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Short Title: Reorganization & Economic Development Act.

(Public)

Sponsors:

Referred to:

March 14, 2023

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

30 **"§ 58-65-177. Reorganization.**

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



1 **(b) 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.

5 **(c) Transfers in Connection with Reorganization.** – Notwithstanding any other provision
6 of this Article, as part of a reorganization, a hospital service corporation may transfer cash,
7 investments, or equity ownership interests in affiliates or subsidiaries to the nonprofit holding
8 corporation and its subsidiaries by dividend, distribution, or otherwise. The total statutory value
9 of cash, investments, and ownership interests in affiliates or subsidiaries, net of liabilities,
10 transferred as part of a reorganization shall not exceed twenty-five percent (25%) of the hospital
11 service corporation's admitted assets as of its most current annual statement filed with the
12 Commissioner. Any affiliate or subsidiary of the hospital service corporation transferred as part
13 of a reorganization shall not be an insurer engaged in the issuance of health insurance policies.

14 **(d) 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 **"§ 58-65-178. Approval by Commissioner.**

19 Compliance with G.S. 58-19-30 and this Part shall be the exclusive means of approval to
20 permit a reorganization, and the provisions of G.S. 58-19-10(b), 58-65-131, 58-65-132, and
21 58-65-133 shall not apply to a reorganization.

22 **"§ 58-65-179. Charter amendments.**

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

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

32 **"§ 58-65-180. Information to be provided by a hospital service corporation.**

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

35 **(1)** A description of the transactions that effectuate the reorganization.

36 **(2)** A copy of any proposed amendments to the hospital service corporation's
37 charter.

38 **(3)** A copy of the nonprofit holding corporation's articles of incorporation.

39 **(4)** If applicable, any information required by G.S. 58-19-30.

40 **(5)** A pro forma balance sheet and income statement for the hospital service
41 corporation prepared in accordance with statutory accounting principles,
42 demonstrating the hospital service corporation's financial position at the
43 effective time of the reorganization.

44 **(6)** A pro forma balance sheet and income statement for the nonprofit holding
45 corporation prepared in accordance with generally accepted accounting
46 principles, demonstrating the nonprofit holding corporation's financial
47 position at the effective time of the reorganization.

48 **(7)** A certification by an executive officer of the hospital service corporation that
49 at the time of the reorganization the subscribers' contracts and certificates
50 issued by the hospital service corporation shall remain in full force and effect.

1 (8) A certification by an executive officer of the hospital service corporation that
2 at the time of the reorganization the governing board of the nonprofit holding
3 corporation will be comprised solely of individuals on the governing board of
4 the hospital service corporation.

5 (b) The Commissioner may contract, at the expense of the hospital service corporation,
6 with professional advisors not otherwise a part of the Commissioner's staff to assist the
7 Commissioner in reviewing the materials submitted pursuant to this section. These contracts are
8 personal professional service contracts exempt from Articles 3 and 3C of Chapter 143 of the
9 General Statutes.

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

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

17 **"§ 58-65-181. Operation of nonprofit holding corporation and subsidiaries.**

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

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

22 (1) The nonprofit holding corporation shall remain a nonprofit corporation
23 subject to Chapter 55A of the General Statutes with no members. The
24 nonprofit holding corporation shall remain the ultimate controlling person of
25 the hospital service corporation. The nonprofit holding corporation shall
26 support the purposes of the hospital service corporation such that at all times
27 all or substantially all of the net worth of the nonprofit holding corporation, as
28 determined by generally accepted accounting principles, other than its
29 investment portfolio held in the ordinary course of business, shall be invested
30 in insurance companies or other affiliates or subsidiaries that (i) engage in
31 operations permitted pursuant to G.S. 58-19-10(a), (ii) contribute to the health
32 needs of customers, subscribers, or the people of this State, including those in
33 rural communities of this State, or (iii) promote affordability, access, better
34 health, or customer experience. The Commissioner may waive the foregoing
35 restriction upon a showing of good cause. Other than as set forth in this
36 subdivision, the nonprofit holding corporation's investments in affiliates and
37 subsidiaries shall not be subject to any of the restrictions set forth in
38 G.S. 58-19-10. This subdivision shall not apply if a plan of conversion of the
39 hospital service corporation is approved pursuant to G.S. 58-65-131,
40 58-65-132, or 58-65-133.

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

47 (3) The nonprofit holding corporation and its subsidiaries shall automatically be
48 a party to any delinquency proceeding under Article 30 of this Chapter
49 involving a hospital service corporation which, as a result of a reorganization,
50 is a subsidiary of the nonprofit holding corporation. In any delinquency
51 proceeding under Article 30 of this Chapter involving the hospital service

1 corporation, the assets of the nonprofit holding corporation are deemed to be
2 assets of the estate of the hospital service corporation for purposes of
3 satisfying the claims of the hospital service corporation's subscribers. The
4 nonprofit holding corporation shall not dissolve or liquidate without the
5 approval of the Commissioner or as ordered by the court pursuant to Article
6 30 of this Chapter.

7 (4) The nonprofit holding corporation shall file annually with the Commissioner
8 by June 1 of each year consolidated audited financial statements for the
9 nonprofit holding corporation for the preceding calendar year. The nonprofit
10 holding corporation shall also file annually with this financial statement
11 executive compensation information for its Chief Executive Officer, Chief
12 Financial Officer, and the next eight highest paid executive officers.

13 (5) The nonprofit holding corporation shall file annually with the Commissioner
14 by June 1 of each year a report describing the nonprofit holding corporation's
15 strategic investment activities for the preceding calendar year.

16 (c) The governing board of the nonprofit holding corporation shall be comprised solely
17 of individuals on the governing board of the hospital service corporation. No equity or ownership
18 interest in the nonprofit holding corporation or any of its subsidiaries shall be granted to any
19 executive officer or any member of the governing board of the nonprofit holding corporation or
20 the hospital service corporation.

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

24 **"§ 58-65-183. Operation of hospital service corporation.**

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

29 (b) The hospital service corporation shall continue to be subject to this Article and Article
30 66 of this Chapter, except for the following:

31 (1) Neither a reorganization nor any other transaction permitted by this Part shall
32 constitute or require a conversion of the hospital service corporation pursuant
33 to G.S. 58-65-131, 58-65-132, 58-65-133, or any other law of this State.

34 (2) Neither a reorganization nor any other transaction permitted by this Part shall
35 require the nonprofit holding corporation, hospital service corporation, or any
36 affiliate of either to make any distribution or payment to any person or entity.
37 This subdivision shall not apply to distributions or payments between a
38 nonprofit holding corporation or hospital service corporation and any of its
39 affiliates.

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

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

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