

SECOND REGULAR SESSION

SENATE BILL NO. 523

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SIMS.

Pre-filed December 1, 1997, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S1945.011

AN ACT

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

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

Section A. Chapter 355, RSMo, is amended by adding thereto eleven new sections, to be known as sections 355.900, 355.903, 355.906, 355.909, 355.912, 355.915, 355.918, 355.921, 355.924, 355.927 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 acquisition by a person or persons of an ownership or controlling interest in a hospital, whether by purchase, merger, lease, gift, or otherwise, which results in a change of ownership or control of twenty percent or greater or which results in the acquiring person or persons holding a fifty percent or greater interest in the ownership or control of a hospital. "Acquisition" shall also include the closing, or cut of more than fifty percent of the services, of a nonprofit hospital in a community where the entity owning the nonprofit hospital is located more than sixty miles from said community;

(2) "Department", the Missouri department of health;

(3) "Hospital", the definition found in section 197.020, RSMo;

(4) "Person", any individual, corporation, partnership, limited partnership, limited liability company, trust, association or any other entity.

355.903. 1. No person 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. For the purposes of sections 355.900 to 355.930, approval of the attorney general shall not be required for the acquisition of a hospital in the following situations:

- (1) The dissolution of a hospital district approved under chapter 206, RSMo; or
- (2) The merger of hospital districts approved under chapter 206, RSMo;

Any person not required to obtain the approval of the attorney general because of the size of the acquisition shall give the attorney general at least sixty days' notice of the impending acquisition. The attorney general may take any necessary and appropriate action consistent with his or her general duties of oversight with regard to the conduct of charities. The notice shall briefly describe the impending acquisition, including any change in ownership of tangible or intangible assets.

3. 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, a copy of the acquisition agreement, a financial and economic analysis and report from an independent expert or consultant on the effect of the acquisition under the criteria set forth in section 355.915, and all other documents or information requested by the department or the attorney general. The applications and all related documents shall be considered public records for purposes of chapter 610, RSMo.

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 county or counties 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 department.

2. Within thirty days after receiving an application, the department shall review the application in accordance with the standards set forth in sections 355.900 to 355.930 and forward to the attorney general a recommendation and all public comments received.

3. Within thirty days after receiving an application, the attorney general shall determine whether to review the application in accordance with section 355.915 and shall so notify the applicant. If the attorney general determines to review the

application, the attorney general shall, within sixty days after receiving the department's recommendation, review the application in accordance with the standards set forth in section 355.915 and approve or disapprove the acquisition. Failure to review the application shall not prevent the attorney general from filing an action under this chapter or any other law.

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. 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 and at any time prior to making a decision on the application.

2. The hearing shall be held not later than thirty days after the attorney general receives the department's recommendations. The hearing shall be held upon ten working days' notice, not including days the application is deemed to be incomplete.

355.912. 1. If the attorney general determines to review the application, he or she shall review the application in accordance with the standards enumerated in section 355.915. Within sixty days after receipt of the department's recommendation, the attorney general shall approve or disapprove the acquisition.

2. If the attorney general does not act within sixty days after receipt of the department's recommendation, the application shall be deemed approved.

3. The attorney general shall not make his or her decision subject to any condition not reasonably related to criteria enumerated in section 355.915.

4. If the attorney general approves or disapproves an application, the applicant, or any person who has submitted written comments under section 355.909 and has a legal interest in the hospital being acquired or in another hospital that has contracted with the acquired hospital for the provision of essential health services, may bring an action for judicial review of the decision. The circuit court shall affirm the attorney general's decision unless the petitioner shows the disapproval was an abuse of discretion. The venue for such an action shall be in the circuit court of the county containing the seat of state government.

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

355.915. If the attorney general determines to review the application, he or she shall not approve the application unless he or she finds that the acquisition is in the public interest. 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. In determining whether the acquisition meets such criteria under sections 355.900 to 355.930, the attorney general shall consider 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 due diligence 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. The attorney general may employ, at the seller's expense, reasonably necessary expert assistance in making this determination;

(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;

(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; and

(9) Whether a right of first refusal to repurchase the assets has been retained by a successor nonprofit corporation or foundation if the hospital is subsequently sold to, acquired by, or merged with another entity.

355.918. 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 affordable care;

(2) Whether the purchaser and parties to the acquisition have made a commitment to provide health care to the disadvantaged, the uninsured, and the underinsured and to provide benefits to the affected community to promote improved health care. Activities and funding provided by the seller or its successor nonprofit corporation or foundation to provide such health care may be considered in evaluating compliance with this commitment; and

(3) 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 procedures or safeguards are in place to avoid conflict of interest in patient referral and the nature of such procedures or safeguards.

355.921. 1. Upon completion of the acquisition, 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 section 355.918, or that the conflict of interest limits under section 355.924 have been violated, the attorney general may initiate proceedings to revoke the license issued to the purchaser.

2. The attorney general shall have the authority to ensure compliance with commitments which inure to the public interest.

355.924. 1. No person may acquire 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 corporation under section 355.900 to 355.930. This restriction shall apply to all positions held within six months preceding the application for acquisition and to any time 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 other 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 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 declaratory judgment or other judicial determination that the acquisition is not in the public interest; or

(3) The hospital is not fulfilling its commitment under section 355.918 or is not following the conflict of interest safeguards required under section 355.918 or 355.924.

355.930. 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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