

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

2

HOUSE BILL 732
Committee Substitute Favorable 4/30/19

Short Title: Nonprofit Mergers/Incr.Charit.Solic.Exempts.

(Public)

Sponsors:

Referred to:

April 15, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES
3 TO THE NORTH CAROLINA NONPROFIT CORPORATION ACT AFFECTING
4 MERGERS AND TO INCREASE THE THRESHOLD TO BE EXEMPT FROM
5 CHARITABLE SOLICITATION LICENSING REQUIREMENTS.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 55A-11-02 reads as rewritten:

8 "§ 55A-11-02. **Limitations on mergers by charitable or religious corporations.**

9 (a) Without the prior approval of the superior court in a proceeding in which the Attorney
10 General has been given written notice, a charitable or religious corporation may merge only with
11 any of the following:

12 ...

13 (5) A limited liability company (i) whose sole member is a charitable or religious
14 corporation or a foreign corporation that would qualify under this Chapter as
15 a charitable or religious corporation and (ii) that is disregarded for income tax
16 purposes and satisfies both of the following conditions:

17 a. The owner of the limited liability company is an organization that is
18 exempt from income tax under section 501(c)(3) of the Internal
19 Revenue Code of 1986 or any successor section.

20 b. The limited liability company is a nonprofit entity that would be
21 eligible for an exemption under section 501(c)(3) of the Internal
22 Revenue Code of 1986 or any successor section if it were not
23 disregarded for income tax purposes.

24"

25 SECTION 2. G.S. 55A-11-09 reads as rewritten:

26 "§ 55A-11-09. **Merger with unincorporated entity.**

27 (a) As used in this section, "business entity" means a domestic business corporation
28 (including a professional corporation as defined in G.S. 55B-2), a foreign business corporation
29 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign
30 nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign
31 limited partnership, a registered limited liability partnership or foreign limited liability
32 partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether
33 or not formed under the laws of this ~~State~~State, or a nonprofit association as defined in
34 G.S. 59B-2 whether or not formed under the laws of this State.

35 ...



1 (e1) If the surviving business entity is not a domestic limited liability company, a domestic
2 business corporation, a domestic nonprofit corporation, or a domestic limited partnership, when
3 the merger takes effect the surviving business entity is deemed:

- 4 (1) To agree that it may be served with process in this State in any proceeding for
5 enforcement of (i) any obligation of any merging domestic limited liability
6 company, domestic business corporation, domestic nonprofit corporation,
7 domestic limited partnership, or other partnership as defined in G.S. 59-36
8 that is formed under the laws of this State, or nonprofit association as defined
9 in G.S. 59B-2 that is formed under the laws of this State, (ii) the appraisal
10 rights of shareholders of any merging domestic business corporation under
11 Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the
12 surviving business entity arising from the merger; and

13"

14 **SECTION 3.** G.S. 131F-3 reads as rewritten:

15 "**§ 131F-3. Exemptions.**

16 The following are exempt from the provisions of this Chapter:

17 ...

- 18 (3) Any person who receives less than ~~twenty five thousand dollars (\$25,000)~~
19 fifty thousand dollars (\$50,000) in contributions in any calendar year and does
20 not provide compensation to any officer, trustee, organizer, incorporator,
21 fund-raiser, or solicitor. Compensation to any organizer or incorporator does
22 not include professional fees paid to licensed attorneys or licensed
23 accountants. A charitable organization may demonstrate to the Department
24 that it receives less than fifty thousand dollars (\$50,000) in contributions by
25 providing any of the following:

- 26 a. A copy of its most recently completed and filed Internal Revenue
27 Service Form 990 or Form 990-EZ or an applicable successor form.
- 28 b. A copy of its budget for the current year that was approved by its
29 governing board and that includes projected revenue and projected
30 expenses.
- 31 c. A completed financial form developed by the Department.
- 32 d. Any other evidence satisfactory to the Department.

33"

34 **SECTION 4.** This act is effective when it becomes law.