

Amendments to Senate Bill No. 317
2nd Reading Copy

Requested by Senator Greg Lind

For the House Business and Labor Committee

Prepared by Susan Byorth Fox
March 12, 2005 (10:17am)

1. Title, line 10.

Strike: the first "AND"

Insert: ", "

Following: "35-2-617, "

Insert: "AND 35-2-722, "

2. Page 2, line 12.

Following: "PUBLIC ASSETS"

Insert: "and the proceeds of public assets"

3. Page 2, line 20.

Strike: "EXERCISE"

Insert: "transfer"

4. Page 3, line 4 and line 5.

Strike: "NEGOTIABLE" on line 4 through "30-3-104" on line 5

Insert: "but not limited to stocks, shares, bonds, notes,
evidences of indebtedness, negotiable instruments, or an
ownership interest in an entity"

5. Page 3, line 13.

Strike: "OR"

Insert: "(xi) any transfer of assets between a nonprofit health
entity that is a nonprofit public benefit corporation and a
nonprofit mutual benefit corporation in which all of the
members are nonprofit public benefit corporations, provided
that the management of all assets transferred by a nonprofit
public benefit corporation in a transaction described in
this subsection (3)(c)(xi) continue to be managed in a
manner consistent with the public benefit purpose of the
transferring nonprofit public benefit corporation; or"

Renumber: subsequent subsection

6. Page 3, line 20.

Following: the first "ASSETS"

Insert: "or the proceeds of public assets"

7. Page 4, line 10.

Following: "COMPORTS"

Insert: "with"

Strike: "ON"

Insert: "of"

8. Page 5, line 7.

Following: "(1)"

Insert: "(a)"

9. Page 5, line 8.

Following: "respect to"

Insert: "the assets of any public benefit corporation, to"

Following: "charity,"

Insert: "or"

10. Page 5, line 9 and 10.

Following: "part 5" on line 9

Strike: ", or to" on line 9 through "35-7-722" on line 10

11. Page 5.

Following: line 10

Insert: "(b) Filing of an application under [sections 1 through 18] satisfies any notice requirements under 35-2-609, 35-2-617, or 35-2-722."

12. Page 5, line 11 through line 13.

Strike: subsection (2) in its entirety

Insert: "(2) (a) (i) Nothing in [sections 1 through 18] precludes the attorney general, the commissioner, or a nonprofit health entity from filing an action in district court under Title 27, chapter 8, seeking a declaration that a nonprofit health entity transaction is or is not a conversion transaction as defined in [section 1] or a declaration of whether assets of a nonprofit health entity are or are not public assets as defined in [section 1]. No other declaratory relief may be sought in a court regarding any issue arising from a transaction that is or is alleged to be a conversion transaction under [sections 1 through 18], except that a transferor or transferee may file an action in district court seeking an injunction prohibiting the attorney general or commissioner from making an unlawful

disclosure of trade secrets or proprietary or other confidential information.

(ii) In an action under this subsection (2) to determine whether assets of a nonprofit health entity are or are not public assets, the presumption in [section 13(3)] applies.

(b) The commissioner or the attorney general, or both, may contract with experts as reasonably necessary to bring or defend an action pursuant to this subsection (2) and the nonprofit health entity shall pay the costs reasonably incurred by the commissioner or the attorney general for the experts' services.

(c) In an action under this subsection (2), if the court finds that the transaction is a conversion transaction subject to [sections 1 through 18] and the transaction has not been completed, the court shall enter an injunction prohibiting any further actions to complete the transaction until it has been approved by the commissioner and attorney general under [section 2].

(d) In an action under this subsection (2), if the court finds that a completed transaction was a conversion transaction that the commissioner and attorney general have not approved under [section 2], the court shall enter an injunction requiring the nonprofit health entity or any successor to the assets involved in the transaction to submit an application for review under [section 5]. After reviewing any application submitted following a court order under this subsection (2)(d), the attorney general may direct that the nonprofit health entity or any successor to the assets involved in the transaction distribute the fair market value of any public assets involved in the transaction as required under [section 18].

(e) The court issuing the declaratory judgment retains jurisdiction to enforce any direction by the attorney general for distribution of the fair market value of public assets under this subsection (2).

(3) [Sections 1 through 18] may not be construed to make void or voidable or to require any distribution of assets with respect to any transaction or series of transactions completed before [the effective date of this act], even if that transaction or series of transactions is considered as part of a conversion transaction completed on or after [the effective date of this act]."

13. Page 8, line 17.

Following: "ATTORNEY GENERAL"

Insert: "or a court pursuant to [section 4]"

14. Page 9, line 27.

Following: "ATTORNEY GENERAL"

Insert: "or a court pursuant to [section 4]"

15. Page 11, line 12.

Strike: "The"

Insert: "Except as provided in subsection (5), the"

16. Page 11, line 24.

Strike: "for-profit company and its"

Insert: "parties to the conversion transaction and their"

17. Page 12, line 3.

Strike: the first "the for-profit entity"

Insert: "any party to the conversion transaction"

Strike: the second "the for-profit entity"

Insert: "a party to the conversion transaction"

18. Page 12, line 23.

Insert: "(5) Notwithstanding any other provision of this section, the proceeds of a conversion transaction that are public assets of a nonprofit mutual benefit corporation in which all of the members are nonprofit public benefit corporations may be distributed to the member nonprofit public benefit corporations if the articles of incorporation of the nonprofit mutual benefit corporation provide for that distribution."

19. Page 13, line 25 through 28.

Following: "[sections 1 through 18]." on line 25

Strike: remainder of line 25 through "corporation." on line 28

20. Page 15, line 9:

Insert: "**Section 21.** Section 35-2-722, MCA, is amended to read:

"**35-2-722. Notices to the attorney general.** (1) Except as provided in subsection (4), a public benefit corporation or religious corporation shall give the attorney general written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the secretary of state. The notice must include a copy or summary of the plan of dissolution.

(2) Assets may not be transferred or conveyed by a public benefit corporation or religious corporation as part of the dissolution process until 20 days after it has given the written notice required by subsection (1) to the attorney general or until the attorney general has consented in writing to the dissolution or indicated in writing that he will not take action in respect to the transfer or conveyance, whichever is earlier.

(3) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list must indicate the address of each person, other than creditors, who received assets and indicate what assets each received.

(4) A public benefit corporation or religious corporation that is considered a nonprofit health entity, as defined in [section 1], is subject to the provisions of [sections 1 through 18]."

{ Internal References to 35-2-722:
35-2-723x }

Renumber: subsequent sections

21. Page 15, line 17.

Following: "transaction"

Insert: "or any individual transaction or series of transactions"

- END -

