

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL DRS35116-NE-75

Short Title: Reorganization & Economic Development Act. (Public)

Sponsors: Senators Johnson, Craven, and Proctor (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A PROCEDURE FOR A HOSPITAL SERVICE CORPORATION
3 TO REORGANIZE BY CREATING A NONPROFIT HOLDING CORPORATION.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 65 of Chapter 58 of the General Statutes is amended by adding
6 a new Part to read:

7 "Part 3. Nonprofit Holding Corporations.

8 "§ 58-65-175. Definitions.

9 The following definitions apply in this Part:

- 10 (1) Affiliate. – As defined in G.S. 58-19-5.
11 (2) Executive officer. – As defined in G.S. 58-19-5.
12 (3) Nonprofit holding corporation. – A domestic corporation formed in
13 connection with a reorganization and operating under Chapter 55A of the
14 General Statutes that directly or indirectly holds all the membership interests
15 in a hospital service corporation and is the ultimate controlling person of the
16 hospital service corporation. A nonprofit holding corporation is not (i) a
17 "company," "insurance company," or "insurer," as those terms are defined in
18 G.S. 58-1-5, or (ii) a "hospital service corporation," as defined in
19 G.S. 58-65-1.1.
20 (4) Reorganization. – A transaction or series of transactions in which a nonprofit
21 holding corporation is created by or on behalf of a hospital service corporation
22 to hold, directly or indirectly, membership interests in the hospital service
23 corporation and becomes the ultimate controlling person of the hospital
24 service corporation.
25 (5) Subsidiary. – As defined in G.S. 58-19-5.
26 (6) Ultimate controlling person. – As defined in G.S. 58-19-5.

27 "§ 58-65-177. Reorganization.

28 (a) Permissible Activities. – A reorganization may include transfers, by dividend or
29 otherwise, of property, assets, rights, liabilities, equity or ownership interests in subsidiaries or
30 other owned business entities, and other interests between the hospital service corporation and
31 the nonprofit holding corporation and any other subsidiaries of the nonprofit holding corporation,
32 and other related transactions.

33 (b) Hospital Service Corporation to be Held by Nonprofit Holding Corporation. –
34 Notwithstanding any other provision of this Article, a hospital service corporation may have a
35 nonprofit holding corporation as its ultimate controlling person.



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1 (c) Reorganization Not a Change of Control. – A reorganization shall be considered an
2 internal restructuring that does not have the effect of changing or influencing the control of the
3 hospital service corporation. A reorganization shall not be considered a change of control of the
4 hospital service corporation and shall not be subject to the provisions of G.S. 58-19-15. For
5 purposes of this subsection, "control" is defined by G.S. 58-19-5.

6 (d) Transfers in Connection with Reorganization. – Notwithstanding any other provision
7 of this Article, as part of a reorganization, a hospital service corporation may transfer, by dividend
8 or otherwise, of property, assets, rights, liabilities, equity or ownership interests in subsidiaries
9 or other owned business entities, and other interests between the hospital service corporation and
10 the nonprofit holding corporation and any other subsidiaries of the nonprofit holding corporation,
11 and other related transactions. Compliance with G.S. 58-19-30 and this Part shall be the exclusive
12 means of approval to permit a reorganization, and the provisions of G.S. 58-19-10(b), 58-65-131,
13 58-65-132, and 58-65-133 shall not apply to a reorganization.

14 (e) Compensation. – A director, officer, or employee of the hospital service corporation
15 shall not receive any fee, commission, additional compensation, or other valuable consideration
16 for aiding, promoting, or assisting in a reorganization. This subsection does not apply to
17 compensation paid in the ordinary course of business.

18 **"§ 58-65-179. Charter amendments.**

19 (a) Notwithstanding (i) any law of this State to the contrary or (ii) anything to the contrary
20 in the bylaws or articles of incorporation of the hospital service corporation, a hospital service
21 corporation may, by action of its governing board, authorize a reorganization and propose
22 corresponding amendments to its charter. Proposed amendments shall be submitted to the
23 Commissioner for approval, and the Commissioner shall approve the proposed amendments no
24 later than 30 days after receiving the application unless the proposed amendments do not comply
25 with this Article or Chapter 55A of the General Statutes.

26 (b) Any provision of this Article relating to the procedure for amending a charter, other
27 than the provisions of this Part, is inapplicable.

28 **"§ 58-65-181. Operation of nonprofit holding corporation and subsidiaries.**

29 (a) Except as provided in this Part, a nonprofit holding corporation shall not be subject
30 to this Article or Article 66 of this Chapter.

31 (b) Both of the following shall apply to a nonprofit holding corporation upon and after a
32 reorganization:

33 (1) The nonprofit holding corporation shall remain a nonprofit corporation under
34 G.S. 55A-1-40. The nonprofit holding corporation shall remain the ultimate
35 controlling person of the hospital service corporation. This subsection shall
36 not apply if a plan of conversion of the hospital service corporation is
37 approved pursuant to G.S. 58-65-131, 58-65-132, or 58-65-133.

38 (2) The nonprofit holding corporation and its direct or indirect subsidiaries that
39 are not hospital service corporations or subsidiaries of hospital service
40 corporations are not subject to G.S. 58-65-131, 58-65-132, or 58-65-133, and
41 the actions of the nonprofit holding corporation and such subsidiaries will not
42 constitute or require a conversion of the hospital service corporation under
43 those sections or any other law of this State.

44 (c) No equity or ownership interest in the nonprofit holding corporation or any of its
45 subsidiaries shall be granted to any executive officer or any member of the governing board of
46 the nonprofit holding corporation or the hospital service corporation.

47 **"§ 58-65-183. Hospital service corporation to maintain legal status.**

48 (a) A reorganization does not change (i) the legal form of the hospital service corporation
49 or (ii) the hospital service corporation's license to do business in North Carolina. Any subscribers'
50 contracts and certificates issued by the hospital service corporation shall remain in full force and
51 effect.

1 (b) The hospital service corporation shall continue to be subject to this Article and Article
2 66 of this Chapter, except for the following:

3 (1) A reorganization shall not constitute or require a conversion of the hospital
4 service corporation pursuant to G.S. 58-65-131, 58-65-132, and 58-65-133 or
5 any other law of this State.

6 (2) A reorganization shall not require the nonprofit holding corporation, hospital
7 service corporation, or any affiliate of either to make any distribution or
8 payment to any person or entity. This subdivision shall not apply to
9 distributions or payments between a nonprofit holding corporation or hospital
10 service corporation and any of its affiliates.

11 (3) The hospital service corporation may make and pay direct or indirect
12 dividends or distributions to the nonprofit holding corporation, and
13 G.S. 58-19-10(b), 58-65-131, 58-65-132, and 58-65-133 shall not apply to
14 such dividends or distributions, provided that such dividends or distributions
15 comply with G.S. 55A-13-02, 58-7-130, 58-19-25(d), and 58-19-30.

16 (4) If the hospital service corporation undertakes a conversion pursuant to
17 G.S. 58-65-131, 58-65-132, and 58-65-133 at any time following a
18 reorganization, then, for the purposes of that conversion, the references in
19 G.S. 58-65-131, 58-65-132, and 58-65-133 to "fair market value of the
20 corporation" or "value of the corporation" shall mean the fair market value of
21 the nonprofit holding corporation."

22 **SECTION 2.** This act is effective when it becomes law.