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A B I L L

To amend section 109.99 and to enact sections 109.34 1
and 109.35 of the Revised Code to require that the 2
Attorney General review transfers of assets by 3
certain nonprofit health care entities to 4
for-profit entities. 5

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

Section 1. That section 109.99 be amended and sections 109.34 6
and 109.35 of the Revised Code be enacted to read as follows: 7

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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

In determining whether the amount transferred equals twenty 17
per cent or more of the assets of an entity, all transfers 18
described in this section that occur in the twenty-four month 19
period prior to the date notice is submitted in accordance with 20
this section shall be considered. 21

A transaction described in this section or section 109.35 of 22
the Revised Code includes any binding obligation in furtherance of 23
the transaction. 24

(2) This section and section 109.35 of the Revised Code do 25
not apply to either of the following: 26

(a) Transactions involving only nonprofit health care 27
entities and persons exempt from taxation under section 501(a) of 28
the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 29
501, as amended; 30

(b) a nonprofit health care entity that, prior to the 31
effective date of this section, entered into a consent decree with 32
the attorney general that requires distribution of the charitable 33
assets of the entity to an appropriate health-related charity. 34
This exemption does not limit the authority of the attorney 35
general to seek remedies for breaches of fiduciary duty or other 36
violations of law. 37

(B) As used in this section and in section 109.35 Of the 38
Revised Code: 39

(1) "Nonprofit health care entity" means either of the 40
following that was created for any charitable or social welfare 41
purpose related to health care: 42

(a) A hospital, as defined in section 3727.01 Of the Revised 43
Code, that is owned or operated by a corporation organized under 44
Chapter 1702. Of the Revised Code or the nonprofit corporation law 45
of another state; 46

(b) Either of the following that is or has been exempt from 47
taxation under section 501(a) of the Internal Revenue Code: 48

(i) A health maintenance organization granted a certificate 49
of authority under Chapter 1742. Of the Revised Code; 50

(ii) A domestic mutual company granted a certificate of 51
authority under Chapter 3941. of the Revised Code that is in the 52
business of providing sickness and accident insurance and that was 53
previously a hospital service association under former Chapter 54
1739. Of the Revised Code or Chapter 669. of the General Code or 55
has merged or otherwise consolidated with a former hospital 56
service association. 57

(2) "Party" includes a nonprofit health care entity that is 58
the subject of a transaction or proposed transaction, an acquiring 59
person, and the resulting entity, if any. 60

(3) "Fair market value" means the price that assets being 61
transferred would bring in a competitive and open market under a 62
fair sale with the buyer and seller acting prudently, 63
knowledgeably, and in their own best interest and a reasonable 64
time being allowed for exposure in the market. 65

(C) A nonprofit health care entity proposing to enter into a 66
transaction subject to this section shall notify the attorney 67
general and obtain written approval of the transaction in 68
accordance with this section. 69

(1) The notice shall be submitted on forms provided by the 70
attorney general and include all of the following: 71

(a) The names and addresses of the parties, including a list 72
of all individuals who are or have been chosen as directors, 73
officers, or board members of the parties; 74

(b) The terms of the proposed transaction, including a 75
summary of all contracts or other agreements of the parties; 76

(c) The amount, source, and nature of consideration to be 77
paid to the nonprofit health care entity, its directors, officers, 78
board members, executives, or experts retained by the nonprofit 79
entity. 80

The notice shall state that the nonprofit health care entity 81
is under a continuing duty to notify the attorney general of any 82
changes in the information contained in the notice or other 83
documents required by this section and that a violation of this 84
duty may delay approval of the transaction. The statement shall be 85
acknowledged by the signature of a representative of the nonprofit 86
health care entity at the time the notice is submitted to the 87
attorney general. Not later than two business days after the 88
discovery of any changes in information, the nonprofit health care 89
entity shall provide copies to the attorney general of any 90
documents and other material relevant to the changes. The attorney 91
general may delay approval of the transaction up to thirty days, 92
in addition to the ninety-day extension authorized by division (A) 93
of section 109.35 Of the Revised Code, following receipt of the 94
documents and other material. 95

(2) In addition to the notice described in this division, the 96
nonprofit entity shall submit all of the following: 97

(a) Audited financial statements for the nonprofit health 98
care entity for the three fiscal years prior to the date of 99
submission; 100

(b) A valuation statement prepared by an independently 101
qualified expert, such as an investment banker, actuary, 102
appraiser, certified public accountant, or other expert, that 103
assesses the full and fair market value of the nonprofit health 104
care entity; 105

(c) Copies of all contracts and other agreements between the 106
parties or their officers, directors, board members, or other 107

fiduciaries, including any contracts or other final agreements 108
relating to the close of the proposed transaction; 109

(d) Any additional information the attorney general considers 110
necessary to value the nonprofit health care entity's assets as 111
required in rules adopted by the attorney general. 112

(3) The application and all other documents or materials 113
submitted pursuant to this section are public records under 114
section 149.43 of the Revised Code. 115

(D) Not later than seven days after submitting the notice and 116
other documents required by this section, the nonprofit health 117
care entity shall publish notice of the proposed transaction in at 118
least one daily newspaper of general circulation in the county 119
where the nonprofit health care entity has its principal place of 120
business. The notice shall state that an application has been 121
received, the names of the parties, and a description of the 122
proposed transaction. 123

Sec. 109.35. (A) Not later than sixty days after receipt of a 124
notice and other documents required by section 109.34 Of the 125
Revised Code, the attorney general shall approve or disapprove the 126
proposed transaction, except that the attorney general may extend 127
this period an additional ninety days. 128

(B) In determining whether to approve or disapprove a 129
proposed transaction, the attorney general shall consider: 130

(1) Whether the transaction is fair to the nonprofit health 131
care entity; 132

(2) Whether the nonprofit health care entity exercised due 133
diligence in deciding to agree to the transaction and negotiating 134
the terms and conditions of the transaction; 135

(3) The procedures used by the nonprofit health care entity 136
in making its decision, including whether appropriate expert 137

assistance was used; 138

(4) Whether the transaction will result in a breach of 139
fiduciary duty, as determined by the attorney general, including 140
conflicts of interest related to payments or benefits to officers, 141
directors, board members, executives, and experts employed or 142
retained by the parties; 143

(5) Whether the nonprofit health care entity will receive 144
full and fair market value for its assets; 145

(6) Whether the proceeds of the transaction will be used 146
consistent with the nonprofit health care entity's original 147
charitable purpose; 148

(7) Whether the attorney general has received from the 149
nonprofit health care entity information sufficient to make a 150
determination under this section; 151

(8) Any other criteria the attorney general considers 152
necessary to determine whether the nonprofit health care entity 153
will receive full and fair market value for its assets as required 154
in rules adopted by the attorney general. 155

The attorney general may retain, at the nonprofit health care 156
entity's expense, one or more independently qualified experts, 157
including an investment banker, actuary, appraiser, certified 158
public accountant, or other expert, as the attorney general 159
considers reasonably necessary to provide assistance in making a 160
decision under this section. The nonprofit health care entity 161
shall promptly reimburse the attorney general for the cost of 162
retaining experts. The cost of retaining an expert shall not 163
exceed an amount that is reasonable and necessary to make a 164
determination under this section. The contract to retain an expert 165
is exempt from Chapter 125. of the Revised Code. 166

At any time while considering a proposed transaction under 167

this section, the attorney general may request any additional
information from the nonprofit health care entity that the
attorney general considers appropriate to the valuation of the
entity's assets. The nonprofit health care entity shall provide
the information not later than ten days after the date of the
request. 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 this section, following
receipt of documents and other material containing the information
requested.

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

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

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

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

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the county where the nonprofit health care entity has its 199
principal place of business. The notice shall include a statement 200
that a transaction has been approved by the attorney general, the 201
names of the parties, a description of the proposed transaction, 202
and the date, time, and place of the hearing. 203

(E)(1) No nonprofit health care entity shall enter into a 204
transaction subject to this section without the approval of the 205
attorney general granted in accordance with this section. 206

(2) No officer, director, board member, or other fiduciary of 207
a nonprofit health care entity shall receive excess compensation 208
of any kind relating to a transaction described in this section 209
and section 109.34 Of the Revised Code. 210

(3) The attorney general may institute and prosecute a civil 211
or criminal action to enforce this section in the court of common 212
pleas of the county in which the nonprofit health care entity has 213
its principal place of business or the Franklin county court of 214
common pleas. In addition to any civil remedies that exist under 215
common law or the Revised Code, a court may rescind the 216
transaction, grant injunctive relief, assess a civil penalty in an 217
amount not exceeding ten million dollars, or impose any 218
combination of these remedies. 219

(F) The powers of the attorney general under this section and 220
section 109.34 Of the Revised Code are in addition to the attorney 221
general's powers held at common law and under sections 109.23 to 222
109.33 of the Revised Code. 223

This section and section 109.34 of the Revised Code do not 224
limit or otherwise affect any of the following: 225

(1) Any other civil or criminal right, claim, or defense that 226
the attorney general or parties may assert under common law or the 227
Revised Code; 228

(2) The authority of the attorney general to institute and 229
prosecute an action to enforce sections 109.23 to 109.33 of the 230
Revised Code; 231

(3) The authority of the attorney general to investigate and 232
prosecute violations of any state or federal antitrust law. 233

Sec. 109.99. (A) Whoever violates section 109.26 of the 234
Revised Code shall be fined not less than five hundred nor more 235
than ten thousand dollars or be imprisoned not less than one month 236
nor more than one year, or both. 237

(B) Whoever violates division (G)(1) of section 109.573 of 238
the Revised Code is guilty of unlawful disclosure of DNA database 239
information, a misdemeanor of the first degree. 240

(C) Whoever violates division (G)(2) of section 109.573 of 241
the Revised Code is guilty of unlawful possession of DNA database 242
information, a misdemeanor of the first degree. 243

(D)(1) Whoever violates division (E)(1) of section 109.35 Of 244
the Revised Code is guilty of entering into a transaction with a 245
nonprofit health care entity without the approval of the attorney 246
general, a felony of the third degree. 247

(2) Whoever violates division (E)(2) of section 109.35 Of the 248
Revised Code is guilty of receiving excess compensation relating 249
to a transaction involving a nonprofit health care entity, a 250
felony of the third degree. 251

Section 2. That existing section 109.99 of the Revised Code 252
is hereby repealed. 253