

CHAPTER NO. 930

HOUSE BILL NO. 1810

By Representatives Rinks, Overbey, Maggart, Lynn, Favors, Lois DeBerry

Substituted for: Senate Bill No. 452

By Senator McNally

AN ACT to amend Tennessee Code Annotated, Title 33; Title 48, Chapter 64; Title 48, Chapter 68 and Title 68, Chapter 11, Part 2, relative to the dissolution of not-for-profit hospitals and the conveyance or transfer of assets of not-for-profit hospitals to for-profit entities through lease, sale or other transactions.

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

SECTION 1. Tennessee Code Annotated, Title 48, Chapter 68, is hereby amended by adding Sections 2 through 12 as a new Part thereto:

SECTION 2. This Act shall be known and may be cited as the "Public Benefit Hospital Sales and Conveyance Act of 2006".

SECTION 3. As used in this act:

(1) "Acquiring entity" means the person who gains ownership or control in a public benefit hospital entity as a result of a public benefit hospital conveyance transaction.

(2) "Person" means any individual, partnership, trust, estate, corporation, association, joint venture, joint stock company or other organization.

(3) "Public benefit hospital conveyance transaction" means:

(A) The sale, transfer, lease, exchange, optioning, conveyance or other disposition of a material amount of the assets or operations of any public benefit hospital as defined in this act to another entity or person; and

(B) The transfer of control or governance of a material amount of the assets or operations of a public benefit hospital entity to another entity or person.

(4) "Public benefit hospital entity" means any public benefit corporation, as defined in title 48, chapter 51, part 2 or any governmental entity that is licensed as a hospital under title 68, chapter 11, part 2 or considered a hospital under title 33, chapter 1, including entities affiliated with any of these through ownership, governance, or membership, such as a holding company or subsidiary.

SECTION 4.

(a) Notwithstanding the provisions of title 48, chapter 61 and title 48, chapter 64, any public benefit hospital entity shall be required to provide written notice to the

attorney general prior to entering into any public benefit hospital conveyance transaction. At the time of providing notice to the attorney general, the public benefit hospital entity shall provide the attorney general with written certification that a copy of this statute has been given in its entirety to each member of the board of trustees of the public benefit hospital entity.

(b) The notice to the attorney general provided for in this Section shall include and contain all the information the attorney general determines is required. No notice shall be effective until the attorney general has acknowledged receipt of a complete notice in accordance with protocol established by the attorney general.

(c) This act shall not apply to a public benefit hospital entity if the public benefit hospital conveyance transaction is in the usual and regular course of its activities and if the attorney general has given the public benefit hospital entity a written waiver of this act as to the public benefit hospital conveyance transaction.

SECTION 5. Within forty-five (45) days of receipt of a complete written notice as required by Section 4 of this act, the attorney general shall notify the public benefit hospital entity in writing of the attorney general's decision to object to the proposed public benefit hospital conveyance transaction or to take no action. The attorney general may extend this period for an additional thirty (30) days, provided the extension is necessary to obtain information pursuant to Section 7, Section 9, and Section 10 of this act.

SECTION 6.

(a) Within five (5) days after giving written notice pursuant to Section 4 of this act, the public benefit hospital entity shall cause the written notice to be published in one (1) or more newspapers of general circulation which are published in the county of the public benefit hospital entity. The published written notice shall contain:

(1) The text of the written notice provided to the attorney general under Section 4 of this act; and

(2) The following statements:

(A) This notice is provided pursuant to T.C.A. Title 48, Chapter 68; and

(B) Any interested party wishing to provide written comment may submit such written comment directly to the Attorney General, Antitrust Division, 425 Fifth Avenue North, Nashville, Tennessee 37243.

(b) A failure by the public benefit hospital entity giving notice under Section 4 of this act to provide a published written notice as required by this subsection (a) shall be a sufficient ground for the attorney general to object to the proposed public benefit hospital conveyance transaction.

SECTION 7. In making a decision whether to object to a proposed public benefit hospital conveyance transaction, the attorney general shall consider:

- (a) Whether the public benefit hospital entity will receive full and fair market value for its charitable or social welfare assets;
- (b) Whether the fair market value of the public benefit hospital entity's assets to be transferred has been manipulated by the actions of the parties in a manner that causes the fair market value of the assets to decrease;
- (c) Whether the proceeds of the proposed public benefit hospital conveyance transaction will be used consistent with the trust under which the assets are held by the public benefit hospital entity and whether the proceeds will be controlled as funds independently of the acquiring or related entities;
- (d) Whether the proposed public benefit hospital conveyance 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;
- (e) Whether the governing body of the public benefit hospital entity exercised due diligence in deciding to dispose of the public benefit hospital entity's assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition;
- (f) Whether the public benefit hospital conveyance transaction will result in private inurement to any person;
- (g) Whether healthcare providers will be offered the opportunity to invest or own an interest in the acquiring entity or a related party, and whether procedures or safeguards are in place to avoid conflict of interest in patient referrals;
- (h) Whether the terms of any management or services contract negotiated in conjunction with the proposed public benefit hospital conveyance transaction are reasonable;
- (i) Whether any foundation established to hold the proceeds of the public benefit hospital conveyance transaction will be broadly based in the community and be representative of the affected community, taking into consideration the structure and governance of such foundation;
- (j) Whether the attorney general has been provided with sufficient information and data by the public benefit hospital entity to adequately evaluate the proposed public benefit hospital conveyance transaction or the effects thereof on the public, provided the attorney general has notified the public benefit hospital entity or the acquiring entity of any inadequacy of the information or data and has provided a reasonable opportunity to remedy such inadequacy; and
- (k) Any other criteria the attorney general considers necessary to determine whether the public benefit hospital entity will receive full and fair market value for its assets to be transferred as required in rules adopted by the attorney general under Section 9 of this act.

SECTION 8. In making a decision whether to object to a public benefit hospital conveyance transaction, the attorney general shall also determine whether the proposed public

benefit hospital conveyance transaction may have a significant effect on the availability or accessibility of healthcare services to the affected community. In making this determination, the attorney general shall consider:

(a) Whether sufficient safeguards are included to assure the affected community continued access to affordable care;

(b) Whether the proposed public benefit hospital conveyance transaction creates or has the likelihood of creating an adverse effect on the access to or availability or cost of healthcare services to the community;

(c) Whether the acquiring entities have made a commitment, at least comparable to the public benefit hospital entity, to provide healthcare to the disadvantaged, the uninsured and the underinsured, and to provide benefits to the affected community to promote improved healthcare. Activities and funding provided by the public benefit hospital entity or its successor public benefit hospital entity or foundation to provide such healthcare or to provide support or medical education and teaching programs or medical research programs shall be considered in evaluating compliance with this commitment;

(d) Whether the public benefit hospital conveyance transaction will result in the revocation of hospital privileges;

(e) Whether sufficient safeguards are included to maintain appropriate capacity for health science research and healthcare provider education; and

(f) Whether the proposed public benefit hospital conveyance transaction demonstrates that the public interest will be served considering the essential medical services needed to provide safe and adequate treatment, appropriate access and balanced healthcare delivery to the residents.

SECTION 9. The attorney general may demand that the public benefit hospital entity giving notice under Section 4 of this act provide such information as the attorney general reasonably deems necessary to complete the review of any proposed public benefit hospital conveyance transaction described in Section 7 and Section 8 of this act. A failure by the public benefit hospital entity giving notice under Section 4 of this act to provide timely information as required by the attorney general shall be a sufficient ground for the attorney general to object to the proposed public benefit hospital conveyance transaction.

SECTION 10. Within the time periods designated in Section 5 of this act, the attorney general may do any of the following to assist in the review of the proposed public benefit hospital conveyance transaction described in this act:

(a) Contract with, consult, and receive advice from any agency of the state or the United States on such terms and conditions the attorney general deems appropriate; or,

(b) At the attorney general's sole discretion, contract with such experts or consultants the attorney general deems appropriate to assist the attorney general in reviewing the proposed public benefit hospital conveyance transaction.

(c) Any contract costs incurred by the attorney general pursuant to this Section shall not exceed an amount that is reasonable and necessary to conduct the review of the proposed public benefit hospital conveyance transaction. The attorney general shall be exempt from the provisions of all state procurement for competitive bidding for purposes of entering into contracts pursuant to this Section. The acquiring entity, upon request, shall pay the attorney general promptly for all costs of contracts entered into by the attorney general pursuant to this Section.

(d) The attorney general shall be entitled to reimbursement from the acquiring entity for all reasonable and actual costs incurred by the attorney general in reviewing any proposed public benefit hospital conveyance transaction under this act, including attorney fees at the billing rate used by the attorney general to bill state agencies for legal services. The acquiring entity, upon request, shall pay the attorney general promptly for all such costs, but in no event shall reimbursement associated with reviewing a proposed public benefit hospital conveyance transaction exceed fifty thousand dollars (\$50,000). The attorney general shall not be entitled to reimbursement for expenses incurred for any legal services rendered by external legal counsel.

(e) The failure by the acquiring entity to promptly reimburse the attorney general for all costs pursuant to subsections (b) or (c) shall be sufficient ground for the attorney general to object to the proposed public benefit hospital conveyance transaction.

SECTION 11. Unless subject to the provisions of title 8, chapter 6, part 4, all documents submitted to the attorney general by any person, including public benefit hospital entities giving notice under Section 4 of this act, in connection with the attorney general's review of the proposed public benefit hospital conveyance transaction pursuant to this act shall be public records subject to the provisions of title 10, chapter 7.

SECTION 12.

(a) Any public benefit hospital conveyance transactions entered into in violation of this act shall be null and void, and each member of the governing boards and the chief financial officers of the parties to the public benefit hospital conveyance transaction may be subject to a civil penalty of up to one million dollars (\$1,000,000), the amount to be determined by a court of competent jurisdiction in Davidson County. The attorney general shall institute proceedings to impose such a penalty. In addition, no license to operate a hospital may be issued or renewed under title 68, chapter 11, part 2, or applicable regulation, if there is a public benefit hospital conveyance transaction entered into in violation of the notice, public hearing, and review requirements of this act.

(b) Nothing in this Section shall be construed to limit the common law authority of the attorney general to protect charitable trusts and charitable assets in this state. These penalties and remedies are in addition to, and not a replacement for, any other civil or criminal actions which the attorney general may file under either the common law or statutory law, including rescinding the public benefit hospital conveyance transaction, granting injunctive relief, or any combination of these and other remedies available under common law or statutory law.

SECTION 13. The provisions of this Act shall be severable, and if any phrase, clause, sentence, provision, or section is deemed unenforceable, the remaining provisions of the Act shall be enforceable.

SECTION 14. This act shall take effect July 1, 2006, the public welfare requiring it. A sale, lease, exchange or other disposition of any assets by an entity which was required to give notice to the attorney general prior to such sale, lease, exchange or other disposition before the enactment of this act shall be governed by the law in effect when such notice was sent.

PASSED: May 25, 2006


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 20th day of June 2006


PHIL BREDEESEN, GOVERNOR