(122nd General Assembly)
(Amended Substitute House Bill Number 242)

AN ACT

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, to require that the attorney general be notified of transfers of assets between certain nonprofit health care entities, and to declare an emergency.

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) As used in this section and in section 109.35 Of the Revised Code:

(1) "Fair market value" means the price that the 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.

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

(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;

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

(i) An entity that is or has been granted a certificate of authority under Chapter 1742. of the Revised Code;

(ii) An entity that is authorized or has been authorized to transact business in this state under Title XXXIX 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, has merged or otherwise consolidated with a former hospital service association, or any of whose

predecessors in interest has merged or otherwise consolidated with a former hospital service association.

(3) "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.

(4) "Transaction" means a transfer of ownership or control of assets of a nonprofit health care entity, whether by purchase, merger, consolidation, lease, gift, joint venture, or other transfer, including any binding obligation in furtherance of the transaction, that is equal to at least twenty per cent of the assets of the entity and occurs in the twenty-four-month period prior to the date notice is submitted to the attorney general in accordance with division (B) of this section. "Transaction" also means a transfer of ownership or control of any assets of a nonprofit health care entity, whether by purchase, merger, consolidation, lease, gift, joint venture, or other transfer, including any binding obligation in furtherance of the transaction, if the entity is unable to fulfill its stated or actual purpose without the assets. "Transaction" does not include either of the following:

(a) A transfer of ownership or control of assets of a nonprofit health care entity between 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;

(b) A transfer of ownership or control of assets of a nonprofit health care entity in relation to which the nonprofit health care entity, prior to the effective date of this section, has 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. The exemption in division (A)(4)(b) of this section does not limit the authority of the attorney general to seek remedies for breaches of fiduciary duty or other violations of law.

(B) A nonprofit health care entity proposing to enter into a transaction shall provide notice of the proposed transaction to the attorney general and obtain written approval of the transaction in accordance with this section. The nonprofit health care entity shall submit the notice on forms provided by the attorney general, and the notice shall include all of the following:

(1) 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;

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

(3) 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 health care entity.

(4) A statement acknowledging 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 proposed transaction. The statement shall be signed by a representative of the nonprofit health care entity at the time the notice is submitted to the attorney general.

(C) In addition to the notice described in division (B) of this section, the nonprofit health care entity shall submit all of the following:

(1) Audited financial statements for the nonprofit health care entity for the three fiscal years prior to the date the nonprofit health care entity submitted the notice to the attorney general;

(2) A valuation statement prepared by an independent, qualified expert, including 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;

(3) Copies of all contracts and other agreements between the parties or their officers, directors, board members, or other fiduciaries, including any contracts or other final agreements relating to the close of the proposed transaction;

(4) 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 in accordance with Chapter 119. Of the Revised Code.

(D) The notice and all other documents or materials submitted pursuant to this section are public records provided they meet the definition set forth in section 149.43 of the Revised Code.

(E) Not later than two business days after the discovery of any changes in information contained in the notice or other documents required by this section, the nonprofit health care entity shall provide copies to the attorney general of any documents and other material relevant to the changes. In addition to the ninety-day extension authorized by division (A) of section 109.35 Of the Revised Code, the attorney general for good cause may delay approval of the proposed transaction up to thirty days following receipt of the documents and other material relevant to the changes.

(F) 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 the names of the parties and a description of the proposed transaction.

(G) Notwithstanding division (A)(4)(a)of this section, AS USED IN THIS DIVISION, "NONPROFIT COMBINATION" MEANS A TRANSACTION BETWEEN A NONPROFIT HEALTH CARE ENTITY AND ANOTHER UNRELATED NONPROFIT HEALTH CARE ENTITY.

NOT LESS THAN SIXTY DAYS BEFORE THE CLOSING OF A NONPROFIT COMBINATION, A NONPROFIT HEALTH CARE ENTITy THAT IS A PARTY TO THE COMBINATION AND IS THE PARTY TO BE ACQUIRED SHALL PROVIDE NOTICE OF THE NONPROFIT COMBINATION TO THE ATTORNEY GENERAL BY SUBMITTING THE INFORMATION DESCRIBED IN DIVISIONS (B)(1) AND (3) OF THIS SECTION.

NOT LATER THAN SEVEN DAYS AFTER THE INFORMATION REQUIRED BY THIS SECTION IS SUBMITTED TO THE ATTORNEY GENERAL, EACH OF THE NONPROFIT HEALTH CARE ENTITIES THAT IS A PARTY TO A NONPROFIT COMBINATION SHALL PUBLISH THE NOTICE DESCRIBED IN DIVISION (F) OF THIS SECTION.

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 for good cause may extend this period an additional ninety days.

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

(1) Whether the proposed 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;

(2) Whether the nonprofit health care entity will receive full and fair market value for its charitable or social welfare assets;

(3) Whether the proceeds of the proposed transaction will be used consistent with the nonprofit health care entity's original charitable purpose;

(4) 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 charitable or social welfare assets as required in rules adopted by the attorney general in accordance with Chapter 119. Of the Revised Code.

(C) 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.

At any time while considering a proposed transaction under 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 charitable or social welfare assets. The nonprofit health care entity shall provide the information not later than ten days after the date of the request. The attorney general for good cause may delay approval of the proposed 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.

(D) The attorney general shall approve or disapprove a proposed transaction on the basis of the criteria set forth in division (B) of this section. Once a proposed transaction is approved, any substantial alteration is a new transaction subject to approval by the attorney general.

The nonprofit health care entity may resubmit a notice and other documents seeking approval of a proposed 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.

If the attorney general disapproves the proposed transaction, the nonprofit health care entity may appeal the disapproval pursuant to division (H) of this section.

(E) If the attorney general approves the proposed 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.

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 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.

(F)(1) The proceeds of an approved transaction shall be dedicated and transferred to one or more existing or new charitable organizations exempt from taxation under section 501(a) and described in section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended.

(2) The attorney general may authorize a dedication and transfer to a person exempt from taxation under section 501(a) and described in section 501(c)(4) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended, if all of the following conditions are met:

(a) The attorney general determines that the dedication and transfer is necessary to ensure effective management and monetization of the equity ownership, if any, in the nonprofit health care entity;

(b) The person described in division (F)(2) of this section agrees to all of the following conditions:

(i) The person described in division (F)(2) of this section will receive from the nonprofit health care entity only the amount of proceeds of the transaction as are necessary to fund the level of activity necessary to preserve the person's tax-exempt status;

(ii) No proceeds of the transaction, or any other funds or resources controlled by the person described in division (F)(2) of this section, will be disbursed for campaign contributions, lobbying expenditures, or other political activity;

(iii) The person described in division (F)(2) of this section agrees to abide by any requirements imposed on persons exempt from taxation under section 501(a) and described in section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended, that the attorney general determines appropriate.

(G)(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.

(2) No person who is an officer, director, board member, or other fiduciary of a nonprofit health care entity shall receive anything of substantial value that relates to a transaction described in this section and section 109.34 Of the Revised Code and is of such a character as to manifest a substantial and improper influence on the person with respect to the person's duties.

(3) The attorney general may institute and prosecute a civil or criminal

action to enforce this section and section 109.34 Of the Revised Code 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.

(H) A nonprofit health care entity that is a party to a proposed transaction that has been disapproved by the attorney general may appeal the disapproval only by following the procedure set forth in this division. The disapproval may be appealed to the court of common pleas of the county in which the nonprofit health entity has its principal place of business. The court of common pleas may reverse, vacate, or modify the attorney general's decision to disapprove a transaction if the court finds that the decision was unlawful or unreasonable. This appeal shall proceed as an appeal de novo. To bring an appeal under this division, a nonprofit health care entity shall file a notice of appeal with the court and the attorney general not later than fifteen days after the entity's receipt of notice of the attorney general's disapproval of the transaction. Not later than thirty days after receipt of the notice of appeal, the attorney general shall prepare and certify to the court of common pleas a complete record of all of the documents submitted by the nonprofit health care entity to the attorney general and any documents generated by consultants at the request of the attorney general or other materials produced by the attorney general as part of the attorney general's determination of whether to approve or disapprove the transaction.

The judgment of the court of common pleas is final unless reversed, vacated, or modified on appeal. An appeal may be taken by either the nonprofit health care entity or the attorney general, shall proceed as in the case of appeals in civil actions, and shall be pursuant to the rules of appellate procedure and, to the extent not in conflict with those rules, Chapter 2505. Of the Revised Code.

(I)(1) 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.

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

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

(b) The authority of the attorney general to institute and prosecute an

action to enforce sections 109.23 to 109.33 of the Revised Code;

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

(2) Nothing in this section shall be construed to grant to the attorney general any authority OF the superintendent of insurance under Title XVII or Title XXXIX of the Revised Code relating to the superintendent's review of an entity described in division (A)(2)(b) of section 109.34 of the Revised Code.

(3) Nothing in this section or section 109.34 Of the Revised Code shall be construed to limit the independent authority of the attorney general to protect charitable trusts and charitable assets in this state.

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.

(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.

(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.

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

(2) Whoever violates division (G)(2) of section 109.35 Of the Revised Code is guilty of receiving improper compensation relating to a transaction involving a nonprofit health care entity, a felony of the third degree.

SECTION 2. That existing section 109.99 of the Revised Code is hereby repealed.

SECTION 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, or safety. The reason for such necessity is that some transactions involving the acquisition of a nonprofit health care entity by a for-profit health care entity have undervalued the charitable assets in the nonprofit entity, attempted to channel charitable assets into the for-profit entity, and provided the Attorney General with inadequate time and information to review the transaction. Therefore, this act shall go into immediate effect.

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Speaker _____ of the House of Representatives.

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President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

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Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

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Secretary of State.

File No. _____ Effective Date _____