

**Assembly Bill No. 890**

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Passed the Assembly August 19, 2002

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*Chief Clerk of the Assembly*

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Passed the Senate August 8, 2002

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2002, at \_\_\_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*



## CHAPTER \_\_\_\_\_

An act to amend Sections 5914, 5917, 5919, 5920, 5921, 5923, and 5924 of the Corporations Code, relating to health facilities.

## LEGISLATIVE COUNSEL'S DIGEST

AB 890, Cedillo. Health facilities: sale of assets.

Existing law requires any nonprofit corporation that is subject to the Nonprofit Public Benefit Corporation Law and that operates or controls a health facility or operates or controls a health facility that provides similar health care, to provide written notice to, and obtain the written consent of, the Attorney General prior to selling or otherwise disposing of a material amount of its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity.

This bill would instead make these requirements applicable to any nonprofit corporation that operates or controls a health facility or operates or controls a facility that provides similar health care. The bill would also authorize the Attorney General to consider, before consenting to an agreement to sell or dispose of assets to a for-profit corporation, whether the terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation, and whether the agreement or transaction is at a fair market value, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 5914 of the Corporations Code is amended to read:

5914. (a) (1) Any nonprofit corporation that is defined in Section 5046 and operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or operates or controls a facility that provides similar health care, shall be required to provide written notice to, and to obtain the written consent of, the Attorney General prior to entering into any agreement or transaction to do either of the following:

(A) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity when a material amount of the



assets of the nonprofit corporation are involved in the agreement or transaction.

(B) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit corporation to any for-profit corporation or entity or to any mutual benefit corporation or entity.

(2) The substitution of a new corporate member or members that transfers the control of, responsibility for, or governance of the nonprofit corporation shall be deemed a transfer for purposes of this article. The substitution of one or more members of the governing body, or any arrangement, written or oral, that would transfer voting control of the members of the governing body, shall also be deemed a transfer for purposes of this article.

(b) The notice to the Attorney General provided for in this section shall include and contain the information the Attorney General determines is required. The notice, including any other information provided to the Attorney General under this article, and that is in the public file, shall be made available by the Attorney General to the public in written form, as soon as is practicable after it is received by the Attorney General.

(c) This section shall not apply to a nonprofit corporation if the agreement or transaction is in the usual and regular course of its activities or if the Attorney General has given the corporation a written waiver of this section as to the proposed agreement or transaction.

(d) This section shall apply to any foreign nonprofit corporation that operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or a facility that provides similar health care.

SEC. 2. Section 5917 of the Corporations Code is amended to read:

5917. The Attorney General shall have discretion to consent to, give conditional consent to, or not consent to any agreement or transaction described in subdivision (a) of Section 5914. In making the determination, the Attorney General shall consider any factors that the Attorney General deems relevant, including, but not limited to, whether any of the following apply:

(a) The terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation.



(b) The agreement or transaction will result in inurement to any private person or entity.

(c) Any agreement or transaction that is subject to this article is at fair market value. In this regard, “fair market value” means the most likely price that the assets being sold would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and in their own best interest, and a reasonable time being allowed for exposure in the open market.

(d) The market value has been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease.

(e) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated nonprofit health system.

(f) The agreement or transaction involves or constitutes any breach of trust.

(g) The Attorney General has been provided, pursuant to Section 5250, with sufficient information and data by the nonprofit corporation to evaluate adequately the agreement or transaction or the effects thereof on the public.

(h) The agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.

(i) The proposed agreement or transaction is in the public interest.

SEC. 3. Section 5919 of the Corporations Code is amended to read:

5919. (a) Within the time periods designated in Section 5915 and relating to those factors specified in Section 5917, the Attorney General may do the following:

(1) Contract with, consult, and receive advice from any state agency on those terms and conditions that the Attorney General deems appropriate.

(2) In his or her sole discretion, contract with experts or consultants to assist in reviewing the proposed agreement or transaction.

(b) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into under this section shall be on a noncompetitive bid



basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The nonprofit corporation, upon request, shall pay the Attorney General promptly for all contract costs.

(c) The Attorney General shall be entitled to reimbursement from the nonprofit corporation for all actual, reasonable, direct costs incurred in reviewing, evaluating, and making the determination referred to in this article, including administrative costs. The nonprofit corporation shall promptly pay the Attorney General, upon request, for all of those costs.

(d) (1) In order to monitor effectively ongoing compliance with the terms and conditions of any sale or transfer of assets subject to Section 5914, including, but not limited to, the ongoing use of the charitable assets in a manner consistent with the trust pursuant to which they are held, the Attorney General may, in his or her sole discretion, contract with experts and consultants to assist in this regard.

(2) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into under this section shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The nonprofit corporation shall pay the Attorney General promptly for all contract costs.

(3) The Attorney General shall be entitled to reimbursement from either the selling or the acquiring corporation, depending upon which one the burden of compliance falls, for all actual, reasonable, and direct costs incurred in monitoring ongoing compliance with the terms and conditions of the sale or transfer of assets, including contract and administrative costs. The Attorney General may bill either the selling or the acquiring corporation and the corporation billed by the Attorney General shall promptly pay for all of those costs.

SEC. 4. Section 5920 of the Corporations Code is amended to read:

5920. (a) (1) Any nonprofit corporation that is defined in Section 5046 and operates or controls a health care facility, as defined in Section 1250 of the Health and Safety Code, or operates or controls a facility that provides similar health care, shall be required to provide written notice to, and to obtain the written



consent of, the Attorney General prior to entering into any agreement or transaction to do either of the following:

(A) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to another nonprofit corporation or entity when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction.

(B) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit corporation to another nonprofit corporation or entity.

(2) The substitution of a new corporate member or members that transfers the control of, responsibility for, or governance of the nonprofit corporation, the substitution of one or more members of the governing body that would transfer voting control of the members of the governing body, or any arrangement, written or oral, that would transfer voting control of the entity shall be deemed a transfer for purposes of this article.

(b) The notice to the Attorney General provided for in this section shall contain the information the Attorney General determines is required. The notice, including any other information provided to the Attorney General under this article, and that is the public file, shall be made available by the Attorney General to the public in written form, as soon as is practicable after it is received by the Attorney General.

(c) This section shall not apply to a nonprofit corporation if the agreement or transaction is in the usual and regular course of its activities or if the Attorney General has given the corporation a written waiver of this section as to the proposed agreement or transaction.

(d) This section shall apply to any foreign nonprofit corporation that operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or a facility that provides similar health care.

(e) This section shall not apply to an agreement or transaction if the other party to the agreement or transaction is an affiliate, as defined in Section 5031, of the transferring nonprofit corporation or entity, and the corporation or entity has given the Attorney General 20 days advance notice of the agreement or transaction.

SEC. 5. Section 5921 of the Corporations Code is amended to read:



5921. Within 60 days of the receipt of the written notice required by Section 5920, the Attorney General shall notify the nonprofit corporation in writing of the decision to consent to, give conditional consent to, or not consent to the agreement or transaction. The Attorney General may extend this period for one additional 45-day period if any of the following conditions are satisfied:

(a) The extension is necessary to obtain relevant information from any state agency, experts, or consultants.

(b) The proposed agreement or transaction is substantially modified after the first public meeting conducted by the Attorney General in accordance with Section 5922.

(c) The proposed agreement or transaction involves a multifacility health system serving multiple communities, rather than a single facility.

SEC. 6. Section 5923 of the Corporations Code is amended to read:

5923. The Attorney General shall have discretion to consent to, give conditional consent to, or not consent to any agreement or transaction described in subdivision (a) of Section 5920. In making the determination, the Attorney General shall consider any factors that the Attorney General deems relevant, including, but not limited to, whether any of the following apply:

(a) The terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation.

(b) The agreement or transaction will result in inurement to any private person or entity.

(c) Fair market value of the agreement or transaction, meaning the most likely price that the assets being sold would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably, and in their own best interest, and a reasonable time being allowed for exposure in the open market.

(d) The market value has been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease.

(e) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated nonprofit health system.



(f) The agreement or transaction involves or constitutes any breach of trust.

(g) The Attorney General has been provided, pursuant to Section 5250, with sufficient information and data by the nonprofit public benefit corporation to evaluate adequately the agreement or transaction or the effects thereof on the public.

(h) The agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.

(i) The proposed agreement or transaction is in the public interest.

SEC. 7. Section 5924 of the Corporations Code is amended to read:

5924. (a) Within the time periods designated in Section 5921 and relating to those factors specified in Section 5923, the Attorney General may do the following:

(1) Contract with, consult, and receive advice from any state agency on those terms and conditions that the Attorney General deems appropriate.

(2) In his or her sole discretion, contract with experts or consultants to assist in reviewing the proposed agreement or transaction.

(b) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into under this section shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The selling nonprofit corporation, upon request, shall pay the Attorney General promptly for all contract costs.

(c) The Attorney General shall be entitled to reimbursement from the selling nonprofit corporation for all actual, reasonable, direct costs incurred in reviewing, evaluating, and making the determination referred to in Section 5921, including administrative costs. The selling nonprofit corporation shall promptly pay the Attorney General, upon request, for all of those costs.

(d) (1) In order to effectively monitor ongoing compliance with the terms and conditions of any sale or transfer of assets subject to Section 5920, including, but not limited to, the ongoing use of the charitable assets in a manner consistent with the trust



pursuant to which they are held, the Attorney General may, in his or her sole discretion, contract with experts and consultants to assist in this regard.

(2) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into under this section shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The selling nonprofit corporation shall pay the Attorney General promptly for all contract costs.

(3) The Attorney General shall be entitled to reimbursement from either the selling or the acquiring nonprofit corporation, depending upon which one the burden of compliance falls, for all actual, reasonable, and direct costs incurred in monitoring ongoing compliance with the terms and conditions of the sale or transfer of assets, including contract and administrative costs. The Attorney General shall be entitled to this reimbursement for a period of time not to exceed two years after any time period specified in the terms or conditions of sale or transfer of assets. The Attorney General may bill either the selling or the acquiring corporation and the corporation billed by the Attorney General shall promptly pay for all of those costs.



Approved \_\_\_\_\_, 2002

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*Governor*

