

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

HOUSE BILL NO. 1347
(Representatives Klein, Keiser)
(Senator Grindberg)

AN ACT to create and enact four new sections to chapter 10-33 of the North Dakota Century Code, relating to proposed agreements and transactions by nonprofit hospitals; and to amend and reenact subsection 3 of section 10-33-85, subsection 1 of section 10-33-88, and subsection 3 of section 10-33-94 of the North Dakota Century Code, relating to proposed agreements and transactions by nonprofit hospitals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

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

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

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

1. A corporation doing business as a hospital shall notify the attorney general in writing before closing an agreement or a transaction that will:
 - a. Sell, lease, transfer, exchange, option, convey, mortgage, create a security interest in, or otherwise dispose of to a for-profit organization fifty percent or more of the assets

or operations of the corporation doing business as a hospital or fifty percent or more of the assets or operations of a related organization;

- b. Sell, lease, transfer, exchange, option, convey, mortgage, create a security interest in, or otherwise dispose of any of the assets or operations of the corporation doing business as a hospital or any of the assets or operations of a related organization if the transaction or agreement will result in any for-profit organization owning or controlling fifty percent or more of the assets or operations of the corporation doing business as a hospital or fifty percent or more of the assets or operations of a related organization; or
 - c. Result in any for-profit organization having control of, governance of, or the power to direct management and policies of the corporation doing business as a hospital or a related organization.
2. The notice must include:
- a. The names and addresses of the corporation doing business as a hospital, the for-profit organization, and all other parties to the proposed agreement or transaction;
 - b. The terms of the proposed agreement or transaction, including the proposed sale price;
 - c. A copy of the proposed agreement or transaction; and
 - d. Information regarding whether a financial or economic analysis by an independent consultant has been prepared concerning the degree to which the proposed agreement or transaction will serve the public interest, or concerning the fair market value of the corporation doing business as a hospital.
3. A corporation doing business as a hospital may neither transfer nor convey any assets or control through an agreement or transaction described in this section until ninety days after the corporation gives the attorney general notice required under this section, unless the attorney general waives all or part of the waiting period. Before the end of the waiting period, the attorney general may extend the period up to sixty additional days by providing written notice of the extension to the corporation. The waiting period may be extended for one or more additional sixty-day periods upon agreement between the corporation and the attorney general, or pursuant to a court order.
4. The notice requirements of this section do not apply to a proposed agreement or transaction between related organizations serving the same or similar charitable purposes and are in addition to any notice requirements that may apply under section 10-33-122.

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

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

1. Upon receipt of a notice under section 4 of this Act, the attorney general may review and investigate the proposed agreement or transaction and may require the corporation doing business as a hospital and the for-profit organization to provide to the attorney general any additional information relevant to the review or investigation of the proposed agreement or transaction.
2. Upon receipt of a notice under section 4 of this Act, the attorney general may review the proposed agreement or transaction to determine whether consummation of the proposed agreement or transaction by the corporation doing business as a hospital is consistent with the fiduciary obligations of the corporation doing business as a hospital and the obligations of the officers and directors of the corporation doing business as a hospital and is in

accordance with law. The attorney general shall consider the following factors in reviewing and evaluating a proposed agreement or transaction:

- a. Whether appropriate steps were taken by the corporation doing business as a hospital to safeguard restricted assets transferred to the for-profit organization;
 - b. Whether appropriate steps were taken by the corporation doing business as a hospital to ensure that any proceeds of the proposed agreement or transaction are used for charitable purposes consistent with restrictions placed on assets of and with the charitable purposes of the corporation doing business as a hospital;
 - c. Whether the terms and conditions of the proposed agreement or transaction are fair and reasonable to the corporation doing business as a hospital, including whether the corporation doing business as a hospital will receive fair market value for the assets of the corporation;
 - d. Whether any conflict of interest or breach of fiduciary duty, as determined by the attorney general, exists and was disclosed, including any conflict of interest or breach of fiduciary duty related to directors and officers of, executives of, and experts retained by the corporation doing business as a hospital, the for-profit organization, and any other party to the agreement or transaction; and
 - e. Whether the agreement or transaction will result in inurement, pecuniary gain, or excess benefit to any person associated with the corporation doing business as a hospital.
3. For the purpose of reviewing and evaluating the factors identified in subsection 2, the attorney general may retain experts if necessary and reasonable and shall obtain public comment regarding the proposed agreement or transaction. If the attorney general intends to seek payment from the corporation doing business as a hospital for the cost of any expert retained under this subsection, at least five days before retaining that expert, the attorney general shall notify the corporation doing business as a hospital of the expert cost projected to be incurred. A corporation doing business as a hospital which receives notice under this subsection shall pay the reasonable cost of any retained expert. If the corporation doing business as a hospital objects to paying the costs of an expert, the corporation may seek a district court order limiting the corporation's liability for the costs. In determining whether to issue an order, the court shall consider whether the expert is necessary and reasonable and the cost of the expert relative to the value of the proposed agreement or transaction.
4. Section 44-04-18.4 applies to any information provided to the attorney general under this Act.

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

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

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

Transaction by a corporation doing business as a hospital - Attorney general decision.

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1347.

House Vote: Yeas 89 Nays 0 Absent 9

Senate Vote: Yeas 49 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State