

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 398

Short Title: Amend Business Corporation Act.

(Public)

Sponsors: Senators Hartsell; and Soles.

Referred to: Judiciary I.

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO AMEND THE BUSINESS CORPORATION ACT AND MAKE A
CONFORMING AMENDMENT TO G.S.47-18.1 AS RECOMMENDED BY THE
GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-1-28(b)(3) reads as rewritten:

"(3) ~~That all fees, taxes, and penalties owed to this State have been paid, if~~
~~(i) payment is reflected in the records of the Secretary of State and (ii)~~
~~nonpayment affects the existence or authorization of the domestic or~~
~~foreign corporation; the articles of incorporation of a domestic~~
corporation or the certificate of authority of a foreign corporation has
not been suspended for failure to comply with the Revenue Act of this
State and that the corporation has not been administratively dissolved
for failure to comply with the provisions of this Chapter;".

Sec. 2. (a) G.S. 55-4-05(b) reads as rewritten:

"(b) The Secretary of State shall adopt uniform certificates to be furnished for
registration in accordance with this section. ~~If the corporation involved is not a domestic~~
~~corporation or a foreign corporation authorized to do business in this State, In the case of a~~
foreign corporation, a similar certificate by any competent authority of the jurisdiction
of incorporation may be registered in accordance with this section."

(b) G.S. 47-18.1(b) reads as rewritten:

"(b) The Secretary of State shall adopt uniform certificates of merger or
consolidation, to be furnished for registration, and shall adopt such fees as are necessary
for the expense of such certification. If the corporation involved is not a domestic

1 corporation, a similar certificate by any competent authority in the jurisdiction of
2 incorporation may be registered in accordance with this section."

3 Sec. 3. G.S. 55-5-02 is amended by adding a new subsection (c) to read:

4 "(c) A corporation may change its registered office or registered agent by
5 including in its annual report required by G.S. 55-16-22 the information and any written
6 consent required by subsection (a)."

7 Sec. 4. (a) G.S. 55-6-40(h) reads as rewritten:

8 "(h) Any action by a shareholder ~~pursuant to subsection (i) and (j) of this section to~~
9 compel the payment of dividends may be brought against the directors, or against the
10 corporation with or without joining the directors as parties. The shareholder bringing
11 such action shall be entitled, in the event that the court orders the payment of a
12 dividend, to recover from the corporation all reasonable expenses, including attorney's
13 fees, incurred in maintaining such action. If a court orders the payment of a dividend,
14 the amount ordered to be paid shall be a debt of the corporation."

15 (b) G.S. 55-6-40 is amended by adding a new subsection (k) to read:

16 "(k) Nothing in this section shall impair any rights which a shareholder may have
17 on general principles of equity to compel the payment of dividends."

18 Sec. 5. G.S. 55-7-21.1 reads as rewritten:

19 "**§ 55-7-21.1. Rights of holders of debt securities.**

20 In addition to any rights otherwise lawfully conferred, the articles of incorporation
21 of the corporation may confer upon the holders of any bonds, debentures or other debt
22 obligations issued or to be issued by the corporation any one or more of the following
23 powers and rights upon such terms and conditions as may be prescribed in the articles of
24 incorporation:

- 25 (1) The power to vote on any matter either in conjunction with or to the
26 full or partial exclusion of its shareholders, notwithstanding G.S. 55-6-
27 01(c)(1), and in determination of votes and voting groups, the holders
28 of such debt obligations shall be treated as shareholders;
- 29 (2) The right to inspect the corporate books and records;
- 30 (3) Any other rights concerning the corporation which its shareholders
31 have or may have.

32 Any such power or right shall not be diminished, as to bonds, debentures or other
33 obligations then outstanding, except by an amendment of the articles of incorporation
34 approved by the vote or written consent of the holders of a majority in principal amount
35 thereof or such larger percentage as may be specified in the articles of incorporation."

36 Sec. 6. (a) G.S. 55-8-08(c) reads as rewritten:

37 "(c) Unless the entire board of directors is to be removed, if ~~if~~ cumulative voting
38 is authorized, a director may not be removed if the number of votes sufficient to elect
39 him under cumulative voting is voted against his removal. If cumulative voting is not
40 authorized, a director may be removed only if the number of votes cast to remove him
41 exceeds the number of votes cast not to remove him."

42 (b) G.S. 55-8-08 is amended by adding a new subsection (e) to read:

43 "(e) Unless otherwise provided in the articles of incorporation or a bylaw adopted
44 by the shareholders, the entire board of directors may be removed from office with or

1 without cause by a vote of shareholders holding a majority of the outstanding shares
2 entitled to vote at any election of directors."

3 Sec. 7. (a) G.S. 55-8-20(b) reads as rewritten:

4 "(b) Unless otherwise provided by the articles of incorporation, ~~or bylaws provide~~
5 ~~otherwise, or the board of directors, may permit any or all directors~~ may ~~to~~ participate in a
6 regular or special meeting by, or conduct the meeting through the use of, any means of
7 communication by which all directors participating may simultaneously hear each other
8 during the meeting. A director participating in a meeting by this means is deemed to be
9 present in person at the meeting."

10 (b) G.S. 55-8-20 is amended by adding a new subsection (c) to read:

11 "(c) Unless the bylaws provide otherwise, special meetings of the board of
12 directors may be called by the president or any two directors."

13 Sec. 8. G.S. 55-10-03(e) reads as rewritten:

14 "(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the
15 shareholders, or the board of directors (acting pursuant to subsection (c)) require a
16 greater vote or a vote by voting groups, the amendment to be adopted must be approved
17 by:

18 (1) A majority of the votes entitled to be cast on the amendment by any
19 voting group with respect to which the amendment would create
20 dissenters' rights; and

21 (2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other
22 voting group entitled to vote on the amendment."

23 Sec. 9. G.S. 55-10-05 reads as rewritten:

24 "**§ 55-10-05. Amendment before issuance of shares.**

25 If a corporation has not yet issued shares, the board of directors, or if the corporation
26 has no directors, a majority of the its incorporators ~~or board of directors~~ may adopt one or
27 more amendments to the corporation's articles of incorporation."

28 Sec. 10. (a) G.S. 55-10-06(6) reads as rewritten:

29 "(6) If an amendment was approved by the shareholders ~~(i) the designation,~~
30 ~~number of outstanding shares, number of votes entitled to be cast by~~
31 ~~each voting group entitled to vote separately on the amendment, and~~
32 ~~number of votes of each voting group indisputably represented at the~~
33 ~~meeting (ii) either the total number of votes cast for and against the~~
34 ~~amendment by each voting group entitled to vote separately on the~~
35 ~~amendment or the total number of undisputed votes cast for the~~
36 ~~amendment by each voting group and a statement that the number cast~~
37 ~~for the amendment by each voting group was sufficient for approval by~~
38 ~~that voting group,~~ a statement that shareholder approval was obtained
39 as required by this Chapter."

40 (b) G.S. 55-11-05(a)(3) reads as rewritten:

41 "(3) If approval of the shareholders of one or more corporations party to the
42 merger or share exchange was required ~~(i) the designation, number of~~
43 ~~outstanding shares, and number of votes entitled to be cast by each~~
44 ~~voting group entitled to vote separately on the plan as to each~~

1 corporation, and (ii) either the total number of votes cast for and
2 against the plan by each voting group entitled to vote separately on the
3 plan or the total number of undisputed votes cast for the plan
4 separately by each voting group and a statement that the number cast
5 for the plan by each voting group was sufficient for approval by that
6 voting group, a statement that the merger or share exchange was
7 approved by the shareholders as required by this Chapter."

8 (c) G.S. 55-14-03(a)(3) and (4) read as rewritten:

9 "(3) ~~With respect to the shareholders (i) the number of votes entitled to be~~
10 ~~east on the proposal to dissolve, and (ii) either the total number of~~
11 ~~votes cast for and against dissolution or the total number of undisputed~~
12 ~~votes cast for dissolution and a statement that the number cast for~~
13 ~~dissolution was sufficient for approval. A statement that shareholder~~
14 ~~approval was obtained as required by this Chapter.~~

15 (4) ~~If voting by voting groups was required, the information required by~~
16 ~~subparagraph (3) must be separately provided for each voting group~~
17 ~~entitled to vote separately on the plan to dissolve."~~

18 Sec. 11. G.S. 55-10-07(b) reads as rewritten:

19 "(b) The restated articles of incorporation may include one or more amendments
20 to the articles. If the restated articles of incorporation include an amendment requiring
21 shareholder approval, it must be adopted as provided in G.S. 55-10-03. The restated
22 articles of incorporation may include a statement of the address of the current registered
23 office and the name of the current registered agent of the corporation, and no other."

24 Sec. 12. G.S. 55-13-02(a)(3) reads as rewritten:

25 "(3) Consummation of a sale or exchange of all, or substantially all, of the
26 property of the corporation other than ~~in the usual and regular course of~~
27 ~~business as permitted by G.S. 55-12-01~~, including a sale in dissolution,
28 but not including a sale pursuant to court order or a sale pursuant to a
29 plan by which all or substantially all of the net proceeds of the sale
30 will be distributed in cash to the shareholders within one year after the
31 date of sale;"

32 Sec. 13. Article 15 of Chapter 55 is amended by adding a new section to
33 read:

34 "**§ 55-15-21. Withdrawal of foreign corporation by reason of a merger.**

35 (a) Whenever the separate existence of a foreign corporation authorized to
36 transact business in this State ceases as a result of a statutory merger permitted by the
37 laws of the state or country under which it was incorporated, the surviving corporation
38 shall apply for a certificate of withdrawal for the merged corporation by delivering to
39 the Secretary of State for filing a copy of the articles of merger or a certificate reciting
40 the facts of the merger, duly authenticated by the secretary of state or other official
41 having custody of corporate records in the state or country under the laws of which such
42 statutory merger was effected. If the surviving corporation is not authorized to transact
43 business in this State the articles of merger or certificate must be accompanied by an
44 application which must set forth:

- 1 (1) The name of each merged corporation authorized to transact business
2 in this State and the name of the surviving corporation and a statement
3 that the surviving corporation is not authorized to transact business in
4 this State;
- 5 (2) That the surviving corporation consents that service of process based
6 upon any cause of action arising in this State, or arising out of business
7 transacted in this State, during the time each merged corporation was
8 authorized to transact business in this State may thereafter be made on
9 such corporation by service thereof on the Secretary of State;
- 10 (3) A mailing address to which the Secretary of State may mail a copy of
11 any process served on him under subdivision (a)(2); and
- 12 (4) A commitment to notify the Secretary of State in the future of any
13 change in its mailing address.
- 14 (b) If the Secretary of State finds that the articles of merger or certificate and the
15 application for withdrawal, if required, conforms to law he shall:
- 16 (1) Endorse on the articles of merger or certificate and the application for
17 withdrawal, if required, the word 'filed' and the hour, day, month and
18 year of the filing thereof;
- 19 (2) File the articles of merger or certificate and the application, if required;
- 20 (3) Issue a certificate of withdrawal; and
- 21 (4) Send to the foreign corporation or its representative the certificate of
22 withdrawal, together with the exact or conformed copy of the
23 application, if required, affixed thereto."
- 24 Sec. 14. G.S. 55-15-31 is amended by adding a new subsection (f) to read:
- 25 "(f) The corporation shall not be granted a new certificate of authority until each
26 ground for revocation has been substantially corrected to the reasonable satisfaction of
27 the Secretary of State."
- 28 Sec. 15. This act is effective upon ratification.