

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H

1

HOUSE BILL 346

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

Sponsors: Representatives Bradford, Setzer, Reives, and Bell (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Health, if favorable, Insurance, if favorable, Rules, Calendar, and Operations of
the House

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) 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.



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

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

9 **(d) Transfers in Connection with Reorganization.** – Notwithstanding any other provision
10 of this Article, as part of a reorganization, a hospital service corporation may transfer, by dividend
11 or otherwise, of property, assets, rights, liabilities, equity or ownership interests in subsidiaries
12 or other owned business entities, and other interests between the hospital service corporation and
13 the nonprofit holding corporation and any other subsidiaries of the nonprofit holding corporation,
14 and other related transactions. Compliance with G.S. 58-19-30 and this Part shall be the exclusive
15 means of approval to permit a reorganization, and the provisions of G.S. 58-19-10(b), 58-65-131,
16 58-65-132, and 58-65-133 shall not apply to a reorganization.

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

21 **"§ 58-65-179. Charter amendments.**

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

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

31 **"§ 58-65-181. Operation of nonprofit holding corporation and subsidiaries.**

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

34 **(b)** Both of the following shall apply to a nonprofit holding corporation upon and after a
35 reorganization:

36 **(1)** The nonprofit holding corporation shall remain a nonprofit corporation under
37 G.S. 55A-1-40. The nonprofit holding corporation shall remain the ultimate
38 controlling person of the hospital service corporation. This subsection shall
39 not apply if a plan of conversion of the hospital service corporation is
40 approved pursuant to G.S. 58-65-131, 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 **(c)** No equity or ownership interest in the nonprofit holding corporation or any of its
48 subsidiaries shall be granted to any executive officer or any member of the governing board of
49 the nonprofit holding corporation or the hospital service corporation.

50 **"§ 58-65-183. Hospital service corporation to maintain legal status.**

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

5 (b) The hospital service corporation shall continue to be subject to this Article and Article
6 66 of this Chapter, except for the following:

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

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

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

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

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