

## SENATE BILL NO. 391

INTRODUCED BY C. KAUFMANN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DISTRIBUTION OF PROCEEDS FROM A CONVERSION TRANSACTION OF A NONPROFIT HEALTH ENTITY; CREATING A HEALTH TRUST ACCOUNT AND EXPENDITURE LIMITS; AMENDING SECTIONS 50-4-704, 50-4-715, 50-4-716, AND 50-4-718, MCA; REPEALING SECTION 50-4-720, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Distribution of proceeds.** The state shall deposit the proceeds from a conversion transaction of a nonprofit health entity approved by the commissioner and attorney general on or after January 1, 2013, into the health trust account provided for in [section 2].

**NEW SECTION. Section 2. Health trust account -- expenditure restrictions.** (1) There is a health trust account in the state treasury. The state treasurer shall deposit money received from a conversion transaction of a nonprofit health entity pursuant to [section 1] into the trust account.

(2) The principal in the trust account may not be appropriated or transferred. Interest from the trust account may be appropriated by the legislature for the purpose of providing increased access to health care, including public programs administered by the department of public health and human services.

(3) Money in the health trust account must be invested as provided by law. Interest and income from the investment of funds in the account must be credited to the account.

(4) The assets of the trust account must be preserved, invested, and expended in the manner and for the purposes set forth in subsection (2). At the end of each fiscal year, the unexpended account balance must carry forward to the next fiscal year and may not revert to the state general fund.

**Section 3.** Section 50-4-704, MCA, is amended to read:

**"50-4-704. Rights and powers.** (1) (a) This part may not be construed to impair the rights and powers of a court or the attorney general with respect to the assets of any public benefit corporation, to any asset devoted

1 to charity, or to a charitable trust as provided in Title 72, chapter 33, part 5.

2 (b) Filing of an application under this part satisfies any notice requirements under 35-2-609, 35-2-617,  
3 or 35-2-722.

4 (2) (a) (i) Nothing in this part precludes the attorney general, the commissioner, or a nonprofit health  
5 entity from filing an action in district court under Title 27, chapter 8, seeking a declaration that a nonprofit health  
6 entity transaction is or is not a conversion transaction, as defined in 50-4-701, or a declaration of whether assets  
7 of a nonprofit health entity are or are not public assets as defined in 50-4-701. No other declaratory relief may  
8 be sought in a court regarding any issue arising from a transaction that is or is alleged to be a conversion  
9 transaction under this part, except that a transferor or transferee may file an action in district court seeking an  
10 injunction prohibiting the attorney general or commissioner from making an unlawful disclosure of trade secrets  
11 or proprietary or other confidential information.

12 (ii) In an action under this subsection (2) to determine whether assets of a nonprofit health entity are or  
13 are not public assets, the presumption in 50-4-715(3) applies.

14 (b) The commissioner or the attorney general, or both, may contract with experts as reasonably  
15 necessary to bring or defend an action pursuant to this subsection (2) and the nonprofit health entity shall pay  
16 the costs reasonably incurred by the commissioner or the attorney general for the experts' services.

17 (c) In an action under this subsection (2), if the court finds that the transaction is a conversion transaction  
18 subject to this part and the transaction has not been completed, the court shall enter an injunction prohibiting any  
19 further actions to complete the transaction until it has been approved by the commissioner and attorney general  
20 under 50-4-702.

21 (d) In an action under this subsection (2), if the court finds that a completed transaction was a conversion  
22 transaction that the commissioner and attorney general have not approved under 50-4-702, the court shall enter  
23 an injunction requiring the nonprofit health entity or any successor to the assets involved in the transaction to  
24 submit an application for review under 50-4-707. After reviewing any application submitted following a court order  
25 under this subsection (2)(d), the attorney general may direct that the nonprofit health entity or any successor to  
26 the assets involved in the transaction ~~distribute the fair market value of any public assets involved in the~~  
27 ~~transaction as required under 50-4-720~~ deposit the fair market value of any public assets involved in the  
28 transaction into the health trust account pursuant to [section 1].

29 (e) The court issuing the declaratory judgment retains jurisdiction to enforce any direction by the attorney  
30 general for distribution of the fair market value of public assets under this subsection (2).

1 (3) This part may not be construed to make void or voidable or to require any distribution of assets with  
 2 respect to any transaction or series of transactions completed before April 8, 2005, even if that transaction or  
 3 series of transactions is considered as part of a conversion transaction completed on or after April 8, 2005."  
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5 **Section 4.** Section 50-4-715, MCA, is amended to read:

6 **"50-4-715. Criteria for attorney general approval of conversion transaction.** (1) The attorney general  
 7 may not approve a conversion transaction except upon a finding that the conversion transaction is in the public  
 8 interest. If the attorney general or a court pursuant to 50-4-704 determines that the transaction does not involve  
 9 public assets, the attorney general may not disapprove the conversion transaction under the provisions of this  
 10 part.

11 (2) In determining whether a conversion transaction is in the public interest, the attorney general shall  
 12 require that:

13 (a) the fair market value of public assets is preserved and protected;

14 (b) the fair market value of public assets is expended or invested with reasonable and prudent  
 15 consideration of the potential risk of financial loss associated with the conversion transaction;

16 (c) the fair market value of the public assets of a nonprofit health entity will be distributed as provided  
 17 in ~~50-4-720~~ section 1;

18 (d) no part of the public assets of the transferor inure directly or indirectly to an officer, director, or trustee  
 19 of the transferor or to the transferee or an officer, director, trustee, shareholder, or employee of the transferee  
 20 or to any other person that is not a foundation or nonprofit organization approved to receive the assets by the  
 21 attorney general; and

22 (e) an officer, director, or trustee of the nonprofit health entity does not receive any immediate or future  
 23 remuneration as a result of a proposed conversion transaction except for the reasonable value of services  
 24 rendered pursuant to a valid contract between the officer, director, or trustee and the nonprofit health entity.

25 (3) For purposes of the attorney general's review under 35-2-609, 35-2-617, and this section, there is  
 26 a rebuttable presumption that the assets of a nonprofit health entity are public assets."  
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28 **Section 5.** Section 50-4-716, MCA, is amended to read:

29 **"50-4-716. Criteria for distribution of assets.** (1) The public assets distributed ~~to a foundation or~~  
 30 ~~nonprofit organization~~ in accordance with 50-4-715 or ~~50-4-720~~ section 1 must be in the form of cash or a

1 combination of cash and publicly traded securities or bonds or similar assets that are readily convertible to cash  
2 and for which a secondary market exists.

3 (2) The attorney general may determine that a distribution of assets of a nonprofit health entity is not  
4 required if the transaction is determined not to be a conversion transaction and is a transaction in the ordinary  
5 course of business and for fair market value.

6 (3) In determining fair market value, the attorney general may consider all relevant factors that may  
7 include but are not limited to:

8 (a) the value of the nonprofit health entity or an affiliate or the assets of the nonprofit health entity or  
9 affiliate that are determined as if the nonprofit health entity or affiliate had voting stock outstanding and 100% of  
10 its stock was freely transferable and available for purchase without restriction;

11 (b) the value as a going concern;

12 (c) the market value;

13 (d) the investment or earnings value;

14 (e) the net asset value; and

15 (f) a control premium, if any."  
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17 **Section 6.** Section 50-4-718, MCA, is amended to read:

18 **"50-4-718. Deposit of assets.** Any public assets distributed pursuant to 50-4-716 as a result of the  
19 conversion transaction of a nonprofit health entity approved by the commissioner and the attorney general on or  
20 after April 8, 2005, must be distributed as provided in ~~50-4-720~~ [section 1]."  
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22 NEW SECTION. **Section 7. Repealer.** The following section of the Montana Code Annotated is  
23 repealed:

24 50-4-720. Distribution of proceeds -- annual report.  
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26 NEW SECTION. **Section 8. Codification instruction.** [Sections 1 and 2] are intended to be codified  
27 as an integral part of Title 50, chapter 4, part 7, and the provisions of Title 50, chapter 4, part 7, apply to [sections  
28 1 and 2].  
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30 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

