

Fifty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1347

Introduced by

Representatives Klein, Keiser

Senator Grindberg

1 A BILL for an Act to create and enact four new sections to chapter 10-33 of the North Dakota  
2 Century Code, relating to proposed agreements and transactions by nonprofit hospitals; and to  
3 amend and reenact subsection 3 of section 10-33-85, subsection 1 of section 10-33-88, and  
4 subsection 3 of section 10-33-94 of the North Dakota Century Code, relating to proposed  
5 agreements and transactions by nonprofit hospitals.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Subsection 3 of section 10-33-85 of the 1997  
8 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9 3. If applicable, a corporation shall comply with section 10-33-122 and section 4 of  
10 this Act before ~~it~~ the corporation may merge ~~or~~, consolidate ~~or~~, sell, lease,  
11 transfer, or dispose of all or substantially all of ~~its~~ the corporation's assets.

12 **SECTION 2. AMENDMENT.** Subsection 1 of section 10-33-88 of the 1997  
13 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14 1. Upon receiving the approval required by section 10-33-87 and after compliance  
15 with section 10-33-122 and section 4 of this Act, if applicable, articles of merger or  
16 consolidation must be prepared that contain:  
17 a. The plan of merger or consolidation;  
18 b. A statement that the plan has been approved by each corporation under this  
19 chapter; and  
20 c. A statement that the notice ~~of~~ to the attorney general required by section  
21 10-33-122 or section 4 of this Act has been given and the waiting period has  
22 expired or has been waived by the attorney general or a statement that  
23 section 10-33-122 or section 4 of this Act is not applicable.

1           **SECTION 3. AMENDMENT.** Subsection 3 of section 10-33-94 of the 1997  
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3           3. If applicable, a corporation shall comply with section 10-33-122 and section 4 of  
4 this Act before selling, leasing, transferring, or disposing of all or substantially all of  
5 its the corporation's assets under this section.

6           **SECTION 4.** A new section to chapter 10-33 of the North Dakota Century Code is  
7 created and enacted as follows:

8           **Transaction by a corporation doing business as a hospital - Notice to attorney**  
9 **general - Waiting period.**

10          1. A corporation doing business as a hospital shall notify the attorney general in  
11 writing before closing an agreement or a transaction that will:

12          a. Sell, lease, transfer, exchange, option, convey, mortgage, create a security  
13 interest in, or otherwise dispose of to a for-profit organization fifty percent or  
14 more of the assets or operations of the corporation doing business as a  
15 hospital or fifty percent or more of the assets or operations of a related  
16 organization;

17          b. Sell, lease, transfer, exchange, option, convey, mortgage, create a security  
18 interest in, or otherwise dispose of any of the assets or operations of the  
19 corporation doing business as a hospital or any of the assets or operations of  
20 a related organization if the transaction or agreement will result in any  
21 for-profit organization owning or controlling fifty percent or more of the assets  
22 or operations of the corporation doing business as a hospital or fifty percent  
23 or more of the assets or operations of a related organization; or

24          c. Result in any for-profit organization having control of, governance of, or the  
25 power to direct management and policies of the corporation doing business  
26 as a hospital or a related organization.

27          2. The notice must include:

28          a. The names and addresses of the corporation doing business as a hospital,  
29 the for-profit organization, and all other parties to the proposed agreement or  
30 transaction;

- 1           **b.** The terms of the proposed agreement or transaction, including the proposed  
2           sale price;
- 3           **c.** A copy of the proposed agreement or transaction; and
- 4           **d.** Information regarding whether a financial or economic analysis by an  
5           independent consultant has been prepared concerning the degree to which  
6           the proposed agreement or transaction will serve the public interest, or  
7           concerning the fair market value of the corporation doing business as a  
8           hospital.
- 9           **3.** A corporation doing business as a hospital may neither transfer nor convey any  
10           assets or control through an agreement or transaction described in this section  
11           until ninety days after the corporation gives the attorney general notice required  
12           under this section, unless the attorney general waives all or part of the waiting  
13           period. Before the end of the waiting period, the attorney general may extend the  
14           period up to sixty additional days by providing written notice of the extension to the  
15           corporation. The waiting period may be extended for one or more additional  
16           sixty-day periods upon agreement between the corporation and the attorney  
17           general, or pursuant to a court order.
- 18           **4.** The notice requirements of this section do not apply to a proposed agreement or  
19           transaction between related organizations serving the same or similar charitable  
20           purposes and are in addition to any notice requirements that may apply under  
21           section 10-33-122.

22           **SECTION 5.** A new section to chapter 10-33 of the North Dakota Century Code is  
23 created and enacted as follows:

24           **Transaction by a corporation doing business as a hospital - Attorney general's**  
25 **powers and duties - Experts.**

- 26           **1.** Upon receipt of a notice under section 4 of this Act, the attorney general may  
27           review and investigate the proposed agreement or transaction and may require the  
28           corporation doing business as a hospital and the for-profit organization to provide  
29           to the attorney general any additional information relevant to the review or  
30           investigation of the proposed agreement or transaction.

- 1           2. Upon receipt of a notice under section 4 of this Act, the attorney general may  
2           review the proposed agreement or transaction to determine whether  
3           consummation of the proposed agreement or transaction by the corporation doing  
4           business as a hospital is consistent with the fiduciary obligations of the corporation  
5           doing business as a hospital and the obligations of the officers and directors of the  
6           corporation doing business as a hospital and is in accordance with law. The  
7           attorney general shall consider the following factors in reviewing and evaluating a  
8           proposed agreement or transaction:
- 9           a. Whether appropriate steps were taken by the corporation doing business as a  
10           hospital to safeguard restricted assets transferred to the for-profit  
11           organization;
- 12           b. Whether appropriate steps were taken by the corporation doing business as a  
13           hospital to ensure that any proceeds of the proposed agreement or  
14           transaction are used for charitable purposes consistent with restrictions  
15           placed on assets of and with the charitable purposes of the corporation doing  
16           business as a hospital;
- 17           c. Whether the terms and conditions of the proposed agreement or transaction  
18           are fair and reasonable to the corporation doing business as a hospital,  
19           including whether the corporation doing business as a hospital will receive fair  
20           market value for the assets of the corporation;
- 21           d. Whether any conflict of interest or breach of fiduciary duty, as determined by  
22           the attorney general, exists and was disclosed, including any conflict of  
23           interest or breach of fiduciary duty related to directors and officers of,  
24           executives of, and experts retained by the corporation doing business as a  
25           hospital, the for-profit organization, and any other party to the agreement or  
26           transaction; and
- 27           e. Whether the agreement or transaction will result in inurement, pecuniary gain,  
28           or excess benefit to any person associated with the corporation doing  
29           business as a hospital.
- 30           3. For the purpose of reviewing and evaluating the factors identified in subsection 2,  
31           the attorney general may retain experts if necessary and reasonable and shall

1           obtain public comment regarding the proposed agreement or transaction. If the  
2           attorney general intends to seek payment from the corporation doing business as a  
3           hospital for the cost of any expert retained under this subsection, at least five days  
4           before retaining that expert, the attorney general shall notify the corporation doing  
5           business as a hospital of the expert cost projected to be incurred. A corporation  
6           doing business as a hospital which receives notice under this subsection shall pay  
7           the reasonable cost of any retained expert. If the corporation doing business as a  
8           hospital objects to paying the costs of an expert, the corporation may seek a  
9           district court order limiting the corporation's liability for the costs. In determining  
10           whether to issue an order, the court shall consider whether the expert is necessary  
11           and reasonable and the cost of the expert relative to the value of the proposed  
12           agreement or transaction.

13           4. Section 44-04-18.4 applies to any information provided to the attorney general  
14           under this Act.

15           **SECTION 6.** A new section to chapter 10-33 of the North Dakota Century Code is  
16 created and enacted as follows:

17           **Transaction by a corporation doing business as a hospital - Notice of decision -**  
18 **Public meeting - Meeting notice.** Before the attorney general approves, denies, or takes any  
19 other action on a proposed agreement or transaction under section 4 or 5 of this Act, the  
20 attorney general shall notify, in writing, the corporation doing business as a hospital of the  
21 attorney general's decision. Before issuing a written decision under this section, the attorney  
22 general shall conduct at least one public hearing, one of which must be held in the county  
23 where the corporation doing business as a hospital is located. At a public hearing under this  
24 section, the attorney general shall request and receive comments from any interested person  
25 regarding the proposed agreement or transaction. At least fourteen days before a public  
26 hearing under this section, the attorney general shall provide notice of the meeting by  
27 publication in the official newspaper of the city in which the corporation doing business as a  
28 hospital is located. The attorney general shall also provide notice of the meeting to the  
29 governing body of the county in which the corporation doing business as a hospital is located, if  
30 applicable, and to the governing body of the city in which the corporation doing business as a  
31 hospital is located, if applicable.

1           **SECTION 7.** A new section to chapter 10-33 of the North Dakota Century Code is  
2 created and enacted as follows:

3           **Transaction by a corporation doing business as a hospital - Attorney general**

4 **decision.** The attorney general may bring proceedings to secure compliance with section 4 of  
5 this Act. If the attorney general determines consummation of the proposed transaction or  
6 agreement is not consistent with the fiduciary obligations of the corporation doing business as a  
7 hospital and the corporation's officers and directors or is not in accordance with law, the  
8 attorney general may bring proceedings to enjoin the consummation of the proposed  
9 transaction or agreement or to secure any other relief available under the law. Failure of the  
10 attorney general to take action on a proposed agreement or transaction described in section 4  
11 of this Act does not constitute approval of the transaction and does not prevent the attorney  
12 general from taking other action.