S T A T E O F N E W Y O R K

7018

2009-2010 Regular Sessions

I N A S S E M B L Y

March 18, 2009

Introduced by M. of A. GOTTFRIED, PAULIN, COOK -- Multi-Sponsored by -- M. of A. DINOWITZ, GALEF, LAVINE, MAISEL -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to conversion of medical or dental expense indemnity corporations or health or hospital service corporations into a corporation organized for pecuniary profit

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The insurance law is amended by adding a new section 7318 to read as follows:

S 7318. CONVERSION OF CERTAIN ARTICLE FORTY-THREE CORPORATIONS AND HEALTH MAINTENANCE ORGANIZATIONS. (A) (1) THIS SECTION SHALL APPLY TO ARTICLE FORTY-THREE CORPORATIONS NOT SUBJECT TO SECTION SEVEN THOUSAND THREE HUNDRED SEVENTEEN OF THIS ARTICLE AND HEALTH MAINTENANCE ORGANIZATIONS DOING BUSINESS AS NOT-FOR-PROFIT ORGANIZATIONS.

(2) FOR THE PURPOSES OF THIS SECTION:

(A) "APPLICANT" SHALL MEAN A CORPORATION OR OTHER ENTITY ORGANIZED PURSUANT TO THIS ARTICLE OR A NOT-FOR-PROFIT ORGANIZATION CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW AND WHICH SEEKS TO CONVERT INTO A CORPORATION OR OTHER ENTITY ORGANIZED FOR PECUNIARY PROFIT OR INTO A FOR-PROFIT ORGANIZATION OF ANY KIND.

(B) "CONVERT" OR "CONVERSION" SHALL MEAN ANY TRANSACTION THE EFFECT OF WHICH IS TO CHANGE THE STATUS, ORIENTATION OR OPERATION OF THE APPLICANT FROM A NOT-FOR-PROFIT ORGANIZATION TO A FOR-PROFIT ORGANIZATION, INCLUDING WITHOUT LIMITATION:

(I) ANY SALE, LEASE, TRANSFER, EXCHANGE, OPTION, CONVEYANCE, GIFT, JOINT VENTURE, MERGER, CONSOLIDATION OR DISPOSITION OR SERIES OF DISPOSITIONS OVER A PERIOD UP TO FIVE YEARS; OR

(II) ANY TRANSFER OF CONTROL, RESPONSIBILITY OR GOVERNANCE OR SERIES OF SUCH TRANSFERS OVER A PERIOD OF UP TO FIVE YEARS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(C) "CHARITABLE ASSET" SHALL MEAN THE FAIR MARKET VALUE OF THE APPLICANT OR PORTION THEREOF INVOLVED IN THE CONVERSION.

(3) ANY APPLICANT SHALL, NO LESS THAN ONE HUNDRED FIFTY DAYS BEFORE PRESENTING A PETITION FOR CONVERSION TO THE SUPREME COURT, SUBMIT AN APPLICATION TO THE ATTORNEY GENERAL. THE APPLICANT SHALL PRESENT SUCH A PETITION TO THE SUPREME COURT IN ACCORDANCE WITH THE PROCEDURES IN PARAGRAPHS (A), (B) AND (C) OF SECTION FIVE HUNDRED ELEVEN OF THE NOT-FOR-PROFIT CORPORATION LAW. IF THE CONVERSION INVOLVES A TRANSFER OR DISPOSITION SUBJECT TO SECTIONS FIVE HUNDRED TEN AND FIVE HUNDRED ELEVEN OF THE NOT-FOR-PROFIT CORPORATION LAW, A MERGER OR CONSOLIDATION PURSUANT TO ARTICLE NINE OF THE NOT-FOR-PROFIT CORPORATION LAW, AN AMENDMENT PURSUANT TO ARTICLE EIGHT OF THE NOT-FOR-PROFIT CORPORATION LAW OR A DISSOLUTION PURSUANT TO ARTICLE TEN OF THE NOT-FOR-PROFIT CORPORATION LAW, THE APPLICANT SHALL ALSO COMPLY WITH ALL APPLICABLE REQUIREMENTS OF SUCH LAW. SUCH APPLICATION SHALL INCLUDE, BUT NOT BE LIMITED TO:

(A) THE BOARD OF DIRECTORS RESOLUTION REQUIRED BY SECTION FIVE HUNDRED TEN, EIGHT HUNDRED TWO, NINE HUNDRED TWO, NINE HUNDRED THREE, ONE THOUSAND ONE OR ONE THOUSAND TWO OF THE NOT-FOR-PROFIT CORPORATION LAW OR COMPARABLE ACTION BY THE APPLICANT'S GOVERNING BODY;

(B) THE INFORMATION REQUIRED TO BE INCLUDED IN THE APPLICANT'S PETITION TO THE SUPREME COURT;

(C) A STATEMENT OF THE BENEFITS THE APPLICANT PROVIDES TO THE PUBLIC AND ITS SUBSCRIBERS, ENROLLEES AND BENEFICIARIES;

(D) AN ASSESSMENT OF THE IMPACT THAT THE PROPOSED CONVERSION MAY HAVE ON HEALTH CARE ACCESS, SERVICES AND COVERAGE IN THE AREA SERVED BY THE APPLICANT; AND

(E) ALL OTHER SUCH INFORMATION WHICH THE ATTORNEY GENERAL DEEMS NECESSARY.

THE ATTORNEY GENERAL, AFTER CONSULTING WITH THE COMMISSIONER OF HEALTH AND THE SUPERINTENDENT, MAY ADOPT SUCH REGULATIONS OR ESTABLISH SUCH PROCEDURES NOT INCONSISTENT WITH THIS SUBSECTION AS THE ATTORNEY GENERAL DEEMS NECESSARY OR PROPER TO IMPLEMENT THIS SUBSECTION. NO APPLICATION SHALL BE DEEMED TO BE COMPLETE UNTIL THE ATTORNEY GENERAL HAS ACKNOWLEDGED, IN WRITING, THE RECEIPT OF A COMPLETE APPLICATION.

(4) UPON RECEIPT OF A COMPLETE APPLICATION, THE ATTORNEY GENERAL SHALL PROVIDE NOTICE TO THE PUBLIC, THE COMMISSIONER OF HEALTH AND THE SUPERINTENDENT OF THE FILING OF THE APPLICATION, AND SHALL HAVE NO LESS THAN ONE HUNDRED TWENTY DAYS TO APPROVE, DISAPPROVE OR CONDITIONALLY APPROVE THE APPLICATION, PROVIDED, HOWEVER, THAT THE ATTORNEY GENERAL MAY EXTEND SUCH TIME LIMIT FOR AN ADDITIONAL SIXTY DAYS UPON A SUBSTANTIAL AMENDMENT TO THE APPLICATION OR FOR OTHER GOOD CAUSE. IN UNDERTAKING A REVIEW OF AN APPLICATION, THE ATTORNEY GENERAL SHALL BE AUTHORIZED TO HIRE INDEPENDENT FINANCIAL, HEALTH, LEGAL AND OTHER EXPERTS AND CONSULTANTS, THE REASONABLE AND NECESSARY COSTS OF WHICH SHALL BE THE RESPONSIBILITY OF THE APPLICANT. PROMPTLY FOLLOWING CONSUMMATION OF THE CONVERSION, THE SURVIVING FOR-PROFIT ORGANIZATION SHALL REIMBURSE THE CHARITABLE ENTITY RECEIVING THE CHARITABLE ASSET FOR THE COSTS OF SUCH EXPERTS AND CONSULTANTS, SUCH REIMBURSEMENTS TO BE MADE NOT LATER THAN THREE YEARS AFTER THE SUPREME COURT'S ORDER AUTHORIZING THE APPLICANT'S PETITION TO CONVERT BECOMES FINAL AND UNAPPEALABLE.

(5) WITHIN FORTY-FIVE DAYS AFTER THE ATTORNEY GENERAL DEEMS AN APPLICATION COMPLETE, THE ATTORNEY GENERAL SHALL HOLD ONE OR MORE PUBLIC HEARINGS ON THE APPLICATION WITHIN THE AREA SERVED BY THE APPLICANT. THE NUMBER AND LOCATIONS OF THE HEARINGS SHALL BE SUFFICIENT TO ENSURE ADEQUATE PUBLIC INVOLVEMENT AND COMMENT. IMMEDIATELY AFTER THE ATTORNEY GENERAL DEEMS THE APPLICATION COMPLETE, THE APPLICANT SHALL PROVIDE

NOTICE OF THE PUBLIC HEARINGS THROUGHOUT THE AREA AFFECTED BY THE APPLICATION, BY DISTRIBUTING A FORM OR NOTICE APPROVED BY THE ATTORNEY GENERAL AND INCLUDING SUCH NOTICES IN THE STATE REGISTER, IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT, IN NEWSPAPERS OF GENERAL CIRCULATION AND ELECTRONIC NOTICES POSTED ON THE INTERNET. THE APPLICANT SHALL NOTIFY POLICYHOLDERS, SUBSCRIBERS, ENROLLEES AND PROVIDERS OF HEALTH CARE SERVICES UNDER CONTRACT WITH THE APPLICANT, IN WRITING, OF THE APPLICATION AND HEARINGS. IN THE EVENT THAT THERE IS A MATERIAL AMENDMENT TO THE APPLICATION, ADDITIONAL HEARINGS SHALL BE HELD WITH DUE NOTICE PROVIDED. WITHIN FIVE DAYS OF RECEIPT OF A COMPLETE APPLICATION, THE APPLICATION AND ANY SUPPORTING MATERIAL SUBMITTED TO THE ATTORNEY GENERAL IN CONJUNCTION WITH THE APPLICATION SHALL BE DEEMED TO BE PUBLIC RECORDS AND SHALL BE MADE AVAILABLE TO THE PUBLIC FOR INSPECTION DURING NORMAL BUSINESS HOURS, AT NO COST, AT THE APPLICANT'S MAIN OFFICE WITHIN THE STATE OF NEW YORK, AND AT THE OFFICE OF THE ATTORNEY GENERAL. ALSO WITHIN FIVE DAYS OF THE APPLICANT'S RECEIPT OF THE ATTORNEY GENERAL'S WRITTEN ACKNOWLEDGEMENT OF A RECEIPT OF A COMPLETE APPLICATION, THE APPLICANT SHALL POST ITS APPLICATION AND ALL SUCH SUPPORTING MATERIAL ELECTRONICALLY ON THE INTERNET. THE ATTORNEY GENERAL SHALL CAUSE A TRANSCRIPT TO BE MADE OF EACH PUBLIC HEARING AND SUCH TRANSCRIPT AND ANY SUBMITTED WRITTEN COMMENTS SHALL BE PUBLIC RECORDS. THE COMMISSIONER OF HEALTH AND THE SUPERINTENDENT SHALL PROMPTLY PROVIDE THE ATTORNEY GENERAL WITH THE TRANSCRIPT OF ANY OTHER PUBLIC HEARINGS THEY HOLD OR WRITTEN COMMENTS THEY RECEIVE WITH RESPECT TO THE PROPOSED CONVERSION, AND ANY SUCH TRANSCRIPT AND COMMENTS SHALL BE PUBLIC RECORDS.

(6) THE ATTORNEY GENERAL SHALL NOT APPROVE AN APPLICATION UNLESS HE OR SHE DETERMINES THAT:

(A) THE CHARITABLE ASSET IS BEING TRANSFERRED TO A CHARITABLE ORGANIZATION THAT SATISFIES THE CRITERIA OF THIS SUBSECTION, AND THE CHARITABLE ASSET SHALL BE IRREVOCABLY DEDICATED TO CHARITABLE HEALTH PURPOSES;

(B) THE RECIPIENT OF THE CHARITABLE ASSET IS EITHER AN EXISTING OR NEW TAX-EXEMPT CHARITABLE ORGANIZATION OPERATING PURSUANT TO 26 U.S.C.A. SEC. 501(C)(3) OR 501(C)(4) OF THE FEDERAL INTERNAL REVENUE CODE, AS AMENDED OR ANY COMPARABLE PROVISION OF ANY SUCCESSOR LAW. IN EITHER INSTANCE, WHETHER OR NOT THE CHARITABLE ORGANIZATION IS CLASSIFIED AS A PRIVATE FOUNDATION UNDER SECTION 509 OF THE INTERNAL REVENUE CODE, AS AMENDED OR ANY COMPARABLE PROVISION OF ANY SUCCESSOR LAW, IT SHALL BE SUBJECT TO THE RESTRICTIONS AND LIMITATIONS THAT APPLY TO PRIVATE FOUNDATIONS IN SECTIONS 4941 THROUGH 4945 OF THE INTERNAL REVENUE CODE, AS AMENDED OR ANY COMPARABLE PROVISION OF ANY SUCCESSOR LAW;

(C) THE ASSETS, PROCEEDS OR OTHER VALUE BEING CONVEYED TO SUCH CHARITABLE ORGANIZATION ARE AT LEAST EQUAL TO THE FAIR MARKET VALUE OF THE APPLICANT, OR THE PORTION OF THE APPLICANT INVOLVED IN THE CONVERSION, BASED ON AN INDEPENDENT VALUATION OF THE CHARITABLE ASSET. FAIR MARKET VALUE WILL BE DETERMINED AS OF THE TIME OF CONVERSION AND SHALL TAKE INTO ACCOUNT ALL RELEVANT CONSIDERATIONS, INCLUDING, BUT NOT LIMITED TO, MARKET VALUE, INVESTMENT OR EARNINGS VALUE, NET ASSET VALUE, A CONTROL PREMIUM, THE VALUE OF ANY LICENSES THAT MAY BE TRANSFERRED TO THE SUCCESSOR CORPORATION BY THE APPLICANT AND THE ECONOMIC IMPACT OF THE CONVERSION ON THIS STATE RELATED TO THE TRANSFER OF THE FAIR MARKET VALUE. THE ATTORNEY GENERAL MAY PERMIT ALL OR A PORTION OF THE CONSIDERATION CONVEYED TO THE CHARITABLE ORGANIZATION TO CONSIST OF EQUITY IN THE FOR-PROFIT ORGANIZATION THAT IS THE SURVIVOR OF THE CONVERSION, PROVIDED THAT ANY CONSTRAINTS ON THE VOTING OR TRANSFERABILITY OF SUCH EQUITY SHALL BE CONSIDERED IN DETERMINING WHETHER FAIR MARKET VALUE OF THE CHARITABLE ASSET IS BEING TRANSFERRED TO THE CHARITABLE ORGANIZA-

TION. THE APPLICANT SHALL SUBMIT AN INDEPENDENT VALUATION WITH ITS APPLICATION. THE ATTORNEY GENERAL MAY REQUIRE THE APPLICANT TO SUBMIT ADDITIONAL VALUATIONS OR APPRAISALS. THE ATTORNEY GENERAL SHALL UTILIZE INDEPENDENT FINANCIAL EXPERTS OR CONSULTANTS TO REVIEW THE APPLICANT'S VALUATION OR APPRAISAL AND, IF THE ATTORNEY GENERAL DEEMS APPROPRIATE, TO CONDUCT ONE OR MORE SEPARATE INDEPENDENT VALUATIONS;

(D) THE FAIR MARKET VALUE OF THE APPLICANT HAS NOT AND IS NOT BEING MANIPULATED, OR OTHERWISE ALTERED IN CONNECTION WITH THE PROPOSED CONVERSION, IN ANY MANNER THAT CAUSES THE CHARITABLE ASSET TO DECREASE OR BE UNDERVALUED;

(E) THE CONVERSION WILL NOT RESULT IN INUREMENT TO ANY PRIVATE PERSON OR ENTITY, INCLUDING STOCK OPTIONS, AGREEMENTS NOT TO COMPETE, AND OTHER PRIVATE BENEFITS;

(F) THE APPLICANT USED DUE DILIGENCE, SOUGHT AND CONSIDERED ALTERNATIVE TRANSACTIONS, AND PERFORMED REASONABLE CHARACTER AND COMPETENCE REVIEW, AND OTHERWISE FULFILLED ITS FIDUCIARY OBLIGATIONS OF DUE CARE, LOYALTY AND OBEDIENCE TO THE APPLICANT, IN SELECTING THE SUCCESSOR ENTITY OR PERSONS INVOLVED IN THE CONVERSION, IN NEGOTIATING THE TERMS AND CONDITIONS OF THE CONVERSION, AND IN DECIDING TO CONVERT IN ACCORDANCE WITH THE TERMS OF THE APPLICATION;

(G) THE CHARITABLE ORGANIZATION RECEIVING THE CHARITABLE ASSETS, ITS DIRECTORS, OFFICERS AND STAFF SHALL BE AND WILL REMAIN INDEPENDENT OF ANY CONTROL OR INFLUENCE BY THE SURVIVING FOR-PROFIT ORGANIZATION AND ITS AFFILIATES AND SUCCESSORS. SUCH REQUIREMENT SHALL NOT PREVENT THE CHARITABLE ORGANIZATION FROM VOTING ITS EQUITY SHARES IN THE FOR-PROFIT ORGANIZATION TO ELECT DESIGNEES TO THE BOARD OF DIRECTORS OF THE FOR-PROFIT ORGANIZATION. NO PERSON WHO IS AN OFFICER, DIRECTOR OR STAFF MEMBER OF THE APPLICANT AT THE TIME THE APPLICATION IS SUBMITTED TO THE ATTORNEY GENERAL, OR THEREAFTER SHALL BE AN OFFICER, DIRECTOR OR STAFF MEMBER OF THE CHARITABLE ORGANIZATION RECEIVING THE CHARITABLE ASSET. NO DIRECTOR, OFFICER, AGENT OR EMPLOYEE OF THE APPLICANT OR THE CHARITABLE ORGANIZATION RECEIVING THE CHARITABLE ASSET WILL BENEFIT DIRECTLY OR INDIRECTLY FROM THE CONVERSION OR TRANSACTIONS CONTEMPLATED THEREBY;

(H) THE CHARITABLE ORGANIZATION RECEIVING THE CHARITABLE ASSETS WILL ESTABLISH FORMAL MECHANISMS TO AVOID CONFLICTS OF INTEREST AND TO PROHIBIT GRANTS BENEFITING THE SURVIVING FOR-PROFIT ORGANIZATION, OR ITS AFFILIATES OR SUCCESSORS, DIRECTORS, MANAGEMENT AND STAFF;

(I) THE MISSION OF THE CHARITABLE ORGANIZATION RECEIVING THE CHARITABLE ASSET SHALL INCLUDE:

(I) EXPANSION OF ACCESS TO HEALTH CARE BY EXTENDING HEALTH INSURANCE COVERAGE TO STATE RESIDENTS WHO CANNOT AFFORD TO PURCHASE THEIR OWN COVERAGE OR WHO HAVE COVERAGE THAT IS INADEQUATE TO MEET THEIR NEEDS;

(II) EXPANSION AND ENHANCEMENT OF ACCESS TO HEALTH CARE BY AUGMENTING AND CREATING HEALTH CARE PROGRAMS THAT DELIVER SERVICES TO POPULATIONS THAT ARE UNABLE TO ACCESS HEALTH CARE SOLELY THROUGH EXPANDED HEALTH INSURANCE COVERAGE; AND

(III) AUGMENTATION OF ITS OTHER PROGRAM PRIORITIES BY SUPPORTING PROGRAMS THAT INFORM AND EDUCATE NEW YORKERS ABOUT PUBLIC HEALTH ISSUES AND EMPOWER COMMUNITIES TO ADDRESS THESE ISSUES BY BECOMING MORE EFFECTIVE AT IDENTIFYING AND ARTICULATING HEALTH CARE NEEDS AND IMPLEMENTING SOLUTIONS.

PROGRAMS OR INITIATIVES INSTITUTED BY THE CHARITABLE ORGANIZATION SHALL NOT NEGLECT THE RESIDENTS OR INSTITUTIONS SERVED BY THE APPLICANT PRIOR TO THE CONVERSION;

(J) THE APPLICANT HAS CONSULTED WITH SUBSCRIBERS, INSTITUTIONS, HEALTH CARE PROVIDERS AND COMMUNITY LEADERS IN THE SERVICE AREA AND HAS

RETAINED AN INDEPENDENT CONSULTANT TO MAKE RECOMMENDATIONS FOR APPOINTMENTS TO THE BOARD OF DIRECTORS OF THE CHARITABLE ORGANIZATION RECEIVING THE CHARITABLE ASSET. THE APPLICANT SHALL SUBMIT ITS PROPOSED NOMINEES TO THE BOARD AND TO THE ATTORNEY GENERAL PRIOR TO THEIR APPOINTMENT, AND THE ATTORNEY GENERAL SHALL NOT APPROVE SUCH NOMINEES UNLESS HE OR SHE FINDS THAT THE BOARD IS BROADLY REPRESENTATIVE OF THE COMMUNITY AND INCLUDES REPRESENTATIVES OF CONSUMER AND PUBLIC INTEREST ORGANIZATIONS AND INDIVIDUALS WITH EXPERTISE IN PUBLIC HEALTH, HEALTH CARE DELIVERY AND FINANCING, CONSUMER HEALTH ISSUES, INVESTMENTS AND PHILANTHROPIC ADMINISTRATION. THE ATTORNEY GENERAL SHALL ALSO FIND THAT THE CHARITABLE ORGANIZATION'S STRUCTURE PROVIDES MECHANISMS FOR ONGOING COMMUNITY CONSULTATION AND ENGAGEMENT INCLUDING, BUT NOT LIMITED TO, THE ESTABLISHMENT OF A COMMUNITY ADVISORY BOARD;

(K) THE CHARITABLE ORGANIZATION RECEIVING THE CHARITABLE ASSETS AGREES IN WRITING TO REGISTER AND FILE ANNUAL FINANCIAL REPORTS WITH THE ATTORNEY GENERAL IN COMPLIANCE WITH SECTION 8-1.4 OF THE ESTATES, POWERS, AND TRUSTS LAW AND TO POST ITS REGISTRATION FILING AND ANNUAL REPORTS ELECTRONICALLY ON THE INTERNET; AND

(L) A FOR-PROFIT HEALTH PLAN OR PLANS HAVE A SIGNIFICANT MARKET SHARE IN THE GEOGRAPHIC AREAS SERVED BY THE APPLICANT.

(7) THE SUPERINTENDENT, WITHIN NINETY DAYS AFTER THE DATE THE ATTORNEY GENERAL PROVIDES NOTICE TO HIM OR HER OF THE APPLICATION, SHALL ADVISE THE APPLICANT AND THE ATTORNEY GENERAL IN WRITING WHETHER THE SUPERINTENDENT APPROVES, DISAPPROVES OR CONDITIONALLY APPROVES THE APPLICATION AND THE REASONS FOR HIS OR HER DECISION. IN MAKING HIS OR HER DECISION, THE SUPERINTENDENT SHALL DETERMINE WHETHER THE APPLICATION IS IN THE BEST INTEREST OF POLICYHOLDERS, SUBSCRIBERS AND ENROLLEES AND COMPLIES WITH ALL APPLICABLE PROVISIONS OF THIS CHAPTER AND REGULATIONS THEREUNDER, AND WHETHER FOLLOWING THE CONVERSION, THE FOR-PROFIT ORGANIZATION'S SUCCESSOR WILL HAVE SUFFICIENT CAPITAL AND RESERVES TO MEET ITS OBLIGATIONS TO SUBSCRIBERS, POLICYHOLDERS, ENROLLEES AND HEALTH CARE PROVIDERS.

(8) AN APPLICANT SHALL NOT SUBMIT ITS PETITION TO THE SUPREME COURT UNTIL IT RECEIVES NOTICE FROM THE SUPERINTENDENT AND THE ATTORNEY GENERAL OF THEIR DETERMINATIONS PURSUANT TO THIS SUBSECTION OR UNTIL THE TIME FOR THEIR MAKING SUCH DETERMINATIONS HAS CONCLUDED. THE APPLICANT SHALL ATTACH THE DETERMINATIONS OF THE SUPERINTENDENT TO ITS PETITION, AND SERVE THE SUPERINTENDENT WITH NOTICE OF THE COURT SUBMISSION IN THE SAME MANNER AND WITHIN THE SAME TIME LIMIT THAT NOTICE IS TO BE GIVEN TO THE ATTORNEY GENERAL. WITHIN TWENTY DAYS FOLLOWING NOTIFICATION OF A PETITION TO THE SUPREME COURT BY AN APPLICANT PURSUANT TO AND IN ACCORDANCE WITH THE PROCEDURE SET FORTH IN PARAGRAPH (B) OF SECTION FIVE HUNDRED ELEVEN OF THE NOT-FOR-PROFIT CORPORATION LAW, THE ATTORNEY GENERAL SHALL ADVISE THE COURT IN WRITING AS TO WHETHER THE PETITION SHOULD BE APPROVED, DISAPPROVED OR CONDITIONALLY APPROVED, AND THE REASONS FOR SUCH RECOMMENDATION AND SHALL MAKE EACH RECOMMENDATION AVAILABLE TO THE PUBLIC.

(9) IN THE CASE OF A COURT HEARING ON A PETITION FOR CONVERSION SUBMITTED PURSUANT TO THIS SUBSECTION AND/OR SECTIONS FIVE HUNDRED TEN AND FIVE HUNDRED ELEVEN, ARTICLE EIGHT, NINE AND/OR TEN OF THE NOT-FOR-PROFIT CORPORATION LAW, ANY SUBSCRIBERS, ENROLLEES, POLICYHOLDERS OR BENEFICIARIES OF THE APPLICANT OR THEIR DESIGNEES MAY ALSO APPEAR AT THE HEARING AND SHOW CAUSE WHY THE APPLICATION SHOULD OR SHOULD NOT BE GRANTED.

(10) IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT THAT THE CONSIDERATION AND THE TERMS OF THE CONVERSION ARE FAIR AND REASONABLE TO

THE CHARITABLE ORGANIZATION THAT IS RECEIVING THE CHARITABLE ASSET, THAT THE CHARITABLE PURPOSES OF THE APPLICANT WILL BE PROMOTED, THAT THE CONVERSION IS CONSISTENT WITH THE FIDUCIARY OBLIGATIONS OF THE APPLICANT'S DIRECTORS AND OFFICERS, AND THAT THE TERMS AND CONDITIONS OF THE CONVERSION TRANSACTION AND ANY TRANSACTIONS CONTEMPLATED THEREBY ARE IN THE BEST INTERESTS OF THE RESIDENTS OF THE STATE OF NEW YORK AND THE APPLICANT'S POLICYHOLDERS, SUBSCRIBERS, ENROLLEES, AND BENEFICIARIES, IT MAY AUTHORIZE THE PROPOSED CONVERSION FOR SUCH CONSIDERATION AND UPON SUCH TERMS AS THE COURT MAY PRESCRIBE. IN THE EVENT THE SUPREME COURT MAKES AN AUTHORIZATION PURSUANT TO THIS SUBSECTION, THE CHARITABLE ORGANIZATION CREATED PURSUANT TO THE CONVERSION OR RECEIVING THE CHARITABLE ASSET SHALL BE SUBJECT TO THE APPLICABLE PROVISIONS OF THE COURT ORDER AUTHORIZING THE CONVERSION.

(B) IN THE EVENT THAT THE PROVISIONS OF THIS SECTION CONFLICT WITH THE PROVISIONS OF THE NOT-FOR-PROFIT CORPORATION LAW, THEN THE PROVISIONS OF THIS SUBSECTION SHALL PREVAIL.

S 2. This act shall take effect immediately.