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A B I L L

To amend section 109.99 and to enact sections 109.34
and 109.35 of the Revised Code to require that the
Attorney General review transfers of assets by
certain nonprofit health care entities to
for-profit entities.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 109.99 be amended and sections 109.34
and 109.35 of the Revised Code be enacted to read as follows:

Sec. 109.34. (A)(1) This section and section 109.35 of the 9
Revised Code apply to a transaction that involves a transfer of 10
ownership or control of assets of a nonprofit health care entity, 11
whether by purchase, merger, consolidation, lease, gift, joint 12
venture, or other transfer, equal to either of the following: 13
(a) Twenty per cent or more of the assets of the entity; 14
(b) Any assets of the entity, if the entity is unable to 15
fulfill its stated or actual purpose without the assets. 16

<u>In determining whether the amount transferred equals twenty per cent or more of the assets of an entity, all transfers described in this section that occur in the twenty-four month period prior to the date notice is submitted in accordance with this section shall be considered.</u>	17
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<u>A transaction described in this section or section 109.35 of the Revised Code includes any binding obligation in furtherance of the transaction.</u>	22
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<u>(2) This section and section 109.35 of the Revised Code do not apply to either of the following:</u>	25
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<u>(a) Transactions involving only nonprofit health care entities and persons exempt from taxation under section 501(a) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 501, as amended;</u>	27
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<u>(b) a nonprofit health care entity that, prior to the effective date of this section, entered into a consent decree with the attorney general that requires distribution of the charitable assets of the entity to an appropriate health-related charity. This exemption does not limit the authority of the attorney general to seek remedies for breaches of fiduciary duty or other violations of law.</u>	31
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<u>(B) As used in this section and in section 109.35 of the Revised Code:</u>	38
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<u>(1) "Nonprofit health care entity" means either of the following that was created for any charitable or social welfare purpose related to health care:</u>	40
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<u>(a) A hospital, as defined in section 3727.01 of the Revised Code, that is owned or operated by a corporation organized under Chapter 1702. of the Revised Code or the nonprofit corporation law of another state;</u>	43
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(b) <u>Either of the following that is or has been exempt from taxation under section 501(a) of the Internal Revenue Code:</u>	47
(i) <u>A health maintenance organization granted a certificate of authority under Chapter 1742. of the Revised Code;</u>	48
(ii) <u>A domestic mutual company granted a certificate of authority under Chapter 3941. of the Revised Code that is in the business of providing sickness and accident insurance and that was previously a hospital service association under former Chapter 1739. Of the Revised Code or Chapter 669. of the General Code or has merged or otherwise consolidated with a former hospital service association.</u>	50
(2) <u>"Party" includes a nonprofit health care entity that is the subject of a transaction or proposed transaction, an acquiring person, and the resulting entity, if any.</u>	51
(3) <u>"Fair market value" means the price that assets being transferred would bring in a competitive and open market under a fair sale with the buyer and seller acting prudently, knowledgeably, and in their own best interest and a reasonable time being allowed for exposure in the market.</u>	52
(C) <u>A nonprofit health care entity proposing to enter into a transaction subject to this section shall notify the attorney general and obtain written approval of the transaction in accordance with this section.</u>	53
(1) <u>The notice shall be submitted on forms provided by the attorney general and include all of the following:</u>	54
(a) <u>The names and addresses of the parties, including a list of all individuals who are or have been chosen as directors, officers, or board members of the parties;</u>	55
(b) <u>The terms of the proposed transaction, including a summary of all contracts or other agreements of the parties;</u>	56

(c) <u>The amount, source, and nature of consideration to be paid to the nonprofit health care entity, its directors, officers, board members, executives, or experts retained by the nonprofit entity.</u>	77 78 79 80
<p><u>The notice shall state that the nonprofit health care entity is under a continuing duty to notify the attorney general of any changes in the information contained in the notice or other documents required by this section and that a violation of this duty may delay approval of the transaction. The statement shall be acknowledged by the signature of a representative of the nonprofit health care entity at the time the notice is submitted to the attorney general. Not later than two business days after the discovery of any changes in information, the nonprofit health care entity shall provide copies to the attorney general of any documents and other material relevant to the changes. The attorney general may delay approval of the transaction up to thirty days, in addition to the ninety-day extension authorized by division (A) of section 109.35 Of the Revised Code, following receipt of the documents and other material.</u></p>	
(2) <u>In addition to the notice described in this division, the nonprofit entity shall submit all of the following:</u>	96 97
(a) <u>Audited financial statements for the nonprofit health care entity for the three fiscal years prior to the date of submission;</u>	98 99 100
(b) <u>A valuation statement prepared by an independently qualified expert, such as an investment banker, actuary, appraiser, certified public accountant, or other expert, that assesses the full and fair market value of the nonprofit health care entity;</u>	101 102 103 104 105
(c) <u>Copies of all contracts and other agreements between the parties or their officers, directors, board members, or other</u>	106 107

<u>fiduciaries, including any contracts or other final agreements relating to the close of the proposed transaction;</u>	108 109
<u>(d) Any additional information the attorney general considers necessary to value the nonprofit health care entity's assets as required in rules adopted by the attorney general.</u>	110 111 112
<u>(3) The application and all other documents or materials submitted pursuant to this section are public records under section 149.43 of the Revised Code.</u>	113 114 115
<u>(D) Not later than seven days after submitting the notice and other documents required by this section, the nonprofit health care entity shall publish notice of the proposed transaction in at least one daily newspaper of general circulation in the county where the nonprofit health care entity has its principal place of business. The notice shall state that an application has been received, the names of the parties, and a description of the proposed transaction.</u>	116 117 118 119 120 121 122 123
<u>Sec. 109.35. (A) Not later than sixty days after receipt of a notice and other documents required by section 109.34 of the Revised Code, the attorney general shall approve or disapprove the proposed transaction, except that the attorney general may extend this period an additional ninety days.</u>	124 125 126 127 128
<u>(B) In determining whether to approve or disapprove a proposed transaction, the attorney general shall consider:</u>	129 130
<u>(1) Whether the transaction is fair to the nonprofit health care entity;</u>	131 132
<u>(2) Whether the nonprofit health care entity exercised due diligence in deciding to agree to the transaction and negotiating the terms and conditions of the transaction;</u>	133 134 135
<u>(3) The procedures used by the nonprofit health care entity in making its decision, including whether appropriate expert</u>	136 137

<u>assistance was used;</u>	138
(4) <u>Whether the transaction will result in a breach of fiduciary duty, as determined by the attorney general, including conflicts of interest related to payments or benefits to officers, directors, board members, executives, and experts employed or retained by the parties;</u>	139 140 141 142 143
(5) <u>Whether the nonprofit health care entity will receive full and fair market value for its assets;</u>	144 145
(6) <u>Whether the proceeds of the transaction will be used consistent with the nonprofit health care entity's original charitable purpose;</u>	146 147 148
(7) <u>Whether the attorney general has received from the nonprofit health care entity information sufficient to make a determination under this section;</u>	149 150 151
(8) <u>Any other criteria the attorney general considers necessary to determine whether the nonprofit health care entity will receive full and fair market value for its assets as required in rules adopted by the attorney general.</u>	152 153 154 155
<u>The attorney general may retain, at the nonprofit health care entity's expense, one or more independently qualified experts, including an investment banker, actuary, appraiser, certified public accountant, or other expert, as the attorney general considers reasonably necessary to provide assistance in making a decision under this section. The nonprofit health care entity shall promptly reimburse the attorney general for the cost of retaining experts. The cost of retaining an expert shall not exceed an amount that is reasonable and necessary to make a determination under this section. The contract to retain an expert is exempt from Chapter 125. of the Revised Code.</u>	156 157 158 159 160 161 162 163 164 165 166
<u>At any time while considering a proposed transaction under</u>	167

this section, the attorney general may request any additional 168
information from the nonprofit health care entity that the 169
attorney general considers appropriate to the valuation of the 170
entity's assets. The nonprofit health care entity shall provide 171
the information not later than ten days after the date of the 172
request. The attorney general may delay approval of the 173
transaction up to thirty days, in addition to the ninety-day 174
extension authorized by division (A) of this section, following 175
receipt of documents and other material containing the information 176
requested. 177

(C) The attorney general shall approve a proposed transaction 178
on finding that the nonprofit health care entity will receive full 179
and fair market value for the assets that are the subject of the 180
transaction. Once a transaction is approved, any substantial 181
alteration is a new transaction subject to approval by the 182
attorney general. 183

The nonprofit health care entity may resubmit a notice and 184
other documents seeking approval of a transaction disapproved by 185
the attorney general but may not submit a notice and other 186
documents that are identical or substantially similar to the 187
original submission. 188

(D) If the attorney general approves the transaction, the 189
nonprofit health care entity shall hold a public hearing to 190
receive comment on the proposed use of the proceeds of the 191
transaction. The hearing shall be held in the county where the 192
nonprofit health care entity has its principal place of business 193
not later than forty-five days after receipt of written notice of 194
the attorney general's approval. 195

At least thirty days prior to the date set for the hearing, 196
the nonprofit health care entity shall publish notice of the 197
hearing in at least one daily newspaper of general circulation in 198

<u>the county where the nonprofit health care entity has its principal place of business. The notice shall include a statement that a transaction has been approved by the attorney general, the names of the parties, a description of the proposed transaction, and the date, time, and place of the hearing.</u>	199 200 201 202 203
<u>(E)(1) No nonprofit health care entity shall enter into a transaction subject to this section without the approval of the attorney general granted in accordance with this section.</u>	204 205 206
<u>(2) No officer, director, board member, or other fiduciary of a nonprofit health care entity shall receive excess compensation of any kind relating to a transaction described in this section and section 109.34 of the Revised Code.</u>	207 208 209 210
<u>(3) The attorney general may institute and prosecute a civil or criminal action to enforce this section in the court of common pleas of the county in which the nonprofit health care entity has its principal place of business or the Franklin county court of common pleas. In addition to any civil remedies that exist under common law or the Revised Code, a court may rescind the transaction, grant injunctive relief, assess a civil penalty in an amount not exceeding ten million dollars, or impose any combination of these remedies.</u>	211 212 213 214 215 216 217 218 219
<u>(F) The powers of the attorney general under this section and section 109.34 of the Revised Code are in addition to the attorney general's powers held at common law and under sections 109.23 to 109.33 of the Revised Code.</u>	220 221 222 223
<u>This section and section 109.34 of the Revised Code do not limit or otherwise affect any of the following:</u>	224 225
<u>(1) Any other civil or criminal right, claim, or defense that the attorney general or parties may assert under common law or the Revised Code;</u>	226 227 228

<u>(2) The authority of the attorney general to institute and prosecute an action to enforce sections 109.23 to 109.33 of the Revised Code;</u>	229 230 231
<u>(3) The authority of the attorney general to investigate and prosecute violations of any state or federal antitrust law.</u>	232 233
 Sec. 109.99. (A) Whoever violates section 109.26 of the Revised Code shall be fined not less than five hundred nor more than ten thousand dollars or be imprisoned not less than one month nor more than one year, or both.	234 235 236 237
(B) Whoever violates division (G)(1) of section 109.573 of the Revised Code is guilty of unlawful disclosure of DNA database information, a misdemeanor of the first degree.	238 239 240
(C) Whoever violates division (G)(2) of section 109.573 of the Revised Code is guilty of unlawful possession of DNA database information, a misdemeanor of the first degree.	241 242 243
<u>(D)(1) Whoever violates division (E)(1) of section 109.35 of the Revised Code is guilty of entering into a transaction with a nonprofit health care entity without the approval of the attorney general, a felony of the third degree.</u>	244 245 246 247
<u>(2) Whoever violates division (E)(2) of section 109.35 of the Revised Code is guilty of receiving excess compensation relating to a transaction involving a nonprofit health care entity, a felony of the third degree.</u>	248 249 250 251
Section 2. That existing section 109.99 of the Revised Code is hereby repealed.	252 253