

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.