

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

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SENATE BILL 647

Short Title: Nonprofit Mergers/Incr.Charit.Solic.Exempts. (Public)

Sponsors: Senators Woodard, Britt, and J. Jackson (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 4, 2019

A BILL TO BE ENTITLED

AN ACT (I) TO CLARIFY AND AMEND THE NONPROFIT CORPORATION MERGER STATUTES RELATING TO MERGERS WITH QUALIFYING LIMITED LIABILITY COMPANIES AND WITH UNINCORPORATED NONPROFIT ASSOCIATIONS AND TO PROVIDE THAT THE REQUIREMENT THAT A NONPROFIT CORPORATION NOTIFY THE ATTORNEY GENERAL OF A SALE OR DISPOSITION OF ALL ITS ASSETS DOES NOT APPLY TO THE DISPOSAL OF ITS ASSETS IN ACCORDANCE WITH A PROPERLY ADOPTED PLAN OF DISSOLUTION AND (II) TO RAISE THE MINIMUM TOTAL CONTRIBUTION THRESHOLD FOR A PERSON TO BE EXEMPT FROM CHARITABLE SOLICITATION LICENSING REQUIREMENTS ON THE BASIS OF TOTAL CONTRIBUTIONS RECEIVED AND TO PROVIDE METHODS OF ESTABLISHING THE AMOUNT OF CONTRIBUTIONS RECEIVED.

The General Assembly of North Carolina enacts:

PART I. NONPROFIT CORPORATION AMENDMENTS

SECTION 1.1. G.S. 55A-11-02 reads as rewritten:

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

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

- (1) A charitable or religious corporation.
- (2) A foreign corporation that would qualify under this Chapter as a charitable or religious corporation.
- (3) A wholly owned foreign or domestic corporation (business or nonprofit) which is not a charitable or religious corporation, or an unincorporated entity, provided the charitable or religious corporation is the survivor in the merger and continues to be a charitable or religious corporation after the merger.
- (4) A business or nonprofit corporation (foreign or domestic) other than a charitable or religious corporation, or an unincorporated entity, provided that:
 - (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved; (ii) it shall return, transfer or convey any assets held by it upon



1 condition requiring return, transfer or conveyance, which condition occurs by
2 reason of the merger, in accordance with such condition; and (iii) the merger
3 is approved by a majority of directors of the charitable or religious corporation
4 who are not and will not become members, as "member" is defined in
5 G.S. 55A-1-40(16) or G.S. 57D-1-03, partners, limited partners, or
6 shareholders in or directors, managers, officers, employees, agents, or
7 consultants of the survivor in the merger.

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

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

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

19 (b) At least 30 days before consummation of any merger of a charitable or religious
20 corporation pursuant to subdivision (a)(4) of this section, notice, including a copy of the proposed
21 plan of merger, shall be delivered to the Attorney General. This notice shall include all the
22 information the Attorney General determines is required for a complete review of the proposed
23 transaction. The Attorney General may require an additional 30-day period to review the
24 proposed transaction by providing written notice to the charitable or religious corporation prior
25 to the expiration of the initial notice period. During this 30-day period, the transaction may not
26 be finalized.

27 (c) Without the prior written consent of the Attorney General, or approval of the superior
28 court in a proceeding in which the Attorney General has been given notice, no member of a
29 charitable or religious corporation may receive or retain any property as a result of a merger other
30 than an interest as a member, as "member" is defined in G.S. 55A-1-40(16), in the survivor of
31 the merger. The Attorney General may consent to the transaction, or the court shall approve the
32 transaction, if it is fair and not contrary to the public interest."

33 **SECTION 1.2.** G.S. 55A-11-09 reads as rewritten:

34 "**§ 55A-11-09. Merger with unincorporated entity.**

35 (a) As used in this section, "business entity" means a domestic business corporation
36 (including a professional corporation as defined in G.S. 55B-2), a foreign business corporation
37 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign
38 nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign
39 limited partnership, a registered limited liability partnership or foreign limited liability
40 partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether
41 or not formed under the laws of this ~~State~~State, or a nonprofit association as defined in
42 G.S. 59B-2 whether or not formed under the laws of this State.

43 (b) One or more domestic nonprofit corporations may merge with one or more
44 unincorporated entities and, if desired, one or more foreign nonprofit corporations, domestic
45 business corporations, or foreign business corporations if:

46 (1) The merger is permitted by the laws of the state or country governing the
47 organization and internal affairs of each of the other merging business entities;

48 (2) Each merging domestic nonprofit corporation and each other merging
49 business entity comply with the requirements of this section and, to the extent
50 applicable, the laws referred to in subdivision (1) of this subsection; and

51 (3) The merger complies with G.S. 55A-11-02, if applicable.

1 (c) Each merging domestic nonprofit corporation and each other merging business entity
2 shall approve a written plan of merger containing all of the following:

- 3 (1) For each merging business entity, its name, type of business entity, and the
4 state or country whose laws govern its organization and internal affairs.
- 5 (2) The name of the merging business entity that shall survive the merger.
- 6 (3) The terms and conditions of the merger.
- 7 (4) The manner and basis of converting the interests in each merging business
8 entity into interests, obligations, or securities of the surviving business entity,
9 or into cash or other property in whole or in part, or of cancelling the interests.
- 10 (5) If the surviving business entity is a domestic nonprofit corporation, any
11 amendments to its articles of incorporation that are to be made in connection
12 with the merger.

13 ...

14 (c3) In the case of a merging domestic nonprofit corporation, approval of the plan of
15 merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. If any member
16 of a merging domestic nonprofit corporation has or will have personal liability for any existing
17 or future obligation of the surviving business entity solely as a result of holding an interest in the
18 surviving business entity, then in addition to the requirements of G.S. 55A-11-03, approval of
19 the plan of merger by the domestic nonprofit corporation shall require the affirmative vote or
20 written consent of the member. In the case of each other merging business entity, the plan of
21 merger must be approved in accordance with the laws of the state or country governing the
22 organization and internal affairs of such merging business entity.

23 ...

24 (d) After a plan of merger has been approved by each merging domestic nonprofit
25 corporation and each other merging business entity as provided in subsection (c) of this section,
26 the surviving business entity shall deliver articles of merger to the Secretary of State for filing.
27 The articles of merger shall set forth:

28 ...

29 (e) A merger takes effect when the articles of merger become effective. When a merger
30 takes effect:

- 31 (1) Each other merging business entity merges into the surviving business entity
32 and the separate existence of each merging business entity except the
33 surviving business entity ceases;
- 34 (2) The title to all real estate and other property owned by each merging business
35 entity is vested in the surviving business entity without reversion or
36 impairment;
- 37 (3) The surviving business entity has all liabilities of each merging business
38 entity;
- 39 (4) A proceeding pending by or against any merging business entity may be
40 continued as if the merger did not occur, or the surviving business entity may
41 be substituted in the proceeding for a merging business entity whose separate
42 existence ceases in the merger;
- 43 (5) If a domestic nonprofit corporation is the surviving business entity, its articles
44 of incorporation shall be amended to the extent provided in the articles of
45 merger;
- 46 (6) The interests in each merging business entity that are to be converted into
47 interests, obligations, or securities of the surviving business entity or into the
48 right to receive cash or other property are thereupon so converted, and the
49 former holders of the interests are entitled only to the rights provided to them
50 in the plan of merger or, in the case of former holders of shares in a domestic

1 business corporation, any rights they may have under Article 13 of Chapter
2 55 of the General Statutes; and

- 3 (7) If the surviving business entity is not a domestic business corporation, the
4 surviving business entity is deemed to agree that it will promptly pay to the
5 shareholders of any merging domestic business corporation exercising
6 appraisal rights the amount, if any, to which they are entitled under Article 13
7 of Chapter 55 of the General Statutes and otherwise to comply with the
8 requirements of Article 13 as if it were a surviving domestic business
9 corporation in the merger.

10 The merger shall not affect the liability or absence of liability of any holder of an interest in
11 a merging business entity for any acts, omissions, or obligations of any merging business entity
12 made or incurred prior to the effectiveness of the merger. The cessation of separate existence of
13 a merging business entity in the merger shall not constitute a dissolution or termination of the
14 merging business entity.

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

- 18 (1) To agree that it may be served with process in this State in any proceeding for
19 enforcement of (i) any obligation of any merging domestic limited liability
20 company, domestic business corporation, domestic nonprofit corporation,
21 domestic limited partnership, or other partnership as defined in G.S. 59-36
22 that is formed under the laws of this State, or nonprofit association as defined
23 in G.S. 59B-2 that is formed under the laws of this State, (ii) the appraisal
24 rights of shareholders of any merging domestic business corporation under
25 Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the
26 surviving business entity arising from the merger; and
- 27 (2) To have appointed the Secretary of State as its agent for service of process in
28 any such proceeding. Service on the Secretary of State of any such process
29 shall be made by delivering to and leaving with the Secretary of State, or with
30 any clerk authorized by the Secretary of State to accept service of process,
31 duplicate copies of such process and the fee required by G.S. 55A-1-22(b).
32 Upon receipt of service of process on behalf of a surviving business entity in
33 the manner provided for in this section, the Secretary of State shall
34 immediately mail a copy of the process by registered or certified mail, return
35 receipt requested, to the surviving business entity. If the surviving business
36 entity is authorized to transact business or conduct affairs in this State, the
37 address for mailing shall be its principal office designated in the latest
38 document filed with the Secretary of State that is authorized by law to
39 designate the principal office or, if there is no principal office on file, its
40 registered office. If the surviving business entity is not authorized to transact
41 business or conduct affairs in this State, the address for mailing shall be the
42 mailing address designated pursuant to subdivision (3) of subsection (d) of
43 this section.

44 (f) This section does not apply to a merger that does not include a merging
45 unincorporated entity."

46 **SECTION 1.3.** G.S. 55A-12-02 reads as rewritten:

47 "**§ 55A-12-02. Sale of assets other than in regular course of activities.**

48 (a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially
49 all, of its property other than in the usual and regular course of its activities on the terms and
50 conditions and for the consideration determined by the corporation's board of directors if the
51 proposed transaction is authorized by subsection (b) of this section.

1 (b) Unless this Chapter, the articles of incorporation, bylaws, or the board of directors or
2 members (acting pursuant to subsection (d) of this section) require a greater vote or voting by
3 class, the proposed transaction to be authorized shall be approved:

4 (1) By the board;

5 (2) By the members entitled to vote thereon by two-thirds of the votes cast or a
6 majority of the votes entitled to be cast on the proposed transaction, whichever
7 is less; and

8 (3) In writing by any person or persons whose approval is required by a provision
9 of the articles of incorporation authorized by G.S. 55A-10-30 for an
10 amendment to the articles of incorporation or bylaws.

11 (c) If the corporation does not have members entitled to vote thereon, the transaction
12 shall be approved by a vote of a majority of the directors then in office. The corporation shall
13 provide at least five days' written notice of any directors' meeting at which such approval will be
14 considered. The notice shall state that the purpose, or one of the purposes, of the meeting is to
15 consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property
16 or assets of the corporation and contain or be accompanied by a description of the transaction.

17 (d) The board may condition its approval of the proposed transaction, and the members
18 entitled to vote thereon may condition their approval of the transaction, on receipt of a higher
19 percentage of affirmative votes or on any other basis.

20 (e) If the corporation seeks to have the transaction approved by the members entitled to
21 vote thereon at a membership meeting, the corporation shall give notice of the membership
22 meeting to those members in accordance with G.S. 55A-7-05. The notice shall state that the
23 purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other
24 disposition of all, or substantially all, of the property or assets of the corporation and contain or
25 be accompanied by a description of the transaction.

26 (f) If the board seeks to have the transaction approved by the members entitled to vote
27 thereon by written consent or written ballot, the material soliciting the approval shall contain or
28 be accompanied by a description of the transaction.

29 (g) A-Other than dispositions to a charitable or religious corporation authorized under a
30 plan of dissolution adopted pursuant to Article 14 of Chapter 55A of the General Statutes, a
31 charitable or religious corporation shall give written notice to the Attorney General 30 days
32 before it sells, leases, exchanges, or otherwise disposes of all, or a majority of, its property if the
33 transaction is not in the usual and regular course of its activities unless the Attorney General has
34 given the corporation a written waiver of this subsection. This notice shall include all the
35 information the Attorney General determines is required for a complete review of the proposed
36 transaction. The Attorney General may require an additional 30-day period to review the
37 proposed transaction by providing written notice to the charitable or religious corporation prior
38 to the expiration of the initial notice period. During this 30-day period, the transaction may not
39 be finalized.

40 (h) After a sale, lease, exchange, or other disposition of property is authorized, the
41 transaction may be abandoned (subject to any contractual rights), without further action by the
42 members or any other person who approved the transaction, in accordance with the procedure set
43 forth in the resolution proposing the transaction or, if none is set forth, in the manner determined
44 by the board of directors."

45
46 **PART II. INCREASE EXEMPTION THRESHOLD – CHARITABLE SOLICITATION**
47 **LICENSES**

48 **SECTION 2.1.** G.S. 131F-3 reads as rewritten:

49 "**§ 131F-3. Exemptions.**

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

51 ...

1 (3) Any person who receives less than ~~twenty five thousand dollars (\$25,000)~~
2 fifty thousand dollars (\$50,000) in contributions in any calendar year and does
3 not provide compensation to any officer, trustee, ~~organizer, incorporator,~~
4 fund-raiser, or solicitor. A charitable organization may demonstrate to the
5 Department that it receives less than fifty thousand dollars (\$50,000) in
6 contributions by providing any of the following:

- 7 a. A copy of its most recently completed and filed Internal Revenue
8 Service Form 990 or Form 990-EZ or an applicable successor form.
9 b. A copy of the message confirming its submission of Internal Revenue
10 Service Form 990-N or an applicable successor form.
11 c. A copy of its budget for the current year that includes projected
12 revenue and projected expenses.
13 d. A completed financial form developed by the Department.
14 e. Any other evidence satisfactory to the Department.

15"

17 PART III. EFFECTIVE DATE AND APPLICABILITY

18 SECTION 3.1. Part I of this act becomes effective October 1, 2019, and applies to
19 plans of mergers adopted on or after that date. Part II of this act is effective when it becomes law
20 and applies to requests for exemptions filed on or after that date. The remainder of this act is
21 effective when it becomes law.