

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 426

Short Title: Dissenters' Rights Amendments.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 18, 1999

A BILL TO BE ENTITLED

1 AN ACT TO LIMIT THE RIGHT OF SHAREHOLDERS OF SECURITIES
2 DESIGNATED AS NATIONAL MARKET SYSTEM SECURITIES TO DISSENT
3 FROM, OR OBTAIN PAYMENT AS A RESULT OF, CERTAIN CORPORATE
4 ACTIONS AND TO MAKE OTHER CLARIFYING CHANGES TO THE LAW
5 GOVERNING DISSENTERS' RIGHTS.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 55-13-02 reads as rewritten:

9 "**§ 55-13-02. Right to dissent.**

10 (a) In addition to any rights granted under Article 9, a shareholder is entitled to
11 dissent from, and obtain payment of the fair value of his shares in the event of, any of the
12 following corporate actions:

13 (1) Consummation of a plan of merger to which the corporation (other than
14 a parent corporation in a merger whose shares are not affected under
15 G.S. 55-11-04) is a party unless (i) approval by the shareholders of that
16 corporation is not required under G.S. 55-11-03(g) or (ii) such shares
17 are then redeemable by the corporation at a price not greater than the
18 cash to be received in exchange for such shares;

19 (2) Consummation of a plan of share exchange to which the corporation is a
20 party as the corporation whose shares will be acquired, unless such

1 shares are then redeemable by the corporation at a price not greater than
2 the cash to be received in exchange for such shares;

3 (3) Consummation of a sale or exchange of all, or substantially all, of the
4 property of the corporation other than as permitted by G.S. 55-12-01,
5 including a sale in dissolution, but not including a sale pursuant to court
6 order or a sale pursuant to a plan by which all or substantially all of the
7 net proceeds of the sale will be distributed in cash to the shareholders
8 within one year after the date of sale;

9 (4) An amendment of the articles of incorporation that materially and
10 adversely affects rights in respect of a dissenter's shares because it (i)
11 alters or abolishes a preferential right of the shares; (ii) creates, alters, or
12 abolishes a right in respect of redemption, including a provision
13 respecting a sinking fund for the redemption or repurchase, of the
14 shares; (iii) alters or abolishes a preemptive right of the holder of the
15 shares to acquire shares or other securities; (iv) excludes or limits the
16 right of the shares to vote on any matter, or to cumulate votes; (v)
17 reduces the number of shares owned by the shareholder to a fraction of a
18 share if the fractional share so created is to be acquired for cash under
19 G.S. 55-6-04; or (vi) changes the corporation into a nonprofit
20 corporation or cooperative organization; or

21 (5) Any corporate action taken pursuant to a shareholder vote to the extent
22 the articles of incorporation, bylaws, or a resolution of the board of
23 directors provides that voting or nonvoting shareholders are entitled to
24 dissent and obtain payment for their shares.

25 (b) A shareholder entitled to dissent and obtain payment for his shares under this
26 Article may not challenge the corporate action creating his entitlement, including without
27 limitation a merger solely or partly in exchange for cash or other property, unless the
28 action is unlawful or fraudulent with respect to the shareholder or the corporation.

29 (c) Notwithstanding any other provision of this Article, there shall be no right of
30 dissent of shareholders to dissent from, or obtain payment of the fair value of the shares in
31 the event of, the corporate actions set forth in subdivisions (1), (2), or (3) of subsection
32 (a) of this section in favor of holders of shares of if the affected shares are any class or
33 series which, at the record date fixed to determine the shareholders entitled to receive
34 notice of and to vote at the meeting at which the plan of merger or share exchange or the
35 sale or exchange of property is to be acted on, were (i) listed on a national securities
36 exchange or designated as a national market system security on an interdealer quotation
37 system by the National Association of Securities Dealers, Inc., or (ii) held by at least
38 2,000 record shareholders, unless in either case: shareholders. This subsection does not
39 apply in cases in which either:

40 (1) The articles of incorporation incorporation, bylaws, or a resolution of the
41 board of directors of the corporation issuing the shares provide
42 otherwise; or

- 1 (2) In the case of a plan of merger or share exchange, the holders of the
2 class or series are required under the plan of merger or share exchange
3 to accept for the shares anything except:
4 a. Cash;
5 b. Shares, or shares and cash in lieu of fractional shares of the
6 surviving or acquiring corporation, or of any other corporation
7 which, at the record date fixed to determine the shareholders
8 entitled to receive notice of and vote at the meeting at which the
9 plan of merger or share exchange is to be acted on, were either
10 listed subject to notice of issuance on a national securities
11 exchange or designated as a national market system security on
12 an interdealer quotation system by the National Association of
13 Securities Dealers, Inc., or held of record by at least 2,000 record
14 shareholders; or
15 c. A combination of cash and shares as set forth in sub-subdivisions
16 a. and b. of this subdivision."

17 Section 2. This act becomes effective October 1, 1999, and applies to
18 corporate actions to which shareholders may dissent occurring on or after that date.