
8 consultants of the surviving corporation.

9 (2) At least 20 days before consummation of any merger of a public benefit corporation or a religious  
10 corporation pursuant to subsection (1)(d), notice, including a copy of the proposed plan of merger, must be  
11 delivered to the attorney general.

12 (3) Without the prior written consent of the attorney general or of the district court in a proceeding in  
13 which the attorney general has been given notice, a member of a public benefit corporation or religious  
14 corporation may not receive or keep anything as a result of a merger other than a membership in the surviving  
15 public benefit corporation or religious corporation. The court shall approve the transaction if it is in the public  
16 interest.

17 (4) A public benefit corporation or a religious corporation that is considered a nonprofit health entity, as  
18 defined in 50-4-701, is subject to the provisions of 35-2-617 and Title 50, chapter 4, part 7.

19 (5) A public benefit corporation or religious corporation that is considered a nonprofit hospital, as defined  
20 in [section 2], is subject to the provisions of [sections 1 through 8]."

21

22 **Section 10.** Section 35-2-617, MCA, is amended to read:

23 **"35-2-617. Sale of assets other than in regular course of activities.** (1) A corporation may sell, lease,  
24 exchange, or otherwise dispose of all or substantially all of its property, which may include the good will, other  
25 than in the usual and regular course of its activities on the terms and conditions and for the consideration  
26 determined by the corporation's board if the proposed transaction is approved as required by subsection (2).

27 (2) Unless this chapter, the articles, the bylaws, or the board of directors or members, acting pursuant  
28 to subsection (4), require a greater vote or voting by class, the proposed transaction to be authorized must be  
29 approved:

30 (a) by the board;



1 (b) by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less;  
2 and

3 (c) in writing by any person or persons whose approval is required by a provision of the articles, as  
4 authorized by 35-2-232, for an amendment to the articles or bylaws.

5 (3) If the corporation does not have members, the transaction must be approved by a vote of a majority  
6 of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice,  
7 in accordance with 35-2-429(3), of any directors' meeting at which approval is to be obtained. The notice must  
8 also state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or  
9 other disposition of all or substantially all of the property or assets of the corporation and must contain or be  
10 accompanied by a copy or summary of a description of the transaction.

11 (4) The board may condition its submission of the proposed transaction and the members may condition  
12 their approval of the transaction on receipt of a higher percentage of affirmative votes or on any other basis.

13 (5) If the corporation seeks to have the transaction approved by the members at a membership meeting,  
14 the corporation shall give notice to its members of the proposed membership meeting in accordance with  
15 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider the sale,  
16 lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and  
17 must contain or be accompanied by a copy or summary of a description of the transaction.

18 (6) If the board needs to have the transaction approved by the members by written consent or written  
19 ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of a description  
20 of the transaction.

21 (7) (a) Except as provided in subsection (7)(b) or (7)(c), a public benefit corporation or religious  
22 corporation shall give written notice to the attorney general 20 days before it sells, leases, exchanges, or  
23 otherwise disposes of all or substantially all of its property if the transaction is not in the usual and regular course  
24 of its activities unless the attorney general has given the corporation a written waiver of this subsection.

25 (b) A public benefit corporation or religious corporation that is considered a nonprofit health entity, as  
26 defined in 50-4-701, is subject to the provisions of Title 50, chapter 4, part 7.

27 (c) A public benefit corporation or a religious corporation that is considered a nonprofit hospital, as  
28 defined in [section 2], is subject to the provisions of [sections 1 through 8].

29 (8) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be  
30 abandoned, subject to any contractual rights, without further action by the members or any other person who

1 approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction  
 2 or, if no procedure is set forth, in the manner determined by the board of directors."

3

4 **Section 11.** Section 35-2-722, MCA, is amended to read:

5 **"35-2-722. Notices to attorney general.** (1) Except as provided in subsection (4) or (5), a public benefit  
 6 corporation or religious corporation shall give the attorney general written notice that it intends to dissolve at or  
 7 before the time it delivers articles of dissolution to the secretary of state. The notice must include a copy or  
 8 summary of the plan of dissolution.

9 (2) Assets may not be transferred or conveyed by a public benefit corporation or religious corporation  
 10 as part of the dissolution process until 20 days after it has given the written notice required by subsection (1) to  
 11 the attorney general or, in a transaction subject to [sections 1 through 8], the time periods for legal review  
 12 provided in [section 5] have elapsed, whichever is later, or until the attorney general has consented in writing to  
 13 the dissolution or indicated in writing that the attorney general will not take action in respect to the transfer or  
 14 conveyance, ~~whichever is earlier.~~

15 (3) When all or substantially all of the assets of a public benefit corporation have been transferred or  
 16 conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those,  
 17 other than creditors, to whom the assets were transferred or conveyed. The list must indicate the address of each  
 18 person, other than creditors, who received assets and indicate what assets each received.

19 (4) A public benefit corporation or religious corporation that is considered a nonprofit health entity, as  
 20 defined in 50-4-701, is subject to the provisions of Title 50, chapter 4, part 7.

21 (5) A public benefit corporation or religious corporation that is considered a nonprofit hospital, as defined  
 22 in [section 2], is subject to the provisions of [sections 1 through 8]."

23

24 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 8] are intended to be  
 25 codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1  
 26 through 8].

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28 **NEW SECTION. Section 13. Effective date.** [This act] is effective July 1, 2013.

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- END -