

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 346
PROPOSED COMMITTEE SUBSTITUTE H346-CSBC-9 [v.2]
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Short Title: Reorganization & Economic Development Act.

(Public)

Sponsors:

Referred to:

March 14, 2023

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

The General Assembly of North Carolina enacts:

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

"Part 3. Nonprofit Holding Corporations.

"§ 58-65-175. Definitions.

The following definitions apply in this Part:

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

"§ 58-65-177. Reorganization.

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

(b) Reorganization Not a Change of Control. – A reorganization shall be considered an internal restructuring that does not have the effect of changing or influencing the control of the



hospital service corporation. A reorganization shall not be considered a change of control of the hospital service corporation and shall not be subject to the provisions of G.S. 58-19-15.

(c) Transfers in Connection with Reorganization. – Notwithstanding any other provision of this Article, as part of a reorganization, a hospital service corporation may transfer, by dividend, distribution, or otherwise, property, assets, rights, liabilities, equity or ownership interests in subsidiaries or other owned business entities, and other interests between the hospital service corporation and the nonprofit holding corporation and any other subsidiaries of the nonprofit holding corporation, and engage in other related transactions.

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

"§ 58-65-178. Approval by Commissioner.

Compliance with G.S. 58-19-30 and this Part shall be the exclusive means of approval to permit a reorganization, and the provisions of G.S. 58-19-10(b), 58-65-131, 58-65-132, and 58-65-133 shall not apply to a reorganization.

"§ 58-65-179. Charter amendments.

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

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

"§ 58-65-180. Information to be provided by a hospital service corporation.

(a) A hospital service corporation reorganizing pursuant to this Part shall file the following information with the Commissioner:

- (1) A description of the transactions that effectuate the reorganization.
- (2) A copy of any proposed amendments to the hospital service corporation's charter.
- (3) A copy of the nonprofit holding corporation's articles of incorporation.
- (4) If applicable, any information required by G.S. 58-19-30.
- (5) A pro forma balance sheet and income statement for the hospital service corporation prepared in accordance with statutory accounting principles, demonstrating the hospital service corporation's financial position at the effective time of the reorganization.
- (6) A pro forma balance sheet and income statement for the nonprofit holding corporation prepared in accordance with generally accepted accounting principles, demonstrating the nonprofit holding corporation's financial position at the effective time of the reorganization.
- (7) A certification by an executive officer of the hospital service corporation that at the time of the reorganization the subscribers' contracts and certificates issued by the hospital service corporation shall remain in full force and effect.
- (8) A certification by an executive officer of the hospital service corporation that at the time of the reorganization the governing board of the nonprofit holding corporation will be comprised solely of individuals on the governing board of the hospital service corporation.

(b) The Commissioner may contract, at the expense of the hospital service corporation, with professional advisors not otherwise a part of the Commissioner's staff to assist the

Commissioner in reviewing the materials submitted pursuant to this section. These contracts are personal professional service contracts exempt from Articles 3 and 3C of Chapter 143 of the General Statutes.

(c) Upon completion of a reorganization, the hospital service corporation shall provide a notice of completion of the reorganization to the Commissioner.

(d) Information submitted as part of a reorganization that constitutes trade secrets or personal information, including addresses, shall be confidential by law and privileged, shall not be considered a public record under either G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

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

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

(b) The following shall apply to a nonprofit holding corporation upon and after a reorganization:

(1) The nonprofit holding corporation shall remain a nonprofit corporation subject to Chapter 55A of the General Statutes with no members. The nonprofit holding corporation shall remain the ultimate controlling person of the hospital service corporation. This subdivision shall not apply if a plan of conversion of the hospital service corporation is approved pursuant to G.S. 58-65-131, 58-65-132, or 58-65-133.

(2) All or substantially all of the net worth of the nonprofit holding corporation, as determined by generally accepted accounting principles, other than its investment portfolio held in the ordinary course of business, shall be invested in insurance companies or other affiliates or subsidiaries that (i) engage in operations permitted pursuant to G.S. 58-19-10(a), (ii) contribute to the health needs of customers, subscribers, or the people of this State, including those in rural communities of this State, or (iii) promote affordability, access, better health or customer experience. The Commissioner may waive the foregoing restriction upon a showing of good cause. Other than as set forth in this subdivision, the nonprofit holding corporation's investments in affiliates and subsidiaries shall not be subject to any of the restrictions set forth in G.S. 58-19-10.

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

(4) The nonprofit holding corporation and its subsidiaries shall automatically be a party to any delinquency proceeding under Article 30 of this Chapter involving a hospital service corporation which, as a result of a reorganization, is a subsidiary of the nonprofit holding corporation. In any delinquency proceeding under Article 30 of this Chapter involving the hospital service corporation, the assets of the nonprofit holding corporation are deemed to be assets of the estate of the hospital service corporation for purposes of satisfying the claims of the hospital service corporation's subscribers. The nonprofit holding corporation shall not dissolve or liquidate without the approval of the Commissioner or as ordered by the court pursuant to Article 30 of this Chapter.

(5) The nonprofit holding corporation shall file annually with the Commissioner by June 1 of each year consolidated audited financial statements for the nonprofit holding corporation for the preceding calendar year.

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

(d) The Commissioner is empowered to exercise the authority provided under G.S. 58-2-40 and G.S. 58-2-60 for purposes of enforcing the nonprofit holding corporation's compliance with this Part.

"§ 58-65-183. Operation of hospital service corporation.

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

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

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

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

(3) The hospital service corporation may make and pay direct or indirect dividends or distributions to the nonprofit holding corporation, its member, and G.S. 58-19-10(b), 58-65-131, 58-65-132, and 58-65-133 shall not apply to such dividends or distributions, provided that such dividends or distributions satisfy the applicable standards for payment of a dividend or distribution set forth in G.S. 55A-13-02, 58-7-130, 58-19-25(d), and 58-19-30.

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

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