

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 523

89TH GENERAL ASSEMBLY

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Reported from the Committee on Corrections and General Laws, March 12, 1998, with recommendation that the Senate Committee Substitute do pass.

S1945.06C

TERRY L. SPIELER, Secretary.

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## AN ACT

To amend chapter 355, RSMo, by adding thereto thirteen new sections relating to transfers of assets by nonprofit hospitals, with an emergency clause.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 355, RSMo, is amended by adding thereto thirteen new sections, to be known as sections 355.900, 355.902, 355.903, 355.906, 355.909, 355.912, 355.915, 355.918, 355.921, 355.924, 355.927, 355.929 and 355.930, to read as follows:

**355.900. 1. Sections 355.900 to 355.930 shall be known and may be cited as the "Nonprofit Hospital Sale Act".**

**2. For the purposes of sections 355.900 to 355.930, the following terms shall have the following meanings:**

**(1) "Acquisition", any purchase by an entity of an ownership or controlling interest in a nonprofit hospital which results in a change of ownership or control of twenty percent or greater or which results in the acquiring entity holding a fifty percent or greater interest in the ownership or control of a hospital. "Acquisition" shall not include a change in governance structure or a merger of nonprofit hospital assets;**

**(2) "Change in governance structure", the change or alteration of governance structure of a nonprofit corporation whereby the right to select directors or trustees comes under the control of another nonprofit corporation, but the corporate entity of the former remains in existence;**

**(3) "Merger of nonprofit hospital assets", the transfer of hospital assets to a nonprofit corporation formed through the merger of nonprofit corporations pursuant to sections 355.616 to 355.641;**

**(4) "Department", the Missouri department of health;**

(5) "Entity", any individual, corporation, partnership, limited partnership, limited liability company, trust, association or any other organization;

(6) "Hospital", the definition found in section 197.020, RSMo.

**355.902. 1. Two or more nonprofit hospitals shall not engage in change in governance structure or a merger of nonprofit hospital assets without notifying the attorney general. A change in governance structure or merger of nonprofit hospital assets shall be reviewed in accordance with chapter 355, RSMo. Such notification for a change in governance structure or merger of nonprofit hospital assets shall include information as determined by the attorney general so that he or she can determine whether the mission of the merged entity is consistent with the mission of the merging entities.**

**2. The attorney general's determination of whether a proposed change in governance structure or merger of nonprofit assets will be approved, conditionally approved, or disapproved shall be made based upon whether the proposal ensures that the accumulated nonprofit hospital assets in a locality at the time of the change in governance structure or merger will continue to be used to provide residents of that locality with health care services or other services in keeping with the charitable mission of the original nonprofit hospitals. For purposes of this section, a "locality" shall be the city and county in which the nonprofit hospital assets are located, except that any county with a population over six hundred thousand shall be considered as one locality, including all cities in such county, and a city not within a county shall be considered together with the adjoining county as one locality.**

**3. If a nonprofit entity closes or cuts more than one-half of the services of a nonprofit hospital in a particular locality, the nonprofit entity shall file with the attorney general a plan which shall include an assessment of current and projected health care needs and access in the locality as defined in subsection 2 of this section. The development of the assessment shall include opportunity for residents of the locality to review and comment upon data and conclusions through public hearings or other comparable means. The attorney general shall use the assessment in making the determination pursuant to subsection 2 of this section or subdivision (8) of subsection 3 of section 355.915 as to the continued use of accumulated hospital assets at the time of the transaction to meet current and projected health care needs in keeping with the mission of the hospital to residents of the locality, especially low-income residents.**

**355.903. 1. No entity shall engage in the acquisition of a hospital owned by a nonprofit corporation without first having made application to the attorney general and, if applicable, received approval from the attorney general pursuant to sections 355.900 to 355.930.**

**2. The application consisting of the documents relevant to the proposed transaction shall be submitted to the department and the attorney general and shall include the name of the seller, the name of the purchaser or other parties to an acquisition, the terms of the proposed agreement, the sale price, the latest draft of the acquisition agreement, a financial and economic analysis and, if requested by the attorney general, a report from an independent expert or consultant on the effect of the acquisition under the criteria set forth in section 355.912, assistance in determining the fair market value of the assets and all other documents or information requested by the attorney general. An application shall not be considered complete until all of the required information, including such additional information relating to the criteria set forth in sections 355.915 to 355.918 as may be required by the attorney general, is received by the department and the attorney general.**

**3. The applications and all related documents shall be considered public records for purposes of chapter 610, RSMo, except for those materials marked confidential due to proprietary or trade secret information. The exemption of such material may be made nonexempt by the attorney general if a determination is made that the public's interests in disclosure outweighs the applicant's interests in confidentiality of the materials. Such determination may be made only after the applicant receives at least fifteen days notice of the intent to disclose within which time applicant may seek appropriate remedies.**

**355.906. 1. Within five working days after receipt of an application under section 355.903, the department shall publish notice of the application in a newspaper of general circulation in the city or county where the hospital is located and shall notify by first-class United States mail any person who has requested notice of the filing of such applications. The notice shall state that an application has been received, state the names of the parties to the agreement, describe the contents of the application, and state the date by which a person may submit written comments about the application to the attorney general.**

**2. Within fifteen days after receiving a completed application, the attorney general shall determine whether to review the application and shall so notify the department and the applicant of that determination.**

**3. If the attorney general determines to review an application, the department shall, within thirty days of that determination, review the application in accordance with the criteria in section 355.902 or 355.918 and forward its review to the attorney general with a recommendation as to whether the application should be approved.**

**4. If the attorney general determines to review the application, the attorney general shall, within seventy-five days after that determination, review the application in accordance with the standards set forth in section 355.902 or 355.912 and approve,**

**conditionally approve or disapprove the acquisition.**

**5. If the attorney general determines to review an application but fails to approve, conditionally approve or disapprove the application within the time allotted, the application shall be deemed approved.**

**355.909. 1. The attorney general, if he or she determines to review the acquisition, shall during the course of review under sections 355.900 to 355.930 hold at least one public hearing in which any person may file written comments and exhibits or appear and make a statement. Such hearing shall be held not later than thirty days after the attorney general receives the department's report and recommendation and shall be held on not less than ten working days' notice.**

**2. The attorney general may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for the purposes of the hearing or, for purposes of the attorney general's review under section 355.912, at any time prior to making a decision on the application.**

**355.912. 1. If the attorney general determines to review the application for an acquisition, he or she shall approve the application unless he or she finds that the acquisition is not in the public interest.**

**2. An acquisition is in the public interest if appropriate steps have been taken to safeguard the value of charitable assets and ensure that any proceeds of the transaction are used for appropriate charitable health care purposes as provided in this section.**

**3. In determining whether the acquisition meets such criteria under sections 355.900 to 355.930, the attorney general shall consider, among other factors, the following:**

**(1) Whether the acquisition is permitted under this chapter and other laws of Missouri governing nonprofit entities, trusts or charities;**

**(2) Whether the nonprofit hospital exercised its fiduciary responsibility in deciding to sell, selecting the purchaser, and negotiating the terms and conditions of the sale;**

**(3) The procedures used by the seller in making its decision, including whether appropriate expert assistance was used;**

**(4) Whether the conflict of interest prohibitions of section 355.924 have been followed;**

**(5) Whether the seller will receive reasonably fair value for its assets and the impact of any right of first refusal if included in the sale agreement on the fair value of such assets;**

**(6) Whether charitable funds are placed at unreasonable risk, if the acquisition**

**is financed in part by the seller;**

**(7) Whether any management contract under the acquisition is for reasonable fair value; and**

**(8) Whether the sale proceeds will be used for appropriate charitable health care purposes consistent with the seller's original purpose or for the support and promotion of health care in the affected community and whether the proceeds will be controlled as charitable funds independently of the purchaser or parties to the acquisition.**

**355.915. 1. After reviewing an application pursuant to section 355.912, the attorney general may approve the acquisition as described in the application, may disapprove the acquisition or may approve the acquisition upon one or more conditions altering or supplementing the acquisition.**

**2. The attorney general may, as a condition of approval, require such additional commitments, promises or undertakings by any of the parties to the acquisition as the attorney general believes are reasonably necessary to meet the criteria set forth in sections 355.902 or 355.912.**

**3. The attorney general shall not make his or her decision subject to any condition or commitment not reasonably related to the criteria set forth in sections 355.902 or 355.912.**

**355.918. In performing its review of an acquisition, a change in governance structure or merger under section 355.902, and in making a recommendation to the attorney general, the department shall consider:**

**(1) Whether sufficient safeguards are included to assure the affected community continued access to health care. Activities and funding provided by the seller or its successor nonprofit corporation or charitable foundation to provide such health care shall be considered in evaluating compliance with this commitment; and**

**(2) If health care providers will be offered the opportunity to invest or own an interest in the purchaser or an entity related to the purchaser, whether they are subject to federal statutory or regulatory restrictions on conflict of interest in patient referral.**

**355.921. 1. Upon completion of the acquisition, a change in governance structure, or a merger of nonprofit hospital assets, if the attorney general receives information from the department or others indicating that the acquiring person is not fulfilling the commitment to the affected community under sections 355.900 to 355.930, or is not fulfilling a commitment made or condition required by the attorney general pursuant to section 355.915, or that an application under section 355.903 contained a material misrepresentation of fact, or that the conflict of interest limits under section 355.924 have been violated, the attorney general may:**

**(1) Initiate proceedings to revoke the license issued to the purchaser;**

**(2) File an action in the circuit court of the county containing the seat of state government seeking any relief that may be available at law or in equity, including but not limited to damages or specific performance of the commitment or condition that has not been fulfilled.**

**2. The attorney general shall have the authority to enforce any commitment, promise or undertaking made as part of the acquisition, a change in governance structure or a merger of nonprofit hospital assets which inures to the public interest.**

**355.924. 1. No entity may engage in the acquisition of a hospital owned by a nonprofit corporation if the person or any director, officer or spouse thereof is also a director, officer, or spouse thereof, of the nonprofit hospital corporation. This restriction shall apply to all positions held within six months preceding the application for acquisition.**

**2. No nonprofit organization receiving the assets or other proceeds of the nonprofit hospital corporation under an acquisition agreement may have a director, officer or spouse thereof who is also a director, officer, or spouse thereof of the person acquiring the nonprofit hospital under sections 355.900 to 355.930. This restriction shall apply to all positions held within six months preceding the application for acquisition and three years after the acquisition.**

**3. There is no restriction on the relationship between the officers of a nonprofit hospital corporation and the officers of any nonprofit foundation or other nonprofit organization receiving the assets of the nonprofit hospital corporation.**

**355.927. No license to operate a hospital may be issued or renewed by the department pursuant to this chapter or any state statute, and a license which has been issued shall be subject to revocation or suspension, if:**

**(1) There is an acquisition of a hospital without the required application under section 355.903 or without the approval of the attorney general, if the attorney general determines to review the application under sections 355.900 to 355.930;**

**(2) There is an acquisition of a hospital and the attorney general disapproves the acquisition and there is a judicial determination that the acquisition is not in the public interest;**

**(3) The entity acquiring the hospital is not fulfilling its commitment to the affected community under section 355.902 or 355.918 or is not fulfilling a commitment made or a condition required by the attorney general pursuant to section 355.912;**

**(4) The application submitted pursuant to section 355.903 contained a material misrepresentation of fact; or**

**(5) The purchaser in the acquisition is in violation of the conflict of interest safeguards under section 355.924.**

**355.929. 1. If the attorney general approves or conditionally approves an**

**application pursuant to section 355.915, any person with a legal interest in the hospital being divested or in another hospital that has contracted with the hospital being divested for the provision of essential health services may bring an action for judicial review of that decision.**

**2. If the attorney general disapproves or conditionally approves an application pursuant to section 355.915, the applicant may bring an action for judicial review of the decision.**

**3. The sole proper venue for any action brought pursuant to this section shall be the circuit court of the county containing the seat of state government.**

**4. In any action brought pursuant to this section, the court shall affirm the decision of the attorney general unless the petitioner shows that the decision was an abuse of discretion.**

**5. There shall be no action to review a decision of the attorney general not to review an application pursuant to section 355.906.**

**355.930. 1. The provisions of sections 355.900 to 355.930 supplant any other provision of chapter 355, RSMo, that might apply to approval by the attorney general of an acquisition, a change in governance structure, or a merger of nonprofit hospital assets, nor shall it be construed to create any barrier to the acquisition, merger or change in governance unless it is to promote the purposes which are explicitly stated in the hospitals' nonprofit charter. The provisions of sections 355.900 to 355.930 shall not apply to any covered transaction, change in governance structure, or merger of nonprofit hospital assets for which notice was provided to the attorney general pursuant to section 355.656 on or before June 1, 1998.**

**2. No provision of sections 355.900 to 355.930 shall limit the common law or other statutory authority of the attorney general.**

Section B. Because of the possible loss of nonprofit hospital services in this state, this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval.

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