

SENATE BILL No. 44

AN ACT relating to hospitals; providing for transfer of hospital assets under certain circumstances to a foundation created under this act; providing for the creation of such foundations and the appointment of a board of directors therefor; placing certain limitations and prohibitions on such foundations and associated persons; and defining certain terms.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. (a) Whenever there is a proposed change in control of a not-for-profit hospital by sale, merger, integration or any other event that may result in the change or loss of the hospital's federal tax exempt status or forfeiture of the hospital's articles of incorporation or amendment of the hospital's articles of incorporation that in any manner alters the original purpose of the hospital, and before there is any transfer or depletion of the hospital's assets, a new foundation shall be formed pursuant to subsection (c), and all Kansas assets of the hospital shall be transferred to such foundation.

(b) The purpose of the foundation created pursuant to this section shall be to determine disposition of the assets transferred to the foundation in accordance with subsection (a). Such disposition shall effectuate as near as possible the manifested general charitable intention of the donor or donors. This section shall not be construed in any way to limit the authority of the attorney general provided by the provisions of K.S.A. 59-22a01 and amendments thereto.

(c) Any foundation formed pursuant to this section shall be organized as a Kansas not-for-profit corporation that is not subject to federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code. The board of directors for any such foundation shall consist of 18 members, of whom five shall be appointed by the governor, five by the attorney general, three by the senate president, three by the speaker of the house of representatives, one by the minority leader of the senate and one by the minority leader of the house of representatives. Vacancies occurring on the foundation board of directors shall be filled by the respective appointing authority. In selecting members, the appointing authorities shall consult to give due consideration to whether the board, as a whole, represents the geographic, ethnic, gender, age, socio-economic and professional diversity of the counties comprising the hospital's service area. Members shall not receive compensation for their service on a foundation board of directors, but may receive actual expenses for such service.

(d) Each foundation board member shall serve a three year term, except initially, when two of the governor's appointees, two of the attorney general's appointees, one of the president's appointees and one of the speaker's appointees shall serve two year terms, and one of the governor's appointees, one of the attorney general's appointees, one of the president's appointees, one of the speaker's appointees and the appointees of the two minority leaders shall serve one year terms.

(e) Each member of a foundation board of directors shall be a resident of one of the counties comprising the hospital's service area.

(f) No foundation created under this section shall make any loans to any of its board members, officers, employees, other person or entity employed by or having a contract with the foundation and shall not engage in any self-dealing for the benefit of any board member, officer, employee, other person or entity having a contract with the foundation. No foundation, foundation board member, officer or employee shall, directly or indirectly, engage in lobbying or otherwise attempt to influence legislation, advocate the nomination, election or defeat of any candidate for public office, or attempt to influence the outcome of any ballot initiative or issue. No asset of the foundation shall be utilized by the foundation, foundation board members, officers, employees, or grant recipients for lobbying or otherwise attempting to influence legislation, advocating the nomination, election or defeat of any candidate for public office, or attempting to influence the outcome of any ballot initiative or issue. Nothing in this provision shall be construed to prohibit the foundation, foundation board members, officers, employees or grant recipients from publicizing the services provided by said foundation or grant recipients, or publicizing the decisions and actions of the foundation, or to prohibit individual foundation board members, officers, employees or grant recipients from expressing individually held opinions as long as such opinions are not expressed as being held by the foundation itself.

(g) As used in this section, “hospital” means one or more of the following: (1) a hospital as defined by K.S.A. 65-425 and amendments thereto, that is not subject to federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code and that is licensed by either the Kansas department of health and environment pursuant to K.S.A. 65-425 *et seq.* and amendments thereto; or (2) Health Midwest, Inc. and any other similarly situated hospital holding company; or (3) a licensed Kansas not-for-profit hospital that is a subsidiary or affiliate of a domestic or foreign hospital holding company. As used in this section, a hospital’s “service area” means the county or counties in Kansas that are served by that hospital.

(h) The provisions of this section shall apply from and after January 1, 2003.

(i) If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

(j) This section shall be a part of and supplemental to the hospital licensing, inspection and regulation act, K.S.A. 65-425 *et seq.*

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the  
SENATE, and passed that body

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*President of the Senate.*

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*Secretary of the Senate.*

Passed the HOUSE \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*