

SENATE PUBLIC HEALTH, WELFARE & SAFETY	
EXHIBIT NO.	18
DATE: 317	2-16-05
BILL NO.	SB317

Amendments to Senate Bill  
1st Reading Copy

Requested by Senator Greg Lind

For the Senate Public Health, Welfare and Safety Committee

Prepared by Susan Byorth Fox  
February 16, 2005 (2:44pm)

1. Page 1, line 19.  
**Following:** line 18  
**Insert:** "(2) "Control or governance" means the possession, indirect or direct, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise unless the power is solely the result of an official position with a corporate office held by the person."  
**Renumber:** subsequent subsections
  
2. Page 1, line 20.  
**Strike:** "conversion,"
  
3. Page 1, line 21.  
**Following:** "disposition"  
**Insert:** "by a nonprofit health entity or another person or entity"  
**Following:** "governance"  
**Insert:** "to a person or entity other than the nonprofit health entity"
  
4. Page 1, line 22.  
**Strike:** "full"
  
5. Page 1, line 23.  
**Strike:** "full"
  
6. Page 1, line 25 and line 26.  
**Following:** "transactions."  
**Strike:** remainder of line 25 through "mission." on line 26  
**Insert:** "In determining the value of a tangible asset under this definition, the value of the asset must be calculated net of any mortgage, lien, or other encumbrance on the asset that

exists of record."

7. Page 1, line 27.

**Following:** "include"

**Insert:** ":

(i)"

8. Page 1, line 28.

**Following:** "result in a"

**Insert:** "material"

9. Page 1, line 29.

**Following:** "mission"

**Strike:** ", including but not limited to:"

**Insert:** ";

(ii) a transaction or series of transactions in the ordinary course of a nonprofit health entity's business if the effect of the transaction or series of transactions is not to convert the nonprofit health entity from a nonprofit to a for-profit entity, to transfer the nonprofit health entity's business or operations to a for-profit entity, or to transfer the control or benefit of public assets to a mutual benefit or for-profit entity;

(iii) awards, grants, or payments to or on behalf of intended members or beneficiaries, consistent with the lawful purposes of a nonprofit health entity;

(iv) a change in the membership of the board of directors or officers of the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity, provided that the change in membership does not result in a change in the nonprofit corporate status of the nonprofit health entity, does not result from a transfer of control, governance, or ownership of the nonprofit health entity, and does not result from exercise of a power of appointment of directors or officers of the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity;

(v) settlement, satisfaction, or payment of a claim or suit against or debt of the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity incurred in the ordinary course of business;

(vi) execution of a promissory note, guaranty, or other evidence of indebtedness for the amount of a loan, the proceeds of which are paid solely to the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity;

(vii) any payment, transfer, or other transaction required by law or by order of any authorized administrative officer or agency, including but not limited to payment of taxes, fees, fines, penalties, or other assessments to a government or a nonprofit health entity or a transaction ordered by the

commissioner or the attorney general;

(viii) purchases, sales, or transfers in the ordinary course of business for fair market value of cash or cash equivalents owned by the nonprofit health entity or any wholly owned subsidiary in exchange for goods, products, services, or an interest in property, including negotiable instruments as defined in 30-3-104, to be held by the nonprofit health entity or its wholly owned subsidiary;"

**Renumber:** subsequent subsections

10. Page 2, line 4.

**Following:** "encumbrance;"

**Strike:** "or"

11. Page 2, line 5.

**Strike:** "full"

12. Page 2, line 7.

**Following:** "subsidiary"

**Insert:** "; or

(xi) any other transaction or proposed transaction for fair market value if:

(A) the nonprofit health entity or its wholly owned subsidiary retains or will retain substantially the same degree of control, governance, or ownership of the proceeds of the transaction that the nonprofit health entity or its wholly owned subsidiary held in the assets or operations prior to the transaction or proposed transaction;

(B) the nonprofit health entity maintains its operations as a nonprofit health entity and public assets are maintained as public assets; and

(C) none of the assets or operations of the nonprofit health entity or its wholly owned subsidiary inure or will inure directly or indirectly to the benefit of any officer, director, trustee, or employee of the nonprofit health entity or its wholly owned subsidiary"

13. Page 2, line 8 through line 12.

**Strike:** subsection (3) in its entirety

**Insert:** "(4) "Fair market value" means the fair market value as of the date of the transaction or proposed transaction as determined by an independent appraisal of the assets or operations performed and communicated by a qualified appraiser according to applicable professional appraisal standards."

14. Page 2, line 14.

**Following:** line 13

**Insert:** "(6) "Health service corporation" has the meaning provided in 33-30-101."

**Renumber:** subsequent subsections

15. Page 2, line 16.

**Strike:** ", as defined in 33-30-101"

16. Page 2, line 19.

**Following:** line 18

**Insert:** "(8) "Ordinary course of business" means with respect to a transaction or disposition that the transaction comports the usual and customary practices on the kind of business in which the nonprofit health entity is engaged."

**Renumber:** subsequent subsections

17. Page 3, line 9.

**Strike:** "information may be considered"

18. Page 3, line 10.

**Strike:** "or"

**Insert:** "and"

**Following:** "secrets"

**Insert:** "are protected from public disclosure"

**Following:** "6]"

**Insert:** "to the extent allowed by law"

19. Page 3, line 13.

**Following:** "powers."

**Insert:** "(1)"

20. Page 3, line 17.

**Following:** line 16

**Insert:** "(2) Nothing in [sections 1 through 18] precludes the attorney general or commissioner from seeking a declaratory judgment on whether an action may be considered a conversion transaction or a transaction in the ordinary course of business."

21. Page 4, line 1.

**Strike:** "full"

22. Page 4, line 3.  
**Following:** "entity;"  
**Insert:** "and"

23. Page 4, line 4 through line 5.  
**Following:** "expert" on line 4  
**Strike:** remainder of line 4 through "transaction" on line 5

24. Page 4, line 8.  
**Strike:** "rule"  
**Insert:** "law"

25. Page 4, line 12.  
**Following:** "record"  
**Insert:** ", except that any proprietary information or trade secret that may by law be kept confidential is not a public record"

26. Page 5, line 6.  
**Following:** "2-4-612"  
**Strike:** ", "  
**Insert:** "through"

27. Page 5, line 20.  
**Strike:** "full"

28. Page 6, line 12 and line 13.  
**Strike:** "90 calendar days after"  
**Insert:** "on"  
**Following:** "on which"  
**Strike:** remainder of line 12 through "earlier" on line 13  
**Insert:** "both the commissioner and the attorney general have issued orders under [section 11]"

29. Page 6, line 20.  
**Strike:** "full"

30. Page 6, line 21.  
**Strike:** "full"

31. Page 6, line 23.  
**Strike:** "full"

32. Page 6, line 30.  
**Strike:** "fair"  
**Insert:** "reasonable"

33. Page 7, line 11.  
**Strike:** "full"

34. Page 7, line 12 through line 13.  
**Strike:** "full"  
**Following:** "factors,"  
**Strike:** remainder of line 12 through "general" on line 13  
**Insert:** "that may include but are not limited to"

35. Page 8, line 8.  
**Strike:** "fair"  
**Insert:** "reasonable"

36. Page 9, line 9.  
**Following:** "transaction"  
**Insert:** "that are public assets"

- END -